

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 & Taxation Commissioner (ETC) is the head of the Excise and Taxation Department who is assisted by one Additional ETC, one Joint ETC, eight Deputy ETCs, 14 Assistant ETCs and 69 Excise & Taxation Officers (ETOs). They are assisted by Excise and Taxation Inspectors and other allied staff for administering the relevant Tax laws and rules.

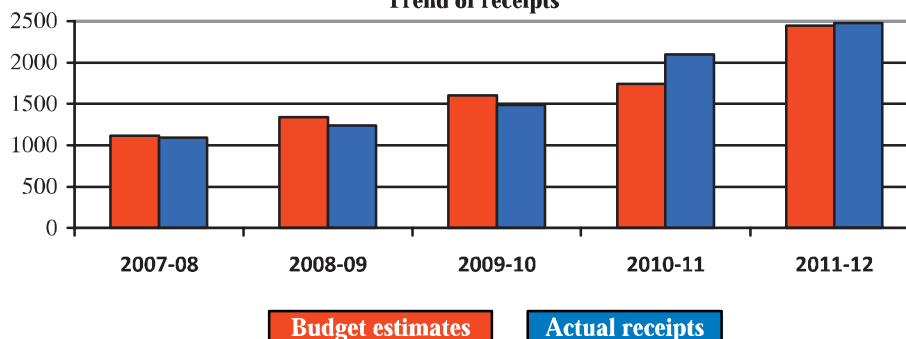
2.2 Trend of receipts

Budget estimates and actual receipts from Sales tax/VAT during the last five years 2007-08 to 2011-12 along with the total tax receipts during the same period is exhibited in the following **Table-2.1** and **Graph-2.1**.

Table 2.1

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	₹ in crore)	
					Total tax receipts of the State	Percentage of actual Sales tax/ VAT receipts vis-à-vis total tax receipts
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
2011-12	2,444.27	2,476.78	32.51	1	4,107.92	60

Graph -2.1
Trend of receipts



It would be seen from the above that the variation between the budget estimates and the actual receipts 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. The actual receipts of Sales Tax/ VAT for the year 2011-12 was ₹ 2,476.78 crore against the Budget estimates of ₹ 2,444.27 crore.

2.3 Arrears in assessment

The number of cases pending for assessment at the beginning of the years, becoming due during the year, disposed of during the year and pending at the end of each year during the period 2007-08 to 2011-12 as furnished by the Excise and Taxation Department in respect of the taxes/VAT on sales, trade etc., are mentioned in **Table 2.2** below.

Table 2.2

Year	Opening balance	Cases which become due for assessment during the year	Total assessments due	Cases disposed of 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.
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	
2011-12	46,781	46,519	93,300	33,599	59,701	24
VAT	1,39,451	52,474	1,91,925	35,863	1,56,062	

Audit noticed that the percentage of disposal, which ranged between 26 and 71 *per cent* during the period 2007-08 to 2010-11, has decreased to the level of 24 *per cent* in 2011-12 as compared to previous year.

The Government may 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, Excise & Taxation Commissioner of the Department, had directed all the Assessing Authorities to:

- (i) dispose of all the pending assessment cases upto 2007-2008, while reviewing the Zonal Meeting;
- (ii) dispose of pending cases of contractors in view of amended provision of the Act; and
- (iii) implement the amended provision of Rule 66 of H.P. VAT Act, 2005, retrospectively also.

These directions had been issued to all AETCs of the Districts and ETO, Kinnaur.

2.3.2 Position of arrears

Table – 2.3

(₹ in crore)				
Year	Opening balance of arrears	Additions during the year	Collection by the end of the year	Balance Arrears
2007-08	99.40	39.55	25.56	113.29
2008-09	113.29	32.87	25.78	120.38
2009-10	120.38	172.44	201.32	91.51
2010-11	91.52	181.97	110.76	162.73
2011-12	162.73	197.18	148.53	211.38

The above table shows that the arrears of revenue in respect of taxes/ VAT on sales, trade etc. sharply increased in 2010-11 and 2011-12.

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 2007-08 to 2011-12 along with the relevant all India average percentage of expenditure on collection to gross collection of the preceding years were as below in **Table-2.4**.

Table – 2.4

(₹ 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.	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
	2011-12	2,476.78	5.16	0.21	0.75

Source: Finance accounts

The above table indicates that the percentage of expenditure on collection was more than the all India average percentage for the years 2007-08 to 2010-11 and was below the all India average percentage in the year 2011-12.

