CHAPTER-II: TAXES/VAT ON SALES, TRADE ETC.

2.1.1 Tax administration

Assessments, levy and collection of value added tax (VAT) in Haryana are governed under the Haryana Value Added Tax Act, 2003 (HVAT Act) and rules framed there under. Excise and Taxation Commissioner (ETC) is the head of the Excise and Taxation Department for the administration of HVAT Act and Rules in Haryana. The Excise and Taxation Officers (ETOs) are responsible for registration of dealers, assessments, levy and collection of VAT. All the dealers registered under the Haryana General Sales Tax Act, 1973 (HGST Act) were liable to get registered under the HVAT Act. Every dealer whose gross turnover (GTO) exceeded ₹ five lakh were liable to get registered under the HVAT Act from the day following the day his GTO exceeded the taxable quantum. All dealers registered under the HVAT Act were assigned Taxpayers Identification Number (TIN). Under the HVAT Act, tax was levied at the prescribed rates at every point of sale after allowing deduction towards tax paid at the previous point {input tax credit (ITC)}. Assessments were made after scrutiny of books of accounts in selected cases under the Act.

2.1.2 Trend of receipts

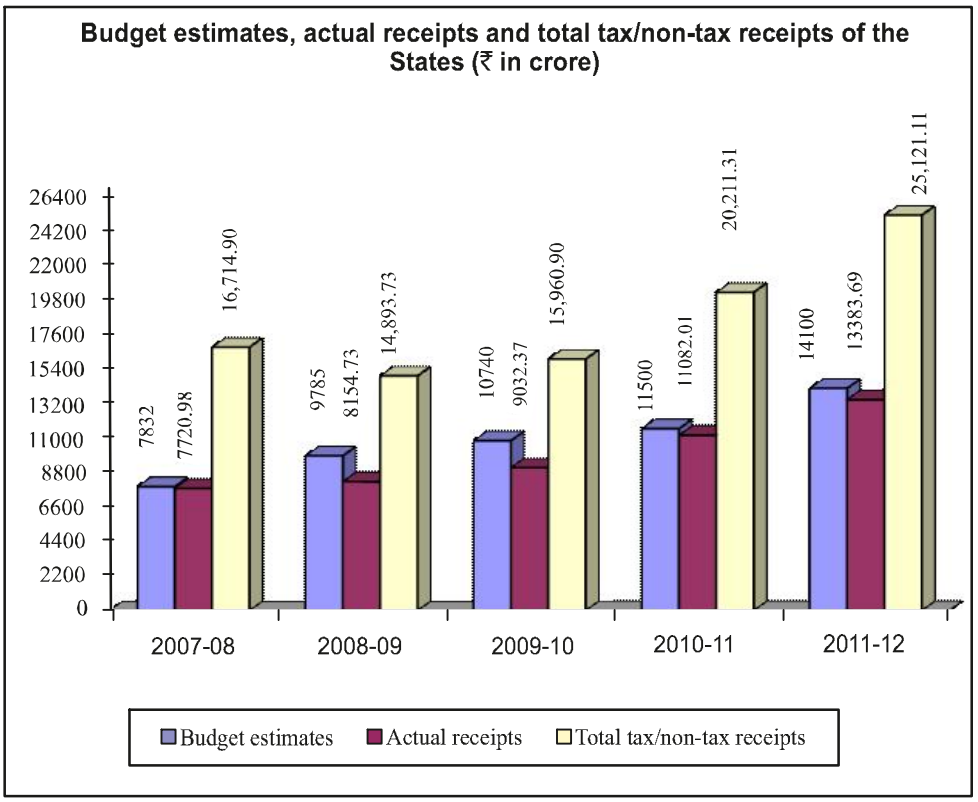
Actual receipts from Taxes/VAT on sales, trade etc. in the State during the last five years 2007-08 to 2011-12 along with the total tax/non-tax receipts during the same period is exhibited in the following table:

(₹ in crore)

Year	Budget estimates	Actual VAT receipts	Variation excess (+)/ shortfall (-)	Percentage of variation (Col. 4 to Col. 2)	Total tax/non-tax receipts of the State	Percentage of actual VAT receipts vis-à-vis total tax / non-tax receipts (Col. 3 to Col. 6)
1	2	3	4	5	6	7
2007-08	7,832.00	7,720.98	(-) 111.02	(-) 01	16,714.90	46
2008-09	9,785.00	8,154.73	(-) 1,630.27	(-) 17	14,893.73	55
2009-10	10,740.00	9,032.37	(-) 1,707.63	(-) 16	15,960.90	57
2010-11	11,500.00	11,082.01	(-) 417.99	(-) 04	20,211.31	55
2011-12	14,100.00	13,383.69	(-) 716.31	(-) 05	25,121.11	53

Source: State Budget and Finance accounts.

The receipts from VAT increased from ₹ 7,720.98 crore to ₹ 13,383.69 crore during the period 2007-08 to 2011-12.



Audit findings

2.1.3 Analysis of arrears of revenue

The arrears of sales tax/VAT revenue as on 31 March 2012 amounted to ₹ 3,405.08 crore of which ₹ 2,583.52 crore (76 *per cent*) were outstanding for more than five years. The following table depicts the position of arrears of revenue during the period 2007-08 to 2011-12:

(₹ in crore)

Year	Opening balance of VAT arrears	Amount collected during the year	Closing balance of VAT arrears	Actual VAT receipts	Percentage (Col. 3 to Col. 2)	Percentage of arrears outstanding to VAT receipts (Col. 4 to Col. 5)
1	2	3	4	5	6	7
2007-08	1,268.50	127.54	1,591.87	7,720.98	10	21
2008-09	1,591.87	155.41	1,955.87	8,154.73	10	24
2009-10	1,955.87	164.08	2,724.08	9,032.37	8	30
2010-11	2,724.08	175.51	2,887.35	11,082.01	6	26
2011-12	2,887.35	701.61	3,405.08	13,383.69	24	25

We observed that arrears of revenue had increased from ₹ 1,268.50 crore at the beginning of the year 2007-08 to ₹ 3,405.08 crore (168 *per cent*) at the end of the year 2011-12. The percentage of realisation of arrears to the arrears at the beginning of the year ranged between six to 24 *per cent* during the years 2007-08 to 2011-12. Though the VAT receipts increased by 73 *per cent* (from ₹ 7,720.98 crore in 2007-08 to ₹ 13,383.69 crore in 2011-12), yet the arrears of VAT revenue increased by 168 *per cent* (from ₹ 1,268.50 crore as on 1 April 2007 to ₹ 3,405.08 crore as on 31 March 2012).

The Government may advise the Department to take effective steps for collecting the arrears promptly to augment Government revenue.

2.1.4 Assessee profile

10,824 dealers were registered during the year 2011-12. 1,77,626 dealers registered as on 31 March 2011 were required to file their periodical returns. The information relating to number of returns received and action taken by the Department to issue notices to the remaining dealers who failed to furnish returns was not furnished by the Department.

2.1.5 Cost of VAT per assessee

The number of assessees and sales tax/VAT receipts during the period 2007-08 to 2011-12 as furnished by the Excise and Taxation Department are mentioned below:

Year	Number of assesses	Sales tax/VAT receipts (₹ in lakh)	Average collection of VAT per assessee
2007-08	1,52,352	6,05,931.44	3.98
2008-09	1,56,545	6,42,489.44	4.10
2009-10	1,61,927	7,53,065.60	4.65
2010-11	1,71,036	11,33,032.08	6.62
2011-12	1,92,481	13,85,258.64	7.20

We observed that the average collection of VAT per assessee increased from ₹ 3.98 lakh in 2007-08 to ₹ 7.20 lakh in 2011-12. However, increase in average collection in the previous years was due to better scrutiny of assessment cases and creation of additional demand.

