



**Report of the Comptroller and Auditor
General of India for the year ended 31
March 2013**

The Report has been laid on the table of the State Legislature Assembly on 04-08-2014



**Report No. 5
Revenue Sector
Government of Assam**

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PREFACE

This Report on Revenue Sector of Government of Assam for the year ended 31 March 2013 has been prepared for submission to the Governor of Assam under Article 151(2) of the Constitution of India.

The audit of expenditure accounts and revenue receipts of State Governments is conducted under Section 13 & 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971.

Chapter I of this Report presents the information on the State revenues, response of the Departments towards audit, audit planning and results of audit of the State Government relating to tax and non-tax revenues. Chapter II contains paragraphs relating to taxes on sales, trade etc. Chapter III contains paragraphs on taxes on motor vehicle. Chapter IV contains the results of Audit on a topic titled "Evasion of Stamp Duty and Registration Fee on immovable properties with special emphasis on Development Agreements". Chapter V contains the results of Audit on "Receipts under State Excise".

The cases mentioned in this Report are those which came to notice in the course of test check of records of various Departments during the year 2012-13 as well as those pertaining to earlier years but could not be included in the corresponding year's Reports.

The audit has been conducted in conformity with Auditing Standards issued (March 2002) by the Comptroller and Auditor General of India.

OVERVIEW

This Report contains 35 paragraphs relating to non/short levy of taxes/ duties interest and penalty etc., loss of revenue, irregular exemption and other irregularities. It also contains a performance audit on “Receipts under State Excise” and the results of an audit on the topic titled “Evasion of Stamp Duty and Registration Fee on immovable properties with special emphasis on Development Agreements”. The above cases involve monetary implication of ₹ 1,161.79 crore. From the date of issuing the paragraphs and the performance audit till finalisation of this Report, *i.e.* about six months, the concerned Departments have reported acceptance of cases involving ₹ 29.32 crore, of which, ₹ 5.45 crore had been recovered. Some of the major findings are mentioned below:

I. GENERAL

- The total receipts of the State for the year 2012-13 were ₹ 30,690.98 crore against ₹ 27,455.39 crore in the previous year. Of this, 35 *per cent* was raised by the Government through tax revenue (₹ 8,250.21 crore) and non-tax revenue (₹ 2,473.59 crore). The balance 65 *per cent* was received from the Government of India in the form of State’s share of net proceeds of divisible Union taxes (₹ 10,601.26 crore) and grants-in-aid (₹ 9,365.92 crore).

(Paragraph 1.1)

- Failure of senior officials to ensure timely replies and accountability resulted in non-settlement of 3,211 paragraphs involving revenue implication of ₹ 1,299.15 crore at the end of June 2013.

(Paragraph 1.2.1)

- During the year 2012-13, five Audit Committee meetings in respect of Environment & Forests, State Excise, Taxation and Transport Departments were held in which 223 paragraphs were settled.

(Paragraph 1.2.2)

- A limited verification of the action taken by the Departments on the recommendations of Audit indicated that though Audit had offered a number of recommendations to the State Excise Department in 2005-06, they were yet to implement the recommendations.

(Paragraph 1.3.2.2)

II. TAXES ON SALES, TRADE ETC.

Excess allowance of remission to industrial unit resulted in non-realisation of tax and interest of ₹ 11.76 crore.

(Paragraph 2.12)

Completion of assessment without conducting cross verification of declaration form led to short levy of tax of ₹ 2.88 crore, on which interest of ₹ 2.33 crore was additionally leviable.

(Paragraph 2.13)

Allowance of exemption without verification of information with other State despite instructions of the CT resulted in non-levy of tax of ₹ 1.84 crore, including interest.

(Paragraph 2.14)

Assessment of sale price of coal at rates lower than those applicable at the source of coal in Meghalaya resulted in short levy of tax of ₹ 1.64 crore, including interest.

(Paragraph 2.15)

Concealment of purchase turnover resulted in short payment of tax of ₹ 1.48 crore, including interest.

(Paragraph 2.16)

Non-detection of concealment of turnover due to non-verification of utilisation of declaration forms resulted in evasion of tax of ₹ 1.16 crore, including interest.

(Paragraph 2.19)

Double adjustment of treasury *challans* resulted in excess benefit awarded to the dealer coupled with short realisation of tax of ₹ 78.40 lakh, including interest.

(Paragraph 2.21)

Non-scrutiny of returns resulted in non-detection of short payment of entry tax of ₹ 1.19 crore.

(Paragraph 2.36)

Failure of the assessing officer to take cognisance of the purchase turnover of a dealer resulted in short levy of entry tax of ₹ 94.37 lakh.

(Paragraph 2.37)

III. Motor Vehicle Tax

Non/short realisation of Fancy Number Registration Fee of ₹ 9.07 lakh.

(Paragraph 3.10)

Non-raising of demands of motor vehicle tax including fine of ₹ 8.61 lakh.

(Paragraph 3.11)

IV. Stamp Duty and Registration Fee

Audit of the “Evasion of Stamp Duty and Registration Fee on immovable properties with special emphasis on Development Agreement” revealed the following:

Non-execution of conveyance deeds between landowners and developers resulted in foregoing of revenue of ₹ 7.30 crore.

(Paragraph 4.2.7.1)

Non-realisation of Registration Fee on fishery and ferry leases of ₹ 2.80 crore.

(Paragraph 4.2.7.2)

Non-registration of deeds of allotment of Government lands resulted in non-realisation of Registration Fee of ₹ 30.76 lakh.

(Paragraph 4.2.7.3)

V. State Excise

A performance audit on “Receipts under State Excise” revealed the following:

Cross verification of records revealed that 9.45 lakh bulk litre extra neutral alcohol was dispatched by the distilleries located outside the State to the bottling units of Assam against permits which were not issued by the Commissioner of Excise, Assam. The aforesaid volume of extra neutral alcohol was capable of producing India made foreign liquor involving revenue of ₹ 21.80 crore which was lost by the Government.

(Paragraph 5.8.1.2)

The Government of Assam is yet to prescribe the norm for production of India made foreign liquor from extra neutral alcohol which is 3.93 bulk litre extra neutral alcohol for each case of India made foreign liquor. Taking that as base, there was short production of 5.87 lakh cases involving revenue of ₹ 80.79 crore.

(Paragraph 5.8.2)

There were variations in the spirit content of IMFL brands against the prescribed standards. Audit scrutiny revealed that the percentage ranged between 70.7 and 73.3 degree proof against the standard of 75 degree proof.

(Paragraph 5.8.3)

In the absence of a system of re-verification of ex-bond price from the MRP printed on the labels, Department could not detect misclassification of brands resulting in loss of revenue of ₹ 238.34 crore.

(Paragraph 5.8.4.1)

Test check of 45 bonded warehouses indicated that they were availing bond limit of ₹ 138.80 crore against security deposit of only ₹ 5,000 in each case. Audit also detected flouting of hypothecation of stock made by them to the Government.

(Paragraph 5.10.1)

Audit noted that the information on closing stock furnished by some bonded warehouses to the Commissioner of Excise, Assam were not reliable as there were wide variations on closing stock as furnished to the other statutory authorities and banks for the same period.

(Paragraph 5.10.2.3)

Cross verification of records of Commissioner of Excise, Assam with the concerned States revealed that 141.77 lakh bulk litre out of 393.31 lakh bulk litre India made foreign liquor/Beer stated to have been exported by the licensees of Assam were not received by the concerned States leading to loss of revenue of ₹ 75.99 crore on account of Excise Duty only.

(Paragraph 5.11.1.1)

Unlike India made foreign liquor, there is no system of chemical examination of Country Spirit consignments though both are for human consumption.

(Paragraph 5.12)

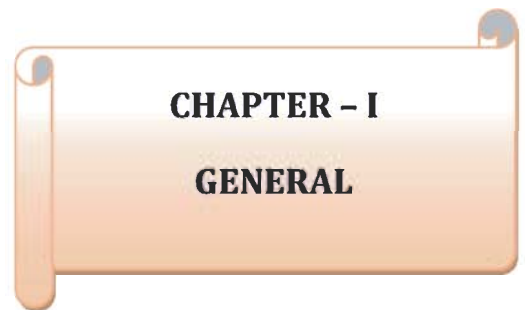
Absence of a system of recording the details of vehicles carrying extra neutral alcohol/India made foreign liquor/Beer entering Assam through the entry points at

Boxirhat and Srirampur denied the Department the option of cross verification of figures reported by the licensees through their returns.

(Paragraph 5.13.2)

The penal action contained in the Assam Excise Act and Rules enacted in 1910 and 1945 respectively has not been reviewed for many years. The penal rate prescribed is abysmally low when compared to the Excise Duty at the present rate. There is also no provision for payment of interest for delayed payments. Therefore, there is a need to review the existing penal provisions.

(Paragraph 5.14.1)



CHAPTER - I

GENERAL



CHAPTER-I: GENERAL

1.1 Trend of Revenue

1.1.1 The tax and non-tax revenue raised by the Government of Assam during the year 2012-13, the State's share of net proceeds of divisible Union taxes and duties assigned to State and grants-in-aid received from the Government of India during the year and the corresponding figures for the preceding four years are mentioned in Table 1.

Table 1
Trend of Revenue

(₹ in crore)						
Sl. No.	Particulars	2008-09	2009-10	2010-11	2011-12	2012-13
1.	Revenue raised by the State Government					
	• Tax revenue	4,150.21	4,986.72	5,929.84	7,638.23	8,250.21
	• Non-tax revenue	2,271.90	2,752.95	2,373.33	2,866.76	2,473.59
	Total	6,422.11	7,739.67	8,303.17	10,504.99	10,723.80
	Percentage of increase over previous year	--	20.52	7.28	26.52	2.08
2.	Receipts from Government of India					
	• Share of net proceeds of divisible Union taxes and duties	5,189.90	5,339.53	7,968.62	9,283.53	10,601.26 ¹
	• Grants-in-aid	6,465.03	6,805.30	6,733.15	7,666.87	9,365.92
	Total	11,654.93	12,144.83	14,701.77	16,950.40	19,967.18
3.	Total receipts of the State Government (1 and 2)	18,077.04	19,884.50	23,004.94	27,455.39	30,690.98
4.	Percentage of 1 to 3	36	39	36	38	35

Source: Finance Accounts.

¹ Note: For details, please see statement No.11: Detailed accounts of revenue by minor heads in the Finance Accounts (Volume-2) of Government of Assam for the year 2012-13. Figures under the "share of net proceeds assigned to States" under the major heads -0020-corporation tax, 0021-taxes on income and expenditure, 0032-taxes on wealth, 0037-customs, 0038-union excise duties, 0044-service taxes and 0045-other taxes and duties on commodities and services booked in the Finance Accounts under 'A- tax revenue' have been excluded from revenue raised by the State Government and included in 'States' share of divisible Union taxes' in the above table.

Thus, growth of revenue during 2012-13 over previous year was at 2.08 *per cent* against 26.52 *per cent* in the year 2011-12. Further, during the year 2012-13, revenue raised by the State Government (₹ 10,723.80 crore) was 35 *per cent* of total receipts against 38 *per cent* in the preceding year. The balance 65 *per cent* of receipts during 2012-13 was from the Government of India.

The decrease in percentage of revenue raised by the State Government *vis-a-vis* the total receipts in 2012-13 over 2011-12 needs to be looked into by the Government.

1.1.2 Details of tax revenue raised during the period 2008-09 to 2012-13 are mentioned in Table 2.

Table 2
Tax revenue

Sl. No.	Head of revenue						(₹ in crore)
		2008-09	2009-10	2010-11	2011-12	2012-13	Percentage of increase (+)/ decrease (-) in 2012-13 over 2011-12
1.	Taxes on sales, trade etc.	3,110.58	3,535.26	4,318.60	5,693.96	6,223.13	9
2.	State excise	198.68	239.19	323.12	503.35	568.11	13
3.	Stamp duty and registration fees						
	Stamps - judicial	13.38	9.72	7.66	8.29	9.15	10
	Stamps - non-judicial	55.39	55.56	64.61	90.10	124.12	38
	Registration fees	42.40	43.18	50.57	76.76	119.02	55
4.	Taxes and duties on electricity	22.36	27.07	41.58	36.67	41.83	14
5.	Taxes on vehicles	145.21	177.26	231.99	293.70	328.09	12
6.	Taxes on goods and passengers	284.67	545.41	478.10	536.39	369.10	(-) 31
7.	Other taxes on income and expenditure – Tax on professions, trades, callings and employments	137.73	150.15	160.60	164.27	168.31	2
8.	Other taxes and duties on commodities and services	8.27	8.67	9.93	11.76	71.11	505
9.	Land revenue	113.36	116.91	141.88	139.71	145.91	4
10.	Taxes on agricultural income	18.18	78.34	101.20	83.27	82.33	(-) 1
	Total	4,150.21	4,986.72	5,929.84	7,638.23	8,250.21	8

Source: Finance Accounts.

Following reasons for variation were reported by the concerned departments.

Taxes and duties on electricity: The increase was mainly due to more receipts of grants-in-aid by the Assam State Electricity Board from the Government of Assam.

Taxes on goods and passengers: The head includes entry tax collected by the Taxation Department which has decreased substantially due to less payment of entry tax on crude oil by Numaligarh Refineries Limited (NRL) and Indian Oil Corporation Limited (IOCL) (Bongaigaon) in 2012-13 in comparison to 2011-12. The above decrease was due to the fact that the NRL received discount on purchase of crude oil from Government of India while the IOCL (Bongaigaon) imported most of the crude oil from outside India on which there is no entry tax.

Other taxes and duties on commodities and services: The increase was mainly due to payment of outstanding dues by the Direct to Home service operators in 2012-13 as per High Court order.

The other Departments did not inform (September 2013) the reasons for variation, despite requests.

1.1.3 Details of non-tax revenue raised during the period 2008-09 to 2012-13 are mentioned in Table 3.

Table 3
Non-tax revenue

(₹ in crore)							
Sl. No.	Head of revenue	2008-09	2009-10	2010-11	2011-12	2012-13	Percentage of increase (+) / decrease (-) in 2012-13 over 2011-12
1.	Petroleum	1,430.12	1,574.18	1,625.93	1,970.63	1,589.55	(-) 19
2.	Interest receipts	433.16	493.63	415.88	475.93	510.21	7
3.	Dairy development	0.04	0.18	0.20	0.22	0.49	121
4.	Forestry and wild life	115.64	160.56	131.01	152.85	110.56	(-) 28
5.	Non-ferrous mining and metallurgical industries	0.54	1.24	0.83	0.85	1.10	29
6.	Miscellaneous general services	104.98	210.88	0.01	0.24	0.01	(-) 96
7.	Major and medium irrigation projects	0.56	0.59	0.38	0.21	0.38	81
8.	Medical and public health	7.91	7.10	8.42	10.42	12.13	16
9.	Co-operation	0.96	0.28	0.74	0.44	0.58	32

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10.	Public works	3.84	3.95	3.15	3.12	3.32	6
11.	Police	12.69	30.91	25.13	29.51	36.22	23
12.	Other administrative services	12.77	102.06	58.89	49.31	56.75	15
13.	Coal and lignite	19.20	37.54	29.35	26.34	43.95	67
14.	Roads and bridges	66.90	79.86	22.62	79.19	52.62	(-) 34
15.	Others ²	62.59	49.99	50.79	67.50	55.72	(-) 17
	Total	2,271.90	2,752.95	2,373.33	2,866.76	2,473.59	(-) 14

Source: Finance Accounts.

The departments did not inform (September 2013) the reasons for variation, despite requests.

1.2 Response of the Departments/Government to audit

The succeeding paragraphs 1.2.1 to 1.2.5 discuss the response of the departments/Government to audit.

1.2.1 Failure of senior officials to ensure timely replies and accountability and protect the interest of the State Government

The Accountant General (AG) (Audit), Assam conducts periodical inspection of the Government departments to test check the transactions and verify the maintenance of important accounts and other records as prescribed in the rules and procedures. These inspections are followed up with the inspection reports (IRs) incorporating irregularities detected during such inspection not settled on the spot. The IRs are issued to the heads of offices with copies forwarded to the next higher authorities for taking prompt corrective action. The heads of the offices/Government are required to promptly comply with the observations contained in the IRs, rectify the defects and omissions and report compliance through initial reply to the AG (Audit) within one month from the date of issue of the IRs. Serious financial irregularities are separately reported to the heads of the departments and the Government.

Review of IRs issued upto December 2012 disclosed that 3,211 paragraphs involving money value of ₹ 1,299.15 crore relating to 882 IRs remained outstanding at the end of June 2013 as mentioned in Table 4.

Table 4

	June 2011	June 2012	June 2013
Number of outstanding IRs	871	805	882
Number of outstanding audit observations	2,735	2,721	3,211

² Others include 29 major head of accounts.

Amount involved (₹ in crore)	907.46	935.88	1,299.15
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Department-wise details of IRs, audit observations pending settlement as on 30 June 2013 and the amounts involved are mentioned in Table 5.

Table 5
Outstanding IRs and paragraphs

Sl. No.	Name of the Department	Nature of receipts	Number of outstanding IRs	Number of outstanding audit observations	Money value involved (₹ in crore)
1.	Finance (Taxation)	(a) Taxes on sales, trade, etc.	149	1,037	455.78
		(b) Taxes on agricultural income	11	52	17.23
		(c) Entry tax, Electricity duty, Entertainment tax, luxury tax, etc.	97	176	13.46
2.	Excise	State excise	80	305	88.14
3.	Revenue	Land revenue	125	345	68.34
4.	Transport	Taxes on motor vehicles	74	260	183.68
5.	Stamps and registration	Stamp duty and registration fees	74	139	3.81
6.	Mines and Minerals	Non-ferrous mining and metallurgical industries	11	55	267.30
7.	Environment and Forests	Forestry and wild life	261	842	201.41
Total			882	3,211	1,299.15

First replies required to be received from the heads of offices within one month from the date of issue of the IRs were not received in respect of 174 IRs issued upto December 2012. Large pendency of IRs due to non-receipt of the replies is indicative of the fact that the Heads of offices and Heads of the departments did not initiate action to rectify the defects, omissions and irregularities pointed out by the audit in the IRs.

Recommendation No. 1:

The Government may take suitable steps to install an effective system to ensure prompt and appropriate remedial action on audit observations as well as take appropriate action against officials/officers who do not send replies to the IRs/paragraphs as per the prescribed time schedules and also do not take action to recover amount realisable/outstanding demand in a time bound manner.

1.2.2 Departmental Audit Committee Meetings

The Government has set up Audit Committees to Monitor and expedite the progress of settlement of IRs and paragraphs contained in the IRs. Details of Audit Committee Meetings held during 2012-13 and paragraphs settled are mentioned in Table 6.

Table 6
Position of Audit Committee Meetings

Name of the Department	Number of meetings held	Number of paragraphs settled
State Excise (Revenue accounts)	01	81
State Excise (Expenditure accounts)	01	27
Environment and Forests (Expenditure accounts)	01	85
Transport (Expenditure accounts)	01	16
Taxation (Expenditure accounts)	01	14
Total	05	223

Thus, in comparison to previous year (during which only two Meetings were held) the position of Audit Committee Meeting had substantially improved as a result of which 223 old paragraphs could be settled in five meetings. However, the position when compared to the total outstanding paragraphs as depicted in table 5 of this Chapter reveals that despite holding five Audit Committee Meetings, only 6.94 *per cent* of the total outstanding paragraphs could be settled. Further, an analysis of the outstanding paragraphs indicated that major outstanding objections related to Taxation Department. The Taxation Department and also the other Departments, thus, need to gear up to arrange Audit Committee Meetings at regular intervals so that the position could be pulled up.

Recommendation No. 2:

The Government may make it mandatory for the Departments to hold at least one Audit Committee Meeting every year.

1.2.3 Response of the departments to the draft audit paragraphs

The Finance Department issued instructions (March 1986) to all the departments to furnish replies to draft audit paragraphs within two months. The AG's office forwards draft paragraphs containing major irregularities prepared on the basis of audit observations to the Secretaries of the concerned departments through demi-official letters drawing their attention to audit findings with the request to send their response within six weeks.

Draft paragraphs and other materials included in this Report for the year ended 31 March 2013 were forwarded to the Secretaries of the departments between March

and August 2013 through demi-official letters with the request to furnish their replies/comments within six weeks. Out of 35 draft paragraphs, one performance audit³ and an audit on the topic - Evasion on Stamp Duty And Registration Fee on immovable properties with special emphasis on Development Agreement, replies either part or full, of the departmental officers in respect of 31 draft paragraphs *i.e.* 89 *per cent* had been received (September 2013). Replies of the Government/Department in respect of the performance audit and the audit on the topic – Evasion of Stamp Duty and Registration Fees had also been received. The replies received have been appropriately incorporated at respective places in the Report. The fact of non-receipt of replies from the Government/concerned Departments is indicated at the end of the relevant paragraph included in this Audit Report.

Thus, unlike the position of response of the Departmental officers in respect of the IRs which needed improvement, the status of replies to draft paragraphs and other materials incorporated was satisfactory, especially the Taxation Department wherein replies to all the draft paragraphs except only one had been received. The Department had also reported recovery of about ₹ 5.50 crore within a short time. Also, the State Excise Department had been prompt in implementing some of the recommendations offered by Audit through the performance audit and had assured Audit of implementing the others at the earliest.

1.2.4 Follow up on Audit Reports – summarised position

The Finance Department issued (May 1994) instructions according to which the departments are required to furnish explanatory notes indicating action taken or proposed to be taken and submit Action Taken Note (ATN) to the Assembly Secretariat with a copy to the AG's office, in respect of paragraphs and performance audits included in the Audit Reports within three months of presentation to the Legislature.

The Audit Report (Revenue Sector) for the year ended 31 March 2012 and Stand Alone report on Performance Audit on Forest Receipts were tabled in the State Legislative Assembly on 04 April 2013. Though the time limit for furnishing ATNs had elapsed, **no ATN in respect of any Department had been received within the prescribed timeline.**

1.2.5 Compliance with earlier Audit Reports

During the years from 2002-03 to 2011-12, the departments/Government accepted audit observations involving revenue implication of ₹ 519.50 crore (out of the

³ Receipts under State Excise.

total money value of ₹ 5,196.09 crore) of which only ₹ 23.33 crore had been recovered till March 2013 as mentioned in Table 7.

Table 7
Compliance with earlier Audit Reports

Year of Audit Report	Total money value	Accepted money value	Recovery made
2002-03	97.69	51.54	0.34
2003-04	413.82	3.35	0.22
2004-05	71.89	4.93	1.24
2005-06	920.60	1.63	0.04
2006-07	186.03	2.17	0.17
2007-08	241.77	16.25	12.35
2008-09	1,155.59	0.54	0.00
2009-10	385.66	299.39	1.41
2010-11	236.60	11.27	0.36
2011-12	1486.44	128.43	7.20
Total	5,196.09	519.50	23.33

The amount recovered was thus only 4.49 *per cent* of the accepted amount while the Government/departments have accepted only 10 *per cent* of the cases included in the Audit Reports. An analysis of above table indicates that the percentage of recovery increased from 4.02 *per cent* during 2011-12 to 4.49 *per cent* in 2012-13.

Recommendation No. 3:

The Government/departments may take earnest efforts to ensure recovery of the balance amount.

1.3 Effectiveness of the mechanism for dealing with the issues raised by Audit

In order to analyse the effectiveness of system for addressing the issues highlighted in the IRs/Audit Reports by the departments/Government, the action taken on the paragraphs and performance audits included in the Audit Reports of the last five years by one department has been evaluated and results included in this Audit Report.

The succeeding paragraphs 1.3.1 to 1.3.2.2 discuss the performance of the **State Excise Department** in dealing with cases detected in the course of local audit conducted during the last five years and also the cases included in the Audit Reports for the years 2007-08 to 2011-12.

1.3.1 Position of Inspection Reports

The summarised position of IRs issued during the last five years, paragraphs included in these reports and their status as on September 2013 are shown in Table 8.

Table 8
Position of Inspection Reports

(₹ in crore)

Year	Opening balance			Addition during the year			Clearance during the year			Closing balance during the year		
	IRs	Para- graphs	Money value	IRs	Para- graphs	Money value	IRs	Para- graphs	Money value	IRs	Para- graphs	Money value
2008-09	34	86	9.58	16	43	1.42	06	37	3.37	44	92	7.63
2009-10	44	92	7.63	15	76	5.33	02	12	1.23	57	156	11.73
2010-11	57	156	11.73	15	77	5.09	20	67	8.97	52	166	7.85
2011-12	52	166	7.85	11	71	55.90	0	05	0.03	63	232	63.72
2012-13	63	232	63.72	10	60	20.10	08	62	1.59	65	230	82.23

Thus, during the last five years, the closing balance of IRs and paragraphs registered an increasing trend which the Department needs to look into.

1.3.2 Assurance given by the Department/Government on the issues highlighted in the Audit Reports

1.3.2.1 Recovery of accepted cases

The position of paragraphs pertaining to the Excise Department included in the Audit Reports of the last five years, those accepted by the Department and the amount recovered are mentioned in Table 9.

Table 9
Status of recovery of accepted cases

(₹ in crore)

Year of Audit Report	Number of paragraphs included	Money value of the paragraphs	Number of paragraphs accepted	Money value of accepted paragraphs	Amount recovered during the year (2012-13)	Cumulative position of recovery of accepted cases
2007-08	04	0.14	03	0.05	-	--
2008-09	01	0.09	01	0.03	-	--
2009-10	05	0.77	04	0.34	0.30	0.30
2010-11	05	5.41	03	3.49	0.23	0.23
2011-12	09	0.45	--	--	--	--
Total	24	6.86	11	3.91	0.53	0.53

It is noticed that the Department could recover ₹0.53 crore which is 13.55 per cent of accepted amount of ₹ 3.91 crore.

1.3.2.2 Action taken on the recommendations of Audit

The performance audits conducted by the AG (Audit) are forwarded to the concerned departments/Government with a request to furnish their replies. These performance audits are also discussed in the Exit Conference and the department's/Government's views received during the Exit Conferences and at other points are included while finalising the performance audits for the Audit Reports.

The following paragraph discusses the issues highlighted in the performance audit(s) on the State Excise Department that featured⁴ in the Audit Report 2005-06 including the recommendations and action taken by the Department/Government.

Year of Audit Report	Name of the performance audit	Recommendations	Action taken by the Department/Government
2005-06	Receipts in the State Excise Department	Classification of brand of India made foreign liquor may be streamlined and enforced.	The Department was requested (August 2013) to provide the details of action taken on the recommendations. Replies are awaited (September 2013).
		Develop strong internal control mechanism including internal audit for effective monitoring of tax laws administration at different levels of the Commissionerate.	
		Rules/notifications as amended from time to time by the Government need to be circulated and implemented immediately so as to avoid loss of revenue to Government.	

However, from the audit observations included in the present performance audit on 'Receipts under State Excise' included in Chapter V of this Report, it is seen that the Department is yet to take action on the first two recommendations stated in the table above.

Recommendation No. 4:

The Government needs to devise suitable mechanism to monitor and ensure that the concerned Departments examine the recommendations offered by Audit through the reviews/performance audits etc to assure good governance, plug scope for leakage and optimise revenue potential.

⁴ During the last ten years 2002-03 to 2011-12, only one performance audit was conducted.

1.4 Audit Planning

While preparing the annual Audit Plan before the commencement of the year, the unit offices under various departments are categorised as high, medium and low risk units according to their revenue position, risks involved, past trends of audit observations, media reports and other parameters. The audit plan is prepared on the basis of risk analysis which *inter-alia* include critical issues in Government revenues and tax administration *i.e.*, budget speech, White Paper on State finances, reports of the Finance Commission (State and Central), recommendations of the Taxation Reforms Committee, statistical analysis of the revenue earning during the past five years, features of 'tax administration', audit coverage and its impact during past five years, etc.

During the year 2012-13, the audit universe comprised of 473 auditable units, of which, 113 units were audited which is 24 *per cent* of the total auditable units. Details are shown in **Annexure-I**. Besides the compliance audit mentioned above, one performance audit and an audit on the topic – Evasion of Stamp Duty and Registration Fees with special emphasis on Development Agreements as mentioned in paragraph 1.2.3 of this Chapter were also taken up.

1.5 Results of Audit

1.5.1 Position of local audit conducted during the year

Test check of records of 113 units of taxes on sales, trade etc., state excise, motor vehicles, forest and other departmental offices during 2012-13 revealed underassessment/short levy/non-realisation/loss of revenue aggregating ₹ 325.11 crore in 523 paragraphs. Besides, one performance audit and audit on the topic titled "Evasion of Stamp Duty and Registration Fees on immovable properties with special emphasis on Development Agreements" was also conducted during the year involving revenue impact of ₹ 1,125.84 crore. During the course of the year, the departments concerned accepted underassessment and other deficiencies of ₹ 34.09 crore involved in 135 paragraphs pointed out during 2012-13 and earlier years. The departments collected ₹ 2.31 crore during 2012-13.

1.5.2 This Report

This report contains 35 paragraphs (selected from the audit observations detected during the local audit referred to above and during earlier years which could not be included in earlier reports), one performance audit titled 'Receipts under State

Excise' and the results of an audit on the topic titled 'Evasion of stamp duty and Registration Fee on immovable properties with special emphasis on Development Agreement'. The paragraphs, performance audit etc. incorporated in this Report contain audit observations on multiple issues including irregular fixation of rates, deprivation of revenue, short/non-levy/realisation of tax, duty and interest/penalty etc., involving financial effect of ₹ 1,161.79 crore. The departments/ Government have accepted audit observations involving ₹ 29.32 crore, of which ₹ 5.45 crore has been recovered. These are discussed in the succeeding Chapters II to V.

COMPLIANCE AUDIT PARAGRAPHS



**CHAPTER - II
TAXES ON SALES,
TRADE ETC.**



CHAPTER – II Taxes on sales, trade etc.

2.1 Tax administration

The Finance (Taxation) Department is responsible for the administration of taxes on sales, trade etc., in the State. The Commissioner of Taxes is the Head of the Department and responsible for administration of all taxation measures and for general control and supervision over the zonal and unit offices and the staff engaged in collection of taxes and to guard against evasion of taxes. He is also the authority for disposing of revision petitions under all Taxation Acts and laws besides providing clarification under Assam Value Added Tax Act, 2003. He is assisted by one Additional Commissioner of Taxes, five Joint Commissioners of Taxes, 15 Deputy Commissioners of Taxes, 25 Assistant Commissioners of Taxes, 165 Superintendents of Taxes, 320 Inspectors of Taxes and other officials in discharging day to day functions both at the Headquarters and regional/unit levels. In addition, there is one Deputy Commissioner of Taxes (Statistics) assisted by one Superintendent of Taxes and two Inspectors of Taxes, two Information Technology Officers and one Finance and Accounts Officer. The Commissionerate of Taxes has one Head Office/Commissioner's Office, 10 Zonal Offices, five Appellate Offices, 34 unit Offices, 23 recovery Offices and 10 check posts.