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 internal audit of any unit was conducted nor pending IRs and Paras cleared by the Wing during the year 2008-09 and 2009-10, as mentioned in **Table 2.5** below.

Table – 2.5

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	2008-09	11	0	11	94	731	-	-	94	731
2	2009-10	11	0	11	94	731	-	-	94	731
3	2010-11	11	8	3	94	731	9	99	93	692

Source: Excise and Taxation Commissioner

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

The Department had not taken any steps to strengthen 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), audit has pointed out 47 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 ₹ 152.55 crore. Of these, the Department/Government had fully /partially accepted audit observations in 25 paragraphs involving ₹ 4.32 crore and had since recovered ₹ 1.07 crore in 17 paragraphs. The details are shown in the following **Table- 2.6**.

Table 2.6

Year of Audit Report	(₹ in crore)					
	Paragraphs included		Paragraphs accepted		Amount recovered	
	No.	Amount	No.	Amount	No.	Amount
2007-08	14	68.24	6	1.59	5	0.40
2008-09	10	31.52	5	1.04	4	0.22
2009-10	08	34.06	4	0.75	2	0.07
2010-11	06	1.42	2	0.08	2	0.04
2011-12	09	17.31	8	0.86	4	0.34
Total	47	152.55	25	4.32	17	1.07

This indicates 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 2011-12, test check of the records of 11 units relating to VAT/sales tax assessments and other records revealed underassessment of tax and other irregularities involving ₹ 22.26 crore in 241 cases, which fall under the following categories as given in **Table -2.7**.

Table -2.7

(₹ in crore)			
Sr. No.	Categories	Number of cases	Amount
1.	Under-assessment of tax	82	10.07
2.	Acceptance of defective statutory forms	33	8.71
3.	Irregular/incorrect/excess allowance of ITC	74	1.90
4.	Other irregularities	52	1.58
Total		241	22.26

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 14.52 crore in 100 cases which were pointed out in audit during the earlier years. An amount of ₹ 0.54 crore was realised in 10 cases during the year 2011-12.

A few illustrative audit observations involving ₹ 17.31 crore are discussed in the following paragraphs.

2.8 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/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. Such omissions on the part of Assessing Authorities (AAs) are pointed out in audit repeatedly, but not only do the irregularities persist, these also remain undetected till we conducted audit. There is need for improving the internal control system so that such omissions can be detected and corrective measures be taken.

2.9 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 and
- (iii) grant of Input Tax Credit.

The assessing authorities while finalising the assessments did not observe some of the provisions of the Acts/ Rules in the cases mentioned in the paragraphs 2.10 to 2.18. This resulted in non/ short levy/non-realisation of tax/interest of ₹ 17.31 crore.

2.10 Incorrect deduction of cost of material

Seven AETCs¹ (26 contractors)

As per sub section 2 (v) of the Himachal Pradesh Value Added Tax (HPVAT) Act 2005, 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 which has also been judicially upheld in two cases² by the Hon'ble Supreme Court. Further, 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.

Audit noticed between October 2011 and March 2012 from the assessment records that the Assessing Authorities (AAs) while finalising (between June 2009 and June 2011) the assessments of 26 contractors for the years falling between 2005-06 and 2009-10, allowed deduction of ₹ 23.45 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 ₹ 1.16 crore on which interest of ₹ 75.51 lakh was also leviable (**Appendix-II**).

After audit pointed out between October 2011 and March 2012, the AETC Mandi intimated in September 2012 that the case had been reassessed and additional demand of ₹ 3.54 lakh created and efforts were being made to recover the amount. Further report on recovery and reply of the remaining AETCs had not been received (December 2012).

Audit reported the matter to the Department and the Government between November 2011 and April 2012. The replies have not been received (December 2012).

2.11 Non-levy of interest

Four AETCs³

Under section 19 of the HPVAT Act 2005, 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.

