

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

### 2.1 Tax administration

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

### 2.2 Results of audit

In 2012-13, test check of the records of 12 units relating to VAT/Sales tax assessments and other records showed underassessment of tax and other irregularities involving ₹109.71 crore in 215 cases, which fall under the following categories as given in **Table -2.1**:

**Table -2.1**

Sr. No.	Categories	₹ in crore)	
		Number of cases	Amount
1.	Under-assessment of tax	106	25.33
2.	Acceptance of defective statutory forms	14	55.36
3.	Evasion of tax due to suppression of sales / purchase	06	0.18
4.	Irregular / incorrect / excess allowance of ITC	53	11.81
5.	Other irregularities	36	17.03
<b>Total</b>		<b>215</b>	<b>109.71</b>

During the course of the year, the Department accepted underassessment and other deficiencies of ₹29.20 crore in 91 cases which were pointed out in audit during the earlier years. An amount of ₹13.95 crore was realised in 48 cases during the year 2012-13.

A few illustrative cases involving ₹33.83 crore are discussed in the following paragraphs.

## 2.3 Allowance of Input Tax Credit (ITC)

### Introduction

Input tax is the tax which a dealer pays on his local purchases of business inputs such as the goods that he purchases for resale, raw materials, capital goods as well as other inputs for use directly or indirectly in his business.

As per section 11 (3) of the Himachal Pradesh Value Added Tax Act, 2005 as amended inter-alia provides that the input tax credit which a purchasing registered dealer may claim, in respect of taxable sales made by him during the tax period, shall be:

- i. the amount of input tax paid or payable by such purchasing dealer to the selling registered dealer, on the turnover of purchases of such goods as have been sold by him during the tax period and
- ii. calculated and allowed as provided in this section and subject to such other conditions as may be prescribed.

An audit on 'Allowance of Input Tax Credit' covering assessment made during the period from 2008-09 to 2011-12 was conducted between June 2012 and March 2013 through test check of records of eight<sup>1</sup> Assistant Excise and Taxation Commissioners (AETCs) out of 14 and Excise and Taxation Officers (ETOs) under them between June 2012 and March 2013. The records were examined to ascertain whether the system for allowance of ITC is satisfactory and the provisions of the Act and Rules are followed by the various assessing authorities of the Department. The following are the audit findings:

### 2.3.2 Excess allowance of ITC

Under Section 11 (3) of the HPVAT Act 2005, ITC shall be allowed to the extent of the amount of input tax paid by the purchasing dealer on the purchase of taxable goods made by him in the State, from a registered dealer. As per notification of May 2007, the amount of input tax credit shall be admissible to a dealer on the purchase value of the goods sold by him during the tax period. Section 19 of the Act *ibid* further provides that if a dealer fails to pay the tax due by the prescribed date, he becomes liable to pay interest at the rate of one *per cent* on the tax due for a period of one month and at the rate of one and a half *per cent* per month thereafter, till the default continues.

Audit scrutiny between June 2012 and March 2013 in respect of eight AETCs<sup>2</sup>, further showed that Assessing Authorities (AAs) while assessing the annual returns of 119 dealers for the tax periods 2007-08 and 2010-11, allowed ITC by adopting different methods. However, on the basis of proportion of local purchases to the total purchases, closing balances of these dealers were aggregated to ₹75.50 crore during the tax periods out of purchases made from

<sup>1</sup> BBN-Baddi, Bilaspur, Chamba, Kangra at Dharamsala, Shimla, Sirmour at Nahan, Solan and Una

<sup>2</sup> AETCs BBN-Baddi, Bilaspur, Chamba, Kangra at Dharmshala, Shimla, Sirmaur at Nahan, Solan and Una

the registered dealers within the State during those years on which no ITC was allowable. The AAs while allowing ITC of ₹1.41 crore on closing stock had also deferred the tax liability of the assesseees to that extent which was otherwise recoverable for the tax periods on the date of assessment. This resulted in excess allowance of ITC amounting to ₹2.13 crore including interest of ₹72.30 lakh on it.