The functioning of the Department is governed by the provisions of the Assam Value Added Tax (AVAT) Act, 2003 (*w.e.f.* 01.05.2005); the Central Sales Tax (CST) Act, 1956; the Assam Entry Tax Act, 2008 (*w.e.f.* 01.06.2008); the Assam Professions, Trades, Callings and Employments Taxation Act, 1947; the Assam Tax on Luxuries (Hotels and Lodgings Houses) Act, 1989; the Assam Amusement and Betting Taxation Act, 1939; the Assam Electricity Duty Act, 1964; the Assam Taxation (on Specified Land) Act, 1990; the Assam Agricultural Income Tax Act, 1939 and various administrative orders issued from time to time.

2.2 Budget preparation

Assam Budget Manual lays down that the estimates of revenue receipts should include/project the actual demand including arrears due for past years and the probability of their realisation during the year. According to the Assam Financial Rules, the Finance Department is required to prepare the estimates

of revenue after obtaining necessary information/data from the respective Department/ Government.

The budget estimates of the Finance (Taxation) Department were prepared taking into account the actual collection of the last seven months of the previous year and provisional collection of the first five months of the current financial year. Besides, growth over actual receipts of the previous year as well as expected realisation of tax due to adoption of certain measures for augmentation of revenue was also taken into consideration.

This indicated that though the provisions of Budget Manual were not considered by the Department in letter and spirit, the budgeting was being done methodically. However, the Taxation Department was not provisioning recovery of arrear revenues which it should have done as provided in the Assam Budget Manual.

2.3 Trend of receipts

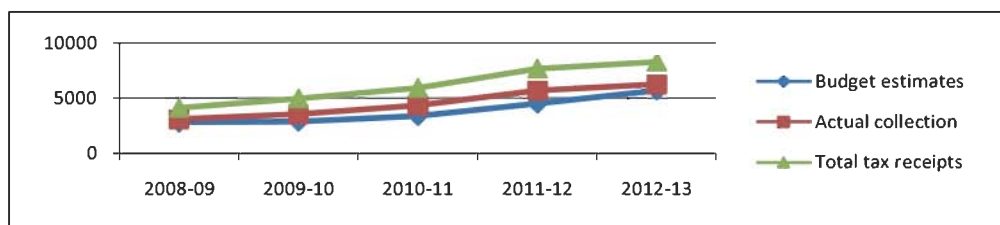
Details of budget estimates, actual receipts from taxes on sales, trade etc. during the period 2008-09 to 2012-13 along with total tax receipts during the same period are exhibited in the following Table 1.

Table 1
Trend of receipts

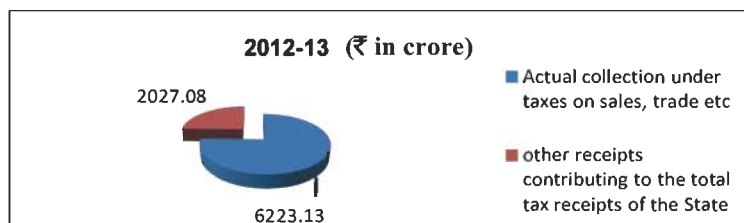
(₹ in crore)

Year	Budget estimates	Actual receipts (Taxes on sales, trade etc.)	Variation excess (+) shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2008-09	2,820.69	3,110.58	289.89	10	4,150.21	75
2009-10	2,900.00	3,535.26	635.26	22	4,986.72	71
2010-11	3,409.00	4,318.60	909.60	27	5,929.84	73
2011-12	4,491.00	5,693.96	1,202.96	27	7,638.23	75
2012-13	5,700.00	6,223.13	523.13	09	8,250.21	75

Source: Finance Accounts and Departmental figures.



Graph showing budget estimates, actual collection under taxes on sales, trade etc vis-a-vis the total tax receipts of the State.



Pie Chart showing actual collection under taxes on sales, trade etc vis-a-vis the total tax receipts

Thus, the growth of revenue under taxes on sales, trade etc during 2012-13 over previous year was at 9.29 *per cent* against 31.85 *per cent* in the year 2011-12. Collection under tax on sales, trade etc contributed substantially to the tax revenues of the State during the last five years (ranging between 71 and 75 *per cent*). The overall collection of revenue under sales tax/VAT also showed an increasing trend.

2.4 Analysis of arrears of revenue

The position of arrears of revenue during the period 2008-09 to 2012-13 is depicted in Table 2.

Table 2
Arrears of revenue

Year	(₹ in crore)			
	Opening balance of arrears	Amount added during the year	Amount collected during the year	Closing balance of arrears
2008-09	638.12	51.88	22.77	667.23
2009-10	667.23	1,221.91	111.25	1,777.89
2010-11	1,777.89	803.48	110.55	2,470.82
2011-12	2,470.82	(-) 362.18	81.56	2,027.08
2012-13	2,027.07	158.34	122.87	2,062.54

Source: Figures as furnished by the Department.

The arrears of revenue had increased drastically in 2008-09, 2009-10 and 2010-11 because assessments made under on Assam Taxation (on Specified Land) Act, 1990 and Assam Entry Tax Act, 2008 could not be realised due to stay orders from Hon'ble Gauhati High Court and Supreme Court.

The above table shows that during 2012-13, the addition of arrears was considerably lower than the figures in 2009-10 and 2010-11 while the position of recovery was at its best in comparison to those pertaining to last five years.

2.5 Assessee profile

The total number of assessees under the Assam Value Added Taxation Act during 2012-13 was 1,66,098. It was observed that the Department/Commissionerate did not maintain records classifying dealers as large tax payers and small dealers separately. The Department/Commissionerate also did not ascertain the number of dealers who were required to file their returns and number of returns received during the year. On being requested for this information, the Department stated that it would have to be obtained from the field units. This is indicative of weak management information system as the Department should have obtained this information from time to time and prepare a State-wise database of dealers which might be required at any point of time for decision making or framing of appropriate and sound taxation policy.

2.6 Revenue per assessee

Position of total revenue collected *vis-à-vis* number of assessees and revenue per assessee for the years 2008-09 to 2012-13 are shown in Table 3.

Table 3
Revenue per assessee

(₹ in crore)			
Year	Number of assessees	Revenue collected	Revenue per assessee
2008-09	89,630	3,110.58	0.03
2009-10	1,06,925	3,535.26	0.03
2010-11	1,25,215	4,318.60	0.03
2011-12	1,49,007	5,693.96	0.04
2012-13	1,66,098	6,223.13	0.04

Source: Figures as furnished by the department.

Revenue per assessee remained at the level of ₹ 3 lakh during 2008-09 to 2010-11 and increased to ₹ 4 lakh in 2011-12 and 2012-13.

2.7 Arrears in assessment

Details of pending assessment cases at the beginning of the year, cases becoming due for assessment during the year, cases finalised during the year and number of cases pending as of March 2013 as furnished by the Department are mentioned in Table 4.

Table 4
Arrears in assessment

(Number of cases)					
Name of Acts	Opening balance as on 1 April 2012	Cases added for assessment during 2012-13	Total assessment due during the year 2012-13	Cases disposed during 2012-13	Balance as on 31 March 2013
Sales Tax (AGST/VAT/CST)	10,171	11,018	21,189	7,265	13,924
APTC&ET ¹	34,451	39,028	73,479	44,479	29,000
Entry Tax	2,230	2,289	4,519	1,885	2,634
Luxury (Hotel & Lodging), 1989	554	409	963	468	495
Electricity duty	1,694	528	2222	494	1,728
Specified Land	973	640	1613	638	975
Luxury Tax, 1997	20	-	20	14	6
Agriculture Income Tax	1,091	744	1,835	751	1,084
Total	51,184	54,656	1,05,840	55,994	49,846

Source: Figures as furnished by the department.

The Department could complete assessment of only 53 per cent of the total cases due for assessment during 2012-13 and there were 49,846 assessments yet to be completed by the Department. The Department did not have the information on age-wise break up of arrear assessments and those completed in order to keep a watch on the status of pendency so that assessments did not

¹ Assam Professions, Trades, Callings and Employment Taxation.

get time barred and ensure that there was no loss of revenue due to non-completion of assessments within the stipulated timeline.

Recommendation No. 1: It is recommended that the Department may prepare an action plan for completion of pending assessments and also ensure that no assessment becomes time barred causing loss to the State exchequer.

2.8 Cost of collection

The gross collection of taxes on sales, trade etc., expenditure incurred on collection and the percentage of such expenditure to gross collection during the years 2010-11 to 2012-13 along with the relevant all India average percentage of expenditure on collection relating to the preceding years are mentioned in Table 5.

Table 5
Cost of collection

Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection	(₹ in crore)
				All India average percentage for the previous year
2010-11	4,318.60	73.10	1.69	0.96
2011-12	5,693.96	43.99	0.77	0.75
2012-13	6,223.13	79.90	1.28	0.83

Source: Finance Accounts and departmental figures.

Percentage of expenditure on gross collection in respect of the last three years was higher than the all India average cost of collection which the Department needs to look into.

2.9 Impact of audit

During 2008-09 to 2011-12, Audit has through inspection reports (IRs), pointed out non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc., with revenue implication of ₹ 698.75 crore through 911 audit observations. Of these, the department accepted audit observations in 250 cases involving revenue of ₹ 20.75 crore and had since recovered ₹ 4.84 crore (23.32 per cent) in 183 cases. The details are shown in Table 6.

Table 6
Impact of audit

Year of Inspection Report	No. of units audited	Amount objected		Amount accepted		Amount recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2008-09	77	235	63.82	10	0.77	7	0.26
2009-10	120	237	86.35	85	1.50	85	1.50
2010-11	98	238	349.49	123	8.50	78	1.04

2011-12	78	201 ²	199.09	32	9.98	13	2.04
Total	373	911	698.75	250	20.75	183	4.84

Recommendation No. 2: It is recommended that the Department may take immediate action to install a mechanism to pursue, monitor and ensure prompt recovery of revenue involved in accepted cases.

2.10 Results of audit

Test check of records of 27 units relating to taxes on sales, trade etc., during 2012-13 revealed irregular grant of exemption, non/short levy of tax/interest, turnover escaping assessment and other irregularities involving revenue of ₹ 130.33 crore in 323 cases, details of which are in Table 7.

Table 7
Results of Audit

(₹ in crore)			
Sl. No.	Category	Number of cases	Amount
Sales tax			
1.	Short/Non-levy of tax/interest/penalty	93	31.83
2.	Irregular grant of exemption	72	27.04
3.	Concealment of turnover escaped assessment	37	25.89
4.	Irregular adjustment of Tax and ITC	38	11.74
5.	Other Irregularities	26	5.81
Total		266	102.31
Other Taxes			
1.	Short/Non-levy of Entry Tax.	30	23.21
2.	Application of incorrect rate of tax.	4	2.28
3.	Short/Non-payment of interest	6	1.57
4.	Short/Non-levy of Professional Tax.	7	0.04
5.	Other irregularities	10	0.92
Total		57	28.02
Grand Total		323	130.33

During the course of the year, the Department accepted underassessment and other deficiencies with revenue implication of ₹ 10.73 crore in 49 cases, of which, an amount of ₹ 1.98 crore was realised in 36 cases during 2012-13.

² This includes the Performance Audit on “Working of Recovery Offices in Sales Tax Department in Assam” which consisted of 681 cases.

A few illustrative cases with money value of ₹ 35.62 crore are mentioned in the succeeding paragraphs.

2.11 Audit observations

Scrutiny of records relating to sales/value added tax (VAT) in the Taxation Department revealed several cases of non-observation of provisions of Acts/Rules/departmental orders and other cases as mentioned in the succeeding paragraphs. These cases are illustrative and are based on a test check carried out by Audit. Some of the omissions on the part of assessing officers (AO) are pointed out in audit each year, but not only do the irregularities persist; these remain undetected till next audit is conducted. It is a matter of concern as these observations are also sent to the higher authorities including the Government each time these are detected. Government and the Department need to strengthen measures to effectively monitor the cases, arrest recurrence of the irregularities and improve the internal control system including internal audit so that such mistakes and omissions are detected, corrected and avoided.

TAXES ON SALES, TRADE ETC.

2.12 Excess allowance of remission of tax to industrial unit.

[Assistant Commissioner of Taxes (ACT), Unit A: Guwahati; and Unit – C, Guwahati, June – September 2011 and January – March 2012]

The Assam Industrial Sales Tax Concession Scheme (AISTCS), 1997 provides that a new industrial unit shall be exempted from payment of tax for a period of seven years subject to a maximum limit of 150 per cent of the capital investment. Further, as per the Scheme, the existing industries going for expansion/modernisation/ diversification shall be entitled to the benefit of part exemption of tax on sale of finished products for nine years subject to maximum of 90 per cent of the additional fixed capital investment. Consequent upon implementation of the AVAT Act w.e.f 1 May 2005, the existing scheme was replaced by remission scheme and the industrial units are entitled to remission of 99 per cent of the tax payable by them during return periods until the amount of such remission exceeds the unavailed quantum of monetary ceiling.

During test check of records of the above units it was noticed that in case of two dealers M/s R.C.L. Cements Ltd. and M/s Unicem Paints (I) Pvt Ltd, the Taxation Department issued authorisation certificate based on Eligibility Certificate of the Industries Department for granting exemption from payment of tax w.e.f 12 December 1999 to 11 December 2004 and 11

November 2001 to 10 November 2008 subject to a maximum of ₹4.76 crore and ₹ 98.31 lakh respectively. Further, another entitlement certificate for seven years for exemption of tax with validity from 1 September 2001 to 31 August 2008 for diversification of the existing industrial unit was granted to M/s RCL Cements Ltd subject to maximum of ₹ 9.47 crore (90 per cent of additional investment for diversification). Scrutiny revealed that M/s RCL Cements enjoyed exemption of ₹15.63 crore (upto March 2008) despite the maximum ceiling of ₹ 9.47 crore. In case of M/s Unicem Paints, tax exemption of ₹ 1.11 crore was allowed against the maximum ceiling of ₹ 98.31 lakh. Thus, non-initiation of action in time by the AO in the case of M/s RCL Cements and irregular allowance of remission in case of M/s Unicem Paints resulted in excess exemption of tax of ₹ 6.28 crore and consequent non-levy of interest of ₹ 5.48 crore (calculated upto the date of audit).

After this was pointed out, the Department stated (June 2013), that M/s RCL Cements was assessed for the years 2005-06 to 2007-08 under both AVAT and CST Acts and determined tax (including interest) of ₹ 5.22 crore after granting maximum exemption of ₹ 15.63 crore. As against M/s Unicem Paints, the Department stated that the dealer was reassessed raising a demand of ₹ 26.59 lakh (including interest). Of these, the dealers had paid ₹ 1.43 crore. Report on realisation of the balance amount had not been received (September 2013).

The case was reported to the Government in April 2012 and followed up in April 2013; their reply has not been received (September 2013).

2.13 Completion of assessments without conducting cross verification of declaration forms led to short levy of tax of ₹ 2.88 crore, on which interest of ₹ 2.33 crore was additionally leviable.

[ACT, Unit A, Guwahati and ST, Diphu; July- September 2012 and November 2012]

Under the CST Act (as it stood during the relevant period), inter-State sales of goods, other than declared goods, to the registered dealers if supported by valid and duly filled in declaration in Form 'C' are taxable at the concessional rate of **four/three/two per cent**. Otherwise, tax was payable at 10 per cent or the rate applicable under the State whichever is higher upto April 2007 and thereafter at the rate of tax applicable under the State Act. In addition, interest at the prescribed rate is also leviable.

The CT, Assam instructed (May and September 1999) all the AOs to examine very carefully the claims of inter-State sales and to cross verify CST declaration forms submitted by some unscrupulous dealers for sale to North-Eastern States, particularly to Arunachal Pradesh (AP) and Mizoram,

and to verify the transaction while making the assessment and ensure that no false claim of such inter-State sales is accepted. The CT, Assam also directed to take appropriate action against the dealer as well as to the AOs for such evasion of taxes.

Under the AVAT Act, ‘Motor Spirit (MS)’ and ‘Diesel (HSD)’ were taxable at the rate of 25.75 per cent and 15.5 per cent from 1 May 2005 which were enhanced to 27.5 per cent and 16.5 per cent respectively from 4 June 2009. ‘India made foreign liquor (IMFL)’ was taxable at 24 per cent upto 31 March 2008 and thereafter at 27 per cent. ‘Cement’ was taxable at 12.5 per cent upto 30 October 2009 and enhanced to 13.5 per cent thereafter.

During scrutiny of records of the above Offices, it was observed that the AOs while finalizing the assessments of five dealers³ allowed concessional rates of tax on the basis of declaration forms furnished by the dealers. Of these, only in case of M/s Essar Oil Ltd., the concerned AO initiated cross verification of declaration forms as per the directives of the CT, Assam. However, the assessment was completed without getting the reply of the Taxation authorities of the concerned State. In the other two cases, no mention about conducting such verification was made in the assessment orders.

Audit has carried out a limited cross verification of a number of declaration forms based on which concessional rates were allowed and results are as mentioned in the following table:

Name of dealer/goods dealt in	Year of assessment/date completed	Turnover on which concessional rate allowed (₹ in crore)	Concessional rate allowed	Turnover on which concession was irregularly allowed (₹ in crore)	Tax/interest leviable on turnover on which irregular concession was allowed (₹ in crore)
M/s Indian Oil Corporation Ltd/ MS and HSD	2005-06/ March 2011	232.10	four	4.79	1.11
	2006-07/ February 2012	270.77		3.52	1.18
Audit findings: A limited cross verification of 12 declaration forms issued by the dealers of AP covering transaction of ₹ 5.38 crore and ₹ 4.69 crore for 2005-06 and 2006-07 respectively by Audit revealed that the dealers of AP (M/s Yankee Filling Station, Dirang, West Kameng District and M/s Rupa Auto Agency, Rupa, West Kameng District, AP purchased MS and HSD of ₹ 0.58 crore and ₹ 1.17 crore during the above years. It was further noticed that the utilisation statements of forms ‘C’ submitted by the dealers of AP were duly authenticated by the concerned Superintendent of Tax & Excise, AP. Thus, by fraudulently inflating the value of MS and HSD sold in course of inter-State trade at least by ₹ 4.79 crore and ₹ 3.52 crore during 2005-06 and 2006-07 respectively in case of the above 12 declaration forms only, M/s Indian Oil Corporation Ltd., evaded tax of ₹ 1.11 crore, on which interest of ₹ 1.18 crore (calculated upto the date of Audit) was additionally leviable.					
M/s Essar Oil Ltd./ MS and HSD	2010-11/ July 2012	55.41	two	2.80	0.54 0.13
Audit findings: Though the AO initiated cross verification of declaration forms in June 2012, the assessment was					

³ M/s Indian Oil Corporation Ltd., M/s Essar Oil Ltd., M/s Lafarge India Pvt Ltd. and M/s Barak Industries Ltd. under Unit – A, Guwahati and M/s Flamingo Beverages under ST, Diphu.

completed in July 2012 without getting the response of the other State.

A limited cross verification by Audit of seven forms 'C' involving ₹ 2.80 crore⁴ received from three dealers of AP revealed that out of three dealers of AP, though two dealers were registered under the CST Act in Bomdila, West Kameng District, AP and Ziro, Lower Subansiri District, AP, yet no form 'C' was issued to them till date; while the other dealer of Holongi, Papum Pare District, AP was not registered under the CST Act. It was further noticed that the aforesaid declaration forms 'C' pertained to Kurung Kumey District, AP. Thus, had the AO pursued the Taxation Department of AP for the information on the declaration forms sent for cross verification prior to completion of the assessments, the above discrepancy and evasion of tax could have been detected. This resulted in non-detection of invalid declaration forms and consequent short levy of tax of ₹ 53.82 lakh and interest of ₹ 12.92 lakh (calculated upto the date of Audit).

M/s Lafarge India Pvt Ltd/ Cement	2005-06 to 2009-10/ between September 2008 and March 2011	33.74	four/three/two	9.84	1.08 0.91
M/s Barak Industries Ltd/ Cement	2005-06 and 2006-07/March 2009	2.45	four/three/two	2.29	

Audit findings: A limited cross verification of 41 declaration forms issued by the dealers of AP covering transactions of ₹ 9.84 crore for the years 2005-06 to 2009-10 pertaining to M/s Lafarge India Pvt. Ltd and seven declaration forms issued by the dealers of AP to M/s Barak Industries Ltd covering transactions of ₹ 2.29 crore revealed that the dealers⁵ against which concessional rate of tax was allowed in respect of the above 48 declaration forms were not registered with the Taxation Department of AP.

M/s Flamingo Breweries/ IMFL	2007-08/ May 2011	48.28	three	0.68	0.15
	2008-09/ May 2011	19.28			0.11

Audit findings: As per information available with Audit, the licence of the purchasing dealer M/s Atlantic Liquors, Banderdewa, AP was cancelled with effect from 16 November 2000. Moreover, the Joint Commissioner of Tax & Excise, Itanagar, AP stated (October 2010) that the correct/genuine declaration in form 'C' issued by the Taxation Department of AP has six digit number with a prefix 'GG'. Thus, the declaration in form 'C' issued by the dealer of AP bearing numbers AP 8558255, AP 8558256 and AP 8558257 for the years 2007-08 and 2008-09 respectively were not genuine. This fact would have come to the knowledge of the AO had he got the declaration forms verified with his counterparts in AP as instructed by the CT, Assam and fraudulent claims of inter-State sales made by the dealer could have been detected.

After this was pointed out, the Department stated (June 2013) that in respect of the first dealer the sales made to the two dealers of AP during 2005-06 and 2006-07 were authentic. The reply is not tenable as the utilisation of 'C' forms was authenticated by the Superintendent of Tax and Excise, Bomdila, West Kameng District, AP. As regards the second dealer, it was replied that the dealer had replaced the defective 'C' forms which had been sent to the Commissioner of Tax, AP. It was further stated that the AO was being sent to the state of AP for ascertaining the genuineness of the declaration forms.

The action taken by the Department in the second case is praiseworthy. The reason(s) for different types of action for similar audit observations as regards the first two dealers was not elucidated by the Department though in both the cases allowance of concessional rate of tax based on invalid/fake declaration

⁴ MS of ₹ 1,30,22,237 and HSD of ₹ 1,49,56,216 = ₹ 2,79,78,453

⁵ Declaration forms issued by M/s T.J.Enterprises, Khonsa, M/s N.T. Enterprises, Khonsa, M/s Tirap. Enterprises, Khonsa, M/s L.L. Enterprises, Along (now Aalo), M/s North East Engineering, Naharlagun and M/s A.R. Enterprises, Tezu to **M/s Lafarge India Pvt. Ltd** and declaration forms issued by M/s Lowang Hardware & Agency, Khonsa and M/s Domin Traders, Khonsa, AP to **M/s Barak Industries Ltd.**

forms were brought to their notice. Report on further developments and reply to the fifth case have not been received (September 2013).

In respect of the third and fourth dealers, the Department stated in case of M/s Lafarge India Pvt. Ltd (June 2013), the assessments had been revised raising a demand of ₹ 1.71 crore (including interest). As the dealers failed to pay the demanded tax, arrear certificate for ₹ 1.74 crore (adding further interest) was issued in May 2013. In respect of the other dealer, the Department stated (June 2013) that the dealer was re-assessed for the years 2005-06 and 2006-07 raising demand of ₹ 8.95 lakh and ₹ 30.46 lakh respectively against which arrear certificate was issued to the RO. Further development has not been reported (September 2013).

The cases were reported to the Government between October 2012 and December 2012 and followed up in March 2013; their reply has not been received (September 2013).

2.14 Exemption without verification of information with other State despite instructions of the CT resulted in non-levy of tax.

[ACT, Unit A, Guwahati and Nagaon; July- September 2012 and December 2011]

Under the provision of the CST Act, transfer of goods to any other place of business outside the State is exempted from tax provided that the dealer furnishes a declaration in form 'F' of importing States duly filled in by the transferee alongwith evidence of dispatch of goods. Otherwise, such transaction is to be treated as inter-State sale and taxed accordingly.

The CT, Assam instructed (March 1999) the AO to verify declaration forms that are issued by the dealers of other North Eastern States, especially on stock transfers, to ascertain the authenticity of the forms and bonafides of the transferee to prevent evasion of tax.

'Cement' was taxable at 13.2 per cent including additional tax under the AGST Act and 12.5 per cent from May 2005 under AVAT Act. 'Jute Products (except Raw Jute)' are taxable at 12.5 per cent in Assam from May 2005 under AVAT Act.

It was observed that the AOs while finalising the assessments of M/s Vinay Cements Ltd. (manufacturer and trader) for the years 2004-05 and 2005-06 between August 2008 and November 2009 and M/s Assam Co-operative Jute Mills Limited (dealing in Jute Products) for the years 2005-06 and 2006-07 in December 2008 allowed exemption from payment of tax on stock transfer of Cement valued at ₹ 8.07 crore and ₹ 13.45 crore respectively (M/s Vinay Cements Ltd) and ₹ 3.03 crore and ₹ 2.05 crore respectively (M/s Assam Co-operative Jute Mills Limited) on the basis of declaration forms 'F' submitted by the dealers.

However, the AOs did not mention anything about verification of the declaration forms submitted by the dealer as instructed by CT, Assam though the dealers had stock transfer to other North Eastern States.

A limited cross verification by Audit of the declaration forms based on which the exemption from payment of tax were granted in the above cases revealed the following:

- In case of M/s Vinay Cements Ltd., a dealer M/s S.K. Enterprise, Banderdewa, AP who issued 15 declaration forms covering transaction of ₹ 2.86 crore and ₹ 2.06 crore for 2004-05 and 2005-06 respectively was not registered in the Taxation Department of AP.
- In case of the other dealer, two dealers M/s Binod Enterprises, Itanagar and M/s Sangam Enterprise, Naharlagun who issued nine declaration forms 'F' covering transaction of ₹ 46.02 lakh and ₹ 33.02 lakh for 2005-06 and 2006-07 respectively were not registered in the Taxation Department of AP.

These facts would have come to the knowledge of the AOs had they got the declaration forms verified with their counterparts in AP as instructed by the CT, Assam and fraudulent claims of stock transfer by the dealers of Assam could have been detected. Failure to do so by the AOs resulted in non-detection of invalid declaration forms and consequent non-levy of tax of ₹ 63.75 lakh (M/s Vinay Cements Ltd) and ₹ 9.88 lakh⁶ (M/s Assam Co-operative Jute Mills Limited) on which, interest of ₹ 1.01 crore and ₹ 9.78 lakh (calculated upto the date of Audit) respectively was additionally leviable.

After this was pointed out, the Department stated (July 2013) that the assessments in respect of the first dealer for the year 2004-05 and 2005-06 had been revised and demand notice for ₹ 1.67 crore (including interest) was raised, of which, the dealer had paid ₹ 60 lakh (May 2013). As regards the other dealer, the Department stated that the assessments had been revised under Section 37(1) of the AVAT Act and demand notice was raised for ₹ 1.28 crore including interest and penalty for the years 2005-06 and 2006-07. Report on recovery of balance amount in the first case and recovery in the second had not been received (September 2013).

The case was reported to the Government between February and October 2012 and followed up in March 2013; reply has not been received (September 2013).

⁶ Calculated at the rate of 12.5 per cent on ₹ 79.04 lakh (₹ 46.02 lakh + ₹ 33.02 lakh).

2.15 Assessment of sale price of coal at rates lower than those applicable at the source of coal in Meghalaya resulted in short levy of tax of ₹ 1.24 crore, on which interest of ₹ 40.21 lakh was additionally leviable.

[Superintendent of Taxes (ST), Jalukbari and Kabaitari Check Posts; June and September 2012]

The Government of India, Ministry of Coal vide its order GSR 522 (E) dated 1 August 2007 revised the rate of royalty per MT of coal from ₹ 165 to ₹ 130 plus five *per cent* of pithead price of coal with effect from 1 August 2007. Accordingly, the Government of Meghalaya after detailed survey and analysis, has fixed the rate of royalty at ₹ 290 considering pithead price (at the coal fields in Meghalaya) of coal as ₹ 3,200 per MT. Thus, minimum value of each MT of coal in Meghalaya is worked out to ₹ 3,490 excluding profit element of the selling dealer in Meghalaya as well as the transportation charges for transporting of coal from Meghalaya to Assam.

During scrutiny of records in the above office, it was observed that the AO while assessing 22 dealers between July 2009 and September 2011 for the years 2008-09 and 2009-10, enhanced the sale value of Meghalaya based coal as disclosed by the dealers and determined the same between ₹ 2,500 and ₹ 3,000 per MT. The assessments were accordingly completed determining aggregate turnover as ₹ 186.08 crore on 6.21 lakh MT coal.

Since the dealers had paid advance tax in the shape of additional security, the same was set off against the tax payable and the balance security was allowed as excess to be carried over to the next assessment periods.

It was observed that the rate of coal per MT in respect of the Guwahati based dealers for the year 2008-09 and 2009-10 was determined by the AO at price (₹ 2,500 and ₹ 3,000 per MT) which was lower than the minimum value of per MT of coal in Meghalaya *i.e.* ₹ 3,490 during 2007, without the profit element of the Meghalaya based dealer and the transportation cost involved in carrying the mineral to Guwahati. The short determination of aggregate turnover of the dealers was to the tune of at least ₹ 30.92 crore resulting in short levy of tax of ₹ 1.24 crore on which interest of ₹ 40.21 lakh was additionally leviable (calculated upto June 2012).

After this was pointed out, the Department stated (June 2013) the following:

- The Government of Meghalaya determined the pit value of coal to fix the Royalty. The actual sale value of coal may not be as determined by Government of Meghalaya for fixation of Royalty.
- The price of commodity like coal is dependent on a number of factors such as market force, various grades/quality of coal and other issues.

- The Hon'ble Supreme Court⁷ has held- if the returns are substantiated and the figures disclosed therein are verifiable from the account books in which no defect is noted, the AO is not legally empowered to reject the account version and to proceed to make assessment on best judgment in disregard of the accounts books.

The replies furnished as per the first two bullets are not convincing as the Government of Meghalaya has conducted a detailed market survey while fixing the pit head price of coal which has duly taken into consideration the ups and downs of the market of coal and other corresponding elements like quality/grades of coal etc. Further, Meghalaya based coal are among the best quality coal available in the country. The replies at third bullet is not acceptable as the AO has rejected the turnover (sale value per MT of coal) disclosed by the dealers and had enhanced that to a uniform figure in respect of all the assessment cases referred by Audit. The AO had specifically mentioned in the assessment proceedings that the turnover returned by the dealers was lower than the prevalent market rate and hence the same were being enhanced. Thus, while determining the market rate, the AO should have also ascertained the pit head price of coal in Meghalaya which was done by Audit. That would have enabled him to determine the sale value of coal on more sound principles.