¹ Chamba: Two contractors; Hamirpur: Three contractors; Kangra: Three contractors; Mandi: One contractor; Shimla: Nine contractors; Sirmour: Two contractors and Una: six contractors

² In case of N. M. Goel and Co. versus Sale Tax Officer Rajnandgaon and another (1988) 72 STC SC 368 and Rashtriya Ispat Nigam Ltd. versus State of Andhara Pradesh (1998) 109 STC SC 425

³ Chamba, Sirmour at Nahan, Solan and Una

Audit noticed between July 2011 and March 2012 from assessment records that the AAs, while finalising the assessments of 13 dealers between January 2010 and March 2011, for the years falling between 2005-06 and 2009-10, created tax demands of ₹ 18.71 lakh. Audit further observed that in the case of these dealers, the AAs did not levy interest of ₹ 10.34 lakh on the additional demand created upto the date of assessment. This resulted in non-charging of interest of ₹ 10.34 lakh.

After audit pointed out the matter to the Department and the Government between August 2011 and April 2012, the AETC Sirmour at Nahan intimated (October 2012) that interest amounting to ₹ 1.38 lakh had been recovered in case of four dealers and efforts were being made to recover the balance amount. Further report on recovery and reply of the remaining AETCs and the Government has not been received (December 2012).

2.12 Evasion of tax due to acceptance of invalid and defective forms

2.12.1 Invalid and defective 'C' forms

Five AETCs⁴

Section 8 of the Central Sales Tax (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* upto 31 March 2007 (three *per cent* w.e.f. 1st April 2007 and two *per cent* w.e.f. 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. It has been judicially held⁵ 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.

Test check of the records of five AETCs (between June 2011 and March 2012) revealed that while finalising the assessments of 19 dealers between June 2008 and August 2011 for the assessment years 2005-06 to 2008-09, the AAs allowed concessional rate of tax on interstate sales valued at ₹ 42.57 crore without verifying the declaration forms produced in support of the transactions which were either duplicate/ incomplete or defective instead of original copies of 'C' forms.

The forms were not liable to be accepted at the time of assessment but the concerned AAs did not reject the same. This resulted in short levy of tax of ₹ 6.59 crore including interest of ₹ 2.88 crore **Appendix-III.**

⁴ BBN, Kangra, Sirmour, Solan and Una

⁵ Commissioner Sale 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)

After the matter was reported to the Department and the Government between June 2011 and March 2012, the Department intimated in December 2012 that eight cases of four AETCs had been reassessed between December 2011 and July 2012 and additional demand of ₹ 5.96 lakh⁶ created and recovered. Further report on recovery and replies of the remaining AETCs and the Government had not been received (December 2012).

2.12.2 Misutilisation of 'F' forms

Three AETCs⁷

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 Form 'F'. 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 rate of 10 *per cent* or at the rate applicable in the State under its GST Act, whichever is higher up to March 2007 and at the rate applicable in the State with effect from 1st April 2007 as provided under section 8 of the CST Act read with Rule 12 of the CST (R&T) Rules. Besides, interest at the prescribed rates is also leviable on the unpaid amount of tax.

Scrutiny of records of three AETCs between June 2011 and January 2012 revealed that while finalising assessments of seven dealers from February 2010 to March 2011 for the assessment years 2005-06 to 2009-10, the AAs allowed exemption of tax of ₹ 4.58 crore including interest of ₹ 1.82 crore on transfers of stock amounting to ₹ 185.77 crore against declaration forms 'F' which were duplicate, incomplete, transactions covering more than one calendar month/assessment year and addressed to those branches that were not specified in the registration certificate.

The forms were liable to be rejected at the time of assessment but the concerned AAs did not properly scrutinize the forms. This resulted in non-levy of tax of ₹ 4.58 crore including interest of ₹ 1.82 crore as detailed in **Appendix-IV**.

Audit reported the matter to the Department and the Government between February 2011 and November 2011. The replies have not been received (December 2012).

2.13 Incorrect determination of turnover

2.13.1 Four AETCs⁸

As per Section 2 (v) (zd) of the HPVAT Act 2005, "turnover" means aggregate amount of sale, purchases and parts of sales and purchases made by any dealer and includes any sum charged, on account of freight, storage, demurrage,

⁶ AETC BBN; five dealers; ₹ 5.10 lakh Solan; two dealers; ₹ 0.83 lakh and Sirmour; one dealer; ₹ 3,000

⁷ BBN, Kangra and Solan

⁸ AETCs Hamirpur, Kangra at Dharamsala, Mandi, and Shimla

insurance and for anything done by the dealer in respect of the goods at the time of or before delivery thereof. Schedule 'A' to section 6 HPVAT Act, 2005, further provides that tax shall be levied at the prescribed rates at every point of sale in respect of goods specified therein. Section 19 of the Act *ibid* further provides that 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.