2.1.6 Arrears in assessments

The details regarding opening balance of cases of assessment, cases becoming due, cases disposed of and closing balance of assessment of cases at the end of each year during 2007-08 to 2011-12 as furnished by the Excise and

Taxation Department in respect of Taxes/VAT on sales, trade are mentioned in the succeeding table:

Year	Opening balance	Cases due for assessment during the year	Total	Cases deemed assessed/regularly assessed during the year	Balance cases at the close of the year	Percentage of cases finalised to total cases (Col. 5 to col. 4)
1	2	3	4	5	6	7
2007-08	2,16,871	1,81,128	3,97,999	1,75,124	2,22,875	44
2008-09	2,22,875	1,83,153	4,06,028	1,64,132	2,41,896	40
2009-10	2,41,896	2,34,839	4,76,735	1,89,476	2,87,259	40
2010-11	2,87,259	2,13,687	5,00,946	2,09,140	2,91,806	42
2011-12	2,91,806	2,35,799	5,27,605	2,36,822	2,90,783	45

We observed that the number of pending cases in respect of sales tax/VAT increased from 2,16,871 cases at the beginning of 2007-08 to 2,90,783 (34 *per cent*) at the end of 2011-12. The percentage of sales tax/VAT assessment cases deemed assessed/regularly assessed to total cases during the period 2007-08 to 2011-12 ranged between 40 to 45 *per cent*.

The Government may advise the Department to take necessary steps for early disposal of these pending assessment cases to augment Government revenue.

2.1.7 Cost of collection

The gross collection in respect of revenue receipts of Taxes/VAT on sales, trade etc., expenditure incurred on their collection and the percentage of such expenditure to gross collection during the years 2007-08 to 2011-12 along with the relevant all India average percentage of expenditure of collection to gross collection for the relevant year are mentioned below:

(₹ in crore)

Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average cost of collection
2007-08	7,720.98	50.64	0.66	0.83
2008-09	8,154.73	65.92	0.81	0.88
2009-10	9,032.37	78.48	0.87	0.96
2010-11	11,082.01	87.82	0.79	0.75
2011-12	13,383.69	87.65	0.65	-

Source: Finance Accounts.

2.1.8 Analysis of collection

The break-up of the total collection at pre-assessment stage and after regular assessments of sales tax/VAT cases for the year 2011-12 and the corresponding figures for the preceding four years as furnished by the Excise and Taxation Department in the succeeding table:

(₹ in crore)

Year	Amount collected at pre-assessment stage	Amount collected after regular assessment	Amount refunded	Net collection as per Department	Net collection as per Finance Accounts	Percentage of collection at pre-assessment stage to net collection (col. 2 to col. 5)
1	2	3	4	5	6	7
2007-08	7,223.15	723.60	81.15	7,865.60[1]	7,720.98[1]	92
2008-09	8,132.08	528.42	101.34	8,559.16[1]	8,154.73[1]	95
2009-10	9,973.05	394.45	133.09	10,234.41[1]	9,032.37[1]	97
2010-11	11,224.83	2,024.09	623.04	12,625.88[1]	11,082.01[1]	89
2011-12	14,286.77	425.15	603.72	14,108.20	13,383.69	101

We observed that percentage of collection of revenue at pre-assessment stage to net collection ranged between 89 and 101 *per cent* during the years 2007-08 to 2011-12.

2.1.9 Impact of Audit on Revenue

2.1.9.1 Position of Inspection Reports

The table below provides details of number of units audited, value of objections pointed out during the course of audit, cases accepted and the

[1] There are differences of ₹ 144.62 crore, ₹ 404.43 crore, ₹ 1,202.04 crore, ₹ 1,543.87 crore and ₹ 724.51 crore in the Departmental figures and the figures given in the Statement No. 11 – Detailed accounts of revenue by minor heads in the Finance Accounts of the Government for the years 2007-08 to 2011-12. The Department stated in October 2012 that the figures relates to compensation under Central Sales Tax (CST) under major head 1601 and refund received by the Finance Department from the GOI. However, these figures are not yet reconciled by the Finance Department.

recovery made there against during the period from 2006-07 to 2010-11.

(₹ in crore)

Year	Units audited			Cases accepted		Recovery made during the year		Percentage of recovery to amount accepted
	Number	Number of cases objected	Amount	Number	Amount	Number	Amount	
2006-07	43	974	395.96	147	1.84	88	0.83	45
2007-08	47	1,232	176.04	145	2.44	77	1.44	59
2008-09	46	863	208.32	106	8.48	61	0.81	10
2009-10	33	667	217.05	102	32.59	36	0.39	1
2010-11	32	775	976.56	182	149.39	54	1.67	1
Total	**201**	**4,511**	**1,973.93**	**682**	**194.74**	**316**	**5.14**	**3**

We observed that the recovery in respect of accepted cases during the years 2006-07 to 2010-11 was only three *per cent*.

2.1.9.2 Position of Audit Reports

During the last five years ending 2011-12, instances of non/short levy/realisation, underassessment/ loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc., with revenue implication of ₹ 284.68 crore have been indicated in 48 paragraphs. Of these, the Department/ Government had accepted audit observations to the tune of ₹ 60.64 crore in 42 paragraphs and recovered ₹ 0.41 crore. The details are shown in the following table.

(₹ in crore)

Year of Report	Paragraphs included		Paragraphs accepted		Amount recovered	
	Number	Amount	Number	Amount	Number	Amount
2007-08	8	2.17	7	1.00	2	0.32
2008-09	11	5.48	11	5.11	2	0.07
2009-10	11	119.01	11	30.95	-	-
2010-11	10	147.03	5	12.59	-	-
2011-12	8	10.99	8	10.99	1	0.02
Total	**48**	**284.68**	**42**	**60.64**	**5**	**0.41**

We observed that the recovery in respect of accepted cases was only 0.68 *per cent* during the year 2007-08 and 2011-12. The slow progress of recovery even in respect of accepted cases is indicative of failure on the part of the heads of offices/Department to initiate action to recover the Government dues promptly.

We recommend that the Government may revamp the recovery mechanism to ensure that at least the amount involved in accepted cases are promptly recovered.

2.1.10 Results of audit

Test check of the records relating to assessments and refunds of sales tax/VAT in Excise and Taxation Department, conducted during the year 2011-12, revealed irregularities in assessments, levy and collection of tax involving ₹ 2,831.41 crore in 996 cases which broadly fall under the following categories:

(₹ in crore)

Sr. No.	Category	Number of cases	Amount
1.	**Assessment, levy and collection of tax on works contracts (Performance Audit)**	**1**	**1,715.02**
2.	Application of incorrect rates of tax	245	31.34
3.	Under-assessment of turnover under Central Sales Tax Act	60	139.71
4.	Non-levy of penalty	88	585.14
5.	Non-levy of interest	63	3.28
6.	Incorrect computation of turnover	14	1.49
7.	Other irregularities	525	337.43
	Total	**996**	**2,831.41**

During the course of the year 2011-12, the Department accepted underassessment and other deficiencies amounting to ₹ 1,732.52 crore in 170 cases, out of which ₹ 1,715.26 crore involved in 28 cases were pointed out during the year and rest in the earlier years. The Department recovered ₹ 1.74 crore in 65 cases during the year 2011-12, out of which ₹ 2.75 lakh involved in four cases were pointed out during the year and rest in the earlier years.