The case was reported to the Government/department in July 2012 and followed up in April 2013; reply has not been received (September 2013).

2.16 Concealment of purchase turnover.

[ACT, Unit C, Guwahati; January- March 2012]

The AVAT Act read with the CST Act provides that if any dealer conceals or fails to fully disclose the particulars of his turnover, the AO may, within eight years from the date of relevant years, make an assessment/re-assessment of the dealer.

'Glass' was taxable at 12.5 per cent under the AVAT Act.

During scrutiny of the records of M/s Ghosh Brothers Motors Pvt. Ltd. (dealing in Motor Vehicles and Spare Parts), it was observed that the dealer furnished the annual return for the year 2008-09 disclosing the purchase value of goods brought from outside Assam at ₹ 7.66 crore. Another dealer M/s Balaji Agencies (dealing in Glass), furnished the annual returns for the years

2005-06 and 2006-07 disclosing the purchase value of goods brought from outside Assam at ₹ 50.19 lakh and ₹ 95.65 lakh respectively.

⁷ The Commissioner Sales Tax, UP, Lucknow Vs Saurashtra Chemicals [1996] 100 STC 0448-(All).

However, scrutiny of the utilisation statements of form 'C' furnished by the dealers revealed that the dealers had actually purchased goods from outside the State valued at ₹ 14.86 crore (M/s Ghosh Brothers Motors Pvt. Ltd. during 2008-09) and ₹ 67.86 lakh & ₹ 1.36 crore respectively (M/s Balaji Agencies during 2005-06 & 2006-07). Thus, there was concealment of purchase turnover of ₹ 7.78 crore⁸ which resulted in short payment of tax of ₹ 97.30 lakh⁹ and interest of ₹ 51.16 lakh¹⁰ (calculated upto the date of Audit).

After this was pointed out, the concerned ACT stated (July 2013) that in respect of the first case the assessment was completed for the year 2008-09 levying tax of ₹ 1.69 crore of which the dealer paid ₹ 70.81 lakh. The ACT further stated that since the dealer had failed to pay the balance dues of ₹ 98.28 lakh and interest of ₹ 57.50 lakh, recovery certificate of ₹ 1.56 crore (adding further interest) was issued. Report on realisation of balance amount has not been received (September 2013). In respect of the other case, the ACT stated (July 2012) that the assessments were completed for the years 2005-06 and 2006-07 levying tax of ₹ 12.73 lakh and ₹ 14.98 lakh against which the dealer paid ₹ 0.76 lakh and ₹ 1.58 lakh respectively. Report on realisation of balance amount has not been received (September 2013).

The case was reported to the Government in April 2012 and followed up in March 2013, further reply of recovery has not been received (September 2013).

⁸ ₹ 7.20 crore – M/s Ghosh Brothers Motors Pvt Ltd for 2008-09 and ₹ 17.67 lakh and ₹ 40.05 lakh – M/s Balaji Agencies during 2005-06 and 2006-07 respectively.

⁹ ₹ 90.09 lakh (M/s Ghosh Brothers Motors Pvt Ltd) + ₹ 7.22 lakh (M/s Balaji Agencies).

¹⁰ ₹ 44.59 lakh (M/s Ghosh Brothers Motors Pvt Ltd) + ₹ 6.57 lakh (M/s Balaji Agencies).

2.17 Incorrect grant of concession against invalid and obsolete declaration form.

[ACT, Unit A, Guwahati; July- September 2012]

Under the CST Act, 1956 as it stood during the relevant years, inter-State sales of goods, other than declared goods, to the registered dealers if supported by valid declaration in form 'C' are taxable at the concessional rate of **four/three/two per cent**. Otherwise, tax was leviable at the rate of 10 per cent, or rate of tax applicable to sale of such goods within the State, whichever is higher upto March 2007 and thereafter at the rate applicable within the State.

The CT, Nagaland, in his letter of February 2002 intimated the CT, Assam regarding cancellation of a series of declaration forms 'C' with effect from 11 June 2001. The information was duly circulated to all the unit offices by the CT, Assam in December 2002 to be taken note of at the time of finalising assessments.

During 2005-06 and 2006-07, **LPG** and **SKO** were taxable at the rate of four and 12.5 per cent respectively while **Asphalt** was taxable at the rate of 22 per cent upto 3 February 2008 and at the rate of four per cent from 4 February 2008 and **Lubes** was taxable at the rate of 12.5 per cent in Assam.

It was observed that the AO while finalising the assessments of M/s Indian Oil Corporation Limited (IOCL) for the years 2005-06 and 2006-07 and M/s Hindustan Petroleum Corporation Limited (HPCL) for the year 2007-08 between March 2011 and February 2012 allowed concessional rate of tax on turnover of ₹ 232.09 crore, ₹ 281.61 crore and ₹ 17.42 crore respectively. Scrutiny of declaration in form 'C' on the basis of which concessional rates of tax was allowed, revealed that inter-State sales amounting to ₹ 1.49 crore and ₹ 1.22 crore during 2005-06 and 2006-07 of M/s IOCL and ₹ 1.60 crore during 2007-08 of M/s HPCL respectively were supported by declaration forms 'C' which

had been declared invalid by the Government of Nagaland. Thus, inaction on the part of the AO to take note of the circular of the CT, Assam in this regard resulted in irregular allowance of concessional rate on the turnover covered by invalid declaration forms and short levy of tax of ₹ 31.17 lakh and interest of ₹ 28.96 lakh (calculated upto the date of Audit).

After this was pointed out, the Department in respect of M/s IOCL stated (June 2013) that the dealer had replaced 12 out of 13 invalid declaration forms. However, in the other case the Department stated that the assessments had been revised raising a demand of ₹ 43.89 lakh (including interest). As the dealers failed to pay the demanded tax, arrear certificate for ₹ 45.42 lakh (adding further interest) was issued in May 2013. Report on recovery has not been received (September 2013).

The action of the AO in allowing the dealer M/s IOCL to replace the invalid declaration forms after the same was pointed out by Audit and without further verification was highly irregular and was in stark contrast with the other case where the same AO had assessed the dealer levying tax and interest. Further, in a similar case (of M/s Essar Oil Limited) the same AO had sent the new declaration forms submitted by the dealer to the concerned State for authentication and also the Department is contemplating to send the AO to that State to personally investigate the case (para 2.13 refers). Reasons for setting different standards for different dealers by the same AO needed to be elucidated by the higher authorities of the Department, which was not done.

Recommendation No. 3: *The Department may ensure that the new declaration forms submitted by M/s IOCL are dealt in a similar manner as was done in the case of M/s Essar Oil Limited.*

The case was reported to the Government in October 2012 and followed up in March 2013, reply has not been received (September 2013).

2.18 Non-initiation of best judgment assessment by the AO resulted in non-realisation of tax.

[ST, Goalpara, October 2012]

Under the provisions of AVAT Act, every registered dealer is required to submit annual return of turnover, pay the admitted tax within the prescribed date and produce books of accounts to the AO as and when asked for. Otherwise, the AO shall complete the assessment on best judgment basis and determine the tax payable by him. Section 43 of the AVAT Act provides that where a dealer fails to pay tax within thirty days from the date of serving notice, the dues shall be recoverable as arrears of land revenue.

‘Coal’ was taxable at four *per cent* with effect from 31 October 2009 under Schedule III and five *per cent* with effect from 21 July 2011 under Schedule II of the AVAT Act.

During scrutiny of the records of a dealer M/s T.R.Enterprise, (dealing in coal only) in the above office, it was noticed that assessment for the year 2008-09 and 2009-10 was completed in June 2010 and June 2011 respectively and tax of ₹ 61.67 lakh (2008-09) and ₹ 21.55 lakh (2009- 10) was levied. Out of this, the dealer paid total taxes of ₹ 56.82 lakh (admitted tax paid along with returns) leaving a balance of ₹ 26.40 lakh. The dealer neither paid the balance tax nor submitted monthly/

annual returns since 2010-11 till the date of audit which was required as per provision under the AVAT Act. Yet, the AO did not proceed to refer the case to the RO for recovering the dues as arrears of land revenue.

It was further observed that for non-submission of returns, show cause notices were issued by the AO between June and September 2011. From the show cause notice it was observed that the dealer had despatched 26,404.20 M.T. and 21,120 M.T. coal during the year 2010-11 and 2011-12 respectively through railway rakes to destinations outside the State of Assam from different railway stations. However, despite (i) initiating the proceedings for assessing the dealer for the years 2010-11 and 2011-12 between June and September 2011 and (ii) availability of specific information on dispatch of coal, the AO did not complete the assessments on best judgment basis. This resulted in non-realisation of tax of ₹ 79.84 lakh and interest ₹ 14.50 lakh (calculated upto the date of Audit). The omission on the part of AO to take timely action resulted in possibility of recovery of tax and interest of ₹1.21 crore¹¹ becoming doubtful.

After this was pointed out, the Department stated (July 2013) that for the years from 2008-09 to 2011-12, demand notice for total dues of ₹ 1.19 crore had been raised. Report on recovery has not been received (September 2013).

The case was reported to the Government in November 2012 and followed up in April 2013; reply has not been received (September 2013).

2.19 Non-verification of utilisation of declaration forms resulted in non-detection of suppression of turnover

[ACT, Unit D, Guwahati, November - December 2011]

Under Section 33(1) of AVAT Act, every return in relation to any period furnished by a registered dealer shall be subject to scrutiny by the prescribed authority to verify the correctness of full payment of tax and interest payable by the dealer during such period.

As per Section 39 of the AVAT Act, no assessment shall be made after the expiry of five years from the end of the year to which the assessment relates. However, in cases where specific information is available, assessment can be made on best judgment basis under Section 40 of AVAT Act as a special case within a period of eight years after allowing the dealer an opportunity of being heard.

Scrutiny of records of M/s T.V.S. Motor Company Ltd. (dealing in Motor Cycle, Motor Parts etc.) revealed that the dealer disclosed in the annual return for 2007-08 the receipt of taxable goods from outside the State at ₹ 37.41 crore and the AO accepted the same during scrutiny of returns in March 2009. The utilisation/ requirement statements of form 'F' submitted by the dealer for the year 2007-08, however, showed that the dealer had

¹¹ ₹79.84 lakh + ₹14.50 lakh + ₹26.40 lakh (arrear of 2008-09 and 2009-10).

actually received goods from outside the state valued at ₹43.07 crore against ₹37.41 crore. Thus, the dealer concealed minimum turnover of ₹5.65 crore and evaded tax of ₹ 70.68 lakh. In addition to tax, interest of ₹45.59 lakh (calculated upto the date of Audit) on unpaid tax was additionally leviable.

After this was pointed out, the Department stated (July 2013) that the assessment have been revised raising a demand of ₹ 74.70 lakh as tax and ₹ 37.16 lakh as interest. Scrutiny of the reply revealed that the interest should have been calculated as ₹ 69.47 lakh (upto June 2013) instead of ₹ 37.16 lakh assessed by the AO. Report on recovery and reply of the AO on short assessment of interest had not been received (September 2013).

The case was reported to the Government in January 2012 and followed up in April 2013; reply has not been received (September 2013).

2.20 Short levy of interest.

[ACT, Unit A-Guwahati and Silchar; July- September 2012 and February – March 2012]

The AVAT Act provides that if a dealer fails to pay the full amount of tax payable by him by the due date, he is liable to pay interest at the rate of one and half *per cent* for each month on the amount by which the tax paid falls short.

Test check of records of the above unit offices revealed that four dealers M/s Assam Tea Brokers' Pvt. Ltd., M/s Cachar Traders, M/s Abhishek Motors Pvt. Ltd. and M/s Jatinga Tea Ltd. (A/c Urunabound Tea Estate) failed to pay full amount of tax payable for various years falling

between 2001-02 and 2007-08, by the due date. The AOs while finalising the assessments between January 2009 and March 2011 levied interest of ₹ 1.80 crore against actual liability of ₹ 2.52 crore resulting in short levy of interest of ₹ 71.73 lakh.

In another case, M/s SCL Cements Ltd failed to pay tax of ₹ 26.58 lakh payable for the year 2009-10 (between April 2009 and October 2009) by the due date. However, the AO while finalizing the assessment in January 2010 failed to levy interest of ₹ 14.67 lakh (calculated upto the date of Audit) for non-payment of tax.

After this was pointed out, the Department stated (June 2013) that all the assessments had been rectified raising a demand of ₹ 1.56 crore (after adding further interest) and arrear certificates were issued to the ST (Recovery), Guwahati in respect of first two dealers. Of this, the RO has realised ₹ 7.25 lakh in respect of the first dealer. Report on recovery of balance amount and initial reply in case of M/s SCL Cements Ltd had not been received (September 2013).

The case was reported to the Government between April 2010 and October 2012, followed up in March 2013; reply has not been received (September 2013).

2.21 Double adjustment of treasury *challan* resulted in excess benefit awarded to the dealer coupled with short realisation of tax of ₹ 40 lakh on which interest of ₹ 38.40 lakh was also leviable.

[ACT, Unit A, Guwahati; July- September 2012]

Under the AVAT Act and rules made thereunder, every registered dealer is required to submit a copy of treasury *challan* as a token of full payment of tax paid on his taxable turnover along with the monthly tax return/annual return of turnover.

Test check of records of the above unit revealed that the AO while finalising the assessment of M/s Abhishek Motors Pvt. Ltd. for the year 2006-07 during March 2012 adjusted ₹ 7.55 crore against the dealer's tax liability during the said period and allowed the claim of excess payment of tax of ₹ 28.69

lakh made by the dealer. In support of payment of ₹ 7.55 crore the dealer submitted 79 treasury *challans*.

Scrutiny of the treasury *challans* against which tax payable was adjusted revealed that two *challans*¹² valuing ₹ 20 lakh each furnished by the dealer at the time of assessment for the year 2005-06 were again furnished by the dealer, one in "ORIGINAL" and the other in "TRIPLICATE" to get credit against the year 2006-07 which the AO failed to detect.

Thus, non-detection of fraudulent claim of payment of ₹ 40 lakh submitted through two *challans* of 2005-06 against tax liability of 2006-07 by the AO resulted in double adjustment of ₹ 40 lakh and consequently the dealer got the undue benefit. This also led to short realisation of tax of ₹ 40 lakh. Besides, interest of ₹ 38.40 lakh (calculated upto the date of Audit) was additionally leviable.

After this was pointed out, the Department stated (June 2013) that the assessment was rectified and the dealer had paid the entire dues as pointed out by Audit. However, reasons for not initiating penal measures while reassessing the dealer for fraudulently claiming tax credit was neither mentioned in the reassessment order.

The case was reported to the Government in October 2012 and followed up in April 2013; reply has not been received (September 2013).

¹² Challan No. 10355 dated 27/12/2006 (vide cheque Nos. 057544 and 057545 dated 8/12/2006) and Challan No. 9944 dated 27/12/2006 (vide Cheque Nos.057546 and 057547 dated 29/11/2006).

2.22 Irregular grant of concessional rate of tax on inter-State sales against certificate in Form 'D'.

[ACT, Unit A, Guwahati; July- September 2012]

Under the CST Act, a dealer, who in course of inter-State trade or commerce sells to Government departments, any goods, other than declared goods, is liable to pay tax at the concessional rate of **four per cent** if sales are supported by valid and duly filled in certificates in Form 'D'. Otherwise, tax is payable at the rate of **10 per cent** or at the rate of tax applicable under the State Act, whichever is higher. In addition, interest at the prescribed rate is also leviable.

'Transformer' was taxable at **12.5 per cent** from May 2005 under AVAT Act.

It was observed that the AO while finalising the assessment of M/s Prag Electricals Pvt. Ltd. (manufacturer and trader) for the year 2006-07 during October 2010 allowed concessional rate of tax of **four per cent** on turnover of ₹ 6.06 crore on inter-State sales of 'Transformer' on the basis of certificate in form 'D' submitted by the dealer.

But scrutiny of certificate in form 'D' revealed that out of inter-State sales against certificate in form 'D' for ₹ 6.06

crore against concessional rate of tax, the dealer submitted certificate in form 'D' for ₹ 4.57 crore of the Deputy General Manager (Material Management), Electrical Stores Division, Tripura State Electricity Corporation Ltd., (A Government of Tripura Undertaking), Agartala. Since, Tripura State Electricity Corporation Ltd. was a 'Corporation' and not a Government department, acceptance of certificate in form 'D' furnished by the 'Corporation' was irregular. Thus, allowance of concessional rate of tax by the AO resulted in short levy of tax of ₹ 37.40 lakh and interest of ₹ 35.90 lakh (calculated upto the date of Audit).

After this was pointed out, the Department stated (June 2013) that the dealer was re-assessed and a demand of ₹ 81.71 lakh (adding further interest) was raised and demand notice issued accordingly. Report on realisation has not been reported (September 2013).

The case was reported to the Government in October 2012 and followed up in March 2013; reply has not been received (September 2013).

2.23 Incorrect grant of exemption of taxable goods as exempted goods.

[ST, Mongoldoi, June 2012]

Section 2(20)(ii) of the AVAT Act states that **goods** means all materials, commodities and articles and all other kinds of movable property whether tangible or intangible and includes computer software, Subscriber Identification Module (SIM) Card and the like.

The Commissioner of Tax (CT), Assam in September 2010 clarified that SIM Cards are also 'goods' under the AVAT Act and should be taxed accordingly.

'IT Software or any media' was taxable at four *per cent* under the AVAT Act.

Test check of records of the above unit office revealed that M/s Easy Communication dealing in SIM Cards claimed exemption on turnover of ₹ 8.23 crore for 2005-06 and 2006-07. While scrutinising the dealer in February 2011, the AO allowed the exemption as claimed by the dealer, without mentioning the rationale or the provision of the AVAT Act under which the exemption was allowed. The exemption was irregular as the dealer dealt in

SIM Cards which are taxable as per the provisions of Section 2(20)(ii) of the AVAT Act and also clarified by CT, Assam. Thus, incorrect grant of exemption resulted in non-levy of tax of ₹ 32.92 lakh and interest of ₹ 30.34 lakh (calculated upto the date of audit).

After this was pointed out, the ST, Mangaldoi stated (June 2013) that SIM Cards had no intrinsic value and it is supplied to the customers for providing mobile service to them and thus it is not taxable. The fact remains that SIM Cards are taxable as per the provisions of the AVAT Act as well as the clarification of the CT, Assam.

The case was reported to the Government in April 2012 and followed up in April 2013; their reply has not been received (September 2013).

2.24 Non-levy of additional tax.

[ACT, Silchar; February-March 2012]

Under the AGST Act, 1993, additional tax at the rate of 10 *per cent* of the tax payable by the dealer is to be levied with effect from 5 June 1998. The provisions of the State Act apply *mutatis mutandis* in case of assessment/reassessment under the CST Act. Further, the CT, Assam clarified on 30 March 2004, that additional tax is payable on inter-State sales of goods, not supported by 'C' or 'D' forms attracting local rate of tax exceeding nine *per cent*. Inter-State sales not supported by declaration in forms 'C'/'D' are to be taxed at 10 *per cent* or rate of tax of the State, whichever is higher. Besides, interest, as applicable, is also leviable on unpaid tax.

Further, under the CST Act when any dealer claims exemption from payment of tax in respect of any goods by reason of transfer of such goods to any other place of his business out of the State, he may furnish to the AO, a valid declaration in form 'F' duly filled in and signed by the transferee alongwith evidence of dispatch of such goods. As per the amended provision of the CST Act, declaration in form 'F' is mandatory with effect from 11 May 2002. If the dealer fails to furnish such declaration, the movement of goods shall be deemed for all purposes to have been occasioned as a result of sale.

'Cement' was taxable at 13.2 *per cent* including additional tax of 10 *per cent* at the point of first sale to a person other than registered dealer under the AGST Act.

certificate had been issued to the Recovery Officer, Silchar. The reply was silent regarding short raising of demand by ₹ 4.01 lakh as pointed by Audit (₹ 60.96 lakh minus ₹ 56.95 lakh). Report on realisation had not been received (September 2013).

The case was reported to the Government/department in April 2012 and followed up in April 2013; reply has not been received (September 2013).

Test check of records of the ACT, Silchar (between February and March 2012) revealed that the AO completed assessment of M/s Cachar Traders during February 2011 for the years 2002-03, 2003-04 and 2004-05 indicating turnover of ₹ 3.67 crore, ₹ 5.75 crore and ₹ 8.49 crore respectively which were not supported by declaration in forms 'C'/'D'/'F' under the CST Act. The AO while finalising the assessments, levied tax at the rate of 12 *per cent* but did not levy additional tax. This resulted in non-levy of additional tax of ₹ 21.50 lakh. Besides, interest of ₹ 39.46 lakh (calculated upto the date of Audit) was also leviable on unpaid amount of tax.

After this was pointed out, the Department stated (June 2013) that the assessments for the years from 2002-03 to 2004-05 were rectified and revised demand of ₹ 56.95 lakh was issued. For non-realisation of dues, arrear

2.25 Irregular grant of concessional rate of tax due to acceptance of declaration in form 'C' of unregistered dealer.

[ACT, Unit A, Guwahati; July- September 2012]

Under the CST Act, inter-State sales of goods, other than declared goods, to the registered dealers if supported by valid and duly filled in declaration in Form 'C' are taxable at the concessional rate of **two per cent**. Otherwise, tax is payable at the rate of tax applicable under the State Act. In addition, interest at the prescribed rate is also leviable.

'Motor Spirit (MS)' and 'Diesel (HSD)' were taxable at **27.5 per cent** and **16.5 per cent** respectively *w.e.f.* 4 June 2009.

It was observed that the AO while finalising the assessment of M/s Essar Oil Ltd. for the years 2010-11 during July 2012 allowed concessional rate of tax of two *per cent* on turnover of ₹ 55.41 crore on inter-State sales of MS and HSD on the basis of declaration forms 'C' submitted by the dealer.

Scrutiny of Form 'C' revealed that out of total inter-State sales of ₹55.41 crore to registered dealers, the dealer submitted one Form 'C' No. NL 079672

indicating transaction of ₹ 2.11 crore made with a dealer of Nagaland between 6 July 2010 and 27 September 2010 for ₹ 2.11 crore¹³ of a dealer of Nagaland whose registration was valid from 1 October 2010. Thus, transaction made prior to registration of the purchasing dealer of Nagaland resulted in fraudulent claims of inter-State sales against concessional rate of tax. Non-detection of invalid declaration form of unregistered dealer by the AO resulted in short levy of tax of ₹ 41.98 lakh and interest of ₹ 10.08 lakh (calculated upto the date of Audit).

After this was pointed out, the ACT, Unit A stated that against a show cause notice issued on 1 October 2012, the dealer stated that the purchasing dealer of Nagaland was registered from 16 November 2007. The reply was not tenable as it was noticed that the Taxation Authority of Nagaland issued the Registration Certificate to the dealer of Nagaland on 21 November 2012 (*i.e.* after issuing the show cause notice) by fixing the liability from 16 November 2007. Also, Audit had verified the TINXSYS¹⁴ website and the transaction details of 'C' form no. NL 079672 was not found.

The case was reported to the Government in October 2012 and followed up in April 2013; reply has not been received (September 2013).

¹³ MS of ₹1,11,08,158 and HSD of ₹99,98,929 = ₹2,11,07,087

¹⁴ Tax information exchange system – A website for online verification of declaration forms.

2.26 Underassessment of tax.

[ACT, Jorhat, February – March 2012]

As per Section 39 of the AVAT Act, no assessment shall be made after the expiry of five years from the end of the year to which the assessment relates. However, in cases where specific information is available and the AO has reason to believe that tax has been underassessed, he may assess/re-assess the dealer on best judgment basis under Section 40 of the AVAT Act as a special case within a period of eight years after allowing the dealer an opportunity of being heard.

‘Conductor’ was taxable at 12.5 *per cent* from 1 May 2005 under the AVAT Act.

It was observed that the AO while scrutinising the annual return for the year 2007-08 in September 2010 of M/s Singhi Cables & Conductors Pvt. Ltd. dealing in ‘Conductor’, levied tax at four *per cent* instead of 12.5 *per cent* on turnover of ₹ 4.03 crore resulting in short levy of tax of ₹ 29.09 lakh. Besides, interest of ₹ 19.63 lakh (calculated upto the date of Audit) was additionally leviable.

Scope of recovery is remote as the case has become time barred. However, the Department should resort to reassessment of the dealer on

best judgment basis as a special case under Section 40 of the AVAT Act.

After this was pointed out, the Department stated (July 2013) that the assessment had been revised raising a demand of ₹ 48.94 lakh (including interest and penalty). As the dealer failed to pay the demanded tax, arrear certificate for ₹ 53.05 lakh (adding further interest) was issued in July 2013. Report on recovery has not been received (September 2013).

The case was reported to the Government in April 2012 and followed up in April 2013; reply has not been received (September 2013).

2.27 Fraudulent use of declaration form issued in the name of other dealer resulted in evasion of tax

[ACT, Unit A, Guwahati; July- September 2012]

Under the CST Act, inter-State sales of goods, other than declared goods, to the registered dealers if supported by valid and duly filled in declaration in Form 'C' are taxable at the concessional rate of four *per cent*. Otherwise, tax is payable at the rate of 10 *per cent* or at the rate of tax applicable under the State Act, whichever is higher. In addition, interest at the prescribed rate is also leviable.

The CT, Assam instructed (May and September 1999) all the AOs to examine very carefully the claims of inter-State sales and to cross verify Central Sales Tax declaration forms submitted by some unscrupulous dealer for sale of 'Cement' to North-Eastern States, and to verify the transaction while making the assessment and ensure that no false claim of such inter-State sales is accepted. The CT, Assam also directed to take appropriate action against the dealer as well as to the AOs for such evasion of taxes.

'Cement' was taxable at 12.5 *per cent* from May 2005 under AVAT Act.

It was observed that the AO while finalising the assessment of M/s R.C.L. Cements Ltd. (manufacturer and trader) for the years 2006-07 during January 2010 allowed concessional rate of tax of four *per cent* on turnover of ₹ 3.47 crore on inter-State sales of 'Cement' on the basis of declaration forms 'C' submitted by the dealer. However, the AO did not mention anything about verification of the declaration forms submitted by the dealer as instructed by CT, Assam though the latter had inter-State sales to other North Eastern States.

On scrutiny of three declaration forms covering transaction of ₹ 2.98 crore issued by a dealer M/s Krishna Trading Co., Kohima Road, Dimapur, Nagaland having CST and VAT

Registration No. 13040008171 and No. 13040109013 respectively it was found that the registration numbers actually belonged to M/s Karnex Trading Co., Kohima Road, Dimapur, Nagaland. Audit also verified the genuineness of the dealer through TINXSYS and it revealed that the dealer M/s Krishna Trading Co., Dimapur was not registered in the Taxation Department of Nagaland and illegally used the registration number of M/s Karnex Trading Co., Dimapur in the fake declaration forms. Such fraudulent use of declaration forms resulted in short levy of tax of ₹ 24.38 lakh and interest of ₹ 23.40 lakh (calculated upto the date of Audit).

After this was pointed out, the Department stated (June 2013) that M/s Krishna Trading Co. was renamed as M/s Kernex Trading Co. on 21 March 2007. However, reply is not acceptable as three 'C' forms against which concession of tax was claimed were issued to the dealer by the Taxation Authority of Nagaland between 13 February 2008 and 21 May 2008 when the name had already been modified.

The case was reported to the Government in October 2012 and followed up in March 2013, reply has not been received (September 2013).

2.28 Non-detection of stock transfer of goods not supported by declaration forms resulted in non-levy of tax.

[ACT, Unit D, Guwahati, November - December 2011]

The CST Act provides that a dealer may claim exemption from payment of tax of any goods by reason of transfer of such goods to any other place of his business out of the State, he may furnish to the assessing authorities declaration in Form 'F' along with the evidence of dispatch of such goods failing which tax at the prescribed rate is to be charged.

It was noticed that while assessing M/s Wimco Ltd. (dealing in Safety Matches) for the years 2007-08 and 2008-09 in March 2010 and June 2010 respectively, the AO did not levy any tax on account of branch transfer of goods. From the audited accounts submitted by the dealer, it was observed that

during the years 2007-08 and 2008-09 the dealer made stock transfer of goods valued at ₹ 5.08 crore and ₹ 1.36 crore respectively which were neither disclosed by the dealer in the annual returns nor submitted 'F' form for such stock transfer. This resulted in non levy of tax of ₹ 25.78 lakh. In addition, interest of ₹ 16.03 lakh (calculated upto the date of Audit) was also leviable.

After this was pointed out, the Department stated (July 2013) that the dealer had produced requisite declaration forms for 2008-09 which had been accepted by the AO. As regards 2007-08, they stated that the stock transfer was wrongly shown by the CA as ₹ 5.08 crore instead of ₹ 1.20 crore. The error was due to copy paste of the figures of 2006-07 in the Audit Report for 2007-08 which was duly verified by the AO. Of the amount, the dealer could produce declaration forms covering transaction of ₹ 1.04 crore and thus, the balance turnover of ₹ 16.29 lakh was assessed as inter-State sale and tax of ₹ 0.56 lakh and interest of ₹ 0.55 lakh levied which had been paid by the dealer.

The case was reported to the Government/department in January 2012 and followed up in April 2013; reply has not been received (September 2013).

2.29 Non-completion of assessment/scrutiny of return resulted in non-detection of short payment of tax and interest of ₹ 37.10 lakh

[ACT, Nagaon, November-December 2011]

The AVAT Act provides that every registered dealer shall submit annual return of turnover, pay the admitted tax within the prescribed date and produce books of accounts. Otherwise, the AO shall complete the assessment on best judgment basis and determine the tax payable by him.

The CT, Assam vide circular dated 11 January 2007 instructed all the AOs to complete scrutiny of returns within 15 days of submission of returns. Also, the CT, Assam vide circular dated 19 January 2011 instructed to complete audit assessment up to 2009-10 under the AVAT and CST Acts within 30 June 2011.

Under the provision of the AVAT Act, 'Jute Products (except Raw Jute)' was taxable at the rate of 12.5 per cent under Sl. No. 1 of Schedule V up to 31 March 2008 and at the rate of four per cent under Schedule II with effect from 1 April 2008.

During scrutiny of records it was observed that Annual Return for the years 2007-08 and 2008-09 were submitted on 25 June 2008 and 2 January 2010 respectively by the dealer M/s Assam Co-operative Jute Mills Limited (manufacturer and seller of 'Jute Products'). However, it was noticed that neither scrutiny of Annual Return nor audit assessment under the AVAT and CST Act was done by the AO till November 2011.

