

CHAPTER II: TAXES/VAT ON SALES, TRADE

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 thereunder. 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. 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 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 2012-13 noticed irregularities in assessments, levy and collection of tax involving ₹ 1,640.32 crore in 1,197 cases, which broadly fall under the categories mentioned in **Table 2.1**.

Table 2.1

(₹ in crore)

Sr. No.	Category	Number of cases	Amount
1.	Performance Audit on “ <i>Delay in disposal of remand and revision cases</i> ”	01	0.45
2.	Underassessment of tax due to application of incorrect rates of tax	01	91.81
3.	Evasion of tax due to suppression of sales/purchases	01	456.53
4.	Non-levy of penalty	102	486.83
5.	Under-assessment of turnover under Central Sales Tax Act	91	256.75
6.	Application of incorrect rates of tax	197	68.60
7.	Non-levy of interest	55	12.58
8.	Incorrect computation of turnover under VAT	55	12.10
9.	Other irregularities	694	254.67
	Total	1,197	1,640.32

During the course of the year 2012-13, the Department accepted underassessment and other deficiencies amounting to ₹ 8.82 crore in 105 cases, out of which ₹ 1.23 lakh involved in three cases were pointed out during the year and rest in the earlier years. The Department recovered ₹ 67.43 lakh in 46 cases during the year 2012-13, out of which ₹ 53,324 involved in two cases were pointed out during the year and rest in the earlier years.

One Performance Audit on “**Delay in disposal of remand and revision cases**” involving tax effect of ₹ 45.26 lakh and a few illustrative audit observations involving ₹ 554.19 crore are mentioned in the succeeding paragraphs.

2.2 Delay in disposal of remand and revision cases

2.2.1 Highlights

- Number of appeal cases increased from 2,993 to 3,399 whereas remand cases increased from 717 to 1,507.

(Paragraphs 2.2.8 and 2.2.8.3)

- Non finalisation of remand cases resulted in blockade of revenue of ₹ 3.20 crore in 33 cases and finalisation of 34 cases involving ₹ 3.91 crore were delayed by 20 to 42 months under HGST Act.

(Paragraphs 2.2.8.4 and 2.2.8.5)

- Non finalisation of remand cases, under HVAT Act, within time frame resulted in blockade of revenue of ₹ 20.10 crore in 198 cases and delayed finalisation of time barred in 83 cases involving amount of ₹ 6.33 crore.

{(Paragraphs 2.2.8.6 (i) and (ii))}

- Seventy six remand cases still lying pending resulted in blockade of revenue of ₹ 19.86 crore and 78 remand cases involving tax of ₹ 3.54 crore were finalised after delay ranging between one to 53 months.

{(Paragraphs 2.2.8.7(i) and (ii))}

2.2.2 Introduction

The HVAT Act and Central Sales Tax Act, 1956 (CST Act) and Rules framed thereunder govern the levy, assessment and collection of VAT. Under section 33 of HVAT ACT, an assessee considering himself aggrieved by an original order passed under the act or rules can file an appeal to the Departmental Appellate Authorities within 60 days from the date of receipt of the copy of the assessment order. The Act provides that no appeal shall be entertained unless Appellate Authority is satisfied that the amount of tax assessed and penalty and interest, if any, recoverable has been paid. The Appellate Authority, if satisfied that the assessee is unable to pay the whole amount of tax assessed or the penalty imposed or the interest due may, for reasons to be recorded in writing, entertain the appeal and stay the recovery of balance amount subject to the furnishing of a bank guarantee or adequate security to his satisfaction. The Appellate Authority may either reject or accept the appeal and allow the relief sought or may remand the case back to the Assessing Authority (AA) for re-assessment. Section 18 (1) of HVAT Act provides a limitation period of two years to dispose of remand cases.

Section 34 of the HVAT Act and Rules, framed thereunder provides that the Commissioner may, on his own motion, call for the records of any case pending before or disposed of by any officer appointed under the Act to assist him or any AA, for the purposes of satisfying himself as to the legality or to propriety of any proceeding or of any order made therein and may pass such

order in relation thereto as he may think fit provided that no order shall be so revised after the expiry of the period of three years from the date of the order.

No time limit was prescribed for re-assessment cases under the Haryana General Sales Tax Act 1973 (HGST Act). However, the ETC, in his instruction of July 1997 and subsequently in July 2005 directed all AAs to decide remand cases within six months from the date of receipt of copy of remand order.