One Performance Audit on "**Assessment, levy and collection of tax on works contracts**" involving ₹ 1,715.02 crore and a few illustrative audit observations involving ₹ 10.99 crore are mentioned in the succeeding paragraphs.

2.2 Assessment, Levy and Collection of tax on Works Contracts

2.2.1 Highlights

- Failure of the Department to analyse the available information and institute a system of exchange of inter Departmental database resulted in non-realisation of revenue of ₹ 283.88 crore from unregistered works contractors and short deduction of WCT of ₹ 88.26 crore by contractees.

(Paragraphs 2.2.8 and 2.2.9)

- Failure of the Department to levy additional tax for misuse of declaration forms resulted in short levy of tax of ₹ 4.00 crore.

(Paragraph 2.2.10)

- Non observation of guidelines of the Department by the assessing authorities (AAs) resulted in non-levy of tax and penalty of ₹ 1,303.16 crore.

(Paragraphs 2.2.12.1 and 2.2.12.2)

- Allowance of inadmissible deductions from gross turnover resulted in short realisation of tax of ₹ 9.17 crore.

(Paragraphs 2.2.12.3 to 2.2.12.6)

- Wrong classification of transactions of sale as works contract resulted in short realisation of tax of ₹ 22.47 crore.

(Paragraph 2.2.13)

- Non-levy of penalty for non-filing of returns resulted in short levy of tax of ₹ 1.36 crore.

(Paragraph 2.2.14)

2.2.2 Introduction

Section 2(1) (zt) of Haryana Value Added Tax (HVAT) Act, 2003 defines "Works Contract" as an agreement between contractor and contractee which include carrying out for cash, deferred payment or other valuable consideration, the assembling, construction, building, altering, manufacturing, processing, fabrication, installation, fitting out, improvement, repair or commissioning of any moveable or immoveable property. Section 2(1) (j) and (k), "Contractee" is the person for whom or for whose benefit, a works contract is executed and "contractor" is the person who executes a works contract either himself or through a sub-contractor. A Contractor is to get himself registered under the HVAT Act either as a registered dealer under Section 11 or lump sum dealer under Section 9.

Section 2 (1) (r) of HVAT Act, 2003 defines "goods" as every kind of movable property, tangible or intangible, other than newspapers, actionable claims, money, stocks and shares or securities but includes growing crops, grass, tree and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. Further, Section

2 (1) (ze) defines "Sale" as any transfer of property in goods for cash or deferred payment or other valuable consideration except a mortgage or hypothecation of or a charge or pledge on goods; and includes the transfer of property in goods (whether as goods or in some other form) involved in the cxccution of a works contract.

Section 2(1) (w) defines input tax as the amount of tax paid to the State in respect of goods sold to a VAT dealer, which such dealer is allowed to take credit of as payment of tax by him, calculated in accordance with the provisions of Section 8. A registered dealer is eligible for the ITC as per Section 8 whereas the lump sum dealer is not eligible for ITC.

Rule 49 (5) of HVAT Rules provides that a lump sum contractor is entitled to make purchase of goods for use in execution of works contract against form 'C' as well as form VAT-D1 and for this purpose, he shall be deemed to be a manufacturer.

Rule 49 (6) of HVAT Rules requires the lump sum contractor to maintain proper account of declaration forms used along with payments receivable and actually received by him.

We conducted the performance audit of the Department of Excise and Taxation with a view to ascertaining that the Act has been enforced effectively and efficiently.

2.2.3 Organisational set up

At the Government level, Principal Secretary, Excise and Taxation Department (PSET) is responsible for the administration of Sales Tax Laws in the State. At the Departmental level, the ETC is responsible for the administration of HVAT/Central Sales Tax Act, 1956 (CST Act) and the rules framed there under. The ETC is assisted by officers in the field divided into revenue districts.

2.2.4 Audit objectives

The objectives of the performance audit are to ascertain whether:

- various provisions relating to works contracts contained in the HVAT Act, /CST Act, have been followed;
- effective internal control mechanism exists to ensure that there is no tax evasion either by the Contractor or by Contractee; and
- penal measures have been initiated in the event of violations of the Act.

2.2.5 Audit criteria

The following are the sources of audit criteria:

- HVAT Act/CST Act, HVAT Rules, 2003 and CST Rules, 1957.
- Guidelines and notifications of the Haryana Government relating to assessment of works contractors.

- Administrative instructions issued by the Department relating to assessment of works contractors.

2.2.6 Scope and methodology of audit

The assessment records relating to works contractors for the period from 2009-10 to 2011-12 in 10[2] out of 23 DETCs offices as well as records of Dakshin Haryana Bijli Vitaran Nigam Limited (DHBVNL), Haryana Vidyut Prasaran Nigam Limited (HVPNL) and Uttar Haryana Bijli Vitaran Nigam Limited (UHBVNL) were test checked between April and June 2012. We selected eight DETCs on random sample selection basis by applying probability proportional to size method (without replacement). DETC Rewari was selected on the recommendation of the Department in place of DETC Palwal. DETCs Ambala and Faridabad (East) were selected on the basis of risk analysis. We also included similar observations noticed in audit of other districts during the period 2006-07 to 2010-11.

2.2.7 Acknowledgement

We acknowledge the co-operation of Excise and Taxation Department in providing necessary information and records for facilitating audit. An entry conference was held (April 2012) with the Financial Commissioner and Principal Secretary to Government of Haryana, Excise and Taxation Department wherein the audit objectives, methodology and criteria employed for selection of districts were explained. The suggestions of the Department were also kept in view at the time of selection of districts. The draft Performance Audit Report was sent for comments to the Department and Government in August 2012. An exit conference was held on 12 October 2012 with the Principal Secretary to Government of Haryana (Excise and Taxation Department), ETC, AETCs and other officers. The replies furnished by the Department and views expressed by Department during exit conference and during the course of audit have been considered in finalising the performance audit report.

System deficiencies

2.2.8 Loss due to non-registration of dealers

Section 3 of HVAT Act read with rule 10 (2) of HVAT Rules, 2003, stipulates that if taxable amount of turnover of any dealer exceeds ₹ five lakh, he shall be liable to pay tax on and from the day following the day his gross turnover in a year exceeds the taxable quantum. Then the dealer shall get himself registered with the AA concerned under Section 11 of HVAT Act. Section 16 of HVAT Act empowers the Department that upon receipt of information about any dealer that during any period he has been liable to pay tax, the AA will, before expiry of three years of such period after giving him a reasonable opportunity of being heard, assess the dealer to tax and direct him to pay by

[2] Ambala, Bhiwani, Faridabad (East), Gurgaon (West), Hisar, Kaithal, Kurukshetra, Rewari, Rohtak and Sirsa.

way of penalty a sum equal to the amount of tax found due from him as a result of such assessment.

DHBVNL, HVPNL and UHBVNL enter into contracts with contractors on turnkey basis for supply, erection, testing and commissioning of capital projects. Turnkey basis contracts are composite contracts on single source responsibility basis and contractor is liable to perform total contract in its entirety. Further, the Department was required to seek information from other Departments/organisations and register those contractors who were executing works contracts but had not been registered with the Department.