### **2.3.3 Non-reduction of ITC on discounts/rebates/incentive received**

Rule 17 of the HP VAT Rules, provides for deduction, for a registered dealer, from gross turnover of the amount allowed as cash discounts provided such discount is in accordance with regular trade practice. The deduction under this clause shall be claimed only if the person is in possession of all copies of tax invoice or retail invoice. The discounts/rebates/incentives received by a dealer lower the purchase price. Therefore, this is required to be exhibited in the trading account and such incentives received on local purchases will cause decrease in tax paid on this account.

Audit scrutiny of assessment records between June 2012 and March 2013 of eight AETCs showed that 27 dealers had received rebates/ incentives/discounts to the tune of ₹2.41 crore on local purchases, for the tax periods 2005-06 to 2010-11 and was exhibited in their profit and loss accounts. The concerned AAs did not notice it during assessment and allowed proportionate ITC on ₹2.41 crore to the dealers. This resulted in excess allowance of ITC of ₹30.12 lakh. Besides, interest of ₹17.46 lakh was also leviable.

### **2.3.4 Allowance of ITC without List of purchases (LP-I)**

Section 11(2) of HP VAT Act 2005, provides that the purchasing dealer availing of the input tax credit shall maintain the tax invoices, the registers and the books of accounts in the manner as may be prescribed. Further, Rule 41 of the HP VAT Rules provides that every registered dealer shall append to his return the lists of sales and purchases in Form LS-I and LP-I as specified in return in Form VAT-XV.

Audit scrutiny between June 2012 and March 2013 of all test checked eight units showed that Form VAT-XV had been submitted by the dealers for the tax years 2006-07 to 2010-11 but the purchases (LP-I) had not been appended with the returns. Of these, in four AETCs<sup>3</sup>, audit further noticed that in 53 cases, the AAs had accepted the incomplete returns i.e. without LP-I and allowed ITC amounting to ₹4.01 crore during assessments. As the returns were filed by the dealers without lists, the credit of input tax was liable to be disallowed which was not done by the AAs. Thus, it was very difficult to verify in audit the authenticity of the claims of ITC or tax deposited / assessed in the absence of lists of description / nomenclature of goods purchased / sold. This resulted in irregular allowance of ITC to that extent causing loss to State exchequer.

<sup>3</sup> AETCs: Kangra at Dharamshala, Shimla, Solan and Una

### 2.3.5 Irregular allowance of ITC on liquor

VAT is a multi-stage taxation where goods manufactured by an entity pass to the consumers through various stages and are taxed at every stage after providing set-off of tax paid at earlier stages. The goods *viz. petroleum products, diesel and liquor* have been kept out of the purview of the VAT. Section 6 (1) (c) of HP VAT Act also provides for levy of tax on these goods at first point of sale as specified in the second column of schedule 'D'.

Test check (between September 2012 and March 2013) of assessment records of three AETCs<sup>4</sup>, showed that in four cases, for the tax periods 2005-06 to 2009-10, AAs had allowed ITC of ₹44.85 lakh to the units who were manufacturing liquor. The fact that liquor was taxable at first stage and was kept out of the purview of ITC, escaped their notice. Thus, irregular allowance of ITC on manufacturing of liquor resulted in under assessment of revenue of ₹92.58 lakh, inclusive of interest of ₹47.73 lakh.

### 2.3.6 Allowance of ITC without tax invoices

Section 11(7)(k) of the HP VAT Act read with Rule 20 and 25 of the HP VAT Rules provides that ITC shall be disallowed where tax invoice is not available with the registered dealer. In case, the original tax invoice has been lost, destroyed or mutilated, a registered dealer shall make an application to the appropriate AA along with the duplicate copy of tax invoice issued to him by the selling registered dealer and furnish an Indemnity Bond in Form-VII for the amount equal to the amount of ITC claimed under such invoice. AA shall cross check the transaction and after being satisfied about the genuineness of the transaction, allow the claim by an order passed in this regard.