2.2.3 Organisational set up

The monitoring and Control at Government level is done by the Principal Secretary to Government of Haryana, Excise and Taxation Department. The overall control of the VAT vests with the ETC who is assisted by nine Additional Excise and Taxation Commissioners (Addl. ETCs), 10 Joint Excise and Taxation Commissioners (JETCs), 23 Deputy Excise and Taxation Commissioners {DETCs (ST)} and ETOs and other allied staff in the administration and implementation of the Act.

There are three JETCs (Appeals) at Ambala, Rohtak and Faridabad who are functioning as Appellate Authorities. Four JETCs (Range) at Ambala, Hisar, Gurgaon and Faridabad and {DETC (ST) (Inspection)} are revisional authorities. Besides, the ETC, as the Revisional Authority, may also remand the cases to the AAs for re-assessment.

2.2.4 Audit Objectives

The objectives of the performance audit are to ascertain whether:-

- the efficacy of the system in vogue in respect of disposal of remand/re-assessment cases is satisfactory;
- compliance to the procedures/codal provisions and executive instructions relating to disposal remand and revision cases was made to ensure timely disposal of remand cases; and
- internal control mechanism existed to ensure disposal of remand cases in time.

2.2.5 Audit Criteria

The audit criteria was derived from the following sources:

- HGST Act 1973, HVAT Act 2003, CST Act, 1956 and Rules framed thereunder. Haryana Government notifications for finalisation of appeal cases.
- Guidelines and notifications of Haryana Government relating to assessment/reassessment of remand cases.
- Guidelines and notifications of Haryana Government relating to finalisation of cases by revisional authorities.
- Any mention of the subject in the Department's activity/appraisal reports.

2.2.6 Scope and methodology of audit

The records relating to remand and revision cases of two¹, out of three Appellate Authorities and ten DETCs (ST) offices² out of 23 DETCs (ST) offices for the year 2009-10 to 2011-12 were test checked between December 2012 and July 2013. We selected ten DETCs (ST) on random sample selection basis by applying probability proportional to size method (without replacement).

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 (February 2013) with the Principal secretary to Government of Haryana, Excise and Taxation Department wherein the audit objectives, methodology and criteria adopted for selection of districts were explained. The draft Performance Audit Report was sent for comments to the Department and Government in September 2013. An exit conference was held on 17 October 2013 with the Principal Secretary to Government of Haryana (Excise and Taxation Department), ETC, AETCs and other officers. An exit conference was again held (January 2014) with the Department/ Government. The views of the Department/Government have been appropriately incorporated in the Performance Audit.

2.2.8 Trend of appeals filed and their disposal

The position of appeal cases for the years 2009-10 to 2011-12 as furnished by JETC (Appeal) Ambala, Faridabad and Rohtak is given in **Table 2.2**.

Table 2.2

Sr. No.	Particulars	2009-10	2010-11	2011-12
1	Number of appeal cases brought forward	2,993	3,218	3,507
2	Number of appeal cases arising during the year	2,856	2,599	2,253
	Total	5,849	5,817	5,760
3	i. Number of appeal cases finalised/ transferred i.e. remanded to the AA during the year.	1,392	1,328	2,107
	ii. Number of appeals rejected	1,239	982	254
4	Number of appeal cases pending at the end of the year	3,218	3,507	3,399

It would be seen from the above table that the number of appeal cases had increased from 2,993 to 3,399 during the period from 2009-10 to 2011-12.

During exit conference ETCs stated that a State policy on appeal cases will be framed shortly (January 2014).

¹ Faridabad and Rohtak.

² Bhiwani, Faridabad (W), Fatehabad, Gurgaon (W), Hisar, Jagadhri, Karnal, Rewari, Rohtak and Sirsa.

2.2.8.1 Non compliance of directions of ETC

To avoid delay in remand cases, ETC Haryana, had issued instructions to the entire JETC (Appeal) in July 2005 that all remand cases should be served upon the dealer within two months after release of order/decision to the concerned AAs.

During test check of records of JETC (A) Rohtak in March 2013, we noticed that 56 remand cases orders were served upon the dealers/AA after delay ranging between seven to 183 days (excluding initial two months) during 2009-10 to 2011-12.