Scrutiny of records of DHBVNL, HVPNL and UHBVNL revealed that during 2009-10 to 2011-12, these companies awarded contracts for supply, erection, testing & commissioning of sub-stations etc. on turnkey basis to 44 works contractors located outside Haryana and paid ₹ 1,135.46 crore for supply of material only. The contractors executed the said contracts by splitting up the composite contract into two parts, i.e. one for Supply and the other for Erection, Testing and Commissioning. We observed that these contractors did not pay tax on equipment supply portion by showing its value as Transit Sale (clause 50.3 of Bid Document) and paid WCT on Erection, Testing and Commissioning portion only. The Transit sale of Turnkey contractors was to be treated as intra-State sale. The non-compliance of provisions of the Act to register such works contractors led to revenue of ₹ 283.88 crore (including penalty of ₹ 141.94 crore) remaining unrealised.

The Department agreed to the observations during exit conference and stated that notices have been issued for registration of such contractors.

2.2.9 Loss due to non-deduction of Works Contract Tax

Section 24 (1) of HVAT Act, enjoys a duty on any person making payment of any valuable consideration to works contractors for execution of works contract in the State involving transfer of property in goods whether as goods or in some other form to deduct tax in advance there from calculated at the rate of four *per cent*. Further Section 24(6) provides that if any person fails to deduct the whole or part of the tax as required under sub-section (1) or fails to pay the whole or any part of the tax as required under Section 24 (3), then the AA, may at any time within five years of the close of the year when he failed to do so direct him, after giving a reasonable opportunity of being heard, to pay by way of penalty a sum equal to the amount of tax which he failed to deduct as aforesaid.

DHBVNL, HVPNL and UHBVNL entered into contracts for capital projects on Turnkey basis. Scrutiny of information received from DHBVNL, HVPNL and UHBVNL revealed that during 2009-10 to 2011-12 these Companies awarded contracts on turnkey basis valued at ₹ 1,324.65 crore to works contactors registered in Haryana which were splitted up into two parts i.e., supply of matcrial (₹ 1,104.81 crorc) and Ercction and Commissioning (₹ 219.84 crore). While making payment to the contractors, WCT valued at ₹ 8.85 crore was deducted on erection and commissioning part only. Clause 50.3 of the standard bid document vide which supply of material was to be

shown as sale in transit was not in conformity with HVAT Act. Since the turnkey contracts were Composite contract and Works Contract Tax should have been deducted on the total value of contract. Non compliance of provisions of HVAT Act resulted in non-collection of VAT of ₹ 88.26 crore including penalty of ₹ 44.13 crore under section 24 (6) of HVAT Act.

The Department agreed to the observation during exit conference and stated that notices have been issued.

Compliance deficiencies

2.2.10 Non-levy of Tax/Penalty for misuse of form VAT D-1

Section 7 (3) of HVAT Act lays down that where taxable goods are sold by one dealer to another dealer, tax is leviable at a concessional rate of four *per cent* if the purchasing dealer furnishes a declaration in form VAT D-1 certifying that the goods are meant for use in manufacturing of goods for sale. Further, if an authorised dealer, after purchasing any goods, fails to make use of the goods for the specified purpose, the AA may impose upon him by way of penalty, under Section 7 (5) of HVAT Act, a sum not exceeding one and a half times the tax which would have been levied additionally. However, no penalty would be imposed if the dealer voluntarily pays the tax which would have been levied additionally under Section 7(1) (a) of HVAT Act, alongwith returns for the period when he failed to make use of the goods purchased for the specified purpose.

Test check of records of office of 10[3] DETCs revealed that 62 works contractors who did not opt to pay lump sum in lieu of tax, had purchased goods/material valued at ₹ 47.02 crore against form VAT D-1 for use in construction of Buildings/Roads etc. during 2006-07 to 2009-10. The contractors had constructed buildings, roads etc. which were not covered under the definition of Goods being immovable property. The contractors violated the condition stipulated in the certificate given on form VAT D-1. Hence the contractors were liable to pay additional tax and penalty under Section 7 (5) of HVAT Act. The AAs while finalising assessments in 103 cases between July 2009 and March 2012 failed to levy additional tax and penalty. This resulted in non-levy of additional tax of ₹ 4.00 crore and maximum penalty of ₹ 6.00 crore.

The Department accepted the observation during exit conference.

2.2.11 Non-levy of penalty under Section 10A of CST Act

Section 10A of CST Act provides that if any dealer fails to make use of the goods for the purpose for which these were purchased, the AA may impose by way of penalty a sum not exceeding one and a half times the tax which would have been levied in respect of the sale to him of goods inside the appropriate State under the sales tax law of that State.

[3] Ambala, Bhiwani, Faridabad (East), Gurgaon (East), Gurgaon (West), Hisar, Kaithal, Kurukshetra, Rohtak and Sirsa.

During test check of records of office of nine[4] DETCs, we noticed that 94 works contractors who had not opted to pay lump sum in lieu of tax, had purchased goods valued at ₹ 285.91 crore from out of Haryana State against declaration in Form 'C' during 2006-07 to 2010-11. The contractors had constructed buildings, roads etc. which were not covered under the definition of Goods being immovable property. As the contractors violated the condition stipulated in the certificate given on Form 'C', the contractors were liable to pay penalty leviable under Section 10 A of CST Act. The AAs while finalising assessments in as many as 162 cases between July 2009 and March 2012 did not levy maximum penalty under Section 10A of the CST Act. We calculated such penalty at ₹ 40.66 crore.

The Department admitted the lapse during exit conference.

2.2.12 Inadmissible deductions from gross turnover

2.2.12.1 High Seas Sale

Section 5 (2) of CST Act provides that a sale or purchase of goods shall be deemed to have taken place in the course of import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of document of title to the goods before the goods have crossed the customs frontiers of India. Further, Section 38 of HVAT Act read with Section 9 (2A) of CST Act provides for levy of penalty for filing/ claiming incorrect accounts/documents/information/returns/benefit of exempted sale etc., a sum equal to three times the tax which would have been avoided had such account, return, document or information as the case may be, been accepted as true and correct.

During test check of the records of DETC, Faridabad (East) and Kaithal, we noticed that two contractors had entered into contract for supply, erection, testing and commissioning (on turnkey basis) and consequently entered into an agreement for supply of material with Haryana Power Generation Corporation Limited, (HPGCL) and Indian Oil Corporation Limited (IOCL). The contractors after purchasing the material from outside the country valued at ₹ 1,396.56 crore supplied the same directly to the site of works during 2007-08 to 2008-09. The AAs while finalising assessments in four cases between March 2011 and March 2012 allowed the benefit of exempted sales, under Section 5 (2) of CST Act against proof of import and agreement for high seas sale, as claimed by the contractors. The benefit claimed/allowed was neither justified nor correct. This resulted in underassessment of VAT of ₹ 174.57 crore, in addition to penalty leviable at ₹ 523.71 crore.

Further, consequent to inclusion of a paragraph No. 2.5.1.1 in the Audit Report No. 3 of 2010-11 (Revenue Receipts)- Government of Haryana, the ETC had issued guidelines (August 2011) that while assessing the cases of contractors of Turnkey Projects, such sales may be treated as intra- State sales

[4] Ambala, Faridabad (East), Gurgaon (West), Hisar, Kaithal, Kurukshetra, Panipat, Rohtak and Sirsa.

and tax levied accordingly. Despite issue of guidelines by ETC, the AAs had allowed the inadmissible deduction of high seas sale.