Audit noticed between October 2011 and March 2012 from assessment records that six dealers were assessed short by ₹ 5.87 crore for the period 2005-06 to 2009-10. The AAs while finalising the assessments of these dealers between November 2008 and February 2011 in some cases did not take cognizance either of gross receipts/turnover determined lesser by the assesses or assessed on lower side to that of certified receipts whereas in some other cases either turnover was taken lesser than the actual work done or was determined on lower side against 'C' forms, though the details of such turnover were available in the assessment files of the dealers. This resulted in short levy of tax of ₹ 95.39 lakh including interest of ₹ 47.42 lakh.

Audit reported the matter to the Department and the Government between February and April 2012. The replies have not been received (December 2012).

2.13.2 Three AETCs⁹

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. Schedule A to section 6 HPVAT Act, 2005, further provides that tax shall be levied at the prescribed rates at every point of sale in respect of goods specified therein. Section 19 of the Act *ibid* further provides that 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.

Audit noticed between September 2011 and March 2012 from the trading accounts that four dealers received ₹ 2.06 crore on account of hire charges of machinery for the period 2005-06 to 2009-10. But the dealers did not include the amount of hire charges in their respective returns and tax was not paid on it. The AAs while finalising the assessments of these dealers between January 2011 and March 2011 did not detect the mistake though such receipts were available in the trading accounts. This resulted in short levy of tax of ₹ 49.61 lakh including interest of ₹ 23.98 lakh.

Audit reported the matter to the Department and the Government between November 2011 and April 2012. The replies have not been received (December 2012).

⁹ AETCs B. B. N at Baddi, Kangra at Dharamsala and Mandi

2.13.3 AETC Una

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 held¹⁰ 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. Schedule A to section 6 of HPVAT Act, 2005, further provides that tax shall be levied at the prescribed rates at every point of sale in respect of goods specified therein. Section-19 of the Act *ibid* further provides that 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.

Audit noticed between November 2011 and March 2012 from the assessment records that the AAs, while finalising (between February 2010 and March 2011) the assessments of two dealers for the period 2005-06 to 2007-08, did not levy tax on freight charges of ₹ 1.90 crore received by them. Non-inclusion of the freight charges in the turnover had resulted in underassessment of tax of ₹ 15.92 lakh including interest of ₹ 6.77 lakh.

Audit reported the matter to the Department and the Government between November 2011 and April 2012. The replies have not been received (December 2012).

2.14 Application of incorrect rate of tax

2.14.1 Two AETCs¹¹

As per the provisions of HPVAT Act, 2005 and rules framed there under, the tax is leviable on sales made by a dealer as per schedule under section 6. Schedule A to section 6 HPVAT Act, 2005, further provides that tax shall be levied at the prescribed rates at every point of sale in respect of goods specified therein. Section 19 of the Act *ibid* further provides that 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.

Audit noticed between October 2011 and March 2012 that three dealers had made intra state sales valued at ₹ 5.82 crore which was taxable at the rate of 12.5 *per cent*. Audit scrutiny revealed that while finalising (between January 2010 and February 2011) the assessments for the years between 2005-06 and 2009-10 the AAs assessed the sales of ₹ 5.82 crore at the rate of four *per cent* instead of 12.5 *per cent*. This omission resulted in short realisation of tax of ₹ 69.80 lakh including interest of ₹ 20.35 lakh.

After the matter was reported to the Department and the Government between November 2011 and April 2012, the Department intimated in November 2012

¹⁰ Supreme Court Judgment in the case of Black Diamond Beverages versus Commercial Tax Officer (1997) 107 STC 219 (SC): AIR 1997 SC 3550: 1998 (1) SCC 458

¹¹ B. B. N. at Baddi: one dealer: ₹ 36.99 lakh and Una: two dealers: ₹ 32.81 lakh

that case of AETC BBN at Baddi had been reassessed (February 2012) and additional demand of ₹ 13.54 lakh was created and recovered. The reply of the AETC Una and the Government had not been received (December 2012).

2.14.2 Two AETCs¹²

As per the transitional provisions of HPVAT Act, 2005 and rules framed thereunder, a manufacturer who was availing partial exemption under the HPGST Act, may continue to avail partial exemption for the unexpired period under the Act *ibid*. After expiry of incentive period, tax as provided under section 6 of the Act *ibid* is leviable. Section 19 of the Act *ibid* further provides that 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.