Test check of the records of the AETC, BBN-Baddi between September and October 2012, showed that in one case the AA allowed (July 2011) ITC of ₹1.69 crore for the tax periods 2006-07 to 2007-08 without the original tax invoices. The original tax invoices were reportedly burnt in fire (June 2009) as stated in affidavit submitted by the dealer. The AA did not follow the proper procedure as laid down in the Rules *ibid* and also failed to give circumstantial evidences. AA had made contradictory observation of verifying the original invoices during assessment which were burnt two years ago and allowed ITC without obtaining Indemnity Bond in Form-VII. Thus, the assessment not only became doubtful but also resulted in irregular allowance of ITC of ₹3.19 crore including interest of ₹1.50 crore.

### 2.3.7 Allowance of ITC on manufacturing / sale of tax free goods

Section 11(7) of the HP VAT Act, provides that no ITC shall be claimed by a purchasing dealer and this shall not be allowed to him for tax collected on the purchase of goods used in the manufacture or processing or packing of goods, declared tax free.

<sup>4</sup> AETCs BBN-Baddi, Kangra at Dharmshala and Sirmaur at Nahan

Test check of records of four AETCs<sup>5</sup> between July 2012 and March 2013, showed that AAs had assessed the cases of five dealers at the GTO of ₹27.08 crore including tax free turnover of ₹4.67 crore and allowed ITC of ₹52.08 lakh on the full purchases for the tax period between 2005-06 and 2010-11. Audit however, noticed that allowance of ₹52.08 lakh as against ₹45.94 lakh allowable after deducting credits on goods utilized for manufacturing of tax free goods, resulted in excess ITC of ₹6.14 lakh besides interest of ₹5.28 lakh.

### 2.3.8 Non-maintenance of the database regarding input tax credit

A reliable database of ITC with the department is not only a necessity but also of vital importance for good decision making and effective control over its regularization from year to year during assessments and other scrutiny etc.

There was no database regarding input tax credit maintained either at the ETC level or at district levels. In the absence of the database, it was impossible to check ITC availed / allowed to the dealers since inception of the VAT. In order to create an efficient and transparent tax administration system, the department should develop a software tool to check fraudulent/false claims ITC.

The above points were reported to the Department and the Government between July 2012 and May 2013; reply has not been received (November 2013).

### Conclusion

Input Tax Credit allowance is an important element in the administration of the Himachal Pradesh Value Added Tax Act, 2005 of the State. In the absence of a clear and unambiguous formula for calculation of ITC, credits were being allowed by adoption of different methods by the AAs, resulting in excess allowance of ITC and loss of revenue. Non-adherence to various provisions of the Act while allowing ITC also led to leakages of revenue which remained undetected.

<sup>5</sup> AETCs Kangra at Dharmshala, Sirmour at Nahan, Solan and Una

## 2.4 Incorrect deduction of cost of material

As per Sub-section 2 (v) of the Himachal Pradesh Value Added Tax (HPVAT) Act 2005, sale includes transfer of property in goods involved in execution of works contracts. As per ETC's instructions of December 2008 if the material is partly or wholly supplied by the contractee and value thereof is set off against the payment of contractors, the value of the material so supplied shall not be deducted from the Gross Turnover (GTO) for the purpose of assessment of tax which has also been judicially upheld in two cases<sup>6</sup> by the Hon'ble Supreme Court. Further, if a dealer fails to pay the tax due by the prescribed date, he becomes liable to pay interest at the rate of one *per cent* on the tax due for a period of one month and at the rate of one and a half *per cent* per month thereafter, till the default continues.