The Department agreed to the contention during exit conference. The ETC directed his officers to take action against defaulting assessing authorities.

2.2.12.2 Transit sale

Section 6 (2) of the CST Act stipulates that where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a dealer shall be exempt from tax, provided the dealer furnishes a certificate in prescribed Form E-I or E-II obtained from selling dealer (s) and declaration in Form 'C' obtained from purchasing dealer (s). The contract of supply of goods must come into existence after commencement and before termination of inter-State movement of goods. Section 38 of HVAT Act read with section 9 (2A) of CST Act provides for levy of penalty for violation of the provisions.

During test check of records of office of four[5] DETCs, we noticed that five contractors had entered into contract for supply, erection, testing and commissioning (on turnkey basis) and consequently entered into an agreement for supply of material with HPGCL, IOCL and DHBVNL. The contractors after purchasing the material from outside the State valuing at ₹ 1,209.80 crore supplied the goods directly to the site of works during 2007-08 to 2008-09. As the material was supplied within the State, the sale transactions were to be taxed under the provisions of the HVAT Act. The AAs while finalising assessments in nine cases between March 2011 and March 2012 had allowed the benefit of exempted sales, under Section 6 (2) of the CST Act against furnishing proof of E-I, E-II and 'C' forms as claimed by the contractors. Thus, the benefit claimed/allowed was neither justified nor correct. This resulted in underassessment of VAT of ₹ 151.22 crore, in addition to penalty leviable at ₹453.66 crore.

Further, consequent to inclusion of a paragraph No. 2.5.1.2 in the Audit Report No. 3 of 2010-11 (Revenue Receipts)- Government of Haryana, the ETC had issued guidelines (August 2011) that while assessing the cases of contractors of Turnkey Projects, such sale be treated as intra-State sales and tax levied accordingly. Despite issue of guidelines by ETC, the AAs had allowed the inadmissible deduction of transit sale.

During exit conference the ETC directed his officers to take action against defaulting assessing authorities.

[5] Faridabad (East), Kaithal, Rohtak and Sirsa.

2.2.12.3 Material supplied by contractee to contractor

Section 2 (ze) (ii) of the HVAT Act provides that the transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract, where such transfer, is for cash, deferred payment or other valuable consideration such transfer shall be deemed to be a sale of those goods by the person making the transfer. Under the provisions of HVAT Act, tax is leviable at every stage and deemed sale is also taxable in the hands of the contractor. A works contractor may either pay lump sum in lieu of tax at the rate of four *per cent* of gross receipts of works contract or pay tax on the value of goods transferred in the execution of works contract. In view of judgement of Hon'ble Supreme Court in the case of Karyapalak Engineer and others (2004) 136 STC 641 (SC-FB), material supplied by contractee to contractor and recovery of which is made through bills is sale.

During test check of records of office of four[6] DETCs, we noticed that six contractees supplied material valued as ₹ 3.63 crore to their works contractors during 2007-08 to 2008-09. The AAs while finalising assessments in nine cases between December 2010 and March 2012 allowed deduction and did not levy tax on material supplied by contractees for use in execution of works contract, value of which was recovered through running bills. Thus, allowing inadmissible deduction resulted in underassessment of VAT of ₹ 0.45 crore.

The Department agreed to the audit contention during exit conference.

2.2.12.4 Sub-Contract

Section 42 of HVAT Act provides that both contractor and sub contractor are jointly and severally liable to pay tax in respect of transfer of property in goods whether as goods or in some other form involved in execution of works contract. No tax is payable by sub contractor if he proves to the satisfaction of AA that the tax has been paid by contractor and assessment of such tax has become final. Contractor is not liable to deduct Works Contract Tax (WCT) from the payment made to sub-contractor if the contractor is paying tax in respect of whole of the contract.

During test check of records of office of six[7] DETCs we noticed that while finalising assessments in 18 cases between March 2010 and March 2012 for the years 2006-07 to 2010-11, allowed deduction of sub-contact of ₹ 60.56 crore to 11 works contractors without obtaining requisite assessment orders/proof of payment of tax by main contractor. This resulted in underassessment of VAT at ₹ 6.46 crore.

The Department agreed to the audit contention during exit conference.

[6] Gurgaon (West), Hisar, Kaithal and Kurukshetra.
[7] Faridabad (East), Gurgaon (West), Kaithal, Panipat, Rohtak and Sirsa.

2.2.12.5 Tax free sale of submersible pumps

As per Entry-1 of schedule B of HVAT Act, agricultural implements and irrigation equipments used for agricultural purposes are exempt from levy of VAT. Accordingly, Submersible Pumps when used for agricultural purpose are exempt from levy of tax.

During test check of records of office of DETCs, Ambala and Kurukshetra, we noticed that contractors who were executing works contract of digging and installation of deep tube wells and had not opted to pay lump sum in lieu of tax, claimed deduction of tax free sale of submersible pumps of ₹ 1.79 crore during 2006-07 to 2009-10. The AAs while finalising assessments in eight cases between August 2009 and February 2012, allowed deduction of tax free sale of submersible pumps to those works contractors who had executed works contracts of digging and installation of deep tube wells of HUDA and Public Health Department. The deduction was inadmissible as submersible pumps were not used for agricultural purpose and was not exempt from levy of tax. We calculated underassessment of VAT of ₹ 0.22 crore.

The Department admitted the lapse and the ETC assured for appropriate action.

2.2.12.6 Tax/WCT from gross receipts

Section 24 (1) read with Rule 33 (2) of HVAT Act provides that any person making payment of any valuable consideration to works contractors for execution of works contract in the State involving transfer of property in goods whether as goods or in some other form, shall deduct tax in advance there from calculated at the rate of four *per cent*. If any works contractor proves through evidence (copy of agreement) to the satisfaction of the AA that the value of material transferred in execution of works contract was inclusive of tax or works contract tax (WCT) then amount of tax involved in material or works contract tax included in gross receipts will be deductible from the gross receipts.

During test check of records of office of four[8] DETCs, we noticed that 39 works contractors had claimed deduction of Tax/WCT from value of material transferred/gross receipts valued at ₹ 18.78 crore. The AAs while finalising assessments in 75 cases between April 2009 and March 2012 for the years 2006-07 to 2010-11 allowed deduction of tax/WCT without obtaining any evidence of inclusion of tax in the contract from the contractors. In the absence of such evidence, the deduction was not admissible to the contractors. Allowing inadmissible deduction of Tax/WCT resulted in passing excess benefit of ₹ 2.04 crore.

During exit conference the Department accepted the observation.

[8] Faridabad (East), Hisar, Kurukshetra and Sirsa.

2.2.13 Underassessment due to misclassification of contracts of Sale as Works Contract

Hon'ble Supreme Court held in the case of State of Andhra Pradesh Vs. Kone Elevators India Limited (2005) 140 STC 22 (SC) that contract for supply, installation, testing and commissioning of LIFT is a contract for sale and not works contract. This was further clarified by FCET on 4 June 2010 that supply and installation of Diesel Generating Sets and Pumping Sets is not a works contract but a sale.