Audit noticed between January and March 2012 that four dealers made intra state sales valued at ₹ 2.07 crore taxable at the rate of 3.125 *per cent* and 12.5 *per cent*. Audit further noticed that the AAs while finalising (between July 2010 and November 2010) the assessments for the years between 2005-06 and 2007-08 had wrongly assessed the sales at the rate of one *per cent* instead of partial concessional rate of 3.125 *per cent* applicable in assessments of five years of four dealers whereas concessional rate of 3.125 *per cent* was applied even after the expiry of eligibility for concession instead of 12.5 *per cent* applicable in this case. These omissions resulted in short realisation of tax of ₹ 9.52 lakh, including interest of ₹ 4.27 lakh.

After audit pointed out between October 2011 and March 2012, the AETC Mandi intimated in September 2012 that the cases had been reassessed and additional demand of ₹ 6.16 lakh (including interest and penalty) created and efforts were being made to recover the amount. Further report on recovery and reply of the AETC Hamirpur has not been received (December 2012).

Audit reported the matter to the Department and the Government in November 2011. The replies have not been received (December 2012).

2.15 Application of concessional rate of tax without declaration forms

Two AETCs¹³

Item number 85 of part-I of Schedule A to Section 6 of HPVAT Act, 2005 provides that in case sale is made to the Government departments on declarations in form 'D', such sales are taxable at the concessional rate of four *per cent*. In the absence of the requisite form, tax in this case shall be levied at the rate of 12.5 *per cent*. Section 19 of the Act *ibid* further provides that 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

¹² Hamirpur: one dealer: ₹ 4.01 lakh and Mandi: three dealers: ₹ 5.51 lakh.

¹³ Chamba: one dealer: ₹ 1.41 lakh and Kangra at Dharamsala: one dealer: ₹ 0.72 lakh.

at the rate of one and a half *per cent* per month thereafter, till the default continues.

Audit noticed between September 2011 and March 2012 that two dealers made intra state sales valued at ₹ 19.79 lakh. The dealers claimed concessional rate of tax of four *per cent* on the context that the sales were made to the Government Departments. Audit noticed that though the dealers had not furnished form 'D', the AAs, while finalising (between November 2010 and March 2011) the assessments, allowed the concessional rate of tax as claimed by the dealers for the year 2009-10. This omission resulted in short realisation of tax of ₹ 2.13 lakh including interest of ₹ 0.45 lakh.

After audit pointed out the cases between November 2011 and March 2012, the ETC Shimla intimated in October 2012 that the cases of the dealers were under process and both the AETCs had been directed to finalise the cases immediately. Further report on recovery and reply of the AETCs has not been received (December 2012).

The matter was reported to the Government between November 2011 and March 2012; their replies have not yet been received (December 2012).

2.16 Incorrect allowance of input tax credit (ITC)

Five AETCs¹⁴

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.

Audit 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. Audit also noticed between September 2011 and March 2012 from the trading and profit and loss accounts of 22 dealers available in the assessment files that during the years 2007-08, 2008-09 and 2009-10, the purchase value of the stock in hand was ₹ 10.52 crore, ₹ 0.96 crore and ₹ 2.25 crore respectively. ITC was not admissible to the dealers on closing stock of ₹ 7.28 crore¹⁵ remaining unsold in respect of purchases made within the State during these years. Audit scrutiny revealed that the AAs while finalising (between April 2010 and March 2011) assessments of these dealers for the years 2007-08, 2008-09 and 2009-10, erroneously allowed ITC on the entire local purchases of ₹ 41.43 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

¹⁴ Chamba: three dealers: ₹ 11.41 lakh; Shimla: five dealers: ₹ 8.89 lakh; Sirmour: six dealers: ₹ 34.78 lakh; Solan: six dealers: ₹ 14.73 lakh and Una: two dealers: ₹ 5.60 lakh

¹⁵ 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.

allowance of ITC of ₹ 49.63 lakh. The dealers are liable to pay interest of ₹ 25.78 lakh on incorrect benefit of ITC passed on to them.

After the matter was reported to the Department and the Government between October 2011 and April 2012, the Department intimated in December 2012 that 13 cases of four AETCs had been reassessed between October 2011 and August 2012 and additional demand of ₹ 17.17 lakh created, out of which ₹ 13.10 lakh¹⁶ were recovered. Further report on recovery and reply of the remaining AETCs had not been received (December 2012).