Further, verification of Annexure 'B' of Audited Accounts along with Annual Report presented by the Board of Directors

revealed that the gross sales during 2007-08 and 2008-09 were ₹ 18.67 crore and ₹ 20.85 crore respectively (including freight, CST and AVAT).

However, the dealer while furnishing Annual Returns for the years 2007-08 and 2008-09 calculated tax on turnover of ₹ 17.15 crore and ₹ 19.86 crore respectively during self assessment. Thus, turnover of ₹ 1.52 crore and ₹ 99.43 lakh during the years 2007-08 and 2008-09 respectively escaped self assessment which resulted in short levy of tax of ₹ 22.99 lakh. Besides, interest of ₹ 14.11 lakh (calculated upto November 2011) was also leviable for non-payment of full tax.

Thus, due to non-scrutiny/non-assessment by the AO as per instruction of the CT, Assam, short payment of tax and interest of ₹ 37.10 lakh for the years 2007-08 and 2008-09 remained undetected.

After this was pointed out by Audit, the ACT, while accepting the audit observation, stated (July 2012) that the assessment had been completed under Section 37 of the AVAT Act and demand notice for ₹ 42.35 lakh was raised. Report on realisation has not been received (September 2013).

The case was reported to the Government in December 2011 and May 2012 and followed up in April 2013; reply has not been received (September 2013).

2.30 Application of lower rate of tax

[ACT, Unit A & D, Guwahati; July – September 2012 and November – December 2011 respectively]

As per Section 33 of the AVAT Act, every return shall be subject to scrutiny by the AO to verify, *inter-alia*, full payment of tax and interest payable by the dealer during the period of return.

The items '**Particle Board**' was taxable at 13.5 per cent with effect from 31 October 2009 as unspecified item (as clarified by CT Assam in October 2010) while 'coal tar' was taxable at 12.5 per cent between 1 May 2005 and 20 May 2012 under the AVAT Act.

Test check of records of the above unit offices revealed that M/s Shree Balaji Traders and M/s Kamakhya Coaltar Industries (manufacturer and seller of coal tar) while submitting the returns for the year 2010-11 and 2011-12 and 2007-08 and 2008-09 respectively classified 'Particle Board' involving turnover of ₹ 1.59 crore and 'coal tar' involving turnover of ₹ 82.01 lakh as taxable at five and four per cent respectively. The AO while scrutinising the annual returns of the dealers between December 2011 -

May 2012 and May 2009 – January 2010 accepted the application of rate of tax at five and four per cent instead of 13.5 per cent. This resulted in short levy of tax of ₹ 20.49 lakh and interest of ₹ 6.05 lakh (calculated upto the date of audit).

After this was pointed out, the Department stated (June 2013), that the assessments had been rectified and demand of ₹ 17.54 lakh and ₹ 11.38 lakh respectively (including interest) had been raised. Of this, ₹ 7.10 lakh had been recovered and for the balance amount recovery certificate had been issued. Further developments had not been reported (September 2013).

The case was reported to the Government between January and October 2012 and followed up in April 2013; reply has not been received (September 2013).

2.31 Failure of the AO to take cognisance of the turnover reported in the audit report resulted in short determination of taxable turnover

[ACT, Silchar; February- March 2012]

Under the AVAT Act, if any part of the turnover of a dealer in respect of any period escaped assessment to tax, the AO may within eight years from the end of the relevant year make a reassessment of the dealer. If a dealer fails to pay the full amount of tax payable by him by the due date, he is liable to pay interest at the rate prescribed on the amount of tax due.

'IMFL/Beer' were taxable at 24 per cent upto 31 March 2008 under the AVAT Act.

It was observed that the AO while finalising assessment of M/s Union Bonded Warehouse for the year 2005-06 in December 2009 determined taxable turnover at ₹ 13.35 crore. However, scrutiny of audited accounts as certified by the Chartered Accountant revealed that the dealer's sales during the period was ₹ 13.73 crore. Thus, turnover of ₹ 38.28 lakh escaped notice of the AO at the time of assessment which resulted in short levy of tax of ₹ 9.19 lakh and interest of ₹ 11.30 lakh.

After this was pointed out, the Department stated (June 2013) that the turnover between 1 May, 2005 and 31 March, 2006 was ₹ 13.35 crore and the remaining amount of ₹ 38 lakh related to the month of April 2005. The Department also furnished the copy of the revised Audit Report for the period May 2005 to March 2006 and monthly return as submitted by the dealer for April 2005 under the AGST Act, 1993. However, scrutiny of the copy of the monthly return now furnished by the Department indicated that the same was not dated and docketed by the concerned office of the AO and as per the circular of CT, Assam issued in May 2001, such returns are not acceptable. Besides, the return does not mention the details of payment of tax *i.e.* date and *challan* number through which the payment has been made. The Department should have verified these before forwarding the documents to Audit which was not done. The matter has been referred back to the Department; their reply has not been received (September 2013).

The case was reported to the Government in April 2012 and followed up in April 2013; reply has not been received (September 2013).

2.32 Non-detection of suppression of purchase turnover and inter-State sales not covered by declaration forms led to short levy of tax and interest of ₹ 19.46 lakh.

[ACT, Unit D, Guwahati, November - December 2011]

Section 33(1) of the AVAT Act provides that all returns shall be subjected to scrutiny to verify the correctness of calculation, input tax credit claimed therein and application of correct rate of tax and interest payable by the dealer.

Under the CST Act, a registered dealer is eligible to certain concession of tax on inter-State transactions subject to submission of form 'C'. Otherwise, tax is leviable at the rate of tax applicable under the State Act.

However, in cases where specific information regarding turnover escaping is available, re-assessment can be made on best judgment basis under Section 40 of AVAT Act as a special case within a period of eight years after allowing the dealer an opportunity of being heard.

During test check of records of M/s Subham Glass Agency dealing in 'Glass', it was noticed that the dealer in his annual return for 2008-09 disclosed turnover of ₹ 1.03 crore (intra-State: ₹ 12.31 lakh and inter-State sales: ₹ 90.20 lakh). The AO also while finalising scrutiny/ assessment between September and November 2010 accepted the disclosed turnover and levied tax of ₹ 3.64 lakh (₹ 1.54 lakh on intra-State sales and ₹ 2.10 lakh on inter-State sales). Audit scrutiny of related records revealed that the dealer had disclosed opening stock of goods as ₹ 85.75 lakh and closing stock as 'nil'. The dealer also disclosed inter-State purchase during the year as 'nil'. Verification of

utilisation/ requirement statements of form 'C' further revealed that the dealer actually purchased goods valued ₹ 76.91 lakh during the aforesaid year. Considering the above, the turnover of the dealer for the above year should not have been less than ₹ 1.63 crore (opening stock: ₹ 85.75 lakh + purchases: ₹ 76.91 lakh – closing stock: Nil). Of this, the dealer submitted form 'C' covering transactions of ₹ 36.61 lakh only and disclosed intra-State sales as ₹ 12.31 lakh. Thus, concessional rate of tax should have been restricted to ₹ 36.61 lakh only and the remaining turnover of ₹ 1.14 crore should have been determined as intra-State sales. Failure of the AO to properly assess/scrutinise the returns despite information of discontinuance of business of the dealer from March 2009 and availability of supporting documents led to non-detection of the suppressed turnover and consequent short levy of tax of ₹ 13.15 lakh. Besides, interest of ₹ 6.31 lakh (calculated upto the date of Audit) was also leviable.

Thus, the AO has the only option of resorting to assessing the dealer under section 40 of the AVAT Act and proceed to recover the tax and interest

through recovery proceedings. Otherwise, the possibility of recovery of tax and interest of ₹ 19.46 lakh is remote.

After this was pointed out, the Department stated (July 2013) that assessment had been revised and demand for ₹ 30.08 lakh was raised. Report on realisation had not been received (September 2013).

The case was reported to the Government in January 2012 and followed up in April 2013; reply has not been received (September 2013).

2.33 Non-verification of the outside purchase available in the case records resulted in non-detection of evasion of tax

[ACT, Unit D, Guwahati, November - December 2011]

Under Section 33(1) of AVAT Act, every return in relation to any period furnished by a registered dealer shall be subject to scrutiny by the prescribed authority to verify the correctness of full payment of tax and interest payable by the dealer during such period.

As per Section 39 of the AVAT Act, no assessment shall be made after the expiry of five years from the end of the year to which the assessment relates. However, in cases where specific information is available, assessment can be made on best judgment basis under Section 40 of AVAT Act as a special case within a period of eight years after allowing the dealer an opportunity of being heard.

During scrutiny of records of M/s Shree Distributors (dealing in Electronic goods only), it was observed that the dealer disclosed outside purchase/ stock receipt during the year 2005-06 as 'nil'. The AO also while scrutiny of annual return of turnover for the year 2005-06 in May 2009 accepted the return and levied tax accordingly. Scrutiny of requirement list of form 'F' revealed that during the year 2005-06 the dealer had received goods from outside the State by way of stock transfer worth ₹ 1.09 crore. Thus, the dealer concealed taxable turnover of ₹ 1.09 crore and evaded tax of

atleast ₹ 4.36 lakh on which interest of ₹ 4.45 lakh (calculated upto the date of Audit) was also leviable. In addition, penalty of ₹ 8.72 lakh for concealment of turnover was also leviable.

After this was pointed out, the Department stated (May 2012) that the assessment had been revised and demand notice for ₹ 17.23 lakh (being tax, interest and penalty) was raised. As the dealer failed to pay the demanded tax, the case was transferred to ST (Recovery), Guwahati in March 2013 to recover the demand of ₹ 17.31 lakh by levying additional interest. Report on realisation has not been received (September 2013).

The case was reported to the Government/department in January 2012 and followed up in April 2013; reply has not been received (September 2013).

2.34 Delay in assessment/non-issuance of recovery certificate resulted in non-recovery of revenue.

[ST, Goalpara; October 2012]

Under the provisions of the AVAT Act, every registered dealer is required to submit return of turnover, pay the admitted tax within the prescribed date and produce books of accounts to the AO as and when asked for. Otherwise, the AO shall complete the assessment on best judgment basis and determine the tax payable by him. The AVAT Act further provides that if the dealer fails to pay the tax demanded within one month, the AO would proceed to recover the dues as arrears of land revenue.

During scrutiny of case records of M/s Seven Sister Enterprise dealing in coal only it was noticed that the dealer submitted monthly/annual returns for the year 2008-09 and defaulted in submission of monthly/annual returns since April 2009. It was noticed that though the AVAT Act provided for taking up assessments on best judgment basis in case of non-submission of returns and payment of tax, it was only in August 2010 the AO assessed the dealer and levied tax and interest

of ₹ 33.51 lakh. The dealer, however, paid tax of ₹ 22.38 lakh (August 2011). Though the dealer failed to pay the balance tax of ₹ 11.13 lakh, the AO did not issue (September 2012) arrear certificate to recover the dues as arrear of land revenue as per provisions of the AVAT Act. Thus, there was gap of 16 months in the first phase (date of non-submission of return and date of best judgment assessment) and 13 months (date of part payment of taxes and date of audit till when arrear certificate was not issued). This 29 months of delay ultimately helped the dealer to wind up his business and become untraceable leading to revenue of ₹ 11.13 lakh becoming irrecoverable.

After this was pointed out by Audit, the department stated (May 2013) that a demand of ₹ 14.93 lakh including further interest of ₹ 3.81 lakh was raised and sent to the Recovery Officer for realisation of the same as arrears of land revenue. Further reply received in July 2013 indicated that the Department had initiated to issue warrant of arrest against the dealer and had also identified some assets of the dealer which is being attached for recovery of tax. Further developments are awaited (September 2013).

The case was reported to the Government in November 2012 and followed up in April 2013; reply has not been received (September 2013).

2.35 Application of incorrect rate of tax.

[ACT, Dibrugarh, January - February 2012]

Under the provisions of the AVAT Act, in cases where specific information is available and the AO has reason to believe that tax has been underassessed, he may assess/re-assess the dealer on best judgment basis under Section 40 of the AVAT Act as a special case within a period of eight years after allowing the dealer an opportunity of being heard.

The item '**Pre-Stressed Concrete (PSC) Poles**' was taxable at 12.5 *per cent* and enhanced to 13.5 *per cent* from 31 October 2009 while the item '**Pre-Cast Concrete (PCC) Poles**' was taxable at 12.5 *per cent* till 30 October 2009 which was reduced to five *per cent* from 31 October 2009.

It was observed that M/s Sigma Liners Private Limited paid tax at five *per cent* on turnover of ₹ 71.07 lakh which was accepted by the AO while completing the scrutiny for the year 2009-10 in August 2010. However, as the dealer dealt in 'PSC Pole', tax at 12.5 *per cent* was leviable on taxable turnover of ₹71.07 lakh. This escaped the notice of the AO at the time of assessment resulting in non-detection of evasion of tax of ₹ 5.33 lakh on which interest of ₹ 1.68 lakh (calculated upto the date of Audit) was additionally leviable.

After this was pointed out, the Department stated (July 2013) that assessment has been revised and demand notice for ₹ 8.84 lakh (including interest of ₹ 3.15 lakh) was issued (May 2013). Report on realisation has not been received (September 2013).

The case was reported to the Government/department in March 2012 and followed up in April 2013; reply has not been received (September 2013).

OTHER TAXES

2.36 Non-scrutiny of returns resulted in non-detection of short payment of entry tax of ₹ 1.19 crore.

[ACT, Unit-A; Guwahati, July- September 2012]

As per the Assam Entry Tax (AET) Act 2001 and 2008, every registered dealer liable to pay tax under the Act shall submit to the AO his monthly statement of such purchase value before the expiry of the next succeeding month alongwith a *challan* or a crossed cheque or a crossed demand draft for the full amount of tax payable on the purchase value of the goods.

The CT, Assam instructed (May 2008 and January 2011) the AOs to complete scrutiny of returns under the AET Act from 2005-06 onwards by 31 March 2011.

The item '**Telecom Equipment**' was taxable at the rate of eight *per cent* under the AET Act.

During scrutiny of records of the above unit it was observed that a dealer M/s Bharat Sanchar Nigam Limited (BSNL) purchased 'Telecom Equipment' for ₹ 29.77 crore in April and May 2005. But the dealer submitted monthly statement of purchase in November 2009 showing payment of entry tax in January 2006 for ₹ 1.19 crore by calculating tax at the rate of four *per cent* instead of eight *per cent*. This resulted in short payment of entry tax of ₹ 1.19 crore.

Audit scrutiny of case records revealed that the dealer though delayed the submission of return, no action was initiated by the department till September 2012. Thus, non-scrutiny of returns resulted in non-detection of short payment of tax of ₹ 1.19 crore.

After this was pointed out, the ST while accepting the audit observation issued (September 2012) demand notice for ₹ 1.19 crore to the dealer which had been deposited by the dealer. However, while raising the demand the AO did not levy interest for delayed payment which was also payable by the dealer.

The case was reported to the Government/department in October 2012 and followed up in March 2013; reply has not been received (September 2013).

2.37 Failure of the AO to take cognisance of the purchase turnover of a dealer resulted in short levy of entry tax.

[ACT, Unit-A; Guwahati, July- September 2012]

The item **Telecom Equipments** and **Diesel Generator** were taxable at the rate of 8 *per cent* under the AET Act.

During scrutiny of the records of M/s Dishnet Wireless Ltd. (dealing in Telecom Equipments, Diesel Generator sets etc.) it was

observed that while assessing for the year 2008-09 (upto May 2008) during December 2009 the AO determined the import purchase of the dealer worth ₹ 1.60 crore as taxable at eight *per cent*. Further scrutiny of utilisation of road permits revealed that the dealer imported goods worth ₹ 13.40 crore which were also available in the case records of the dealer. Failure to include this turnover in the assessment resulted in short levy of entry tax of ₹ 94.37 lakh.

After this was pointed out, the Department stated (June 2013) that the dealer was re-assessed on June 2013 and levied tax of ₹ 51.81 lakh¹⁵. Later, at the time of assessment the AO found that the dealer had paid ₹ 42.40 lakh and balance amount of ₹ 9.41 lakh was paid by the dealer on 18 June 2013. However, evidence of payment of ₹ 42.40 was not made available during Audit, as the dealer was defaulter in payment of tax at the time of original assessment (October 2009) as well as at the time of Audit (September 2012).

The case was reported to the Government in October 2012 and followed up in March 2013, reply has not been received (September 2013).

2.38 Irregular fixation of liability of a dealer while registration resulted in non-realisation of entry tax.

[ACT, Silchar; February- March 2012]

As per the AET Act, read with the AVAT Act, upon receipt of an application for registration under the AET Act, the prescribed authority may conduct such inquiry/call for such evidence and information as he deems fit and after the inquiry/considering the evidence and information, if he is satisfied that the application for registration is in order, he shall register the applicant and issue a certificate of registration.

The items 'HTS Wire' and 'Inserts' used in manufacture of Railway tracks' were taxable at the rate of 12.5 *per cent* with effect from November 2006 and 'Cement' was taxable at 12 *per cent* with effect from August 2005 under the AET Act.

During scrutiny of the records of M/s Railtrack Concrete Products Pvt. Ltd. (imported HTS Wire, Inserts and Cement for manufacturer of Railway Concrete Sleepers), it was noticed that though the dealer started commercial production from 15 June 2007, the AO while registering the dealer under the AET Act fixed tax liability from 1 June 2008.

Audit scrutiny revealed that the dealer imported HTS Wire, Inserts and

Cement valued at ₹ 7.26 crore by using 'C' Form between January 2007 and

¹⁵ The balance amount related to imports made by the dealer from outside the country on which entry tax was not leviable. The AO had verified the invoices which were not available in the case records seen by Audit.

May 2008 *i.e.* prior to the registration under the AET Act and also did not pay any Entry Tax on the aforesaid items. The AO also failed to take cognisance of the aforesaid turnover while registering the dealer and erroneously fixed the date of tax liability as 1 June 2008 instead of date of import of taxable goods as disclosed by the dealer while furnishing utilisation of 'C' Forms. It was further noticed that though the dealer had disclosed purchase of above materials worth ₹ 7.26 crore by using 'C' Forms which were available in the case records, the AO did not initiate any assessment proceedings (March 2012). Thus, non-detection of purchase turnover resulted in non-realisation of entry tax of ₹ 90.20 lakh.

After this was pointed out, the Department stated (June 2013) that the dealer was originally liable to pay Entry Tax of ₹ 66.39 lakh, not ₹ 90.20 lakh (as import value was less due to cancellation and double issue of 'C' form against same purchases). The dealer had paid ₹ 15.03 lakh and for the balance amount of ₹ 51.36 lakh arrears certificate was issued to the ST (Recovery), Silchar. Further report on realisation is awaited (September 2013).

The case was reported to the Government in April 2012 and followed up in March 2013, reply has not been received (September 2013).

2.39 Concealment of purchase turnover while filing returns under AET Act.

[ST, Morigaon , July-August 2011]

The AET Act read with the AVAT Act provides that a registered dealer liable to pay tax shall submit to the AO his monthly statement of such purchase along with a copy of the treasury challan for the full amount of tax payable on the purchase value of goods disclosed in the statement before the expiry of the next succeeding month of purchase.

'Lime Stone' and 'Lime Powder' were taxable at the rate of four per cent under the AET Act.

During scrutiny of the case records of M/s Hindustan Paper Corporation Ltd., Morigaon it was noticed that the dealer submitted monthly statement of purchase value of 'Lime' during the year 2008-09 from outside the state at ₹ 47.10 lakh and paid entry tax of ₹ 1.88 lakh. However, scrutiny of records revealed that the dealer actually imported 'Lime' valued at ₹ 5.72 crore during 2008-09 (between June 2008 and March 2009) by utilising declaration in Form 'C'. Though the

information on import of 'Lime' was available in the case records, the prescribed authority failed to co-relate the returns with the utilisation statement of Form 'C'. Non-detection of concealment of purchase turnover of

₹ 5.25 crore (₹ 572.18 lakh - ₹ 47.10 lakh) by the AO resulted in non-levy of entry tax of ₹ 21 lakh.

After this was pointed out, the Department stated (June 2013) that assessment has been revised and demand notice for ₹ 43.19 lakh (including interest) was raised. Report on realisation has not been received (September 2013).

The case was reported to the Government in August 2011 and followed up in April 2013; reply has not been received (September 2013).

2.40 Under assessment of entry tax.

[ACT, Unit-A; Guwahati, July - September 2012]

The item 'Air Cooler (AC)' and 'Diesel Generator (DG) set' were taxable at the rate of eight per cent under the AET Act.

It was observed that the AO while finalising the assessment in December 2010 of M/s Vodafone Essar Spacetel Ltd (dealing in 'AC' and 'DG set') for the year 2007-08 (July 2007 to March 2008) determined purchase turnover at ₹ 7.95 crore as eight per cent goods (as per revisional order passed by the Deputy Commissioner of Taxes). Audit scrutiny of utilisation statement of form 'C' submitted (June 2009) by the dealer revealed that the dealer actually imported 'AC' and 'DG set' valued at ₹ 10.09 crore between 1 July 2007 and 31 March 2008. Thus, purchase turnover of ₹ 2.14 crore escaped assessment resulting in underassessment of entry tax of ₹ 17.12 lakh.

After this was pointed out, the Department stated (July 2013) that the dealer has been reassessed raising a demand of ₹ 17.12 lakh which has been paid by the dealer. However, the AO did not levy interest for delayed payment which was also payable by the dealer.

The case was reported to the Government in October 2012 and followed up in April 2013; reply has not been received (September 2013).

2.41 Non levy of entry tax.

[ACT, Barpeta Road, March 2012]

Under the AET Act, the item 'Tobacco' was taxable at the rate of 10 per cent with effect from February 2005.

Scrutiny of the records in the above unit revealed that M/s Ganesh Tobacco Company imported 'Tobacco' from outside the state valued at ₹1.34 crore during the year 2006-07 as per monthly returns submitted by the dealer. Though the

information on import of taxable goods was available in the case records, the AO did not initiate any action to levy entry tax of ₹ 13.41 lakh.

After this was pointed out, the Department stated (June 2013) that the AO had reassessed the dealer and demand notice for ₹ 13.41 lakh was raised, of which, the dealer had deposited ₹ 4.25 lakh. Report on realisation of balance amount had not been received (September 2013).

The case was reported to the Government in April 2012 and followed up in April 2013; reply has not been received (September 2013).

2.42 Non-imposition of entry tax on taxable purchase led to evasion of entry tax.

[ACT, Unit-A; Guwahati, July- September 2012]

As per the AET Act, every registered dealer liable to pay tax under the Act shall submit to the AO his monthly statement of such purchase value before the expiry of the next succeeding month alongwith a *challan* or a crossed cheque or a crossed demand draft for the full amount of tax payable on the purchase value of the goods.

The item 'Crane' was taxable at the rate of eight *per cent* under the AET Act from 10 February 2006 to 13 September 2009.

During scrutiny of records of the above unit it was observed that a dealer M/s Bharat Heavy Electricals Limited was registered under the AET Act by the AO by fixing tax liability from 1 June 2008 and as such the dealer submitted annual return of the year 2007-08 in June 2011 by showing import purchase as 'nil'. But Audit scrutiny of utilisation statement of Form 'C'

revealed that the dealer purchased 'crane' valued at ₹ 1.48 crore in December 2007 and did not pay any entry tax on such purchase. Thus, non-detection of taxable purchase by the AO and fixation of liability from later date enabled the dealer to evade tax of ₹11.86 lakh.

After this was pointed out, the Department stated (July 2013) that the AO had reassessed the dealer raising a demand of ₹ 11.86 lakh which has been paid by the dealer. However, the AO did not levy interest for delayed payment which was also payable by the dealer.

The case was reported to the Government in October 2012 and followed up in April 2013; reply has not been received (September 2013).

2.43 Short levy of Entry Tax.

[ACT, Silchar; February - March 2012]

Under the AET Act, item ‘SGCI Inserts’ used in manufacture of Railway tracks’ was taxable at the rate of 12.5 per cent with effect from November 2006.

During scrutiny of the records of a dealer M/s Railtrack Concrete Products Private Limited (manufacturer of Railway Concrete Sleepers) it was observed that while completing the assessment (March 2011) the AO determined the dealer’s import purchase of ‘SGCI Inserts’ for the years 2008-09 as ₹ 3.72 crore instead of ₹ 4.53 crore resulting in short levy of entry tax of ₹ 10.12 lakh.

After this was pointed out, the Department stated (June 2013) that there was an inflation of figure with regard to the purchase of ‘SGCI Inserts’ arising out due to consideration of figures both under Road Permits and ‘C’ Forms and accordingly actual entry taxable purchase was ₹ 4.09 crore and not ₹ 4.53 crore. Accordingly, the reassessment was completed and the dealer was liable to pay entry tax of ₹ 4.63 lakh on the differential turnover of ₹ 37 lakh¹⁶. It was further noticed that during reassessment in August 2012 the AO irregularly adjusted interest amount of ₹ 3.23 lakh which was paid by the dealer voluntarily. Thus, the dealer is liable to pay ₹ 7.86 lakh¹⁷.

The case was reported to the Government in April 2012 and followed up in March 2013, reply has not been received (September 2013).

¹⁶ ₹ 4.09 crore minus ₹ 3.72 crore.

¹⁷ Balance tax of ₹ 4.63 lakh plus incorrect credit of ₹ 3.23 lakh.



CHAPTER - III
MOTOR VEHICLE TAX



CHAPTER – III : Motor Vehicle Tax

3.1 Tax administration

The Transport Department is responsible for collection of taxes, fees and fines on motor vehicles in Assam. Motor vehicle tax is realised primarily from all vehicles registered in the State. Tax is realised once for 15 years in the case of private vehicles while for commercial vehicles, it is realised each year, at the option of the vehicle owner to pay it every quarter, half yearly or annually. Besides, composite fee in lieu of motor vehicles tax is also collected from commercial vehicles bearing national permit/tourist permit of other States willing to ply in the State. Further, there is provision for levy and collection of fines for various offences which are imposed under the respective Acts and Rules. Motor vehicle tax so collected is deposited in the Government exchequer under the major head of account-0041.

The functioning of the Department is governed according to the provisions of the Motor Vehicles Act, 1988, the Assam Motor Vehicles Taxation Act, 1936 and Rules, 2003 and various administrative orders issued from time to time. The Assam Motor Vehicle Taxation Act was amended in May 2011.

The Commissioner of Transport (COT) is the head of the Department who is assisted by one Joint Commissioner {who is also the ex-officio Secretary, State Transport Authority (STA)}, one Deputy Commissioner and one Assistant Commissioner of Transport. There are 29 district level offices which are headed by District Transport Officers (DTO) who are assisted by motor vehicles inspectors and other officials in discharging their day to day functions. They are empowered to implement taxation laws and rules.

3.2 Budget preparation

As per the provisions of the Assam Budget Manual, the estimates of revenue and receipts should show the actual demand including arrears due for past years and the probability of their realisation during the year. According to the Assam Financial Rules, the Finance Department is required to prepare the estimates of revenue after obtaining necessary information/data from the respective Department/ Government.

It was observed that while estimating the revenues, tax structure of motor vehicles, trend of revenue, trend of motor vehicles registered, movement of vehicles across the motor vehicle check gates, amount of arrears of taxes, etc., are taken into consideration by the Transport Department.

3.3 Trend of receipts

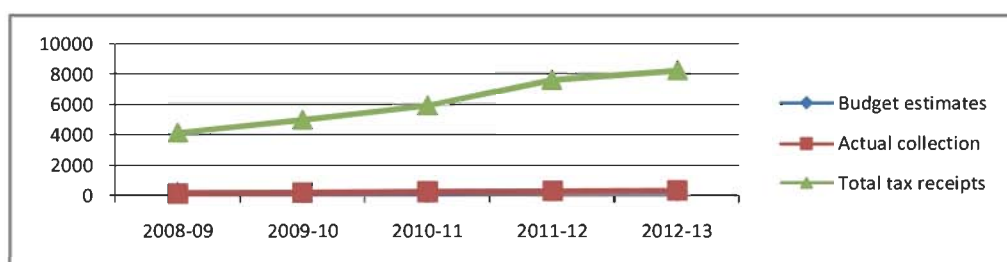
The position of budget estimates, actual receipts under ‘Taxes on Motor Vehicles’ along with the total tax receipts of the State during 2008-09 to 2012-13 are exhibited in the following Table 1, graph and pie chart.

Table 1
Analysis of taxes on motor vehicles receipts

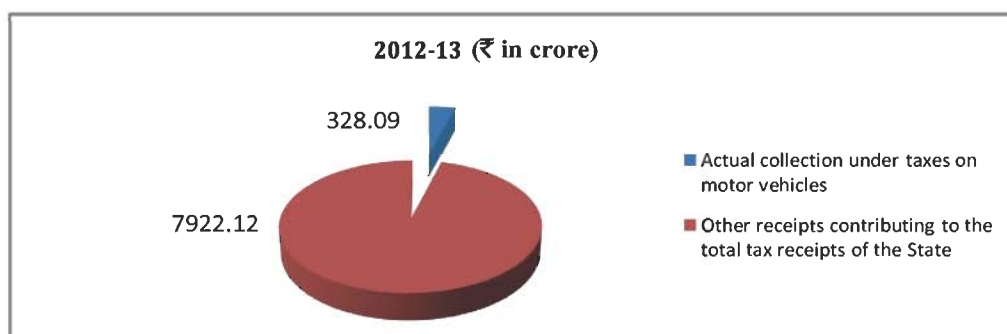
(₹ in crore)

Year	Budget estimate	Actual receipts of Taxes on Motor Vehicles	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts {(3) to (6)}
(1)	(2)	(3)	(4)	(5)	(6)	(7)
2008-09	193.00	145.21	(-) 47.79	(-) 25	4,150.21	3
2009-10	181.51	177.26	(-) 04.25	(-) 2	4,986.72	4
2010-11	189.54	231.99	42.45	22	5,929.84	4
2011-12	290.60	293.70	3.10	1	7,638.23	4
2012-13	295.48	328.09	32.61	11.04	8,250.21	4

Source: Finance Accounts and Departmental figures.



Graph showing budget estimates, actual collection under taxes on motor vehicles vis-a-vis the total tax receipts of the State.



Graph showing actual collection under taxes on motor vehicles vis-a-vis total tax receipts of the State

As could be seen, the growth of revenue under taxes on motor vehicles during 2012-13 over previous year was at 11.71 *per cent* against 26.60 *per cent* in the year 2011-12. The percentage of taxes on motor vehicles receipts when compared to the total tax receipts of the State remained at the level of three to four *per cent* during the last five years.