Test check of records of office of four[9] DETCs revealed that 11 works contractors during 2006-07 to 2008-09 undertook works of ₹ 264.39 crore for the supply, erection, testing and commissioning of lifts/ACs/supply and laying of ready mix concrete and hot mix (for road) and paid tax at the rate of four *per cent* treating these as works contract instead of contracts for sale. Accordingly the AAs while finalising assessments in 15 cases between June 2009 and March 2012 assessed the cases at the rate of four *per cent* instead of rate of tax of 12.5 *per cent*. We estimated the underassessment of VAT at ₹ 22.47 crore.

During exit conference the Principal Secretary expressed the opinion that audit contentions should concentrate on areas already decided in judicial cases. We are of the opinion that the Department should revisit areas of taxation and apply the principles of decided cases in similar areas in order to avoid evasion of tax.

2.2.14 Non-levy of penalty for non-filing of returns

Section 37A of HVAT Act provides that if a dealer, without sufficient cause, fails to file return, the AA may, after giving such dealer an opportunity of being heard, direct him to pay by way of penalty a sum calculated at the rate of ₹ one hundred per day for the first ten days and at a rate of ₹ two hundred per day thereafter for the period during which the default continues. No penalty will be levied in case the AA comes to the conclusion that in the given period, there was nil turnover.

During test check of records of offices of DETC, Rohtak and Rewari, we noticed that 42 works contractors had not filed their returns for the period 2009-10 to 2011-12. The Department did not initiate any action for levy of penalty or trace out the contractors who had not filed their returns without sufficient cause. This had resulted in underassessment of VAT amounting to ₹1.36 crore due to non levy of penalty for non filing of returns.

The Department admitted the lapse during exit conference and further action is awaited.

[9] Ambala, Gurgaon (East),Gurgaon (West) and Sonepat.

2.2.15 Other interesting cases

During test check of records of office of six[10] DETCs, we noticed that the AAs while finalising assessment between January 2010 and February 2012, assessed less tax, allowed excess ITC and assessed less GTO of 10 contractors in 13 cases for the years 2006-07 to 2010-11. This had resulted in underassessment of tax as ₹ 2.72 crore (including refund of excess amount of ₹ 0.02 crore for 2007-08 and penalty of ₹ 0.05 crore), as per details below:

(₹ in crore)

Sr. No.	Name of DETC	Tax			Remarks
		leviable	Levied	Short	
1	Faridabad(E)	0.97	0.58	0.39	In 3 cases of 2 works contractors, tax was leviable on material valued at ₹ 10.49 crore transferred in execution of works contract but levied on ₹ 6.90 crore
2	Kurukshetra	0.33	0.25	0.08 0.06 (Intt)	The contractor was allowed deduction of loss of ₹ 0.64 crore from material to be taxed but this was not allowable as loss is to be adjusted towards expenses and material transferred in execution of works contract is to be taxed in full.
3	Ambala	0.22	0.19	0.03	The contractor was allowed deduction of loss of ₹ 0.83 crore from material to be taxed but this was not allowable as loss is to be adjusted towards expenses and material transferred in execution of works contract is to be taxed in full.
4	ETO Dabwali	0.18	0.00	0.18 0.54 (penalty)	In 2 cases, the contractor concealed his turnover and filed wrong returns which were accepted by AAs. Hence tax and penalty u/s 38 is leviable.
5	Kaithal	0.63	0.43	0.20 0.25 (ITC)	The contractor was allowed irregular refund of ₹ 0.45 crore as the contractor had opted to pay lump sum in lieu of tax w.e.f. 1.4.10 but tax was assessed on material transferred in execution of works contract during the year.
Input Tax Credit					
		Allowed	**Allow-able**	**Excess**	
6	Faridabad(E)	0.25	0.11	0.14 0.11 (Intt)	The contractor opted to pay lump sum in lieu of tax w.e.f 1.4.08 and on 31.3.08 material involving ITC of ₹ 0.14 crore was in stock which was not allowable for being used in lump sum contract.
7	Faridabad(E)	0.35	0.02	0.33 0.26 (intt)	The contractor paid lump sum in lieu of tax on works contract hence no ITC was allowable on purchase of material used in such works contract.

[10] Ambala, Faridabad (East), Gurgaon (East), Kaithal, Kurukshetra and Sirsa.

Sr. No.	Name of DETC	Tax					Remarks
		leviable	Levied	Short			
Gross Turn Over							
		Assess-able	Tax	Asses -sed	Tax	Excess tax	
8	Faridabad(E)	7.50	0.30	6.97	0.28	0.02	During 2008-09 the contractor was allowed irregular refund of ₹ 0.04 crore (including ₹ 0.02 crore for 2007-08) and excess of tax of ₹ 0.03 crore was carried forward without explaining reasons for taking lesser GTO.
		6.16	0.25	5.38	0.22	0.03	
9	Gurgaon (W)	11.48	0.46	8.94	0.36	0.10	As per affidavit of contractor, GTO was to be taken as ₹ 10.48 crore but wrongly taken as ₹ 8.94 crore (as per P&L a/c) resulting in irregular excess benefit of carry forward of tax of ₹ 0.10 crore.

The Department admitted the lapse during exit conference.

2.2.16 Benefit of TDS / WCT allowed without verification

Section 24 (5) of HVAT Act stipulates that any tax paid to the State Government deducted in advance by any person shall be adjustable by the payee on the authority of the certificate issued to him (by payer) with the tax payable by him under this Act and the AA on furnishing of such certificate, allow the benefit of such tax after due verification of the payment.

Test check of records of office of seven[11] DETCs revealed that 79 works contractors claimed benefit of TDS/WCT of ₹ 28.65 crore during 2006-07 to 2009-10. The AAs while finalising assessments in 123 cases between April 2009 and March 2012 allowed the benefit of ₹ 14.96 crore without cross verifying the payments received from the Daily Collection Register (DCR) of the same or other districts concerned. Thus, correctness of allowing benefit of TDS/WCT to works contractors could not be vouchsafed.

The Department accepted the observation in exit conference.

2.2.17 Non-obtaining of accounts of declaration forms

Under HVAT Rule 49 (6), a works contractor is required to maintain complete account of declaration forms-C, VAT D-1 and VAT D-3 alongwith complete account of payments receivable and actually received by him.

[11] Ambala, Bhiwani, Faridabad (East), Gurgaon (West), Kurukshetra, Rewari and Rohtak.

Test check of records of offices of DETC, Gurgaon (West) and Rewari, revealed that 61 works contractors did not submit the requisite account of declaration forms and account of payments receivable and actually received by them during 2006-07 to 2008-09. The AAs while finalising assessments in 68 cases between April 2009 and March 2012 had also not obtained the said account. In the absence of these documents the correctness of the assessment framed could not be ascertained.

The Department accepted the audit observation.

2.2.18 Internal audit

No internal audit system existed in the Department. The Department informed that the introduction of internal audit is being considered.

2.2.19 Conclusion

The performance audit revealed a number of systemic deficiencies in the method of assessment and collection of tax from works contractors. The Department has not established any mechanism for cross verification of inter departmental database of works contractors resulting in escapement of revenue from unregistered works contractors. There was no effective system of monitoring the records of contractees. Benefit of payment of tax/WCT was given to contractors without verification of payment from DCRs concerned. The Department had not evolved effective system of internal control for proper assessment, levy and collection of tax and thus failed to detect tax evasion. Instances of irregular grant of various deductions were noticed which resulted in loss of revenue.