Audit noticed between July 2012 and February 2013 from the assessment records three Assistant Excise and Taxation Commissioners (AETCs)<sup>7</sup> that the Assessing Authorities (AAs) finalised the assessments of 15 contractors for the years 2005-06 to 2010-11 between July 2009 and September 2012. The AAs allowed deduction of ₹28.53 crore from the GTO on account of material supplied by the Departments to them for the execution of the Departmental works. The deduction so allowed was irregular as supply of the material by the Departments to the contractors tantamounted sale. This resulted in underassessment of the tax of ₹1.41 crore on which interest of ₹83.54 lakh was also leviable.

On this being pointed out (between October 2012 and March 2013) in audit, the ETC stated (November 2013) that five cases had been reassessed and additional demand of ₹64.65 lakh was created out of which ₹13,100 had been recovered, the remaining cases were under process. The AETCs had also been directed to recover the balance amount immediately. The reply of the Government has not been received (November 2013).

## 2.5 Application of incorrect rate of tax

**2.5.1** As per the provisions of HPVAT Act, 2005 and rules framed there under, tax is leviable on sales made by a dealer as per Schedule-A under Section 6. Schedule A further provides that tax shall be levied at the prescribed rates at every point of sale in respect of goods specified therein. Section 19 of the Act *ibid* further provides that if a dealer fails to pay the tax due by the prescribed date, he becomes liable to pay interest at the rate of one *per cent* on the tax due for a period of one month and at the rate of one and a half *per cent* per month thereafter, till the default continues.

Audit noticed in two AETCs<sup>8</sup> between September 2012 and March 2013 that 10 dealers had made intra state sales valued at ₹16.69 crore which was taxable at the rate of 12.50 *per cent*. The AAs finalised the assessments of the dealers for

<sup>6</sup> In case of N. M. Goel and Co. versus Sale Tax Officer Rajnandgaon and another (1988) 72 STC SC 368 and Rashtriya Ispat Nigam Ltd. versus State of Andhra Pradesh (1998) 109 STC SC 425

<sup>7</sup> Kangra: Two contractors, Shimla: 12 contractors and Solan: one contractor

<sup>8</sup> AETCs BBN-Baddi: seven dealers: ₹1.96 crore and Nahan: three dealers: ₹52.11 lakh

the years 2005-06 and 2010-11 between August 2010 and February 2012. Audit scrutiny showed that the AAs assessed the sales of ₹16.69 crore at the rate of four or five *per cent* instead of correct rate of 12.50 *per cent*. These omissions resulted in short finalisation of tax of ₹2.48 crore including interest of ₹1.08 crore.

Audit reported the matter to the Department and the Government between November 2012 and April 2013; the department stated (September 2013) that in case of two dealers an additional demand of ₹20.17 lakh had been created out of which ₹7.65 lakh was recovered and remaining cases were under process or in appeal. The reply of the Government has not been received (November 2013).

**2.5.2** As per the transitional provisions of HPVAT Act, 2005 and rules framed thereunder, a manufacturer who was availing partial exemption under the HPGST Act may continue to avail partial exemption for the unexpired period under the Act *ibid*. After expiry of incentive period, tax as provided under Section 6 of the Act is leviable. Besides, interest under Section 19 of the Act is also leviable at the prescribed rates on tax due till the default continues.

Audit noticed in two AETCs<sup>9</sup> between July 2012 and September 2012 that four dealers made intra state sales amounting to ₹9.66 crore taxable at the rate of 3.125 and four *per cent*. Audit scrutiny showed that the AAs finalised the assessments of the above dealers for the years 2005-06 to 2008-09 between April 2011 and October 2012. The AAs had wrongly assessed the sales at the rate of one *per cent* instead of 3.125 or four *per cent* applicable in assessments of dealers though concessional rate was applied even after the expiry of eligibility. These omissions resulted in short realization of tax of ₹43.29 lakh including interest ₹22.37 lakh.

**2.5.3** Similarly, in another case of AETC BBN- Baddi, the AA had charged concessional rate of one percent on the taxable turnover (TTO) of ₹44.63 crore against the determinable amount of ₹44.28 crore on 'C' forms. Thus, turnover of ₹34.79 lakh had escaped to be taxed at general rate of tax instead of one per cent. Charging of incorrect rates of tax resulted in short levy of tax of ₹8.34 lakh inclusive of interest of ₹3.99 lakh.