Audit reported the matter to the Government between November 2011 and March 2012. The replies have not been received (December 2012).

2.17 Wrong exemption of tax

2.17.1 Under the transitional provisions of the HPVAT Act, 2005, any dealer who was availing partial exemption under the repealed Act (HPGST) may continue to avail such exemptions for the unexpired period under the VAT Act. The benefit of partial exemption is not available to the new manufacturers who commenced manufacturing on or after 1st April, 2005.

Audit scrutiny of assessment records in March 2012 of AETC Mandi, revealed that while finalising (April 2010) assessments for the years 2005-06 to 2008-09 of a dealer, the assessing authority had wrongly allowed partial exemption from payment of tax at the rate of 3.125 *per cent* instead of 12.5 *per cent* because the dealer had commenced manufacturing of goods with effect from 21 June 2005. This resulted in wrong allowance of partial exemption of tax of ₹ 7.52 lakh including interest of ₹ 2.94 lakh.

After this was pointed out by audit in March 2012, the AETC Mandi intimated in October 2012 that the case had been reassessed and additional demand of ₹ 8.55 lakh (including interest and penalty) was created (May 2012) and efforts were being made to recover the amount. Further report on recovery has not been received (December 2012).

2.17.2 The Excise and Taxation Department, Government of Himachal Pradesh vide notifications dated July 1999 and June 2009 had allowed concessional rate of Central Excise tax at one *per cent* of the taxable turnover of such goods manufactured for inter state sale/trade by the dealers running industrial units in Himachal Pradesh and are registered with Excise and Taxation Department of HP Government. One of the conditions for availing the concession was that unit located in industrially backward areas should have employed 80 *per cent* of its total manpower from amongst the bonafide Himachalies.

Audit test checked the assessment records of AETC Kangra at Dharamsala and noticed that while finalising (January 2011) assessment of a dealer for the year 2009-10, the AA had not objected to 93 *per cent* employment of bonafide Himachalies in the venture, which was wrongly worked out by the G. M. DIC Kangra at Dharamsala as against the correct employment of 67.74 *per cent* i.e.

¹⁶ AETC Chamba; two dealers; ₹ 1.10 lakh, Shimla; four dealers; ₹ 1.56 lakh, Solan; six dealers; ₹ 9.48 lakh and Sirmour; one dealer; ₹ 0.96 lakh

21 Himachalies out of 31 being employed in the industrial units. Thus, the AA had allowed concessional rate of one *per cent* to the dealer who did not satisfy the condition *ibid*. This resulted in under assessment of tax of ₹ 52.63 lakh including interest of ₹ 11.98 lakh.

Audit reported the matter to the Department and the Government between March and April 2012. The replies have not been received (December 2012).

2.18 Misuse of declaration forms 'C' by purchasing dealer

AETC Shimla

Section 8 (3) (b) of the CST Act, 1956, 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 registered dealer purchasing the goods as being intended for resale by him or any rules made by the Central Government in this behalf for use by him in the manufacture or processing of goods for sale or (in the telecommunication network) in mining or in the generation or distribution of electricity or any other form of power, the dealer shall be liable to pay tax at the concessional rate of such turnover provided such sales are supported by declaration in form 'C'. Besides, interest at the prescribed rates is also leviable on the unpaid amount of tax.

Audit test checked the records of AETC, Shimla between October 2011 and January 2012 and noticed that a dealer was engaged in the business of running a resort and made interstate purchase of diesel valued at ₹ 1.94 crore during the year 2007-08 and 2008-09 by using the declaration Form 'C'. Audit scrutiny of return filed by the dealer further revealed that the goods purchased against the 'C' Forms were not shown in the returns as resold or used in the manufacturing of goods for sale. Therefore, the dealer was not entitled for concessional rate of tax on interstate purchase of above goods and liable to pay tax on the purchase of goods at the rate applicable to the sale or purchase of such goods inside the State. The AA finalised the assessments in July 2009 and August 2010 for the assessment years 2007-08 and 2008-09 respectively did not detect the mistake and allowed the grant of concessional rate of tax. This resulted in short levy of tax of ₹ 34.54 lakh including interest of ₹ 11.87 lakh.

After the matter was reported to the Department and the Government in February 2012, the Department intimated that the case had been reassessed (July 2012) and additional demand of ₹ 28.86 lakh was created. Further report on recovery and reply of the Government has not been received (December 2012).