Though the Department has put in place a mechanism for estimating the revenues based on vehicular population, arrears, check gate records etc, there were considerable variations between budget estimates and actual receipts ranging between (-) 28 and 22 *per cent* during 2008-09 to 2012-13 except 2011-12 when the variation percentage was minimal.

3.4 Cost of collection

Details of gross collection of taxes on motor vehicles, expenditure incurred on collection and the percentage of such expenditure to gross collection during the years 2010-11 to 2012-13 along with the all India average percentage of expenditure on collection of preceding years are mentioned in Table 2.

Table 2
Cost of collection

Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection	(₹ in crore)
				All India average percentage of expenditure on collection of preceding year
2010-11	231.99	10.07	4	3.07
2011-12	293.70	11.58	4	3.71
2012-13	328.09	13.40	4	2.96

Source: Finance Accounts and Departmental figures.

Thus, the percentage of expenditure to gross collection in 2010-11 and 2011-12 was slightly higher than the all India average percentage. However, during 2012-13, the percentage of gap increased to 26 *per cent* which the Department needs to look into.

3.5 Impact of audit

During the period 2008-09 to 2011-12, we had, through inspection reports (IRs) pointed out instances of non-realisation of tax, non-assignment of new registration marks, non/short realisation of trade licence fee/certificate fee, non-levy of fine on trucks carrying excess load and other irregularities with revenue implication of ₹ 1,090.61 crore in 190 cases. Details are shown in Table 3.

Table 3
Impact of audit

Year of Inspection Report	No. of units audited	Amount objected		Amount accepted		Amount recovered	
		No. of cases	Amount (₹ in crore)	No. of cases	Amount (₹ in crore)	No. of cases	Amount (₹ in crore)
2008-09	19	27	2.18	09	0.31	00	0.00
2009-10	15	64	3.30	18	0.77	07	0.06
2010-11	19	60	413.74	85	0.35	13	0.06
2011-12	07	39	671.39	01	0.14	01 ¹	0.04
Total	60	190	1090.61	113	1.57	21	0.16

Thus, during the preceding four years, against 190 audit observations involving money value of ₹ 1,090.61 crore, the Department accepted 113 observations involving ₹ 1.57 crore which is meagre 0.14 *per cent*. Out of the accepted amount of ₹ 1.57 crore, the Department could recover only ₹ 16 lakh. Recovery of revenue (10.19 *per cent*) when compared to the number of cases accepted by the Department was extremely poor.

Recommendation No. 1 : There is a need for strengthening the monitoring mechanism in the Department to ensure recovery of revenues atleast in respect of the accepted cases.

3.6 Working of internal audit wing

Internal audit, a vital component of the internal control mechanism, functions as ‘eyes and ears’ of the Department and is a vital tool which enables the management to assure itself that prescribed systems are functioning reasonably well.

The Department stated that the Finance Department has not put in place any separate internal audit system for the Transport Department. Had there been an effective internal audit system in the Department, deficiencies detected during local audit could possibly have been detected, rectified and prevented.

Recommendation No. 2 : The Department may, in coordination with Finance Department, arrange to conduct internal audit of its records/accounts through the Director of Local Audit regularly.

3.7 Results of audit

Test check of records in 19 unit offices of the Transport Department during 2012-13 revealed non/short levy and realisation of fine/motor vehicles taxes amounting to ₹ 22.76 crore in 77 cases as shown in Table 4.

¹ Partially recovered.

Table 4
Results of audit

(₹ in crore)			
Sl. No.	Category	Number of cases	Amount
1.	Non-realisation of Motor Vehicle Tax.	16	1.95
2.	Non-assignment of New Registration mark to vehicle from other State.	6	1.17
3.	Non-realisation of Road Tax after expiry of One Time Tax.	9	0.85
4.	Outstanding revenue – Observation thereof	3	0.12
5.	Non-realisation of Fees for Fancy Number.	3	0.11
6.	Realisation of tax without realisation of tax of earlier period.	2	0.06
7.	Offence cases – Observation thereof.	9	-NIL-
8.	Others	29	18.50
Total		77	22.76

During the course of the year 2012-13, the Department accepted 49 cases involving revenue of ₹ 1.84 crore and recovered ₹ 29.50 lakh in 10 cases.

A few illustrative audit observations involving revenue implication of ₹ 32.84 lakh are mentioned in the following paragraphs.

3.8 Audit observations

Scrutiny of the records of the Transport Department revealed several cases of non-observation of the provisions of Acts/Rules/departmental orders as mentioned in the succeeding paragraphs. These cases are illustrative and are based on test checks carried out by Audit. Such omissions on the part of the departmental officers are pointed out by Audit each year, but not only do the irregularities persist, these remain undetected till subsequent audit is conducted. It is a matter of concern as these observations are also sent to the higher authorities including the Government each time these are detected. Yet the Government or the Department did not take sufficient measures to monitor the cases and arrest their recurrence. There is a need for the Government to strengthen their control and monitoring mechanism including regular internal audit so that these omissions can be prevented, detected and corrected.

3.9 Non-assignment of new registration marks.

[DTOs, Morigaon and Mangaldoi; May, 2012]

Under Sub-section (1) of Section 47 of the Motor Vehicles Act, 1988, when a motor vehicle registered in one State has been kept in another State for a period exceeding 12 months, the owner of the vehicle shall apply to the registering authority for the assignment of a new registration mark and pay fee at the rate prescribed under the Assam Motor Vehicle Rules, 2003 (AMVR). The owner of the vehicle who brought such motor vehicle from outside the State and kept the same in the State shall intimate to the registering authority within 30 days from the date of the entry in the State. If the owner of the vehicle fails to apply for new registration number, he shall be liable to pay fine of ₹ 100 if the application is submitted within seven days after the expiry of the prescribed period and there after fine of ₹ 300 is payable for every seven days till the vehicle is registered.

In addition, ₹ 500 is chargeable against each vehicle as reassignment fees under Rule 24(4) of the AMVR.

During test check of the Combined Register of Foreign vehicles in the above offices, it was observed that in 44 cases, the owners of the vehicles did not apply for the new registration marks although the vehicles were plying within the jurisdiction of the above DTOs, for more than 12 months as per record. As per the system in place, the DTOs were required to review the combined register at periodic intervals. Had the DTOs carried out the same, the above omission on the part of the vehicle owners could have been detected which would have enabled the DTOs to issue notice to the vehicle owners to come forward for re-assignment of vehicle numbers on realisation of prescribed fees and fines.

Failure to do so resulted in non-assignment of new registration marks coupled with non-realisation of ₹ 15.16 lakh on account of fees and fines.

The cases were reported to the Government/Department between June – July 2012 and followed up in March 2013; reply has not been received (September 2013).

3.10 Non/short realisation of Fancy Number Registration Fee ₹ 9.07 lakh

[DTO, Silchar; December, 2012]

As per Government of Assam order of 9 October 2006 and the Commissioner of Transport, Assam's letter of 7 June 2010, the registration numbers from 0001 to 0010 in each series are to be allotted in consultation with COT, Assam *w.e.f.* 7 June 2010 and during the allotment of these numbers, first preference will be given to Government vehicles. If there is no such claim for registration of Government vehicles the same may be allotted to any applicant on payment of a premium of ₹ 5,000. For the other fancy numbers or numbers of choice, the registering authority may charge a premium of ₹ 4,000.

During scrutiny of Fancy Number Register maintained by the DTO, Silchar it was noticed that the numbers from 0001 to 0010 have been issued without charging any premium while in 254 other cases fancy numbers were issued by charging pre-revised rates of premium of ₹ 500 in each case instead of ₹ 4,000 as prescribed in the aforesaid Government order. This resulted in non/short realisation of revenue of ₹ 9.07 lakh.

The case was reported to the Government/department in January 2013 and followed up in March 2013; reply has not been received (September 2013).

3.11 Non-raising of demands of motor vehicle tax including fine ₹ 8.61 lakh.

[DTO, Morigaon, May, 2012]

Section 4 of the Assam Motor Vehicles Taxation Act, 1936 provides that taxes on motor vehicles are to be paid in advance on or before 15 April of each year or optionally in four equal instalments payable on or before 15 April, 15 July, 15 October and 15 January respectively. The Act also provides that every owner of a motor vehicle who fails to pay the appropriate road tax in time shall be liable to pay a fine at a rate of ₹ 5 per day of such delayed payment with effect from 9 May 2002.

As per the provisions of the AMVT, the DTOs are required to maintain a combined register to watch the recovery of tax. He is also required to review the register at periodic intervals and issue demand notices to defaulters.

During test check of Combined Register in the above Office, it was noticed that road tax including fine

amounting to ₹ 8.61 lakh was due from 72 commercial vehicles for various period from October 2009 to June 2012. Due to the absence of periodic

review, these vehicles continued to ply in public places without payment of tax. There was also nothing on record to show that the owners of these vehicles had surrendered the licenses. Thus, failure of the DTO to review the Combined Register at periodic intervals and issue demand notice against the above vehicles resulted in non-realisation of tax and fine of ₹ 8.61 lakh. This indicates that there is a need to reinforce the mechanism of reviewing the combined registers by the DTOs so that demand notices to the defaulting vehicle owners for recovery of the dues are issued in time and regularly.

The case was reported to the Government/Department in June 2012 and followed up in March 2013; reply has not been received (September 2013).

Recommendation No. 3: The Department/Government may issue suitable instructions making it mandatory for the DTOs to review the Combined Registers at regular intervals and the status of the same may be monitored by higher authorities in Government at regular intervals.



CHAPTER - IV
STAMP AND
REGISTRATION



CHAPTER – IV : Stamp Duty and Registration Fee

4.1 Results of audit

Test check of records in 11 unit offices dealing with Stamp Duty and Registration Fee under the Registration Department during 2012-13 revealed non/short levy and realisation of stamp duty and registration fees amounting to ₹ 0.05 lakh in 21 cases. Also, an audit on the topic titled “Evasion of Stamp Duty and Registration Fee on immovable properties with special emphasis on Development Agreement” was also conducted during the year. These are shown in Table 1.

Table 1
Results of audit

Sl. No.	Category	Number of cases	Amount (₹ in lakh)
1.	“Evasion of Stamp Duty and Registration Fee on immovable properties with special emphasis on Development Agreement”	01	1, 041.00
2.	Short realisation of Stamp Duty.	04	0.05
3.	Non-maintenance of stock register and records.	04	-
4.	Huge number of deeds lying pending for copying and delivery.	06	-
5.	Delay in deposit of Revenue collection.	05	-
6.	Retention of heavy cash balance.	02	-
Total		22	1, 041.05

During the course of the year, the Department accepted 13 paragraphs involving procedural irregularities which did not involve monetary implications.

Results of the Audit on the topic titled “Evasion of Stamp Duty and Registration Fee on immovable properties with special emphasis on Development Agreement” involving revenue implication of ₹ 10.41 crore are mentioned in the following paragraphs.

4.2 Evasion of Stamp Duty and Registration Fee on immovable properties with special emphasis on Development Agreements.

Highlights

Non-execution of conveyance deeds between landowners and developers resulted in foregoing of revenue of ₹ 7.30 crore.

(Paragraph 4.2.7.1)

Non-realisation of Registration Fee on fishery and ferry leases of ₹ 2.80 crore.

(Paragraph 4.2.7.2)

Non-registration of deeds of allotment of Government lands resulted in non-realisation of Registration Fee of ₹ 30.76 lakh.

(Paragraph 4.2.7.3)

4.2.1 Introduction

Receipts from Stamp Duty and Registration Fee in the State are regulated under the Indian Stamp Act (IS Act), 1899; Indian Registration Act (IR Act), 1908, as applicable in Assam and the rules made there under. The IS Act and the State Acts impose duty on various instruments specified in the schedules appended thereto at the rates specified therein. Such duties are paid by executors of instruments by either using impressed stamp paper of proper denominations or by affixing stamps of proper denominations on them. The State Governments have made rules for the purpose of the IS Act by virtue of powers vested in them. These rules lay down the detailed procedure for determination and collection of Stamp Duty.

The IR Act and Rules made there under, by the State Governments broadly outline the system of assessment and collection of revenue as Registration Fees. Section 78 to 80 of the IR Act requires that fees should be paid at rates determined and notified by the State Government for registration of documents which are in the nature of services rendered by the Registration Department.

“**Development Agreement**” is a case where the owner of the land entrusts the land to the developer only for the purpose of managing the construction of structures/houses and sell the constructed properties to the willing buyers for a consideration. Development Agreement facilitates the process of addressing

the issue of construction of houses by bringing together such people, one of whom has a land but does not have the resources to develop it and at the same time does not like to give the ownership of the land whereas the person who has the resources does not have the land. Development Agreement is the mechanism developed by the Government to bring the resources together at minimum cost of ₹ 100. Some of the States charge ₹ 100 on the Development Agreement and other States are charging the Stamp Duty at lower rates on percentage basis. The agreement contains the mutual terms and conditions between the owner of the land and the developer of the land.

4.2.2 Organisational set up

In the State of Assam, the determination of policy, monitoring and control at the Government level is done by the Secretary, Finance (Revenue) Department. The Inspector General of Registration (IGR) is the head of the Department. He is assisted by one Assistant Inspector General of Registration (AIGR) and five Deputy Registrars (DR), eight Senior Sub-Registrars (Sr. SR), 66 Sub-Registrars (SR) and two SRs (Attached).

4.2.3 Audit scope and Methodology

Audit was conducted during May and June 2013 in the office of the IGR, and the selected registration offices of the Sr. SR, Kamrup (Metro) and the SR, Kamrup (Rural), under whose jurisdiction major developmental activities in the form of construction of multipurpose complexes/apartments took place. Relevant information on immovable property was also collected from different Government agencies¹ for the period from 2007-08 to 2011-12.

4.2.4 Acknowledgment

Indian Audit and Accounts Department acknowledges the co-operation of the IGR in providing necessary information and records for audit. The draft Report was sent to the Government/Department in July 2013. Replies of the Department had been received in September 2013 which has been appropriately incorporated in respective paragraphs.

¹ Source from which information collected: Regarding approval of new apartments complexes from Office of the Chief Executive Officer (CEO) - Guwahati Metropolitan Development Authority (GMDA), Commissioner-Guwahati Municipal Corporation (GMC).

Regarding Ferry and Fishery leases which are classified as immovable properties, from the Director - Inland Water Transport (IWT), General Manager (GM) - Assam Fishery Development Corporation (AFDC), Secretary, Government of Assam, Fishery Department and the Deputy Commissioner (DC), Kamrup (Metro) and Kamrup (Rural) furnished information on allotment of land by the GOA to different parties (both private and Government).

4.2.5 Audit objectives

Audit was conducted with a view to ascertaining:

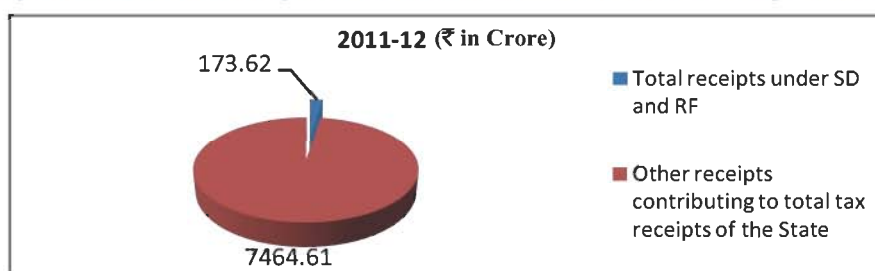
- whether the Government had clearly defined Development Agreement and prescribed Stamp Duty and Registration Fee on such agreements;
- whether Registration offices discharged their functions in regard to levy of Stamp Duty and Registration Fee in accordance with the prescribed rules and procedures;
- whether any lacunae in the Acts/Rules impacted revenue; and
- the extent of compliance with prescribed rules and procedures with regard to lease of immovable properties.

4.2.6 Trend of revenue receipts

The following table brings out a comparison of the budget estimates, actual receipts of Stamp Duty (SD) and Registration Fee (RF) and the total tax receipts of the State during the period from 2007-08 and 2011-12:

Year	Budget estimates		Actual Receipts		Total receipts under SD and RF	Total Tax revenue of the State	Percentage of total receipts under SD and RF vis-a-vis total tax revenue of the State
	SD	RF	SD	RF			
2007-08		37.78	77.52	30.22	107.74	3,359.50	3.20
2008-09		45.05	77.12	42.40	119.52	4,150.21	2.87
2009-10	Not fixed	Not fixed	62.31	43.18	105.49	4,986.72	2.12
2010-11		Not fixed	78.43	50.57	129.00	5,929.84	2.18
2011-12		94.73	96.86	76.76	173.62	7,638.23	2.27

Graph showing the total receipts under SD and RF vis-a-vis the total tax receipts of the State



Pie chart showing the total receipts under SD and RF vis-a-vis total tax receipts of the State during 2011-12

As could be seen, the growth of revenue under SD and RF during 2011-12 over previous year was at 34.59 per cent against 22.29 per cent in the year 2010-11. Also, the Department has not framed any target in respect of SD in any of the years while target for RF was not fixed during 2009-10 and 2010-11. The percentage of SD and RF to total tax revenue of the State ranged from 2.12 to 3.20 per cent over the five year period. The overall position

of revenue from SD and RF has been registering an increasing trend; yet, when compared to the total tax receipts of the State, it showed a decreasing trend till 2009-10. The position improved during subsequent years and stood at 2.27 *per cent* in 2011-12 which was far below the percentage achieved in 2007-08 which the Department needs to look into.

4.2.7 Audit findings

4.2.7.1 Non-execution of conveyance deeds between land owners and developers.

Under the provisions of Article 48 (f) of the Schedule-1 to the IS Act, (as applicable in Assam), any instrument when executed, authorising the attorney to sell any immovable property for consideration, are chargeable to Stamp Duty as a conveyance for the amount of the market value of the property. For the purpose of levy of Stamp Duty, an instrument is required to be classified on the basis of its recital given in the document and not on the basis of its title.

During test check of the records of two SR offices of Kamrup (Metro) and Kamrup (Rural), it was noticed that 50 documents (Development Agreements) were registered between 2007-08 and 2011-12. Scrutiny of the documents revealed that the recitals of the documents clearly mentioned that consideration was paid/agreed to be paid by the developers to the land owners and the land owners also empowered the developers to sell the constructed / developed

properties, along with the right in land and to receive its consideration. Since the power to sell the land cannot be transferred without the execution of conveyance deed, separate conveyance deeds were required to be executed between the land owners and the developers on payment of proper Stamp Duty. The concerned SRs also did not notice the same resulting in foregoing of revenue to the tune of ₹ 7.30 crore (@ six *per cent* Stamp Duty) in 50 cases.

The Department in their reply stated (September 2013) that the details of Power of Attorney and such instruments were required for examination. The Department further stated that the Assam Apartment Act, 2009 was duly passed by the Assembly, but is yet to be implemented. The Assam Apartments (Construction and Transfer of Ownership) Rules, 2010 was subsequently notified where ‘the Development Agreement’ was found defined. Further

developments in the cases pointed out by Audit in respect of which Department sought time had not been reported (September 2013).

Recommendation No. 1:

Department may consider issuing instructions to Sub Registrars to insist for separate conveyance deeds in all cases where the developer is authorised through power of attorney by the land owner to sell the property constructed on his land against consideration. Moreover, the Government may consider inserting an article regarding 'Development Agreement' in the Stamp Act of Assam as it had already been defined in the Assam Apartments (Construction and Transfer of Ownership) Rules, 2010.

4.2.7.2 Non-realisation of Registration Fee on Ferry and Fishery leases.

Under section 2(6) of the IR Act, "immovable property" includes land, buildings, lights, ferries, fisheries etc. Further, the Supreme Court in its decision {(1995) 6-SCC 520} declared that fishing from a tank is a profitable profession, which comes in the class of immovable property.

Moreover, as per section 17(d) of IR Act, lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent shall be compulsorily registered.

Information collected from the Director, Inland Water Transport, Assam and Managing Director, Assam Fisheries Development Corporation Ltd. / the Secretary, Government of Assam, Fishery Department revealed that the departments had awarded 139 leases of ferries at a cost of ₹ 16.45 crore and 1,103 leases of fishery at a cost of ₹ 25.39 crore respectively (each

exceeding ₹100) during the period from 2007-08 to 2011-12. It was, however, noticed that these leases were not registered under the IR Act which resulted in non-realisation of Registration Fee of ₹ 1.40 crore (@ 8.5 per cent) on Ferry leases and ₹ 1.40 crore (@ 5.5 per cent) on Fishery leases.

The Department in their reply confirmed that no registration of deed was done in cases of settlement of ferry and fishery. Further development in these cases had not been reported (September 2013).

4.2.7.3 Non-registration of deeds of allotment of Government land.

Section 17b of the IR Act provides that other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest whether vested or contingent, of the value of ₹ 100 and above, to or in immovable property, are required to be compulsorily registered.

Registration Fee of the documents where value exceeds ₹ 5 lakh was fixed at ₹ 85 per thousand vide notification No. REGN 43/86/68 dated 7 December 1989.

Scrutiny of the information collected from two Deputy Commissioners (Kamrup-Metro & Rural) revealed that the Government had allotted 22 plots of land to Government and private parties in Kamrup (Metro) and Kamrup (Rural) districts during the period from 2007-08 to 2011-12, the total value of which were ₹ 3.62 crore (two cases of Government

agencies with a land value of ₹ 1.35 crore & 20 private parties including individuals where the land value involved was ₹ 2.27 crore). The allotment of aforementioned land was required to be registered by a levy of ₹ 30.76 lakh as Registration Fee (@ 8.5 per cent) which was not done, resulting in non-realisation of the same amount.

The Department in their reply stated that Government land is allotted to Government Departments/private individuals on receipt of application from them after following prescribed procedures and in such cases no sale deed is registered. The individual allottees of land can, however, apply for conversion of their land allotment into short lease and periodic lease. Such conversion may be allowed by competent authorities on realisation of government dues called premium payable through treasury *challans*. In such allotment cases, thus, no sale deed registration is done. However, they called for the details of the cases commented upon by Audit for further examination.

Response of Audit: The required information has been forwarded to the Department. Further development in these cases had not been reported (September 2013).

4.2.8 Other issues impacting revenue

Against an audit query, the Department replied that:

- To check under valuation of the properties in transaction, although the Government of Assam through Revenue Registration Department has taken some steps like institution of zonal valuation Committee/Cell under the control of respective Deputy Commissioner of the districts, the final outcome in the form of gazette notification fixing valuation in uniform manner throughout the

State by the Government has to be made at the earliest. This would ensure that a permanent check can be instituted on under valuation of properties.

- The Assam Apartment Act, 2009 which was duly passed by the Assembly is yet to be implemented by making Rules and notification thereon to check the under valuation of the buildings, flats and apartments by the concerned authorities leading to evasion of huge revenue, especially in urban areas.

The above indicates that there is still scope of generating revenue by making specific rules, issuing notifications which need to be looked into by the Government. Till such time, the Government would continue to loose revenue.

Recommendation No. 2:

The Department may initiate action to take up the matter at appropriate level to address the above issues in the best interest of revenue of the State.

4.2.9 Weak internal controls

Inspection by senior level officers is an important internal control for administration to ascertain and ensure that machinery at the execution level is adhering to the rules and procedures prescribed and are sufficient to safeguard proper collection of revenue. In the Registration Department, it is ascertained that the AIGR is required to conduct inspection of SR offices, but there was no prescribed norm for inspection of the SR offices by the superiors. Audit observed that during the period of five years, out of the total 81 number of units, only one inspection was carried out in 2009-10 and three inspections in 2010-11.

Adequate and proper inspection of the SR offices by the AIGR or authorised officers could have assured the department that rules and procedures were being complied with by the departmental officers.

4.2.10 Conclusion

Stamp Duty and Registration Fee is an important tax revenue of the State. Evasion of Stamp Duty and Registration Fee is common due to undervaluation of properties, non-execution of conveyance deeds in cases of Development Agreements, non-realisation of Stamp Duty and Registration Fee in ferry/fishery leases etc. The internal controls of the Department were found to be weak as evidenced by the short fall in the number of inspections required to be conducted and audit findings which revealed non/short levy/realisation of Stamp Duty and Registration Fees on a number of transactions.

PERFORMANCE AUDIT



CHAPTER - V
STATE EXCISE



CHAPTER – V: State Excise

5.1 Results of audit

Test check of records of 10 units relating to the State Excise Department during 2012-13 revealed non-levy of excise duty, non/short realisation of establishment charges, loss due to warehouse going dry and other irregularities involving ₹ 19.09 crore in 23 cases. A Performance Audit on “Receipts under State Excise” was also conducted during the year. The results of the Performance Audit involved revenue implication of ₹ 1,115.43 crore. These are mentioned in the following table 1.

Table 1
Results of audit

Sl. No.	Categories	No. of cases	(₹ in crore)
			Amount
1.	‘Receipts under State Excise’ – A Performance Audit	01	1,115.43
2.	Non-payment of licence fee	04	0.73
3.	Non/short realisation of establishment charges	05	0.58
4.	Loss due to warehouse going dry	01	0.07
5.	Other irregularities	13	17.71
Total		24	1,134.52

The Department accepted nine cases having revenue implication of ₹ 87.83 lakh pertaining to 2012-13 and recovered ₹ 32.53 lakh during 2012-13.

The Performance Audit on ‘Receipts under State Excise’ with financial implication of ₹ 1,115.43 crore is mentioned in the succeeding paragraphs.

RECEIPTS UNDER STATE EXCISE

Highlights

Cross verification of records revealed that 9.45 lakh bulk litre extra neutral alcohol was dispatched by the distilleries located outside the State to the bottling units of Assam against permits which were not issued by the Commissioner of Excise, Assam. The aforesaid volume of extra neutral alcohol was capable of producing India made foreign liquor involving revenue of ₹ 21.80 crore which was lost by the Government.

(Paragraph 5.8.1.2)

The Government of Assam is yet to prescribe the norm for production of India made foreign liquor from extra neutral alcohol which is 3.93 bulk litre extra neutral alcohol for each case of India made foreign liquor. Taking that as base, there was short production of 5.87 lakh cases involving revenue of ₹ 80.79 crore.

(Paragraph 5.8.2)

There were variations in the spirit content of IMFL brands against the prescribed standards. Audit scrutiny revealed that the percentage ranged between 70.7 and 73.3 degree proof against the standard of 75 degree proof.

(Paragraph 5.8.3)

In the absence of a system of re-verification of ex-bond price from the MRP printed on the labels, Department could not detect misclassification of brands resulting in loss of revenue of ₹ 238.34 crore.

(Paragraph 5.8.4.1)

Test check of 45 bonded warehouses indicated that they were availing bond limit of ₹ 138.80 crore against security deposit of only ₹ 5,000 in each case. Audit also detected flouting of hypothecation of stock made by them to the Government.

(Paragraph 5.10.1)

Audit noted that the information on closing stock furnished by some bonded warehouses to the Commissioner of Excise, Assam were not reliable as there were wide variations on closing stock as furnished to the other statutory authorities and banks for the same period.

(Paragraph 5.10.2.3)

Cross verification of records of Commissioner of Excise, Assam with the concerned States revealed that 141.77 lakh bulk litre out of 393.31 lakh bulk litre India made foreign liquor/Beer stated to have been exported by the licensees of Assam were not received by the concerned States leading to loss of revenue of ₹ 75.99 crore on account of Excise Duty only.

(Paragraph 5.11.1.1)

Unlike India made foreign liquor, there is no system of chemical examination of Country Spirit consignments though both are for human consumption.

(Paragraph 5.12)

Absence of a system of recording the details of vehicles carrying extra neutral alcohol/India made foreign liquor/Beer entering Assam through the entry points at Boxirhat and Srirampur denied the Department the option of cross verification of figures reported by the licensees through their returns.

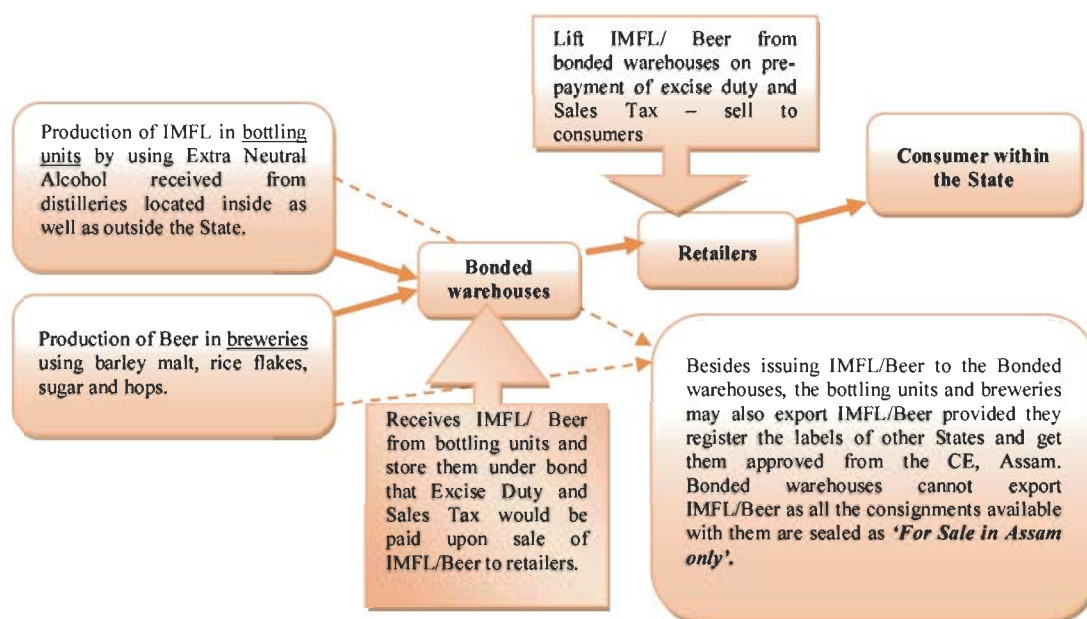
(Paragraph 5.13.2)

The penal action contained in the Assam Excise Act and Rules enacted in 1910 and 1945 respectively has not been reviewed for many years. The penal rate prescribed is abysmally low when compared to the Excise Duty at the present rate. There is also no provision for payment of interest for delayed payments. Therefore, there is a need to review the existing penal provisions.

(Paragraph 5.14.1)

5.2 Introduction

‘Liquor’ means intoxicating liquid which includes wine, India Made Foreign Liquor (IMFL), Country Spirit (CS), Beer and all liquids consisting of or containing alcohol or any substance which the State Government may by notification declare to be liquor. Country and foreign liquor are manufactured from alcohol produced in the distilleries through the process of blending/reduction, compounding and flavouring or colouring or both. Beer is manufactured from malt, grain, sugar and hops in breweries. The process of manufacturing, distribution and sale of liquor in the State of Assam is depicted in the following block diagram:



Block diagram - 1

Licences for bottling of IMFL/manufacture of Beer, operation of bonded warehouses, retailers are issued by the Government of Assam (GoA) to be renewed yearly by the Commissioner of Excise (CE), Assam on payment of prescribed licence fees. Operation of country spirit warehouses are finalised through tender system and licences are issued for a period of three years.