During exit conference (January 2014), all DETCs assured that instructions will be followed in future.

2.2.8.2 Non maintenance of records

To monitor remand cases, ETC in his instructions of July 1997 prescribed appeal register to be maintained in each DETC (ST) office. The register serves as a monitoring tool for watching the receipt and disposal of remand cases.

During test check of remand cases between December 2012 and July 2013, we noticed in eight DETCs (ST) offices³ that registers of the cases remanded by Appellate Authorities during the period 2009-10 to 2011-12 were not maintained.

During exit conference (January 2014), DETCs stated that appeal registers will now be maintained separately.

2.2.8.3 Disposal of Remand Cases

The number of remand cases pending at the beginning of the year received and disposed of during the years 2009-10 to 2011-12 and cases pending at the close of the year in the test checked 10 DETCs (ST) are mentioned in **Table 2.3**.

Table 2.3

(Number of cases)						
Sr. No.	Year	Opening Balance	Cases received during the year	Total	Cases disposed of	Cases pending disposal
1	2009-10	717	713	1,430	563	867
2	2010-11	867	534	1,401	539	862
3	2011-12	862	1,009	1,871	364	1,507
Total		2,446	2,256	4,702	1,466	3,236

During exit conference (January 2014), ETC stated that the Department will amend the Act and issue guidelines to finalise these cases.

³ Bhiwani, Faridabad (W), Fatehabad, Gurgaon (W), Jagadhri, Karnal, Hisar and Rewari.

2.2.8.4 Cases pending for finalisation under HGST Act

Under the HGST Act, no time limit was prescribed for re-assessment of remand cases. However, the ETC had issued instructions in July 1997 to all AAs to decide remand cases within six months from the date of receipt of copy of remand order.

During test check of remand cases between December 2012 to July 2013, in seven DETCs (ST) offices⁴, we noticed that 33 cases pertaining to the period from 1977-78 to 2002-03 involving tax of ₹ 3.20 crore were referred for reassessment between July 2007 and November 2011. These cases were still lying pending for finalisation. The delay was ranging between 18 and 60 months, as detailed in **Table 2.4**.

Table 2.4

Reassessments pending	Number of cases	Amount (₹ in crore)
After 12 months but up to 24 months	6	1.86
After 24 months but up to 36 months	7	0.56
After 36 months but up to 48 months	7	0.05
After 48 months but up to 60 months	13	0.73
Total	33	3.20

During exit conference (January 2014), the Principal Secretary directed all DETCs concerned to finalise the remand cases by 30 June 2014.

2.2.8.5 Cases finalised after a delay of six months (under HGST Act)

Under the HGST Act, no time limit was prescribed for re-assessment of remand cases. However, the ETC had issued instructions in July 1997 to all AAs to decide remand cases within six months from the date of receipt of copy of remand order.

During test check of remand cases in three DETCs (ST) offices⁵ between December 2012 to July 2013, we noticed that 34 cases pertaining to the assessment years 1997-98 to 2002-03 involving tax liability of ₹ 3.91 crore were referred for reassessment between July 2007 and August 2009. These cases were finalised after a period of six months between April 2009 and

⁴ Fatehabad, Gurgaon (W), Hisar, Jagadhri, Karnal, Rewari and Sirsa.

⁵ Faridabad (W), Jagadhri and Gurgaon (W).

May 2012. The delay in final action of remand cases was ranging between 20 and 42 months, as detailed in **Table 2.5**.

Table 2.5

Reassessments finalised	Number of cases	Amount (₹ In crore)
After 12 months but up to 24 months	7	1.23
After 24 months but up to 36 months	21	2.15
After 36 months but up to 48 months	6	0.53
Total	34	3.91

In DETC (ST) Faridabad (W) in three cases of a dealer were remanded to the AAs by the Appellate Authority on 8 February 2005 for de novo assessment for the years 2000-01 to 2002-03. Assessments for these years were finalised in March 2011 by creating additional demand of ₹ 74.25 lakh. However, notice of recovery of outstanding tax could not be served as the proprietor of the firm was not traceable. Hence, purpose of creating additional demand was defeated.

During exit conference (January 2014), the Principal Secretary directed all DETCs concerned to finalise the remand cases by 30 June 2014.