Audit reported the matter to the Department and the Government between August 2012 and October 2012, the Department stated (September 2013) that in two cases, an additional demand of ₹2.85 lakh was created out of which ₹0.23 lakh had been recovered and remaining cases were under process. The reply of the Government has not been received (November 2013).

## 2.6 Non / short levy of interest and penalty

**2.6.1** Under section 19 of the HPVAT Act 2005, if a dealer fails to pay the tax due by the prescribed date, he becomes liable to pay interest at the rate of one *per cent* on the tax due for a period of one month and at the rate of one and a half *per cent* per month thereafter, till the default continues. Besides, interest under the CST Act, is also leviable at the prescribed rates on the unpaid amount of tax.

<sup>9</sup> AETCs Bilaspur: one dealer: ₹1.99 lakh and Solan: three dealers: ₹41.54 lakh

Audit noticed between December 2012 and March 2013 from assessment records of AETCs Kangra and Nahan that the AAs, while finalising the assessments of seven dealers for the years 2005-06 to 2010-11, between April 2011 and March 2012, created additional tax demands of ₹10.01 lakh. Audit observed that in these cases, the AAs did not levy interest of ₹4.18 lakh on the additional demand created up to the date of assessment. Further, the AETC Nahan, assessed the tax amounting to ₹10.44 lakh and levied interest of ₹9.71 lakh instead of ₹11.06 lakh chargeable up to March 2012. This resulted in short levy of interest of ₹1.35 lakh. The omissions resulted in short realization of interest amounting to ₹5.54 lakh.

On this being pointed out (between March and April 2013) in audit, the ETC stated (November 2013) that cases had been reassessed and additional demand of ₹13,067 was created and recovered. The concerned AETCs had also been directed to dispose off the remaining cases and recover the amount. The reply of the Government has not been received (November 2013).

**2.6.2** Under Section 16 (8) of the HPVAT Act 2005, if a dealer has maintained false or incorrect accounts with a view to suppressing his sales, purchases or stocks of goods, the Commissioner or any person appointed to assist him under Sub-Section (1) of Section 3 may, after affording such dealer a reasonable opportunity of being heard, direct him to pay, in addition to the tax, by way of a penalty equal to twice the amount of tax to which he is assessed or is liable to be assessed.

Audit scrutiny of the assessment records of AETC Kangra, between December 2012 and February 2013, showed that a dealer had suppressed the purchases of ₹51.66 lakh and the AA while re-assessing (October 2011) the case for 2010-11, raised an additional demand of tax of ₹2.84 lakh and levied penalty of ₹42,621 instead of ₹5.68 lakh as provided in the Act. This resulted in short levy of penalty of ₹5.26 lakh and foregone revenue to that extent.

Audit reported the matter to the Department and the Government in March 2013. Their replies have not been received (November 2013).

## **2.7 Wrong allowance of concessional rate of tax**

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

Audit test checked the assessment records of two AETCs<sup>10</sup> and noticed that while finalising between July 2010 and December 2012 assessments of 10 different manufacturing units for the years 2005-06 to 2009-10, the AAs had applied the concessional rate of tax of one *per cent* on inter state sale of ₹279.40

<sup>10</sup> AETCs: Kangra at Dharamsala and Una



crore to these units. The units, however, had employed bonafide Himachalis between 70 and 78.6 *per cent* against the mandatory 80 *per cent*, in their industrial units located in industrially backward areas. Thus, allowance of concessional rate of one *per cent* to the units instead of applicable rates of 2 to 4 *per cent* without satisfying the condition *ibid* was irregular. This resulted in under assessment of tax of ₹11.50 crore including interest of ₹5.53 crore.