The State Excise Department (SE Department), GoA is responsible for administration and collection of excise revenue under the relevant Acts and Rules and enforcement of the Excise laws on prohibition of illicitly distilled liquor, *ganja*, *bhang* and opium. The functioning of the SE Department is governed according to the provisions of the Assam Excise Act (AE Act), 1910 and the Assam Excise Rules (AER), 1945 as amended and various administrative orders issued from time to time. The Assam Bonded Warehouse Rules (ABW Rules), 1965 regulate the establishment and working of bonded warehouses. In Assam, excisable items such as country spirit, Extra Neutral Alcohol (ENA)/Rectified Spirit (RS)¹ and other spirits are imported from outside the State. IMFL is bottled and Beer is manufactured and bottled in the State and also imported from outside the State.

Excise revenue is generated through imposition of duties and fees on transportation, manufacture/bottling, storage, sale, import and export of

¹ Rectified spirit (RS) contains strength of upto 67 degree or less over proof and may contain some impurities. Hence, RS is mainly used in manufacturing country spirit or local brands. RS, when further refined by removing the impurities and raising the strength to 68 degree over proof is called extra neutral alcohol.

liquor. State Excise revenue is one of the most important sources of tax revenue of the State.

Ethically, Audit would not like to encourage increase in consumption of intoxicants as it may have detrimental impact on the health of the citizens as well as the society, at large.

To examine whether the revenue accrued from consumption of IMFL/Beer/country spirit etc within the State of Assam is properly assessed, levied and realized by the SE Department, GOA, a Performance Audit (PA) of the 'Receipts under State Excise' was conducted covering the period 2007-08 to 2011-12. The PA revealed a number of deficiencies and also a few cases of good practices in the SE Department, GoA. These are discussed in the following paragraphs under 'Audit findings'.

5.3 Organisational set up

The Additional Chief Secretary to the GoA, SE Department is in overall charge of the Department at the Government level. At the Department level, the SE Department is headed by the Commissioner of Excise (CE), Assam who is assisted by an Additional Commissioner, one Joint Commissioner, one Deputy Commissioner and one chemical examiner at the headquarters. At the district/sub-divisional levels (field formation) there are Superintendents/Deputy Superintendents of Excise who are assisted by Inspectors of Excise and other officials in discharging their day to day functions.

5.4 Scope and criteria of audit

The PA was conducted during March to June 2013 through test check of records pertaining to the period 2007-08 to 2011-12. Deficiencies noticed during the course of audit which were found to be continuing during 2012-13 had also been incorporated in this Report to present an updated position. Audit commenced with examination of the records in the office of the CE, Assam and eight² out of 26 districts were covered. The selection of districts was done considering the revenue generated by them during the period covered by the PA. Apart from the selected districts, Superintendent of Excise (SE), Lakhimpur was covered to examine the impact of inflow of IMFL/Beer pertaining to the State of Arunachal Pradesh. Also, audit findings

² Cachar, Dibrugarh, Jorhat, Kamrup, Karbi Anglong, Sivsagar, Sonitpur and Tinsukia.

in regular audit conducted during the course of the year have been suitably incorporated in this Report.

The audit team also visited the office of the CE, Arunachal Pradesh to gather information/data on pattern of sale of IMFL/Beer by the licensees, especially those located adjacent to Assam. Besides, the export passes issued by the SE Department during the period covered by the PA was examined and cross verified with the concerned States.

The PA was conducted against the following criteria:

- Statutory requirements under the provisions of AE Act 1910, AE Rules 1945 and ABW Rules 1965;
- Assam Financial Rules; and
- Policies and procedures laid down by the CE, Assam.

5.5 Audit Objectives

The PA was conducted with a view to ascertaining the:

- adequacy of the AE Act and Rules made thereunder;
- proper levy and collection of fees, duties etc;
- administration of export passes and its impact on revenue; and
- adequacy and effectiveness of the internal control mechanism to contain leakage of revenue.

5.6 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation of the SE Department for providing necessary information and records for audit. An Entry Conference was held on 28 February 2013 wherein scope, objective and methodology of audit were explained to the GoA and SE Department. The CE and the Dy. CE, Assam attended the meeting on behalf of the SE Department while the Under Secretary, Finance Department represented the Finance Department, GoA. The PA Report was sent to the SE Department and the GoA in August 2013. The audit findings and the recommendations were discussed in an Exit Conference on 3 October 2013. The CE, Assam represented the SE Department while the Joint Secretary, SE Department and the Under Secretary, Finance (E&F Department) attended the meeting on behalf of the GoA. The para-wise replies received in September 2013 have been incorporated against each para. While summing up the reply, the Department stated that the points and recommendations of the performance audit Report are noted and the Department would put every efforts to plug the

leakages and shortcomings as pointed out by Audit. During the exit conference, the CE stated that some of the recommendations had already been implemented while the others would be implemented at the earliest.

5.7 Financial analysis

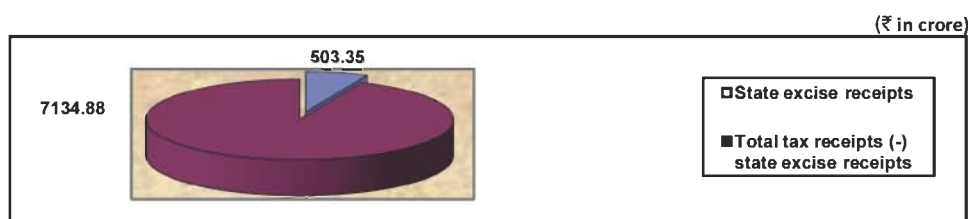
5.7.1 Trend of revenue

Position of budget estimates, actual receipts under State Excise along with total tax receipts of the State during 2007-08 to 2011-12 is exhibited in following Table 1 and pie chart.

Table 1
Analysis of excise receipts

(₹ in crore)

Year	Budget estimate	Actual receipts under state excise	Variation excess (+)/shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts under state excise <i>vis-à-vis</i> total tax receipts {(3) to (6)}
(1)	(2)	(3)	(4)	(5)	(6)	(7)
2007-08	204.92	188.71	(-) 16.21	(-) 8	3,359.50	6
2008-09	223.30	198.68	(-) 24.62	(-) 11	4,150.21	5
2009-10	235.90	239.19	3.29	1	4,986.72	5
2010-11	259.46	323.12	63.66	25	5,929.84	5
2011-12	400.00	503.35	103.35	26	7,638.23	7



Share of excise receipts to total tax receipts during 2011-12

The share of Excise receipts in the total tax receipts of the State ranged between five and seven *per cent* during the last five years. The growth of revenue during 2011-12 over previous year was at 55.78 *per cent* against 35.09 *per cent* in the year 2010-11.

The reasons for abrupt increase of actual receipts during 2009-10 to 2011-12 was attributable to enhanced re-structuring of Excise levies and stoppage of export passes to the bonded warehouse licensees of Assam by the SE Department.

5.7.2 Cost of collection

The actual receipts under State Excise, expenditure incurred on collection and the percentage of such expenditure to gross collection during the years 2010-11

to 2012-13 along with the relevant all India average percentage of expenditure on collection relating to the preceding years are mentioned in Table 2.

Table 2
Cost of collection

(₹ in crore)

Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage for the previous year
2010-11	323.12	26.79	8.29	3.64
2011-12	503.35	30.51	6.06	3.05
2012-13	568.11	34.29	6.03	2.98

Source: Finance Accounts and departmental figures.

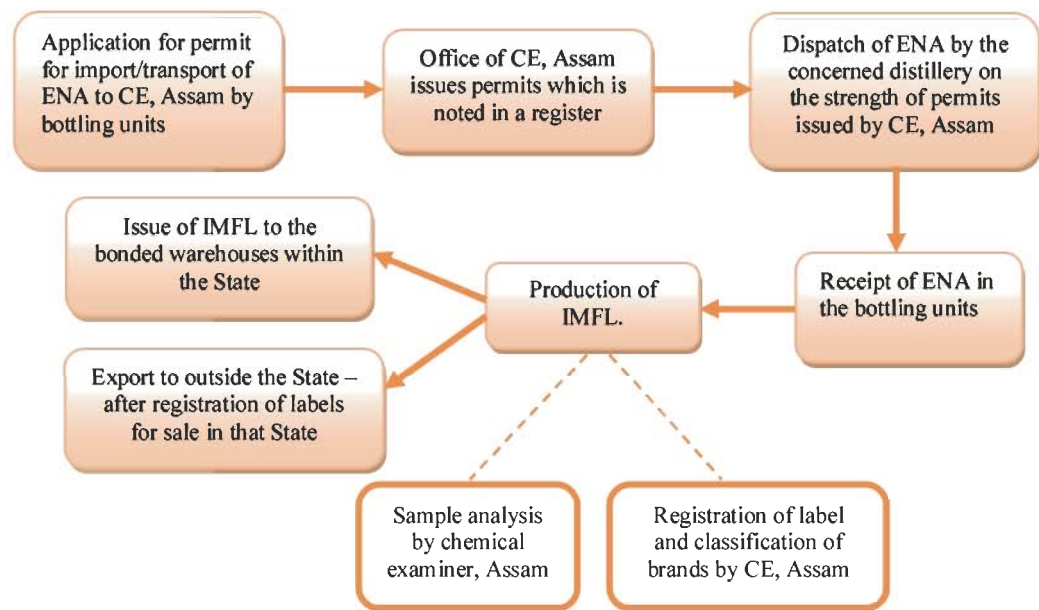
Percentage of expenditure on gross collection during the three years had been registering a decreasing trend which is encouraging. However, the percentage remained far above the corresponding all India average percentage during all the three years which the Department needs to look into.

Audit findings

As depicted in block diagram 1 under paragraph 5.2, the bottling units/breweries and the bonded warehouses play the most vital role in production and distribution of IMFL/Beer to the consumers, both within the State (through the retailers of the State) and outside the State (through export permits). Besides, there are country spirit warehouses in the State for supply of country spirit to the consumers through designated retailers. The audit findings are accordingly categorised under – ‘bottling units’, ‘breweries’, ‘bonded warehouses’, ‘export of IMFL/Beer and other inter-State issues’, ‘Country Spirit’, ‘internal control mechanism’ and ‘other points of interest’.

5.8 Bottling units

The following block diagram displays the work flow as regards the intake of ENA in the bottling plants and production/distribution of IMFL within/outside the State:



Block diagram 2

5.8.1 Import of ENA

5.8.1.1 As per new system installed³ by the SE Department, the bottling units are required to submit monthly returns to the CE, Assam through the Superintendents of Excise of the concerned districts mentioning therein the receipt of ENA and resultant production of IMFL during the period reported upon. It was, however, observed that the format **does not have the provision** for noting the total volume of ENA permitted to be imported during the month. This could have enabled the Department to monitor the actual import of ENA *vis-à-vis* the permits granted to pre-empt any scope of evasion of revenue.

Audit analysis of the volume of ENA permitted by the CE, Assam in respect of 13 bottling units revealed that 5.33 crore BL ENA were permitted to be imported during 2010-11 and 2011-12. However, these bottling units had

indicated receipt of 4.39 crore BL ENA in their monthly reports submitted to

Cases of major variation				
Name of licensee	Year	ENA intake reported	ENA as per CE Office	Variation
(in lakh BL)				
Karnak Dist.	2011-12	62.75	78.82	16.07
NE Dist. (P) Ltd.	2010-11 2011-12	93.81	105.42	11.61
Saran Ind.	2010-11	18.41	27.41	9.00
Mangalam Dist. & Bottling	2011-12	22.50	33.41	10.91
Spey Bottlers	2010-11 2011-12	55.86	68.21	12.35
Total				59.94

³ In view of audit observation regarding short production of IMFL featured in the Audit Report on Revenue Receipts for 2010-11, Government of Assam.

the CE, Assam. Thus, there was a variation of 94.06 lakh BL ENA. Of these 13 cases, major variations (59.94 lakh BL) were noticed in case of five bottling units (shown in the inset). The balance ENA of 94.06 lakh BL had the potential of producing 23.88 lakh cases of IMFL involving revenue of ₹ 525.11 crore⁴.

The Department stated (September 2013) that the variation may be due to some permits remaining un-executed because of non-availability of stock in the distilleries of other States and execution of some permits may cross over to the next year.

Response of Audit: As per the system, unexecuted permits are either to be re-validated or to be cancelled. In both the cases, the fact is to be clearly noted in the permit register. This has been duly considered by Audit while totaling the volume of ENA permitted. As regards execution of permits crossing over to the next year, it could be stated that the situation would have been the same during the initial period of the current year when permits issued during preceding year had been executed.

Recommendation No 1:

(i) *The CE, Assam may arrange to reconcile the figures of ENA intake as reported to the GoA by them and as indicated by the bottling units.*

(ii) *The SE Department may consider suitably revising the format for monthly reports of bottling units to provide space for depicting the volume of ENA permitted during the month and corresponding remarks column for incorporating the reasons for variation.*

5.8.1.2 In order to cross verify the figures of ENA permitted by CE, Assam *vis-à-vis* those dispatched by the distilleries of other States, a limited cross verification was carried out by Audit. Information received from Government of Maharashtra regarding issue of ENA from various distilleries indicated that seven distilleries of that State issued 42.45 lakh BL ENA to eight bottling units of Assam during the year 2011-12. The information received was cross verified with the records of the CE, Assam. The analysis revealed that against three permits for import of 85,000 BL ENA issued by CE, Assam, the distilleries issued 3.60 lakh BL ENA. Further, in case of five other permits, the distilleries reported dispatch of 6.70 lakh BL ENA against permits which were not issued by the CE, Assam. The volume of 9.45 lakh

⁴ Calculated taking into account the average duty and VAT in respect of fast moving brands *i.e.* general, regular, luxury and premium.

BL ENA⁵ not covered by valid permits (22.26 per cent of 42.45 lakh BL ENA) had the potential of producing 2.41 lakh cases IMFL involving revenue of ₹ 21.80 crore.

The Department stated (September 2013) that all issues from distilleries have to be responded back by relevant excise verification certificates (EVC) issued by the officer-in-charge concerned of the consignee licensee and countersigned by the respective SE.

Response of Audit: The reply corroborates audit findings as the distilleries of other States would not allow dispatch of consignments without receipt of the certificate issued by the officers-in-charge of the receiving units in respect of consignments sent earlier. This also confirms that the materials were received in various bottling units of Assam. Therefore, it calls for investigation into such cases to plug the loopholes and point towards a need to strengthen the internal control mechanism for more effective monitoring of consignments at the entry check posts at Boxirhat/Srirampur and regular cross verification with the other States which dispatch ENA to Assam.

Recommendation No 2:

The CE, Assam may arrange to carry out periodic cross verification of ENA intake reported by the bottling units with the dispatch figures of distilleries located in other States.

5.8.1.3 The CE, Assam issued instructions in October 2004 and reiterated in December 2011 that the Non-Execution Certificates (NEC) for non-lifting and short supply certificates for short supply of the liquor consignments issued by the officers-in-charge of the concerned bottling units/breweries/bonded warehouses of Assam should be countersigned by the Superintendents of Excise of the consignor district. Otherwise, the NEC or the short supply certificates were to be considered as invalid.

The above mechanism was aimed at preventing fake certification having adverse impact on revenues of the State, yet similar system was not being followed in cases of certificates issued by distilleries of other States. Audit detected NECs/short supply certificates issued by the inspectors of the distilleries of other States which were neither countersigned by the higher authorities nor sent for further verification by the SE Department. This bears significance as there is neither a system of recording the inward consignments of ENA/RS at Srirampur and Boxirhat nor has the Department installed a

⁵ 3,60,000 – 85,000 = 2,75,000 BL + 6,70,000 BL = 9,45,000 BL.

mechanism for cross verification of the NECs/short supply certificates with the issuing authorities, even on a random basis.

Thus, the Department was yet to install a verifiable mechanism for assuring itself about the genuineness of the NECs/short supply certificates, though such a system had been put in place for the NECs/short supply certificates being issued by the licensees within the State.

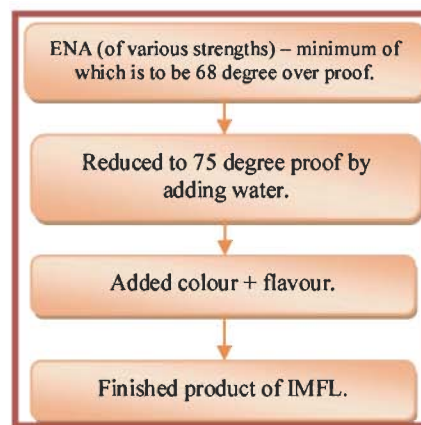
Recommendation No. 3:

In view of absence of countersignature of NECs issued from other States, the CE, Assam may install a system of carrying out regular cross verification of the NECs/short supply certificates received from other States.

During the Exit Conference, the CE while accepting the recommendation assured of instituting a system of regular cross verification of NECs/short supply certificates with the concerned States.

5.8.2 Production of IMFL from ENA

As per the standard procedure followed by the bottling units across the country including those in Assam, ENA of various strength (minimum of which should be of 68 degree over proof⁶) is reduced to 75 degree proof and blended with colour and flavour to derive the finished product, *i.e.* IMFL. Each case of IMFL contains the average of 8.8 BL⁷ IMFL or 6.6 London Proof Liquor (LPL)⁸. This when divided by 1.68 (minimum strength of ENA) indicates that 3.93 BL ENA produces 1 case of IMFL⁹.



⁶ Strength of alcohol is measured in 'degree proof'. Strength of such alcohol 13 parts of which weigh exactly equal to 12 parts of water at 51 degree Fahrenheit is assigned 100 degree proof. Alcohol containing strength more than 100 degree proof is termed as 'over proof' while that having strength below 100 degree proof is termed as 'under proof'.

⁷ Cases consisting 750/375 ml bottles contain 9 BL and cases containing 180 ml bottles contain 8.64 BL; thus, average is calculated as 8.8 BL.

⁸ Conversion formula : 8.8 BL X 0.75 (75 degree proof) = 6.6 LPL.

⁹ Information obtained by Audit from their counterparts in Meghalaya revealed that the bottling units in Meghalaya follow the same norms for production of IMFL from ENA *i.e.* - 3.9 BL ENA = 1 case of IMFL. To ensure the veracity of the norm of 3.9 BL ENA per case of IMFL, samples of IMFL produced in Meghalaya based bottling units were procured by Audit and got chemically tested which confirmed that the bottles contained IMFL at 74.9 degree proof.

It was observed that though the SE Department has devised (from April 2011 onwards) a monthly report showing production of IMFL from use of ENA to be furnished by all bottling units to the CE, Assam, they are yet to prescribe the norm for such production.

Audit scrutiny of the monthly reports of 11 bottling units revealed that the average consumption of ENA per case of IMFL as furnished by the units through the monthly reports ranged between 3.6 and 4.9 BL. The variations indicate the possibility that (i) the units which are disclosing lower consumption of ENA per case are not disclosing the ENA intake correctly or (ii) the units disclosing higher consumption of ENA per case are suppressing the production figures. In the absence of a standard norm for benchmarking production of IMFL from ENA, the implications of such large variations in production of IMFL from ENA as reported by the bottling units could not be detected by the SE Department.

Analysis of records in respect of the bottling units of Assam revealed that the bottling units disclosed production of 2.04 crore cases of IMFL from 8.26 crore BL of ENA¹⁰. However, considering the aforesaid norm of 3.93 BL required for production of one case having liquor at 75 degree proof, the above volume of ENA should have produced 2.10 crore cases of IMFL. Thus, there was a short production of 5.87 lakh cases. Non-prescription of standard norms for IMFL production from ENA and absence of provision in the monthly reports led to non-detection of short production of IMFL reported by bottling units. This led to non-realisation of revenue of ₹ 80.79 crore.

The Department stated (September 2013) that consumption of ENA may vary according to the content as cases of IMFL containing 750/375 ml bottles contain 6.75 LPL ENA while those containing 180 ml bottles contains 6.48 LPL ENA. Further, ENA is not supplied at fixed strength. Thus, a formula using average parameters to calculate outcome of ENA used, will not be correct.

Response of Audit: The contention of the Department that average parameters taken for calculation for usage of ENA will not be correct is not sustainable as records available with Audit¹¹ showed that more than 70 per cent production related to cases of 180 ml bottles contain 6.48 LPL (requiring 3.85 BL ENA per case) whereas cases of 750/375 ml bottles contain 6.75 LPL (requiring 4.01 BL ENA per case). Hence, the parameter taken for calculation *i.e.* 6.6 LPL per case requiring 3.93 BL ENA is still on the higher side and the

¹⁰ Arrived at after considering admissible allowances against transit and blending loss of one per cent each.

¹¹ This was discussed in the exit conference and agreed to by the Department.

requirement of ENA per case would be further lesser if the actual ratio of production is taken into account. The Department may fix specific norm for production of 750/375 ml and 180 ml bottles. Secondly, Audit has considered the lowest strength of ENA, *i.e.* 68 degree over proof. And considering the above, usage of 3.93 BL of ENA at minimum of 1.68 degree over proof will have to produce IMFL of 6.6 LPL¹² = 1 case, which is fixed and cannot vary in any circumstance. The more the strength of ENA the production would rather increase.

During the exit conference, the CE agreed that a benchmark should be fixed to monitor the production of IMFL from ENA intake and assured Audit of fixing the same at the earliest. It was also assured that the format of the returns would be suitably amended to provide for the same and in cases of deviation the bottling units are at liberty to explain the reasons for consideration by the Officers of the Department.

Recommendation No. 4:

The SE Department may consider the prescription of norms for production of IMFL from ENA to prevent loss of revenue. They may also make suitable amendments in the formats for reporting production by bottling units to provide for such norm so that any variation in production can readily be visible from the returns.

5.8.3 Chemical examination of IMFL

As per the standard procedure, IMFL consignments after production should be examined by the Chemical Examiner of the GoA. The Chemical Examiner tests the sample bottles and certifies *inter-alia* (i) that they are 'fit for human consumption', (ii) that the strength of spirit is at prescribed level- *i.e.* 75 degree proof.

In order to examine the strength of spirit content in IMFL bottles bottled in various bottling units of Assam, chemical analysis of a sample of bottles produced by the major units located in Assam was got conducted at the instance of Audit. The findings are given in the following table:

¹² 3.93 multiplied by 1.68 = 6.6 LPL.

Brand name	Name of manufacturer	Batch No. & date	Standard proof/v/v ¹³ & printed in the label	Proof/v/v found during physical verification
(1)	(2)	(3)	(4)	(5)
Mc. Dowell's No. 1 celebration XXX Rum	Mangalam Distillers & Bottling	06 dt. 8-6-2013, L 3	75/42.8 v/v	72.2/41.2 v/v
-do-	Nilachal Distilleries	104 dt 3-1-2013	75/42.8 v/v	72.7/41.4 v/v
Gold Riband	North East Distilleries (P) Ltd	10 dt 9 April 2013 L/1	75/42.8 v/v	72.9/41.6 v/v
Mc Dowell's No. 1	Spey Bottlers (P) Ltd	52 dt 3 May 2013 L/2	75/42.8 v/v	73.3/41.8 v/v
Officer's Choice	Karnak Distillery (P) Ltd	Apr 024-2013	75/42.8 v/v	73.2/41.7 v/v
8 PM Whisky	Seven Sister Trade and Distilleries Pvt Ltd	24-11/2012	75/42.8 v/v	70.7/40.34 v/v
Bagpiper Whisky	Nilachal Distilleries Pvt Ltd	06 L/2 dt. 20-6-2012	75/42.8 v/v	73.2/41.7 v/v
Old Monk XXX Rum	Radiant Manufacturers	03 April 2013	75/42.8 v/v	71.2/40.6 v/v
Royal Champion	Gayatri Distilleries & Bottling	05 March 2012	75/42.8 v/v	72.9/41.6 v/v
Royal Amigog	Do	06 March 2012	75/42.8 v/v	72.2/41.2 v/v

The figures at column 5 reflect the actual spirit content against the prescribed percentage of 42.8 v/v. Lower v/v percentage means short utilisation of ENA against the prescribed percentage to attain 75 degree proof and there is every risk that the balance ENA could have been used for production of IMFL which is not accounted for and escaped levy of duty and taxes.

The Department stated (September 2013) that the CE shall collect samples through the concerned SE of the district and undertake chemical examination of the same independently.

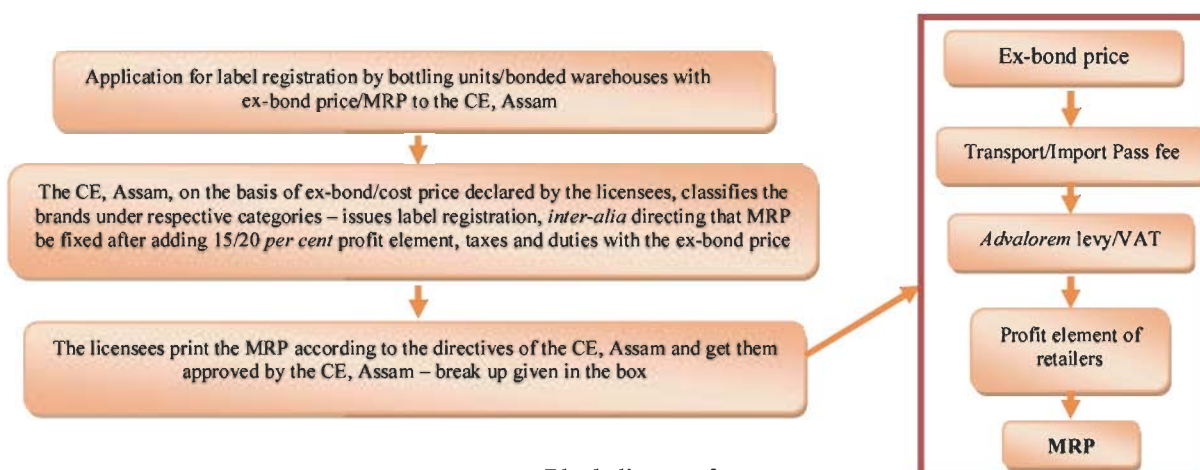
Recommendation No. 5:

The SE Department may consider implementing a system of surprise checks to be conducted on a random basis to examine the strength of IMFL. They may also make the bottling units and the Chemical Examiner of GoA accountable for any variation found during surprise checks.

5.8.4 Label registration

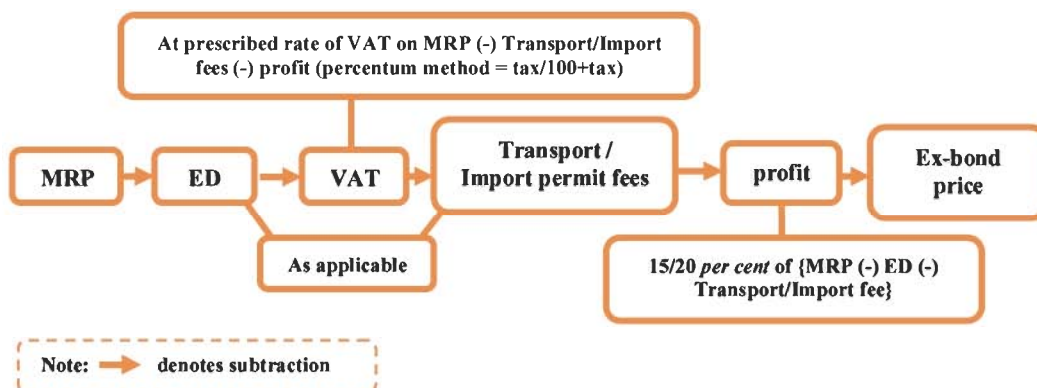
5.8.4.1 As per the provisions of the AE Act and Rules, Excise Duty is leviable on the 'cost price' of IMFL. 'Cost price' in this case means the 'ex-bond price' i.e. the price at which the IMFL consignments are issued by the bonded warehouses to the retailers. At the beginning of the year, the bottling units producing IMFL or the bonded warehouses importing IMFL from outside the State are required to apply for label registration to the CE, Assam furnishing full details of the brand, its ex-bond price, Maximum Retail Price (MRP) etc. The process involved in the registration of labels is shown through the following block diagram.

¹³ v/v or volume /volume is the percentage of spirit in water.



Block diagram 3

Audit scrutiny of the label registration process in the office of the CE, Assam revealed that the Department is yet to devise a system of ensuring that the ex-bond price as approved at the time of application by licensees is the same as the one based on which the MRP is calculated and printed on the labels furnished by the licensees. Audit conducted a detailed verification in case of nine major selling brands¹⁴. The formula adopted by Audit for arriving at the ex-bond price through backward calculation from the MRP is as follows:



Block diagram 4

It was observed that these nine brands were registered under different categories as ‘Regular’ and ‘Luxury’ on the basis of the ex-bond price declared by the licensees at the time of application for label registration. However, detailed audit analysis on the above lines revealed that the ex-bond prices after deducting the prescribed elements from the declared MRP were higher than those disclosed by the licensees and hence the brands were to be classified under next higher categories attracting higher rates of Excise Duty and VAT. Thus, the absence of a system of re-verification of MRP labels after approval of ex-bond price resulted in mis-classification of the brands and

¹⁴ AC Black, Director’s Special, DSP Black, Gold Riband, Imperial Blue, Mc Dowell’s No. 1 Reserve, Mc Dowell’s Platinam, Officer’s Choice and Officer’s Choice Blue.

consequent loss of revenue of ₹ 238.34 crore on account of Excise Duty and VAT in respect of sales of the above selected brands only for the years during which mis-classification took place.

The Department stated (September 2013) that the CE shall further examine the matter.

Response of Audit: The matter was discussed at length during the exit conference and Audit personnel explained to the Officers of the Department the methodology which was adopted by Audit while calculating the ex-bond price from the MRP.

Recommendation No. 6:

The SE Department may initiate process for re-classifying the brands in view of their ex-bond and the MRP. Also, they may devise a mechanism for re-verifying the classification in view of the MRP printed on the labels to satisfy itself about the correctness of classification of the brands at the time of label registration.

5.8.4.2 On the basis of an audit observation incorporated in the Audit Report on Revenue Sector for 2011-12, Government of Assam, the CE, Assam had issued directive in April 2012 to the bottling plants/manufacturing units/breweries to submit the break up (as shown in the inset) analysis of the purchase values rendered at different points during the process of transfer of their products to the retailers.