2.2.8.6 Disposal of remand cases under HVAT Act

(i) Cases pending for finalisation under HVAT Act

Section 18 of the HVAT Act provides limitation period of two years to dispose of remand cases. ETC had also advised (March 2012) all the DETCs (ST), about the necessity of quick disposal of all such cases within limitation period as provided under the Act. It was also made clear that if any remand case becomes time barred, then the concerned AA will be personally held responsible for the same.

During test check of remand cases in eight DETCs (ST) offices⁶ between December 2012 to July 2013 we noticed that 198 cases involving tax of ₹ 20.10 crore, remanded between April 2007 and June 2011, pertaining to the period from 2003-04 to 2007-08 were pending for finalisation though more

⁶ Bhiwani, Faridabad (W), Fatehabad, Gurgaon (W), Hisar, Jagadhri, Karnal and Rewari.

than two years had elapsed from the date of receipt of order. The delays ranged between 1 to 49 months, as detailed in **Table 2.6**.

Table 2.6

Reassessments pending	Number of cases	Amount (₹ In crore)
After one month but up to 12 months	56	4.14
After 12 months but up to 24 months	71	6.23
After 24 months but up to 36 months	51	7.27
After 36 months but up to 48 months	19	2.38
After 48 months but up to 60 months	1	0.08
Total	198	20.10

During exit conference (January 2014), the ETC stated that action would be taken against the officer in case of default.

(ii) Cases finalised after two years under HVAT Act

During test check of remand cases in nine DETCs (ST) offices⁷, we noticed between December 2012 and July 2013 that 83 cases pertaining to the period from 2003-04 to 2008-09 involving tax of ₹ 6.33 crore were referred between July 2007 and January 2011. These were finalised between April 2009 and April 2013 with a delay ranging between 1 and 46 months as detailed in **Table 2.7**.

Table 2.7

Reassessments finalised (excluding initial two years)	Number of cases	Amount (₹ In crore)
After one month but up to 12 months	52	4.82
After 12 months but up to 24 months	16	0.79
After 24 months but up to 36 months	10	0.59
After 36 months but up to 48 months	5	0.13
Total	83	6.33

Thus, the above mentioned 83 cases were finalised after becoming time barred but no action was taken by the department against the defaulting officers/officials.

⁷ Bhiwani, Faridabad (W), Fatehabad, Gurgaon (W), Hisar, Jagadhri, Karnal, Rewari and Rohtak.

During exit conference (January 2014), the Principal Secretary has sought the views of all DETCs in this regard in writing.

2.2.8.7 Non compliance of directions of the Appellate Authority

(i) Non finalising the reassessments

JETC (Appeal)⁸, while remanding the cases to the concerned AAs, directed to reassess the cases in a particular time frame between one to three months.

During test check of remand cases in four DETCs (ST) offices⁹, we noticed between December 2012 and July 2013 that 76 cases pertaining to the period from 1998-99 to 2007-08 involving tax of ₹ 19.86 crore, referred between July 2007 and March 2012, were still pending. Delay was ranging between eight to 104 months, as detailed in **Table 2.8**.

Table 2.8

Reassessments pending	Number of cases	Amount (₹ In crore)
After one month but up to 12 months	3	0.33
After 12 months but up to 24 months	3	0.16
After 24 months but up to 36 months	15	3.04
After 36 months but up to 48 months	20	14.23
After 48 months but up to 60 months	29	1.94
After 60 months but up to 120 months	6	0.17
Total	76	19.86

In the meantime, 23 dealers (28 cases) involving tax of ₹ 12.26 crore had closed their business and the proprietors of the firms were not traceable. Thus the possibility of recovery in these cases was remote.

During exit conference (January 2014), ETC stated that directions will be issued to dispose of these cases without any further delay.

⁸ Ambala, Faridabad (W) and Rohtak.

⁹ Bhiwani, Gurgaon (W), Karnal and Sirsa.

(ii) Delay in finalisation of remand cases

During test check of remand cases in ten DETCs (ST) offices¹⁰, we noticed between December 2012 and July 2013 that 78 cases pertaining to the period from 1999-2000 to 2007-08 involving tax of ₹ 3.54 crore, referred between August 2007 and August 2011 were finalised after delay ranging between one to 53 months, as detailed in **Table 2.9**.