2.2.20 Recommendations

The State Government may consider:

- directing the Department to devise a system of cross exchange of information to detect the unregistered works contractors and monitoring the results of cross exchange of information;
- evolving a system for detecting and avoiding misuse of declaration forms by the assesses;
- Issuing appropriate directions to the public sector companies desisting from entering into splitting up of contracts whereby the supply of plant and machinery is treated as transit sale leading to avoidance of tax;
- developing a system whereby the principles involved in judicial rulings of the Supreme Court are applied in cases of similar contracts;
- evolving a system for utilising the information contained in returns of contractee for assessment of works contractors; and
- taking steps to put in place effective internal control mechanism.

2.3 Non-observance of the provisions of the Acts/Rules

The HGST Act, HVAT Act/ CST Act and Rules made there under provide for:-

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

(ii) allowance of Input Tax Credit as admissible; and

(iii) Section 14 (6) of the HVAT Act inter alia lays down that if any dealer fails to make payment of tax, he shall be liable to pay, in addition to the tax payable by him, simple interest at one and half per cent (one per cent with effect from 11 October 2007) per month if the payment is made within ninety days, and at three per cent per month (two per cent with effect from 11 October 2007) if the default continues beyond ninety days for the whole period, from the last date specified for the payment of tax to the date he makes the payment.

We noticed that the AAs, while finalising the assessments, did not observe the provisions of the rules in the cases mentioned in the paragraphs 2.3.1 to 2.3.3. This resulted in non/short levy/non-realisation of tax and interest of ₹ 9.26 crore.

2.3.1 Underassessment of tax due to application of incorrect rate of tax

The rates under Haryana Value Added Tax Act, 2003 (HVAT) have been prescribed as per Schedules A to G. However, under section 7 (1) (a) (iv) of the HVAT Act, any commodity other than the commodities classified in any of the schedules, is taxable at the rate of 12.5 *per cent* w.e.f. 1.7.2005. Further interest is also leviable under section 14(6) of the HVAT Act in case of default in payment of tax.

During test check of the assessment record of the office of DETC, (ST) Faridabad (West), we noticed in July 2011 that a dealer sold Railway Track Machines for ₹ 59 crore during the year 2007-08. These Machines were used for repair and maintenance of railway track for the movement of trains safely and cannot be used for carrying the passenger or goods etc. The AA while finalising the assessment in December 2010, levied value added tax at the rate of four *per cent*, instead of correct rate of 12.5 *per cent* as applicable in respect of unclassified item. This had resulted in under assessment of tax amounting to ₹ 5.01 crore and interest of ₹ 3.81 crore thereon.

After we pointed out the case in July 2011, the AA, Faridabad (West) stated in July 2011 that the main function of this machine was repair and maintenance of Railway Tracks and hence it was covered under Entry No. 62 of Schedule 'C' of VAT Act. The reply of AA was not in consonance with the instructions contained in the HVAT Act, 2003 and the clarification issued on 30 March 2006 by the Financial Commissioner & Principal Secretary, Government of Haryana, Excise and Taxation Department in the case of JCB India Ltd in which it was stated that only such machinery would qualify to be covered under the entry plant and machinery, which is used in a plant for production of

goods or services on an industrial scale, anything other than those would attract tax at 12.5 *per cent*.

During exit conference the Department accepted the audit observation.

2.3.2 Non-levy of value added tax on sale of Guar Gum

The rates under HVAT Act have been prescribed as per Schedules A to G. However, under Section 7 (1) (a) (iv) of the HVAT Act, any commodity other than the commodities classified in any of the schedules, is taxable at the rate of 12.5 *per cent* w.e.f. 1 July 2005.

During test check of the records of office of the ETO (Sales Tax), Mandi Dabwali (Sirsa) in April 2010, we noticed that dealer sold Guar Gum valued at ₹ 2.18 crore during the year 2007-08 and claimed the goods as tax free. The AA while finalising the assessments in January 2010 allowed the deductions treating it as tax free goods under Schedule 'B' of the HVAT, Act. However, Guar Gum, being non-specified in any schedule, was taxable at the rate of 12.5 *per cent*. This had resulted in non-levy of VAT amounting to ₹ 27.23 lakh.

After we pointed out the case in April 2010, ETO Dabwali stated in February 2012 that the case had been sent to the revisional authority for taking suo motu action.

During exit conference the Department accepted the audit observation and directed the concerned officers to look into the matter for necessary action.

2.3.3 Incorrect allowance of input tax credit

Under Section 8 of the HVAT Act, input tax in respect of any goods purchased by a VAT dealer shall be the amount of tax paid to the State on the sale of such goods to him. Further, as mentioned in Schedule E, no ITC on petroleum products and natural gas is admissible when used as fuel. Further, interest was also leviable under Section 14 (6) of the HVAT Act.

During test audit of the office of DETC (ST), Rewari in January 2012, we noticed that a dealer (manufacturer) purchased furnace oil (FO) valued at ₹ 2.53 crore for use as a fuel during the year 2007-08 and claimed ITC. The AA while finalising the assessment in November 2010 allowed ITC of ₹ 10.11 lakh though it was not admissible on purchase of petroleum products when used as fuel. This resulted in incorrect allowing of ITC of ₹ 10.11 lakh, besides interest amounting to ₹ 7.28 lakh.

After we pointed out the case in January 2012, DETC (ST) Rewari stated in June 2012 that the case had been sent to revisional authority for taking suo moto action.

We pointed out the matter to the ETC, Excise and Taxation Department and reported to the Government in June 2012.

During exit conference the Department accepted the audit observation.

2.4 Incorrect determination of classification/turnover

The HVAT Act, CST Act and Rules framed there under provide for:-

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

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

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

(iv) accurate determination of turnover at the time of assessment.

We noticed that the AAs, while finalising the assessments, in the cases mentioned in the paragraphs 2.4.1 to 2.4.4, did not observe the provisions of the Act. This resulted in non/short levy/non-realisation of tax/interest/ penalty of ₹ 1.73 crore.

2.4.1 Evasion of tax due to suppression of sales

Under Section 38 of the HVAT Act, if a dealer has maintained false or incorrect accounts or documents with a view to suppress his sales, purchases, or stock of goods, or has concealed any particulars or has furnished to or produced before any authority any account, return, document or information which is false or incorrect in any material particular, such authority may direct him to pay by way of penalty, in addition to the tax to which he is assessed or liable to be assessed, a sum thrice the amount of tax which would have been avoided had such account, return, document or information as the case may be, been accepted as true and correct. In order to prevent the tax evasion by fraudulent means, VAT provides for introduction of Tax Information Exchange System (TINXSYS) for proper tracing of inter-state sales transactions. Further, with a view to detect evasion of VAT by claiming fraudulent ITC by issuing forged tax invoices or fictitious accounting of goods neither purchased nor sold etc., the ETC issued instructions in March 2006 for cross verification of all purchase/sale transactions totaling more than ₹ one lakh from a single VAT dealer in a year.

During test check of the records of the office of DETC (ST), Faridabad (East), we noticed in December 2009 and June 2010 that two dealers had not included sales of ₹ 6.08 crore made to four dealers in their tax returns. Further, one dealer had also not reflected purchase of ₹ 1.63 crore made against 'C' form. Although, the sales of ₹ 1.50 crore to one dealer had been noticed in September 2007 by the Department yet no action was initiated by the AA against the defaulting dealer for levying the tax and penalty, while finalising the assessment for the year 2005-06 in March 2009. Failure of the AAs to cross verify the transactions of sales and purchases despite ETC directions of March 2006, led to suppression of sales of ₹ 7.88 crore which consequently led to evasion of VAT of ₹ 31.51 lakh. Besides, penalty of ₹ 94.53 lakh was also leviable on suppression of sales and purchases.