Analysis of the cost indicator revealed that the item on 'Import/Transport pass fee' has been included as an element which is to be added with the ex-bond price. This was irregular as the import/transport pass fee is payable by the bonded warehouses (distributors) as the first element to the CE,

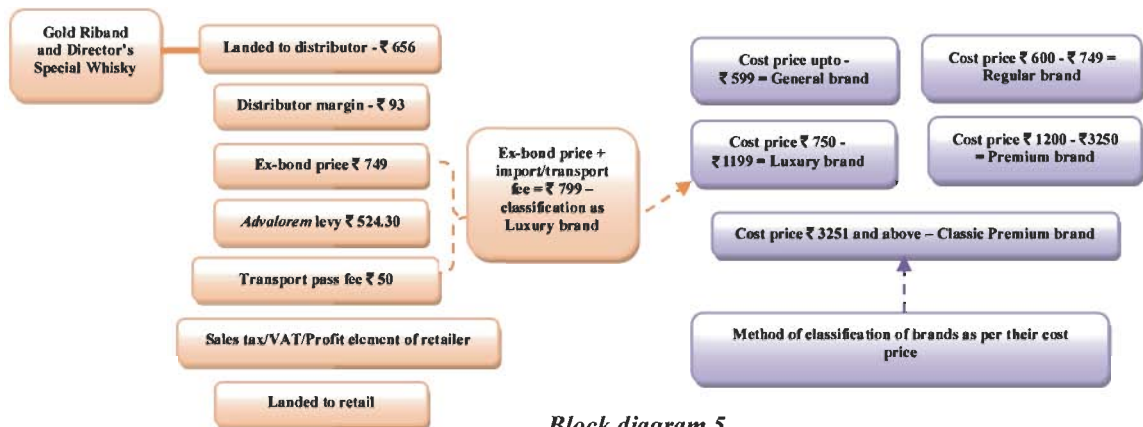
Assam for issuing the import/transport pass that enable them to receive the consignments in their storage. Hence, for all purposes these are elements to be borne by the bonded warehouses and should be included in the 'ex-bond price'. The impact of such mis-classification of import/transport pass fee after ex-bond price is discussed below.

IMFL brands are classified into various categories as per their ex-bond price, i.e. the cost price to the retailers. The break-up of cost indicator of a few

Format for cost indicator

- **Landed to distributor (bonded warehouse);**
- **Distributor margin;**
- **Ex-bond price;**
- **Advalorem levy per case;**
- **Import pass fee/transport pass fee;**
- **Sales tax/VAT per case;**
- **Landed to retail;**
- **Retail margin (maximum 20 per cent);**
- **MRP per case;**
- **MRP per bottle.**

major selling brands – ‘Gold Riband’ and ‘Directors Special Prestige Whisky’ revealed that the ex-bond price of both the brands was ₹ 749 while the



Block diagram 5

transport pass fee was shown as to be charged after the ex-bond price. Accordingly the brands were classified as ‘Regular brands’. However, if the transport pass fees are included in the ex-bond price, the ex-bond price would move up to ₹ 799 per case rendering the brands to be classified as ‘Luxury brand’ attracting higher rate of Excise Duty and VAT.

The Department stated (September 2013) that there is technical difficulty in considering transport or import permit fee as a part of the ex-bond price. As the rate of import and transport pass fees are different, these two amounts are not included in the ex-bond price, otherwise on inclusion of the same, the similar IMFL item will have to be classified in different slabs for the same market.

Response of Audit: The Department while replying in respect of another para agreed with Audit that VAT is to be levied on ex-bond price plus excise duty plus TP/IP. Thus it is evident that the element of TP/IP is paid before transfer of goods from bonded warehouse to retailers. As regards the technical difficulty put forward by the Department, they may initiate steps to revisit the rates of such fees appropriately so that TP/IP can be made a part of the ex-bond price.

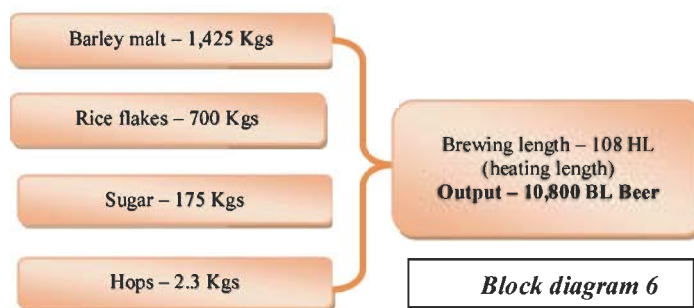
Recommendation No. 7:

The SE Department may revisit the rates of both the fees to revise them appropriately so that the elements on ‘import/transport pass fee’ could be made a part of ex-bond price.

5.9 Breweries

There are two breweries functioning in the State of Assam. Audit scrutiny of the control mechanism exercised by the CE, Assam on the functioning of these units indicated that similar to the bottling units, the breweries are also required to submit monthly reports on production and dispatch of consignments. It was, however, noticed that the breweries are not required to furnish the raw materials used for production of Beer. In absence of such vital information, the CE, Assam has no input to cross verify the production so reported by the units.

Audit has gathered the formula of production of Beer from the raw materials from one of the breweries. It was observed that for producing Beer the main raw materials used, are – barley malt, rice flakes, sugar and hops. The percentage usage of each items and the output are as follows:



An analysis with the above parameters revealed that, during the years 2010-11 to 2012-13, these breweries consumed 72.78 lakh Kgs barley malt and 34.52 lakh Kgs rice flakes which were capable of producing 67.34 lakh BL Beer. However, the units disclosed production of 64.48 lakh BL Beer which was 2.86 lakh BL short of the ideal production as per the norm which involved revenue of ₹ 6.05 crore as Excise Duty and VAT. Due to non-prescription of norm for input-output and absence of a system of calling for information on usage of raw materials for production in the monthly report of the breweries, the CE, Assam could not detect the variation and was compelled to accept the production as disclosed by the units.

The Department stated (September 2013) that the CE shall take steps to modify the format of the returns as suggested by Audit.

Recommendation No. 8:

The SE Department may suitably modify the format of returns to accommodate the details of raw material consumption and the ideal production based on norms available with the breweries so as to enable detection of short production of Beer.

5.10 Bonded warehouses

5.10.1 Issue of licence

As per the ABW Rules, 1965, before actual operation of the bonded warehouse, the licensee is required to (i) furnish security of ₹ 5,000 or more according to the volume of business, (ii) execute a hypothecation deed pledging the warehouse with the stock of foreign liquor, vats, all apparatus and utensils for due discharge of all payments which may become due to the State Government by way of duty, fees, rents, fines, penalties or otherwise and (iii) sign a bond with the condition that the licensee shall not at any time import/transport or store any quantity of foreign liquor above the sum at which hypothecation is pledged. The amount given in the bond is termed as 'bond limit' and the hypothecation deed of an equal amount is to be executed.

Audit scrutiny of the system of issuing licences for operating bonded warehouse revealed the following deficiencies:

5.10.1.1 Security

The ABW Rules {Rule 4(3)} prescribed for obtaining security of ₹ 5,000 or more according to the volume of business. Audit scrutiny revealed that despite availability of provision for fixing the rate of security according to the volume of business, it was observed that in practice security deposit was obtained at the minimum rate of ₹ 5,000 in all cases. Analysis revealed that 38 out of 45 bonded warehouses have bond limit of ₹ 1 crore and above. Thus, at present the bonded warehouses are enjoying bond limits running into crores of rupees by paying security of a paltry sum of ₹ 5,000 which would not suffice to recover the dues in the event of any default. It was further noticed that though the annual licence fees for bonded warehouses had been revised from ₹ 1,000 (in 1965) to ₹ 1.50 lakh - ₹ 5 lakh depending upon the bond limit¹⁵, yet the security deposits had remained static since then.

5.10.1.2 Hypothecation deed

Audit scrutiny of the system of obtaining hypothecation deed revealed that it did not have a clause prohibiting further hypothecation of stock to other agencies, like banks etc. In case of 18 out of 45 bonded warehouses (in respect of which records were readily available) it was observed that the licensees have hypothecated the stock to the banks to obtain loans for their business though their stock were already hypothecated to the GoA. Of these,

¹⁵ bond limit upto ₹ 50 lakh = ₹ 1.50 lakh; ₹ 50 lakh to ₹ 1 crore = ₹ 2.50 lakh and more than ₹ 1 crore = ₹ 5 lakh.

three bonded warehouses mentioned the name of the bank as the sole claimant in the insurance policies obtained as discussed in the succeeding para. Further verification of records revealed that in 10 out of 45 cases test checked, the bond limits were enhanced from the earlier limits, but fresh hypothecation deeds were yet to be executed.

Thus, the sanctity of the hypothecation deed signed by the licensees and the CE, Assam (on behalf of GoA) has been reduced to simple legal documentation having no force.

5.10.1.3 Insurance

It was observed that though there is a system of hypothecating stock equal to the amount of bond limit, however, under the present system, the scope of recovery in case of default of a bonded warehouse is remote since the bonded warehouses are assigning first charge to the bankers and the security deposit collected is abysmally low.

It was further noticed that the banks insist on valid insurance policies covering the amounts of loans/stock hypothecated to them by the bonded warehouses and the fact is mentioned in the insurance policies. In some cases, it was observed that the insurance policies mention the banks as the sole claimants. Legally, in such cases it would transpire that the State Government does not have any legal right over the bonded stock for recovering the accrued revenue, in case of a default.

Thus, the audit findings on security, hypothecation and insurance as mentioned above reveal that the GOA has neither any security nor any assurance regarding the recovery of revenue aggregating ₹ 138.80 crore¹⁶ being the bond limit enjoyed by 45 test checked bonded warehouses though the revenue in respect of IMFL/Beer stored therein is due to the Government.

The Department stated (September 2013) that the revision of security will be taken up. During the exit conference, the CE assured of taking steps so that the same is implemented from renewal of licences for the next financial year 2014-15. As regards the prohibition to further hypothecate stock to other agencies and ensuring insurance policies, the Department stated that the matter would be taken up with the Government for implementation.

Recommendation No. 9:

- *The SE Department may consider ensuring valid insurance policy covering the Excise Duty and VAT involved in the stock allowed as bond limit*

¹⁶ Only excise duty component, without taking into consideration the VAT involved.

and make it a pre-requisite for next renewal of the licences of bonded warehouses as an additional security measure.

- They may also ensure that the insurance policies mention GoA as the first claimant in case of any claim.
- Fix the security deposit according to the volume of business as per the provisions of the AE Act and Rules.

5.10.2 Functioning of bonded warehouses



Control exercised on bonded warehouses

As prescribed under the ABW Rules, licensees of bonded warehouses are permitted to transport/import or store IMFL/Beer involving Excise Duty upto the amount of bond limit so fixed by the CE, Assam. GoA has prescribed separate licence fees¹⁷ for bonded warehouses having different bond limits. For monitoring the functioning of the bonded warehouses

the Department has a system of placing Excise Officers at each warehouse, keeping the stock under joint lock and key, periodical physical verification by various officers and calling for monthly information. Audit scrutiny of the functioning of bonded warehouses *vis-à-vis* control exercised by the SE Department revealed the following deficiencies.

5.10.2.1 Monitoring of Bond limit

Scrutiny of the stock registers and monthly reports on stock furnished by the licensees to the CE, Assam revealed that these documents do not reflect the actual excise duty involved *vis-à-vis* the stock balance. Examination of records of four

Name of BW	Year	Bond limit	Duty involved in goods
			(₹ in crore)
Abhijit Intl	2011-12	2.00	2.62
KDC	2011-12	1.50	5.75
	2012-13	5.00	5.69
Eastern Entp	2011-12	4.00	4.88
Sun Intl.	2011-12	4.00	8.10
	2012-13	4.00	11.35

bonded warehouses having bond limit of ₹ 1 crore and above indicated that the Excise Duty involvement of stock of IMFL exceeded the bond limit

¹⁷ bond limit upto ₹ 50 lakh = ₹ 1.50 lakh; ₹ 50 lakh to ₹ 1 crore = ₹ 2.50 lakh and more than ₹ 1 crore = ₹ 5 lakh.

ranging between ₹ 2.62 crore and ₹ 11.35 crore. As there is a single rate of licence fees for licensees holding stock more than ₹ 1 crore, there is no further fees to be paid by these licensees.

However, in 11 cases where the bond limits were at various levels below ₹ 1 crore, the licensees were required to pay additional bond licence fees of ₹ 49.50 lakh as the duty involved in the stock attracted bond licence of next higher category. Further, ₹ 17.50 lakh and ₹ 10 lakh was also realisable from two breweries as additional licence fees and a bottling unit as licence fees respectively. Thus a total of ₹ 77 lakh is realisable from the 14 licensees as licence fees.

The Department stated (September 2013) that necessary steps to recover the dues and other issues would be taken on receipt of reply from the concerned district officials.

Recommendation No. 10:

The SE Department may initiate steps to recover the balance licence fees from the concerned licensees and issue necessary orders to the officers to keep strict vigil regarding the bond limit. They may also consider prescribing penal measures for excess stocking over and above the bond limits by the bonded warehouses.

5.10.2.2 Receipt and issue of IMFL

The stock statement furnished by the bonded warehouses, *inter-alia* contains the opening and closing stock, receipt/issue and transit/godown wastage claimed during the period. Audit scrutiny of reports/returns submitted by the licensees revealed that in five cases, the closing stock ought to have been 65.21 lakh BL considering the opening stock, receipts and sales against which the licensees disclosed 60.23 lakh BL as closing stock. The shortage of stock of 4.98 lakh BL or about 56,637 cases of IMFL involved Excise Duty and VAT of about ₹ 14.86 crore¹⁸.

Recommendation No. 11:

The SE Department may prescribe a system of submission of annual reports by the bonded warehouses similar to that prevalent in Sales Tax Department and arrange to get these reports verified at the CE's office to ensure their correctness.

¹⁸ Considering Excise Duty and VAT involved in fast moving brands.

The Department stated (September 2013) that necessary action for obtaining annual statements from the licensees would be initiated. The verification of Reports is already underway and a team of eight officials is formed to scrutinise the statements. Report on further development is yet to be received.

5.10.2.3 Verification of closing stock

Audit noted that there is no system of submission of annual reports along with audited accounts (AA) certified by a qualified chartered accountant. This could have enabled cross verification of the figures reported by the bonded warehouses through their reports.

Cases where major variations were noticed				
Name of BW	Year	Value of stock as in report to CE	Value of stock in BS/AA etc	Difference
(₹ in crore)				
John Smeal	2011-12	21.89	10.80	11.09
Sun Intl	2011-12	12.23	4.87	7.36
Barak Warehouse	2011-12	19.09	14.77	4.32
Universal Entp	2011-12	4.51	2.64	1.87
Radiant Mfg	2011-12	12.32	11.32	1.00
Mohit Entp	2011-12	2.05	1.48	0.58

Audit correlated the information furnished by the licensees to the CE, Assam on stock with the reports furnished to other agencies like Income Tax/Taxation Departments & Banks. It was observed that in 10 out of 15 cases test checked¹⁹ for the year 2011-12 the total value of stock as per returns to CE, Assam was ₹ 81.99 crore against which ₹ 51.62 crore was shown to the other agencies. Thus, the value of stock disclosed to the CE, Assam was in excess by ₹ 30.37 crore.

Out of the above 10 cases, Audit could gather the stock statement submitted to the bank by one licensee. It revealed that the licensee had reported closing stock of IMFL as on 31-3-2013, to the bank as 48,615 cases. But the report submitted to CE, Assam indicated the stock as 1,98,132 cases resulting in difference of 1,49,517 cases. The balance cases involved Excise Duty and VAT of ₹ 16.68 crore²⁰.

The above observations reveal that the stock of IMFL/Beer being disclosed by some of the bonded warehouses in their stock registers as well as reported to the CE, Assam are not reliable despite these being under joint lock and key.

¹⁹ Remaining licensees, mainly those under Kamrup District (except M/s Hill View, M/s Abhijeet International and M/s Megha Assam) did not provide us with the BS/AA, despite specific requests.

²⁰ Excise duty of ₹ 7.83 crore (at average rate of general, regular, luxury and premium) and VAT of ₹ 8.85 crore {1,49,517 X ₹ 1,449.25 (average value/case) + ₹ 7.83 crore (excise duty) X 30 %}.

The Department stated (September 2013) that all the stocks received are entered in the stock register of a bonded warehouse which are issued only on payment of duty or underbond, under cover of a stock transfer permit issued by CE, Assam. Secondly, as regards the dealer where Audit has pointed out variation of 1,49,517 cases, they stated that the Department has more expertise and capabilities to verify physical stock than any other institution mentioned by Audit.

Response of Audit: The reply states the ideal system under which the bonded warehouses work. However, Audit has analysed the stock reported to the CE by the bonded warehouses with other equally important records like the BS/AA drawn up by qualified chartered accountants. Regarding the second part of the reply, while accepting the expertise and capabilities of the Department to verify physical stock, it is pertinent to mention that the licensee while submitting the stock position to the bank reported closing stock as 48,615 cases. This indicates there is a need to examine the stock more closely by the officers of the SE Department. Besides, the information available in the case records showed that the licensee can store a **maximum of one lakh cases of IMFL/Beer**. Thus, question of stocking 1,98,132 cases of IMFL/Beer does not arise and consequently the Departmental reply to this case is not acceptable.

Recommendation No. 12:

The SE Department may, in addition to prescribing submission of annual reports as recommended in the preceding para, prescribe a system of submission of a copy of the BS/AA/report to banks alongwith the annual reports.

5.10.2.4 Destruction of stock

As per the ABW Rules, if spirits stored in a bonded warehouse are found to be of inferior quality or otherwise unsuitable for the purpose for which they were stored, they might be rejected or destroyed or otherwise dealt with under the orders of the CE. Instruction 229 under the AE Act authorises the CE to sanction the remission of irrecoverable excise revenue. However, Rule 32 of the ABW Rules specifically mentions that the State Government shall not be held responsible for the destruction, loss or damage of any spirits stored in warehouse by fire or by gauging or by any other cause, whatsoever.

Audit scrutiny of the system of allowing destruction of IMFL/Beer stored in the bonded warehouses revealed that these were mainly cases of IMFL/Beer getting sedimented/rejected due to prolonged storage. It was observed that in case of 10 bonded warehouses, 75,950.78 cases IMFL and 17,609.46 cases

Beer were allowed to be destroyed which involved minimum Excise Duty of ₹ 4.05 crore. Of these, in two cases specific orders were issued to recover the requisite revenue of ₹ 1.01 crore²¹ while in all other cases revenue involved was remitted exercising powers conferred under instruction 229 despite specific mention against the same in Rule 32. Scrutiny further revealed that in all the cases reasons attributable were due to the licensees not following FIFO method²² leading to a portion of the stock becoming sedimented/ rejected. Yet, in none of the cases the reasons for stock getting sedimented/rejected was called for from the licensees.

As regards remission of revenue exercising powers conferred under instruction 229, Audit is of the opinion that such powers may not be exercised for waiving revenue in the cases where the fault lies with the bonded warehouses and further waiver is prohibited under Rule 32. Instead such provision can be exercised on case to case basis only after it has been proved beyond doubt that the revenue involved is irrecoverable.

Recommendation No. 13:

The SE Department may install a system of obtaining the reasons attributable to IMFL/Beer getting sedimented/rejected and only after it is proved to be beyond the control of the licensee, waiver of revenue may be considered as per provisions available in the extant Rules.

They may also issue necessary instructions to the bonded warehouses to introduce system of bin cards for monitoring the movement of stock.

The Department stated (September 2013) that the matter would be examined and a device formulated accordingly as suggested by Audit.

²¹ Which is yet to be paid by the licensees.

²² M/s Pernod Ricard has installed a system of putting bin card in each stack of IMFL/Beer etc and follows the system of FIFO (First In First Out) method. This prevents prolonged storage of IMFL. The bin cards include columns like 'date', 'TP no', 'mfg date', 'batch no', 'received qty', 'balance qty', 'initials'.

5.11 Export of IMFL/Beer and other Inter-State issues

5.11.1 Export of IMFL/Beer

5.11.1.1 As per Rule 38 of the AE Rules, IMFL manufactured in any distillery or bonded warehouse in Assam may be exported to any other State under cover of an export pass.

As per Rule 40 of AE Rules, export passes shall be prepared in triplicate; the original copy shall be retained by the excise officer-in-charge of distillery or bonded warehouse and shall be forwarded to the CE, Assam alongwith the quarterly statement of exports prescribed for the purpose. The duplicate copy shall accompany the export while the third is to be sent to the Collector or any other authority of the place of export. The third copy is to be returned by the concerned officer with a certificate signed by the Collector or other officer of importing district certifying the due arrival or otherwise of the consignments at the destination.

Audit scrutiny of the procedures for export of IMFL/ Beer and controls thereon prevalent in the SE Department revealed that they had not installed a suitable mechanism for verification of either the import permits or the certificates of receipt issued by the importing State. In absence of the same, the SE Department was constrained to accept the certificates of receipts as produced by the licensees of Assam exporting IMFL/Beer to other States.

The term bonded warehouses as mentioned in Rule 38 means the bonded warehouses attached with the distilleries and not licensees holding bonded warehouse licence only as the latter hold IMFL/ Beer consignments imported from outside the State or transported from bottling units within the State under bond on which duty would be payable on sales of such items. Further, each consignment so received contains the seal – “*For sale in Assam only*”. Thus, export passes cannot be granted to the licensees holding only bonded warehouse licence.

Audit scrutinised²³ the export of 434.76 lakh BL of IMFL/Beer in respect of 14 licensees²⁴ during the period 2007-08 to 2011-12 as made available by the Office of the CE, Assam. The exercise revealed that out of 393.31 lakh BL IMFL/Beer shown to have been exported to seven States²⁵, the importing States did not receive the consignments/issue import permits covering 141.77 lakh BL IMFL/Beer. Though Government of Nagaland has endorsed exports of

State	Total export	Export authenticated by receiving State	Receipt denied by concerned States	Excise duty involvement (average of ED of fast moving brands)
				(₹ in crore)
	(in BL)			
AP	2,02,48,344.6	44,14,743.6	1,31,49,292.33	75.99
Jharkhand	1,99,350	1,21,050	78,300	
Manipur	14,400	14,400	–	
Mizoram	88,975	55,125	33,850	
Nagaland	1,84,30,083	1,76,50,395	7,79,688	
Sikkim	1,83,409.8	1,54,775.8	28,634	
WB	1,66,090.12	59,065.12	1,07,025	

176.50 lakh BL IMFL/Beer, Audit is apprehensive of the endorsement as IMFL/Beer available with the bonded warehouses of Assam are clearly marked as 'For sale in Assam only'. The volume of 141.77 lakh BL IMFL/Beer which was not acknowledged involved Excise Duty of ₹ 75.99 crore besides applicable VAT²⁶. Thus, in the absence of a system of verification of the import permits/certificates of receipts issued by the other States, this could not be detected. Since the unacknowledged IMFL/Beer had been sold clandestinely within the State of Assam it can be concluded that there was loss of revenue of ₹ 75.99 crore.

The Department stated (September 2013) that a mechanism for verifying the genuineness of import permits issued by other States was in existence. It is now made mandatory to verify the genuineness of each of the import permits issued by other States. Further, the export permits issued to bonded warehouses for export of IMFL/Beer to other States, specifically mentioned therein, that the exported liquor is "Not for sale in Assam". Relevant copy of order was enclosed by the Department with the reply.

²³ Through cross verification of the export passes with the records of the importing States *i.e.* Arunachal Pradesh, Goa, Jharkhand, Manipur, Mizoram, Nagaland, Sikkim, Tripura and West Bengal.

²⁴ Centenary Distilleries, Flamingo Distilleries, Gayatri Distilleries, Himalayan Distilleries, Indo Assam Distillery and Bottling Pvt Ltd., Karnak Distilleries, Megha Assam Bonded Warehouse, North East Distilleries, PB Bonded Warehouse, Radiant Manufacturing (bottling unit), Rhino Agencies, Seven Sisters Trade and Distilleries Pvt Ltd., Spey Bottlers and Zarrang India Pvt Ltd Bonded Warehouse.

²⁵ Arunachal Pradesh (partly, as all the registers could not be produced to Audit), Jharkhand, Manipur, Mizoram, Nagaland, Sikkim and West Bengal.

²⁶ Of at least ₹ 39.62 crore, a case on which is pending in Gauhati High Court, hence not commented upon in this Report.

Response of audit: While the proposed action of the Department to make it mandatory to verify genuineness of each and every import permits issued by the other States is appreciated, it may be stated that issuance of the export permits to bonded warehouses was not permissible under extant AE Act and Rules made thereunder. Further, a perusal of the recital of the order enclosed by the Department revealed that it read “All the **manufacturing units** of IMFL of this State are hereby informed that while exporting their product/brand of liquor to any State of the country they must clearly indicate the words on the bottle of IMFL “NOT FOR SALE IN ASSAM” to be exported from the respective bottling units and any violation of this, no export permit would be allowed to them from now onwards”. Thus it is evident from the above that the order was for **bottling units** and not for the bonded warehouses as contended by the Department.

Recommendation No 14:

The SE Department may install a system of verifying the genuineness of the import permits/certificates of receipt issued by the other States at periodic intervals to safeguard the revenue interest of the Government.

5.11.1.2 Further audit scrutiny revealed that though substantial volume of IMFL/Beer is exported to Nagaland for consumption by paramilitary forces, there is no system of obtaining/gathering the actual requirement at the beginning of the year. Such a system could have enabled the SE Department to limit it to bare minimum because GoA loses revenue in the shape of Excise Duty and VAT in case of exports where a nominal fee of ₹ 50 per case only is realised.

Audit noticed requests from other States to the CE, Assam for certifying the genuineness of import permits presented to the latter by licensees of those States. Only after receipt of the genuineness from Assam, the consignments of ENA were allowed to be issued from those States.

Audit correlated the export of 56.91 lakh BL IMFL (involving Excise Duty of ₹ 13.16 crore²⁷) made from Assam to paramilitary forces in Nagaland between 2010-11 and 2011-12 with the total excise revenue of Nagaland for those years. It revealed that against ₹ 13.16 crore, the overall excise collections of Nagaland stood at ₹ 6.37 crore during the above years. Even considering the entire revenue collections of Nagaland during these years as the Excise Duty component coupled with the fact that the consignments were meant for

²⁷ Considering the rate of Excise Duty of ₹ 144 per case levied by Government of Nagaland.

paramilitary forces indicated that 4.72 lakh²⁸ cases IMFL were not actually exported but could have been sold within the State of Assam leading to loss of revenue of ₹ 33.85 crore on account of Excise Duty and VAT.

The Department stated (September 2013) that all exports were allowed only on the strength of import permits issued by responsible excise authorities of the state in question.

Response of Audit: The reply of the Department narrates the system. If the entire stock of 56.91 lakh BL IMFL was exported to Nagaland, the excise revenue of that State should have been much more than ₹ 13 crore which was not the case. Further, possibility of evasion of Excise Duty in Nagaland is remote as IMFL is sold through secured channels in Nagaland only to Government bodies like the military and para-military forces.

Recommendation No. 15:

The SE Department may install a system of obtaining/gathering the actual requirement of IMFL/Beer for paramilitary forces stationed at Nagaland from appropriate authorities before commencement of each year. Further, they may also call for genuineness certificates of each of the import permits before issue of export passes in the interest of revenue of the State.

5.11.2 Other Inter-State issues

Equal competition and fairness in the taxation system can only be achieved by ensuring level playing ground for all the States which were the fundamentals for switching over to VAT system from the erstwhile Sales Tax regime. Under VAT system uniform floor rate of tax was given maximum emphasis by the Union Government.

Similar initiative to ensure uniformity and rationalise the variation in Excise Duty, price structure of liquor and excise policies among the States, the Government of India constituted a Joint Working Group (JWG) of the Union Ministries concerned and State Excise Commissioners. Till December 2007, the JWG had met several times and a consensus emerged, which inter-alia included ensuring uniformity in policy/taxation/MRP.

Audit, however, observed that despite the above developments, there were considerable variation between the Excise Duty, VAT leviable on IMFL/Beer

²⁸ ₹ 6,79,24,557/₹ 144 per case (excise duty of IMFL applicable in Nagaland) = 4,71,698 cases.

and their MRP in Assam and those applicable in adjoining States²⁹ like Arunachal Pradesh and Meghalaya as mentioned in the following table:

State	Excise Duty of IMFL – Ranging between	VAT (in per cent)	Retail price per bottle of some major selling brands						Remarks
			Officer's Choice Blue	Officer's Choice	Imperial Blue	Platinum No. 1	Gold Riband	Mc Dowell No. 1 Reserve	
Assam	₹ 452 and ₹ 2,000	30	240	180	240	300	200	240	
Arunachal Pradesh	₹ 90 and ₹ 210	20	--	146	187	223	156	215	Rate of tax on IMFL has been kept at the minimum rate of 20 per cent.
Meghalaya	₹ 551 and ₹ 1,282	20	220	160	220	220	160	220	

It was observed that taking the advantage of the variation of duties, taxes and retail prices, numerous retail liquor shops had been allowed to be set up just on the border of Assam by the Government of Arunachal



Retail liquor shops at Banderdewa and sketch showing IMFL shops set up at the border facing NH 52

Pradesh and Meghalaya, despite prohibition on setting up retail shops within three km of the border. The Audit team had conducted physical verification of the border areas of Arunachal Pradesh (Banderdewa on NH 52) and Meghalaya (Khanapara on NH 37) and captured the details of

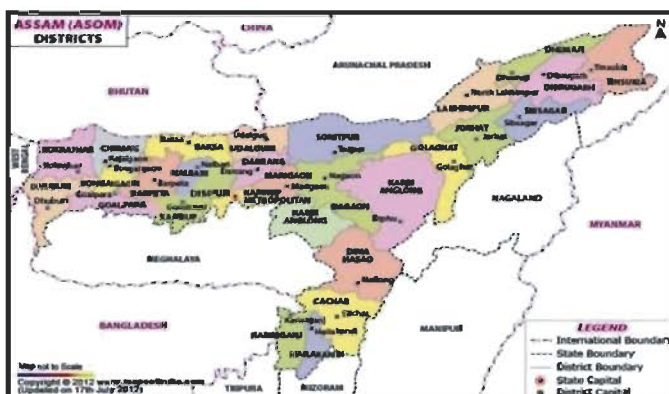


Joint physical verification by Audit team and the excise officials

the licensees operating within few meters of the inter-State border. At present, altogether 27 and 23 retail shops are operating at Banderdewa (Arunachal Pradesh) and Khanapara (Meghalaya) area respectively. The physical verification in the bordering areas of Banderdewa was conducted alongwith the excise officials of Lakhimpur district in Assam (district adjoining Banderdewa area). During interaction, the District excise officials confirmed that large volume of IMFL/Beer are being routed from these retail shops of Arunachal Pradesh to various pockets of Assam and with the limited staff it was not possible to ensure regular patrolling in that area.