On this being reported to the Department and the Government between August 2012 and March 2013 in audit the Department stated (September 2013) that all cases were under process. Further reply of the Government has not been received (November 2013).

## 2.8 Non-levy of tax on entry of goods

Section 3 of the Himachal Pradesh Tax on Entry of Goods into Local Area Act, 2010, provides for levy and collection of tax at the rate of five *per cent* of the cost of cement as well as other goods to be used in the course of business of a dealer, for work contracts of hydro-power projects e.g. generation, transmission and distribution executed by private entities etc., which enter the local areas of Himachal Pradesh from places outside the State, as specified in Schedule-II of the Act.

Audit noticed (March 2013) from the assessment records of Excise and Taxation Officer (ETO), Kinnaur at Reckong-Peo that AA had finalised the assessments of a dealer for the years 2010-11 and 2011-12 between June and October 2012. Audit scrutiny showed that the assessee had brought heavy machineries valuing ₹25.73 crore in Himachal Pradesh on 'F'-forms from Madhya Pradesh for execution of 1000MW Karcham Wangtoo Hydro Electric Project for generation of electricity. The department, however, had not levied entry tax of ₹1.29 crore at the rate of 5 *per cent* leviable on the value of these goods. This resulted in non-realisation of tax to that extent besides interest which was also leviable on tax due.

After being pointed out in audit, the ETO (March 2013) stated that action would be taken as per provisions of Act / Rules after re-examination of the case. Further reply has not been received (November 2013).

The case was brought to the notice of the Department / Government in April 2013; their replies have not been received (November 2013).

## 2.9 Evasion of tax due to acceptance of invalid, duplicate and defective 'C'-forms

The 'C' Form is issued by a purchasing dealer in two copies. The copy marked 'original' is enclosed by the selling dealer with his return and the copy marked 'duplicate' is retained by purchasing dealer in his records. It has also been judicially held<sup>11</sup> that production of original copy of Form 'C' for claiming

<sup>11</sup> Commissioner Sale Tax v/s M/s Prabhu Dayal Prem Narayan (1988) 71 STC (SC) and Delhi Automobiles Private Limited versus Commissioner of Sales Tax (1997) 104 STC 75 (SC)

concessional rate of tax is mandatory to prevent the form being misused for the commission of fraud and collusion with a view to evade payment of tax.

Test check of the records of four AETCs<sup>12</sup> (between July 2012 and March 2013) showed that while finalising the assessments of 15 dealers between August 2010 and July 2012 for the assessment years 2006-07 to 2009-10, the AAs irregularly allowed concessional rate of tax on interstate sales valued at ₹10.19 crore without verifying the declaration forms produced in support of the transactions which were either duplicate / incomplete or defective copies of 'C'-forms as detailed in **Appendix-II**. These forms were liable to be rejected at the time of assessment by the concerned AAs as per rules. This resulted in short levy of tax of ₹78.56 lakh, including interest of ₹31.55 lakh.

On this being pointed out (between August 2012 and March 2013) in audit the Department stated (September 2013) that in six cases re-assessment had been completed and additional demands aggregating to ₹3.19 lakh were created / recovered (May and August 2013) whereas nine cases were under process. As in six re-assessed cases either assessment orders or necessary documents were not furnished to audit, no conclusion could be arrived at. Further reply of the Government has not been received (November 2013).

## 2.10 Non-levy / demand of tax

As per Section 21 of the HPVAT Act, 2005, read with Rules 69 and 70 of HPVAT Rules, 2005, provide that after assessment of tax and imposition of penalty etc. tax demand notice for the amount payable, shall be served upon the dealer specifying the date, not less than fifteen days and not more than thirty days from the date of service of notice and the dealer has to furnish receipted challan in proof of such payment, before the AA within the time specified therein. If dealer fails to pay the tax due by the prescribed date, interest under Section 19 of the Act *ibid*, is also leviable at the prescribed rates on tax due, till the default continues.