After we pointed out the cases in December 2009 and June 2010, the AA Faridabad (East) stated in May 2012 that in one case re-assessment has been framed in August 2010 levying tax of ₹ 16.99 lakh on suppressed sales and imposing penalty u/s 38 for ₹ 50.98 lakh, out of this ₹ 2 lakh has been

recovered so far. In second case, the AA stated in May 2012 that the Registration certificate of the dealer had been cancelled w.e.f. 31 March 2006 and no return was filed by the dealer for the year 2006-07. The reply of the AA was not correct as this dealer had made sales in 2006-07 and was therefore liable to pay tax on that. However, during exit conference the Department accepted the audit observation and directed the concerned officers to look into the matter for necessary action.

2.4.2 Evasion of tax due to misuse of Form 'F'

As per Section 6A of the CST Act, transfer of goods from one State to another place of business in another State is exempt from levy of tax on production of 'F' forms and if any dealer fails to prove to the satisfaction of AA claim of transfer of goods, then the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale. The ETC issued instructions in March 2006 that in the cases of specific traders (selected for scrutiny) all transactions totaling more than ₹ one lakh from a single VAT dealer in a year should be cross verified to detect evasion of VAT. Further, penalty was also leviable under section 38 of HVAT Act.

During test check of the assessment records of the office of DETC (ST), Kaithal and Kurukshetra in August 2009 and March 2011, we noticed that declaration forms 'F' were found suspicious against which three dealers claimed deduction of consignment sale of goods valued as ₹1.19 crore on concessional rate of tax during 2005-06 and 2006-07. The AAs, while finalising the assessment in September 2008, November 2009 and January 2010, allowed the deduction. Failure on the part of AAs to scrutinise the claim and cross verify the transaction, as required in the ETC's instructions dated 14 March 2006 resulted in incorrect allowing of deductions which consequently led to evasion of tax ₹ 9.48 lakh. In addition penalty was also leviable for evasion of tax.

After we pointed out these cases in August 2009 and March 2011 to DETC (ST) for verification of 'F' forms from the concerned State. AA Kurukshetra stated in January 2012 that on verification, these forms were not found issued by the concerned authority and these cases had been sent to the Revisional authority in August 2011 for taking suo-moto action. In another case, the AA Kaithal stated in March 2012 that case had been sent to Revisional authority for taking suo moto action.

During exit conference the Department accepted the audit observation and the Principal Secretary directed to issue instructions to the concerned Assessing Authorities to proceed against the dealers by opening their cases for re-assessment and recovery of legitimate revenue.

2.4.3 Evasion of tax by submitting fake declaration Form 'C'

Section 8 (4) of the CST act provides that the concession under sub section (1) shall not apply to any sale in the course of interstate trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in the

prescribed form obtained from the prescribed authority. The ETC issued instructions in March 2006 that in the cases of specific traders (selected for scrutiny) all transactions totaling more than ₹ one lakh from a single VAT dealer in a year should be cross verified to detect evasion of VAT. Further, penalty was also leviable under Section 38 of the HVAT Act.

During test check of the assessment files of the office of DETC (ST), Gurgaon (West) and Faridabad (East) in May 2010, we noticed that out of total CST/sale of goods valued as ₹ 3.69 crore, two dealers claimed concessional rate of CST on two declaration forms 'C', for sale value of ₹ 58.97 lakh which were found suspicious due to inferior quality of paper and had no water mark during 2006-07. The AA while finalising the assessment for the year 2006-07 between January and March 2010, allowed the claim without cross verifying the transaction, which resulted in incorrect allowing concessional rate of tax which consequently led to evasion of tax amounting to ₹ 4.56 lakh. Additionally, penalty was also leviable for evasion of tax.

After we pointed out the cases in May 2010, the AAs stated in November and December 2011 that the forms were verified from concerned issuing authority and found not genuine. In one case, The AA Faridabad had created demand of ₹ 1.33 lakh (Tax levied ₹ 3.48 lakh out of which ₹ 2.15 lakh had been adjusted from excess ITC). Though, the AA created tax demand against the ingenuine form but no action was initiated to levy penalty under section 38 of HVAT Act. In another case, AA Gurgaon stated that the proceedings for taking action against the dealer had been initiated.

During exit conference the Department accepted the audit observation and directed the concerned officers to take necessary action.

2.4.4 Short levy of tax due to incorrect classification

2.4.4.1 Under Section 7 (1) (a) (iv) of the HVAT Act, tax is leviable at the rates specified in schedules 'A' to 'G' of Act depending upon the classification of goods and the items not classified in above schedule are taxable at general rate of tax i.e. 12.5 *per cent* w.e.f.1 July 2005. The State Government did not specify these commodities under any Schedule of the HVAT Act with effect from 1 April 2003. It has judicially been held in August 1998 that mosquito coil/mat cannot be treated as insecticide and is commonly known as repellent and taxable as such. Mosquito mats/coils and other mosquito repellents, being non-specified item in any schedule, are leviable to tax at the general rate of 10 *per cent* upto 30 June 2005 and 12.5 *per cent* thereafter.

During test check of the assessment records of the offices of DETC (ST), Panipat we noticed in October 2008 that a dealer made sales of mosquito mats/coils valued as ₹ 40.15 lakh during the year 2004-05. The Assessing Authority while finalising the assessments in January 2008, levied tax at the rate of four *per cent* treating the goods as insecticides instead of the correct rate of 10 *per cent*. Incorrect classification resulted in short levy of tax of ₹ 2.41 lakh.

After we pointed out the case in October 2008, the AA stated in March 2012 that the additional demand of ₹ 2.41 lakh had been created in January 2009. Further report on recovery had not been received (October 2012).

We pointed out the matter to the ETC, Excise and Taxation Department and reported to the Government in May and June 2012.

2.4.4.2 The Financial Commissioner and Principal Secretary to Government of Haryana has clarified on 11 September, 2007 that Ultra High Temperature (UHT) sweetened flavoured milk is different from Ultra High Temperatured milk which is covered under entry 81 of Schedule 'C' of HVAT Act. Hence, UHT sweetened flavoured milk products are taxable at general rate of tax i.e. 12.5 *per cent*. Further interest was also leviable under section 14 (6) of the HVAT Act.

During test check of the assessment records of the offices of DETC (ST), Sonepat in January 2012, we noticed that a dealer sold milk products[12] worth ₹ 2.01 crore during the year 2007-08 and levied VAT at the rate of four *per cent*. The AA, while finalising the assessment in March 2011, also levied VAT at the rate of four *per cent* treating them as schedule 'C' item instead of correct rate of 12.5 *per cent*. This had resulted in underassessment of tax of ₹ 17.09 lakh, besides Interest of ₹ 14.02 lakh.

After we pointed out the case in January 2012, the AA stated in June 2012 that the case had been sent to Revisional Authority for taking suo-motu action.

We pointed out the matter to the ETC, Excise and Taxation Department and reported to the Government in June 2012.

During exit conference the Department accepted the audit observation.

[12] Amul Calci+Milk, Chocolate Milk, Flavoured Milk, Cool Coffee, Natramul Milk.