²⁹ Other adjoining States Manipur, Mizoram and Nagaland are dry States.

For further verification of the issue, the Audit team visited the Office of the CE, Arunachal Pradesh. It was noticed that the retail liquor shops had been purposely set up at the bordering areas to increase the sales and excise revenue of that State, despite prohibition of setting up retail shops within three km of border. Besides, setting up of such shops had tremendous detrimental effect on the revenue of Assam due to difference in Excise Duty and retail prices as indicated in the table above. Analysis of the numbers of



Map of Assam



Map of Arunachal Pradesh – the districts adjoining Assam had more retail licensees and contributed higher revenues when compared to others.

retail shops and the revenue collection of the districts³⁰ of Arunachal Pradesh adjoining Assam confirmed the fact as these districts had more number of retail licensees and contributed higher revenues compared to that of other interior districts, though the population was more or less same. Subsequently, Audit had carried out investigation of 27 retail licensees located at Banderdewa (facing towards NH 52 under jurisdiction of Assam) under the jurisdiction of **one of the districts** adjoining Assam. It was observed that during the period 2009-10 to 2012-13, 10.88 lakh cases of IMFL and 1.44 lakh cases of Beer having revenue impact of ₹ 79.94 crore in Assam were lifted by these retailers. This, when compared to the population of Banderdewa³¹ which is 8,523 only and other issues discussed above confirms that the majority of the consignments was intended for routing into various pockets of Assam.

The Department stated (September 2013) that the matter is being taken up with the concerned State Governments for either (i) enhancing their excise

³⁰ Banderdewa (under Papumpare), Changlang, East Siang, Lohit, West Kameng, West Siang and Tirap.

³¹ Obtained from the Directorate of Economics and Statistics, Arunachal Pradesh from the database of Census Operations 2011.

revenue structure to bring it at par with that leviable in Assam, or (ii) to shift the retail shops opened on inter-State border to interior site.

Response of Audit: Though a consensus on the first point has emerged in the JWG way back in 2007, the second option of shifting the retail shops from the inter-State border is a better one as the Excise Acts of relevant States prohibit opening up of retail shops within three km of the inter-State borders. Till such time, the SE Department may immediately initiate steps to erect check posts on both sides of Banderdewa so that illegal entry of liquor can be contained.

Recommendation No. 16:

The SE Department may take up the matter with their counterparts in Arunachal Pradesh and Meghalaya for either ensuring uniformity in excise duty/VAT and MRP of IMFL/Beer in view of the decisions in the JWG or shifting the retail shops from inter-State borders. Till such time, they may immediately initiate suitable action to erect the two check posts near Banderdewa (Arunachal Pradesh) at strategic locations to effectively curb the influx of IMFL/Beer into Assam from that State.

5.12 Country Spirit

As per the system, Country Spirit warehouses and retail vends are settled for a period of three years through tendering process. The contractors are issued with import permits for importing RS for manufacturing Country Spirit in their warehouses. The contractor is required to pay annual licence fees and entitled to reimbursement of cost price per LPL of Country Spirit so sold by retailers (on payment of Excise Duty, VAT and vend fee) from the Government at rates so fixed during the tendering process. As per authorised prescription, Country Spirit bottles should contain spirit of 40 degree proof or 60 degree under proof. Audit scrutiny of the Country Spirit warehouses revealed the following observations.



Country Spirit bottles

5.12.1 It was observed that there is no system of conducting chemical examination of the Country Spirit after manufacture and before their dispatch from the warehouses, which is invariably being done in case of IMFL consignments. Issue of Country Spirit for human consumption without conducting chemical examination can be dangerous and lead to health hazards for the consumers as neither the strength

of spirit in the bottle is checked nor the contents of the bottles is examined regarding their conformity to acceptable standards fit for human consumption.

In view of the absence of the system of chemical examination of Country Spirit bottles, sample bottles were randomly picked up and the strength gauged in the presence of the excise officer-in-charge and the representatives of the warehouse contractor during the field audit. Verification by Audit revealed that the sample bottles³² contained spirit ranging between 71.2 and 73.9 under proof or 28.8 and 26.1 degree proof per bottle. This would mean that against the requirement of 22.82 v/v per bottle, the bottles contained 14.89 and 16.43 v/v³³ spirit. Thus, there is every likelihood that the balance spirit unutilised in each bottle could be used for manufacturing more Country Spirit as evidenced by the audit findings mentioned in the succeeding para.

5.12.2 Verification of the material usage in the excise warehouses at Guwahati, Jorhat and Sivasagar revealed wide variations between the sales of Country Spirit as disclosed by the contractors and the quantity in view of the material usage as shown in the following table.

Name of warehouse (WH)	Year	Production disclosed (in LPL)	Average production per month	Bottles to be used	Variation (in bottles)
Jorhat country spirit WH	2011-12	11,77,859.2	1,03,896	3,42,856.8 (per month)	18,85,718.4
	2012-13	13,15,646.8			18,85,718.4
Audit Observation : Scrutiny revealed that the contractor had procured 5,00,000 caps per month during both the years. Thus at an average, 1,57,143.2 bottles per month had been produced in excess which has not been accounted for and escaped levy of Excise Duty and VAT, yet these were sold in the market on recovery of the price of bottles i.e. ₹ 20/bottle (minimum rate). Thus, there is strong possibility that the licensees (warehouse contractor and retailers) drew undue benefit of ₹ 7.54 crore on sale of balance 37.71 lakh bottles during the above two years.					
Sivasagar country spirit WH	2011-12	14,19,480	--	47,31,600 (during the year)	4,01,400
Audit Observation : Scrutiny revealed that the contractor had procured 51,33,000 caps during the year. Thus, atleast 4,01,400 bottles had been produced in excess which has not been accounted for and escaped levy of Excise Duty and VAT, yet these were sold in the market on recovery of the price of bottles i.e. ₹ 20/bottle (minimum rate). Thus there is strong possibility that the licensees (warehouse contractor and retailers) drew undue benefit of ₹ 80.28 lakh on sale of balance 4.01 lakh bottles during the above two years.					
Guwahati country spirit WH	2010-11	5,07,570	--	25,37,850 pouches (@ 0.2 LPL/pouch)	23,70,150
	2011-12	4,18,100	--	20,90,500 pouches (@ 0.2 LPL/pouch)	24,09,500

³² Collected from the excise warehouse of Jorhat and Sivasagar.

³³ Degree proof when multiplied by .5706 works out the v/v of spirit content.

Audit observation : Scrutiny of the balance sheets of the contractor for the years 2010-11 and 2011-12 revealed that packing materials worth ₹ 11.19 lakh @ ₹ 114/kg and ₹ 10.89 lakh @ ₹ 121/kg was utilised. This indicates that the contractor purchased 9,816 Kgs and 9,000 kgs packing materials from which 49.08 lakh and 45 lakh pouches respectively could be yielded during 2010-11 and 2011- 12. Thus, the contractor concealed production of 23,70,150 and 24,09,500 pouches which were sold in the market on recovery of the price. Since physical verification of the pouches revealed that these contained prescribed percentage of spirit, it can be concluded that there was short realisation of excise duty of ₹ 191.19 lakh $\{47,49,461 \times 0.2 \text{ LPL} = 9,49,892.2 \text{ LPL} \times ₹ 20/\text{LPL} (\text{excise duty})\} = ₹ 191.19$ lakh. Besides, the licensees (contractor and retailers) were benefitted of ₹ 6.17 crore³⁴ being the price of the pouches produced in excess.

Thus, had the SE Department instituted the system of levying of Excise Duty and VAT on per bottle/crate system similar to IMFL/Beer instead of per LPL system, the excess quantity of country spirit produced and sold through short usage of spirit in the bottles could have been brought under the duty/taxation network. In absence of such a system, Government would continue to loose revenue while the licensees would be getting undue benefits.

The Department stated (September 2013) that a system of chemical examination of the RS is in place but there is no system for chemical examination of the finished product which may cause delay in supply of bottled country spirit. Secondly, as all the Country Spirit warehouses in the State do not have the bottling facilities, levying Excise Duty per bottle/crate system may be difficult. It was further stated that if *advalorem* levy on Country Spirit is formulated, duty could be charged as suggested by Audit. The Department, however, agreed to implement the recommendations of Audit.

Response of Audit: The chemical examination of finished products would ensure (i) quality and conformity of liquor to the accepted standards for human consumption and (ii) arrest cases of liquor issued on lesser strength leading to undue benefit to the contractors at the cost of common public. The issue of levying Excise Duty on crate/bottles could be effectively tackled if bottling facility is introduced in all the country spirit warehouses in the State which would also prevent adulteration and pilferage.

Recommendation No. 17:

The SE Department may in order to streamline the working of the Country Spirit warehouses in the State, install/change system of:

- *Levying Excise Duty and VAT on per bottle/crate system like IMFL/Beer instead of per LPL system;*

³⁴ @ ₹ 13/pouch.

- *conducting chemical examination of country spirit consignments before their dispatch from the warehouses; and*
- *tallying the production so disclosed by the contractors with the intake of caps, packing materials etc to detect variation, if any.*

5.13 Internal Controls

Internal control is intended to provide reasonable assurance of proper enforcement of laws, departmental rules and orders. Rule 117 of Assam Financial Rules provide that the controlling officers are to see and ensure that the dues of the Government are correctly and promptly assessed, collected and deposited in the Government accounts.

During the course of the audit, it was observed that various controls had been prescribed by the AE Act/Rules made thereunder and through executive



orders of the SE Department, like (i) Reports/ returns to be furnished by the licensees; (ii) erection of check posts at strategic locations; (iii) periodic stock taking/inspection of stock and records of licensees by concerned Officers and (iv) Supervision and monitoring

by higher authorities.

Audit findings on the various elements of internal control mechanism and other issues are as discussed below.

5.13.1 Reports/returns

Deficiencies found in monthly/quarterly reports/returns of bottling units have been discussed in para 5.8. Coming to the reports prescribed for bonded warehouses, it was observed that the Office of the CE, Assam is yet to install a system of verification of the reports received from the bonded warehouses as evident from the following paragraphs:

5.13.1.1 Difference between closing and opening stock

Scrutiny of the monthly reports furnished by the bonded warehouse licensees revealed that in three cases the licensees had disclosed closing stock of 12.79 lakh BL of IMFL/Beer in the monthly reports for various months falling between December 2011 and March 2013. However, in their reports for the subsequent months the opening stock was shown as 12.19 lakh BL of IMFL/Beer. The variation of 60,321.24 BL between the closing and opening stock involved revenue of ₹ 57.19 lakh.

Further, in case of one bonded warehouse, it was noticed that there was variation of 1,17,274.31 LPL between the closing stock shown in the report for the period ending March 2013 and that should have been worked out from the figures depicted in the returns. The balance stock of 1,17,274.31 LPL involved revenue of ₹ 1.38 crore.

5.13.1.2 Variation between sales vis-à-vis revenue remittance

As per the system, Excise Duty and VAT is realisable prior to sale of IMFL/Beer from the bonded warehouses to the retailers. The bonded warehouses while furnishing the monthly reports are required to mention the volume of sales vis-à-vis the revenue remitted to the Government accounts by the retailers on such items.

From the monthly reports for the period 2011-12 and 2012-13, it was noticed that in case of 10 bonded warehouses Excise Duty of ₹ 45.29 crore was payable on the volume of IMFL/Beer shown to have been sold during the period of reports; against which the licensees remitted ₹ 39.27 crore. This resulted in short payment of ₹ 6.02 crore.

5.13.1.3 Excess claim of godown wastage

As per Rule 37 of ABW Rules and subsequent executive instructions, the superintendent of excise or the officer-in-charge of the bonded warehouse shall take stock of all spirits in the warehouse on the last day of the quarter and the licensee shall pay duty at prescribed rates on all spirits in excess of an allowance of one *per cent* on account of wastage allowance.

In case of five bonded warehouses, it was noticed from the monthly reports that for various months falling between 2010-11 and 2012-13 the licensees claimed godown wastage of 1,04,785.64 BL against entitlement of 29,002.27 BL on which excise duty of ₹ 47.76 lakh was leviable. However, the excess claim of godown wastage of 75,783.37 BL was not detected at any level leading to non-realisation of ₹ 61.39 lakh (including VAT of ₹ 13.63 lakh).

The Department while highlighting that an e-governance proposal was underway which would effectively counter such issues and ensuring that a verification system will be evolved in the CE's Office as suggested by Audit, stated (September 2013) that cases pointed out by Audit are being examined and further replies in these regards would follow. Report on further development is yet to be received.

Recommendation No. 18:

The SE Department may devise a mechanism so that the reports received at the CE's Office through the concerned district excise offices are verified at each stage to ensure that there is neither any error nor any short payment/levy of revenue.

5.13.1.4 Matching of reports of bonded warehouses and bottling units

As per the system prescribed by the SE Department, the bottling units are required to furnish sale statements while the bonded warehouses are to furnish arrival reports. These reports are to be furnished monthly. An analysis of the formats of returns indicated that the sale reports of the bottling units are prepared based on transport pass and thereby making it difficult to ascertain the position of sale to each bonded warehouse. Similarly, the arrival reports submitted by the bonded warehouses are also prepared date-wise. Even though the Department has installed the MIS mechanism, yet it serves little or no purpose as the sale statement and arrival reports per month contain huge data and analysing these data would consume additional manpower and substantial time. These reports can help in more effective monitoring of the issue and receipt of IMFL/Beer if these reports are accompanied by a topsheet showing the licensee-wise total figures of sales/receipt during the period. These two sets of reports can then easily be matched at the CE's office to ensure that there is no mismatch between the figures of IMFL/Beer issued by the bottling units with those shown to have been received by the bonded warehouses.

Recommendation No. 19:

The SE Department may issue instruction to the bottling units and bonded warehouses to include a top sheet along with the sale statements and arrival reports mentioning the licensee wise position of total issue and receipt, from now onwards.

The Department stated (September 2013) that the CE shall instruct all the licensees to include a top sheet with the sale statement and arrival reports as suggested by Audit.

5.13.2 Check posts

The SE Department, GoA has erected check posts at various strategic locations like the entry points of Assam from the mainland *i.e.* Boxirhat, Srirampur and at Khanapara to monitor and control movement of excisable goods from outside and within the State of Assam.

Detrimental impact on revenue of State Government of Assam due to absence of check posts near Banderdewa (Arunachal Pradesh) has been pointed out in para 5.11.2. Further verification revealed that the check posts at the entry point of Assam from West Bengal at Boxirhat and Srirampur do not maintain any database of consignments carrying ENA/RS/IMFL/Beer entering Assam. Neither has the Department installed a system for co-ordination with the Taxation Department for obtaining the database of the check posts maintained by the latter. Consequently, the departmental officers were not in a position to cross verify the reports of the licensees. Besides, absence of such a system denied the scope for assuring that vehicles carrying consignments going to other States have crossed them and did not unload the goods within the State; thus causing loss of revenue to the Government.

Audit scrutiny of the records made available by the Taxation Department revealed that during 2007-08 to 2011-12, 378 consignments of IMFL and 2.45 lakh BL ENA which entered the State through Boxirhat and Srirampur, was not found to have exited the State. As per the Value Added Taxation Act, such cases are deemed to have been sold within the State and tax recovered accordingly. However, similar provision is not made in the AE Act and Rules. It was observed that the IMFL consignments contained 2,24,764 cases³⁵ while 2.45 lakh BL ENA was capable of producing about 62,364 cases of IMFL which involved total Excise Duty of ₹ 13.43 crore which could not be detected by the SE Department in the absence of database at the check posts.

Recommendation No. 20:

The SE Department may install a system of recording the details of vehicles passing through the entry check posts at Boxirhat and Srirampur and

³⁵ In case of 302 consignments which contained the volume of IMFL in cases; others contained volume in weight which has not been considered for calculating Excise Duty involvement.

reporting of the same to the concerned SE/CE for enabling these offices to cross verify the reports.

Till such time, a mechanism for sharing of information/data between the SE and Taxation Departments may be put in place to minimise the leakage of revenue.

The Department stated (September 2013) that necessary steps will be taken to ensure maintenance of a database of entry vehicles at Srirampur and Boxirhat check posts. Also, the matter would be taken up with the Taxation authorities to allow cross verification of entry and exit data.

5.13.3 Dissemination of revised rates

The rates of duties, fees and other levies are revised by the Government from time to time. These are published in the Official Gazette and it is also mentioned therein that the revised rates would come into effect from the date of its publication in the Official Gazette.

Audit scrutiny revealed that the latest revision came to effect from 29 September 2010 which was published in the Official Gazette on the same day. However, there was short realisation of revenue of ₹ 56.37 lakh due to non-implementation of the revised rates, as given in the following table:

Name of SE	No of licensees	Observation, in brief	Amount involved (₹ in lakh)
Kamrup	2	Additional bottling fee of ₹ 8 per case was levied on production beyond 30 lakh LPL by the bottling units. In two cases though the bottling units produced more than 30 lakh LPL, neither did they pay the additional bottling fees, nor was any demand raised by the Department.	25.46
	11	Rate of transport pass fee was revised from ₹ 30 to ₹ 50 per pass. Revised rate was not realised.	10.62
	2	Import permit fee of ₹ 60 per case of beer was levied with effect from 20-9-2010, which was not realised.	10.53
	81	<i>Advalorem</i> levy on IMFL was realised at pre-revised rates	7.40
	2	Underbond permit fee of ₹ 25 per case of IMFL/Beer was levied with effect from 29-10-2010; which was not realised in cases of permits issued till 8 October 2010.	2.36
Total			56.37

Recommendation No. 21:

The SE Department may consider allowing a reasonable time gap between the dates of publication of revised rates in the Official Gazette and its

enforcement or make arrangements to disseminate the rates immediately after the e-governance is in place. They may also issue instruction for recovery of differential revenue in the above cases.

The Department stated (September 2013) that reasonable time gap would be allowed between the dates of publication of revised rates in Official gazette and its enforcement.

5.13.4 Co-ordination with other Departments

Since sale of excisable goods are exigible to both – Excise Duty under AE Act as well as VAT under the Assam VAT Act, close co-ordination between the SE Department and the Taxation Department is essential which would help both the Departments to ensure proper control and monitoring on the transactions involving excisable goods and prevent leakage of revenue.

Audit scrutiny revealed that the co-ordination between both the Departments is weak as evidenced from the following:

- The Taxation Department initiated cross verification of export of IMFL/Beer and has re-assessed some of the dealers for wrongly claiming the concessional rate/exemption of sales tax. While the SE Department has not taken any action, even to obtain the information from the Taxation Department for examining its impact on the excise revenues.
- The licensees are required to submit audited accounts while submitting returns to the Taxation Department which enables the assessing officers to cross verify the figures depicted in the returns with those shown in the audited accounts certified by qualified Chartered Accountants. However, **no such system exists** in the SE Department. A system of obtaining the audited accounts alongwith an annual return would have helped the SE Department to detect the variation in stock position as pointed out in para 5.10.2.3.
- The Taxation Department has check posts at strategic locations which are computerised and the database is available at the Commissioner of Tax, Assam's office. In absence of database of vehicles crossing the check posts, the SE Department could have initiated action to obtain the database from the Taxation Department and cross verify the same with the reports of the licensees. On being requested by Audit, the Finance Department has issued orders (June 2013) to both the Departments to share the information of the check posts of Taxation Department.

Recommendation 22:

The SE Department may, in consultation with the Finance Department, install a system of closer co-ordination with the Taxation Department on the following counts:

- *The important developments regarding the excisable goods may be shared between the Departments;*
- *A system of data/information sharing between both the Departments may be installed;*
- *The database of the check posts of Taxation Department may be obtained at periodic intervals and verified with the records of the licensees to safeguard leakage of revenue.*

5.14 Other points of interest

5.14.1 Preventive measures – leviability of interest and penalty

Audit scrutiny revealed that though the taxation Acts and Rules governing sales, trade etc in Assam have been updated and provisions for penalty and interest incorporated in the Assam Value Added Taxation Act, the AE Act and Rules still continues with the rates fixed during the enactment of the Act, *i.e.* the maximum penalty being ₹ 1,000 with no provision for levying interest for delayed payment. Thus, there is no deterrent for the licensees indulging in fraudulent practices as the penal measures are meagre and, infact, serves no purpose.

Initiatives in other States

The Government of Jharkhand has increased the level of penalty to ₹ 1 lakh in each case while the rate of interest has been fixed as five *per cent* per day of delay in payment.

Recommendation No. 23:

The SE Department may consider amending the AE Act and Rules to incorporate provisions for levy of penalty and interest at par with those leviable under the Assam VAT Act.

The Department stated (September 2013) that steps would be taken to include disincentive for the defaulters and process amending the relevant provisions of the AE Act and Rules as suggested by Audit.

5.14.2 Payment of licence fees and establishment charges

As per the provisions of the AE Act and Rules made thereunder, licence fees for bottling plants and bonded warehouses are to be paid in advance before the commencement of the year for which it relates. These licensees are also required to bear the expenditure of the excise staff and officers posted at their premises which is to be paid within seven days after expiry of the month to which it relates.

Non/delayed payment of licence fees and establishment charges had been a regular deficiency in the SE Department as had been detected by Audit and commented upon repeatedly in successive Audit Reports. Audit scrutiny of records during the course of this PA, however, revealed that the check list devised by the CE, Assam and further action of the CE in stopping issuance of permits without all entries in the check list has helped the Department in ensuring that licence fees and establishment charges are paid by all the licensees within the stipulated timeline.

Initiatives by CE, Assam

The CE, Assam has devised a check list containing details of payment of licence fees and establishment charges. The check list is to accompany each application for permits for ENA/IMFL/Beer.

Recommendation 24:

The SE Department may ensure continuation of the good practices instituted by the CE, Assam which would ensure timely realisation of the revenues due to the Government.

5.14.3 Other miscellaneous observations

Other important and interesting observations noticed during the course of PA are given in following table:

Name of the Districts	Licensee	Observations, in brief	Amount involved (₹ in lakh)
Karbi Anglong	M/s Sara Distillery	The licensee imported IMFL/Beer involving Excise Duty and VAT of ₹ 3.29 crore from 2009 to March 2011. No permit was issued to the retailers for lifting of IMFL/Beer from this licensee. However, during the course of the PA it was noticed that the whereabouts of the licensee is not known and the case records	328.66

		had been left unattended.	
Tezpur	M/s Sun International	Scrutiny of the stock register maintained by the licensee revealed that in 17 instances the details of permit number, date, quantity of IMFL/Beer imported were duly noted in the receipt side of the register. However, these imports were not added with the earlier balance leading to these remaining out of the stock. Further, in four cases the licensee had deducted excess volume than that has been issued which resulted in further reduction of the stock. Thus, total 1,14,113.62 BL of IMFL remained out of stock which involved Excise Duty and VAT of ₹ 90.55 lakh.	90.55
Total			419.21

The Department stated (September 2013) that the details would be called for from the concerned district excise offices and further reply would follow. Report on further development is yet to be received.

5.15 Conclusion

There are complex issues pertaining to taxation of alcoholic beverages as it involves important economic, social and cultural dimensions. The issue is both ethical as well as socio-economic. The Assam State Legislature has enacted the State Excise Act and made Rules thereunder to administer and levy duties and taxes on Liquor. The PA intended to ensure that the liquor sold in any form within the State of Assam passes through the designated channel after suffering proper duties and taxes till it reaches the consumers and that there is no evasion of duties and taxes by fraudulent practices. During the course of the PA, Audit has come across a number of deficiencies and suggested few recommendations to improve the revenue collection mechanism.

- Non-prescription of production norms of IMFL from ENA coupled with the absence of a system to note the same in the monthly reports compelled the Department to accept the production figures as submitted by the bottling units and non-detection of large variation in intake of ENA ranging between 3.6 and 4.9 BL per case of IMFL. In cases of short production of IMFL there was loss of revenue of ₹ 80.79 crore. Due to the absence of a system of cross verification of ENA dispatched by distilleries of other States with the records of bottling units located in the state, the SE Department could not detect unauthorised receipt of ENA resulting in loss of revenue of ₹ 21.80 crore. The process of chemical examination needs to be streamlined as physical verification of brands by Audit revealed that spirit content in IMFL bottles were substantially less than the

prescribed percentage. Re-verification of the cost price/ex-bond price by deducting the prescribed elements from the MRP would have enabled the Department to detect mis-classification of brands which resulted in loss of revenue of ₹ 238.34 crore.

- Though the AE Act and Rules enabled obtaining security deposit according to the volume of business, the SE Department is still collecting security deposit at ₹ 5,000 in each case as per the ABW Rules of 1965, while 45 bonded warehouses test checked are allowed bond limit of ₹ 138.80 crore (Excise Duty involvement of IMFL/Beer stored in godown). Despite presence of officers-in-charge at the bonded warehouses, storage of IMFL/Beer far in excess of the bond limit (without security and hypothecation) escaped notice of the Department. The stock reported by some of the bonded warehouses were not reliable as evidenced by substantial difference between the reports submitted to the CE and BS/AA/Reports furnished to the banks. The Department allowed remission of substantial amount of revenue of IMFL/Beer which got sedimented/rejected without ascertaining the reasons for the same from the licensees though most of the cases were due to prolonged storage which could have been avoided through proper monitoring.
- Failure of the Department to cross verify the genuineness of the import permits/certificates of receipts as produced by the exporting licensees resulted in non-detection of fraudulent claims of export leading to loss of revenue of ₹ 109.84 crore³⁶. Lower rates of Excise Duties, VAT and retail prices prevalent in Arunachal Pradesh and Meghalaya coupled with setting up of retail shops at the bordering areas by the neighbouring States resulted in huge loss of revenue.
- Absence of a system of conducting chemical examination of the Country Spirit before these are dispatched from the warehouses to the retailers resulted in short utilisation of spirit and consequent undue benefit accrued to the licensees (warehouse contractor and retailers) remaining undetected.
- Proper verification of the reports submitted by the licensees at the SE/CE Offices could have enabled detection of variation between (i) closing and opening stock; (ii) sales vis-à-vis revenue remittance; (iii) excess claim of godown wastage etc. The reports on sales by the bottling units and the arrival reports by the bonded warehouses can be more effectively matched if these reports are accompanied by top sheets containing licensee wise total position during the period of report. There was no system of recording the movement of vehicles carrying excisable goods at the Excise check posts at Boxirhat and Srirampur and reporting the same to the CE/SE concerned. Consequently, the departmental officers were not in a position to cross verify the reports of the licensees and there

³⁶ ₹ 75.99 crore on export to other States and ₹ 33.85 crore on export to Nagaland.

was no assurance that vehicles carrying consignments going to the other States did not unload the goods within the State.

- The co-ordination between the SE Department and the Taxation Department needs to be improved as proper levy and collection of Excise Duty and VAT rests on both these Departments. The AE Act and Rules made thereunder contain penal provisions which needed to be reviewed and brought at par with other taxation Acts in force in the State. A time gap between the date of publishing the revised rates in the official gazette and date of its enforcement would have prevented short realisation of revenue due to non-receipt of the information, on time.

5.16 Summary of recommendations

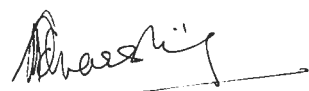
The GOA/SE Department may consider implementing the recommendations noted under respective paragraphs with special emphasis on the following:

(Ref. to paragraph)	Recommendations	Projected Additional revenue ³⁷ (₹ in crore)
(Para 5.8.1.2)	Carrying out periodic cross verification of ENA intake reported by the bottling units with the dispatch figures of the distilleries located in other States.	
GOA/SE Department's response: <i>Recommendation accepted and system of periodic cross verification would be implemented.</i>		
(Para 5.8.2)	Prescribing the norms for production of IMFL from ENA and suitably amending the formats of monthly reports of bottling units to provide for such norm.	43.93
GOA/SE Department's response: <i>Recommendation accepted - norm would be prescribed and necessary amendments would be made in the monthly reports.</i>		
(Para 5.8.4.1)	Re-verifying the classification of labels of IMFL brands in view of the MRP printed on the labels during the process of label registration.	105.07
GOA/SE Department's response: <i>Recommendation accepted and necessary action would be taken during label registration for next year.</i>		
Response of Audit: The Department may kindly revisit the label registration for the current year in order to contain the amount of loss of revenue due to mis-classification.		
(Para 5.11.1)	Installing a system of verifying the genuineness of the import permits/certificates of receipt issued by the other states at periodic intervals to safeguard the revenue interest of the Government.	
GOA/SE Department's response: <i>Audit point and recommendation accepted. The CE informed that at present cent per cent cross verification of the import permits are being carried out before issuing the export permits.</i>		

³⁷ Revenue that can be additionally generated on yearly basis if the GoA/SE Department implements the concerned recommendations.

(Para 5.11.2)	Ensuring uniformity in Excise Duty/VAT and MRP of IMFL/Beer in neighbouring States as applicable in Assam and pursuing those States to shift the retail shops from inter-State borders. Till such time, they may immediately initiate suitable action to erect the two check posts at strategic locations near Banderdewa (AP).	
GOA/SE Department's response: <i>The matter has been referred to the Government by the CE, Assam for taking up with the Government of Arunachal Pradesh for relocating the shops at appropriate places within the State jurisdiction.</i>		
(Para 5.14.1)	Initiating steps to amend the AE Act and Rules to incorporate the provisions for levy of penalty and interest to bring them at par with those leviable under the other taxation Acts in the State.	
GOA/SE Department's response: <i>Recommendation accepted. The CE stated that the Commissionerate would examine amending the relevant Rules to include disincentives as suggested by Audit and move Government for implementation accordingly.</i>		
Projected additional revenue that can be generated per annum, if the concerned recommendations are implemented.		149.00

Place: Guwahati



(C H Kharshiing)

Date:

Accountant General (Audit), Assam

Countersigned

Place: New Delhi



(Shashi Kant Sharma)

Date:

Comptroller and Auditor General of India



Annexure-I

(Reference paragraph 1.4)

Number of auditable and audited units

Sl. No.	Name of the Department	Total number of auditable units	Total number of units due for audit during 2012-13	Units planned for audit during 2012-13	Units actually audited during 2012-13
1.	Sales Tax	83	77	25	27
2.	Transport	52	50	20	19
3.	Stamp Duty & Registration	82	72	12	11
4.	State Excise	19	48	10	10
5.	Agricultural Income Tax	02	02	01	01
6.	Mines and Minerals	01	01	01	01
7.	Land Revenue	161	140	16	16
8.	Forest	89	83	27	28
	Total	489	473	112	113