Audit noticed between September and October 2012 from the assessment records that the AETC, BBN-Baddi had finalised (July 2011) the assessment of a dealer for the year 2009-10 and sale of non-woven fabric (Polypropylene) amounting to ₹24.67 crore treated as exempted, whereas tax of ₹1.46 crore was chargeable at minimum rate of tax 4 *per cent*. This resulted in underassessment of tax of ₹1.46 crore including interest of ₹46.88 lakh.

Audit reported the matter to the Department and the Government between November 2012 and March 2013. The replies have not been received (November 2013).

## 2.11 Incorrect determination of turnover

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

<sup>12</sup> AETCs BBN-Baddi (11 dealers: ₹46.61 lakh), Nahan at Sirmour (one dealers: ₹3.93 lakh), Solan (two dealers: ₹26.77 lakh) and Una (one dealers: ₹1.25 lakh)

insurance and for anything done by the dealer in respect of the goods at the time of or before delivery thereof. Schedule-A to Section 6, further provides that tax shall be levied at the prescribed rates at every point of sale in respect of goods specified therein. Further, Section 19 provides that if a dealer fails to pay the tax due by the prescribed date, he becomes liable to pay interest at the rates fixed therein, till the default continues.

Audit noticed between June 2012 and February 2013 from the assessment record of three AETCs<sup>13</sup> that the AAs had finalised the assessments of five dealers between February and December 2011 for the year 2006-07 to 2009-10 and assessed gross turnover (GTO) at ₹71.10 crore as against ₹89.27 crore. Audit scrutiny further showed that the AAs did not take cognizance either of gross receipts / turnover determined lesser by assesses or assessed on lower side compared to the certified receipts. Thus, short assessment of GTO of ₹18.18 crore resulted in short levy of tax by ₹1.44 crore including interest of ₹58.94 lakh.

On this being pointed out (between July and March 2013) in audit, the ETC stated (November 2013) that additional demand of ₹15.29 lakh was created after reassessment in one case. The remaining cases were under process and the AETCs had also been directed to recover the amount immediately. The reply of the Government has not been received (November 2013).

## 2.12 Incorrect exemption of tax due to misuse of declaration Forms 'F'

Section 6-A of the CST Act, read with Rule 12(5) of the CST (R&T) Rules, provides that exemption of tax to a registered dealer is granted in case of branch transfer / consignment sale, provided these are supported by a Declaration 'F'-form. Every dealer, who in the course of interstate trade or commerce, sells to a registered dealer, goods of the classes, specified in the certificate of registration of the purchasing dealer, shall be liable to pay tax at the rate of 10 *per cent* or at the rate applicable in the State under the GST Act, whichever is higher up to March 2007 and at the rate applicable in the State with effect from 1<sup>st</sup> April 2007 as provided under Section 8 of the CST Act read with Rule 12 of the CST (R&T) Rules. Besides, interest at the prescribed rates is also leviable on the unpaid amount of tax till the default continues.

Scrutiny of records of four AETCs<sup>14</sup> between July 2012 and March 2013 showed that while finalising the assessments in respect of eight dealers between May 2011 and March 2012 for the assessment years 2005-06 to 2009-10, the AAs allowed incorrect exemption on transfers of stock amounting to ₹10.27 crore against 'F'-forms, which were either duplicate, incomplete, covering transactions of more than one calendar month / year or addressed to other branches which were not specified in the registration certificate. The forms were liable to be rejected at the time of assessment but the concerned AAs did not scrutinise them properly and allowed the exemption. This resulted in non-

<sup>13</sup> AETCs BBN-Baddi (one dealers: ₹98.10 lakh), Chamba (two dealers: ₹0.12 crore), and Solan (two dealers: ₹0.35 crore).

<sup>14</sup> BBN-Baddi, Kangra, Solan and Una

levy of tax of ₹1.16 crore including interest of ₹0.52 crore as detailed in **Appendix-III**.

Audit reported the matter to the Department and the Government between November 2012 and March 2013. The replies have not been received (November 2013).