Table 2.9

Reassessments finalised	Number of cases	Amount (₹ In crore)
After one month but up to 12 months	31	1.29
After 12 months but up to 24 months	24	1.71
After 24 months but up to 36 months	9	0.23
After 36 months but up to 48 months	8	0.10
After 48 months but up to 60 months	6	0.21
Total	78	3.54

During exit conference (January 2014), ETC stated that directions will be issued to dispose of such cases without any further delay.

2.2.9 Revision cases

Section 34 of the HVAT Act provides that the Commissioner may, on his own motion, call for the records of any case pending before or disposed of by any officer appointed under the Act to assist him or any AA, for the purposes of satisfying himself as to the legality or to propriety of any proceeding or of any order made therein and may pass such order in relation thereto as he may think fit provided that no order shall be so revised after the expiry of the period of three years from the date of the order.

In eleven cases of four DETCs (ST)¹¹, DETC (Inspection) called for assessment files and remanded them back to concerned AA for verification. Out of these, three cases involving an amount of ₹ 0.27 crore were pending for verification and in remaining eight cases additional demand of ₹ 0.44 crore was created but the same had not been realised.

During exit conference (January 2014), DETC Rewari stated that efforts are being made to recover the balance amount.

¹⁰ Bhiwani, Faridabad (W), Fatehabad, Hisar, Jagadhri, Karnal, Rewari, Rohtak, Gurgaon (W) and Sirsa.

¹¹ Fatehabad, Hisar, Karnal and Rewari.

2.2.10 Evasion of tax by submitting fake declaration Form

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 furnishes to the AA a declaration form duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in the form. 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.

In seven DETCs (ST) offices¹², eleven dealers claimed concessional rate of tax on declaration forms 'C' and 'F' for sale value of ₹ 5.74 crore during the years 2009-10 to 2011-12 which were found fake on cross verification of forms resulting in evasion of tax amounting to ₹ 45.26 lakh besides penalty of ₹ 1.36 crore was also leviable.

During exit conference (January 2014), ETC advised the DETCs to register cases/FIRs against such fraudsters under the Act.

2.2.11 Internal control

To have an effective internal control, the Department prescribed statements/returns to be furnished by the DETCs (ST) to ETC every month.

Scrutiny of records in the ETC, Haryana showed that the prescribed returns showing the receipt and disposal of remand and revision cases were not received from the DETCs and there was no monitoring at the Department level and coverage of internal audit was also not adequate. The irregularities discussed in audit paragraphs 2.2.8.1 to 2.2.8.5 are indicators of ineffective internal control mechanism.

2.2.12 Conclusion

The abnormal delay in finalisation of remand and revision cases resulted in non realisation of Government revenue. The instructions issued by ETC were not adhered to by the AAs in finalisation of assessment cases. There was lack of internal control mechanism in the department to ensure disposal of remand/revision cases in a timely manner.

2.2.13 Recommendations

For speedy settlement of cases, the State Government may consider the following steps to improve the effectiveness of the system:-

- Records like appeal register of remand cases essential for monitoring the remand cases at Joint Commissioner (Appeal)/DETC/AA wise be maintained as per the provisions of the Act/instructions.
- Assessment cases may be given more attention and the provisions of the Act and instructions issued by the department should be complied with.
- To put in place effective internal control mechanism to ensure compliance of the Act.

¹² Faridabad (W), Fatehabad, Gurgaon (W), Jagadhri, Karnal, Rohtak and Sirsa.

2.3 Underassessment of tax due to application of incorrect rates of tax

2.3.1 Non /Short levy of tax

2.3.1.1 Under section 7(1) (a)(iv) of the HVAT Act, any commodity classified in Schedule C is taxable at the rate of four *per cent* and the unclassified commodities are taxable at the rate of 12.5 *per cent* with effect from 1 July 2005. Further, interest is also leviable under section 14 (6) of the HVAT Act, if any dealer fails to make payment of tax.

In 21 DETC (ST)¹³, 133 dealers had sold goods valued as ₹ 1,078.97 crore during 2004-05 to 2009-10 and paid tax of ₹ 27.19 crore against the payable tax of ₹116.58 crore, due to misclassification of goods. The AA accepted the claims of the dealers. This resulted in non/short levy of tax of ₹ 89.39 crore, besides interest of ₹ 64.98 crore is also leviable as per details given in **Table 2.10**.

Table 2.10

(₹ in crore)

Sr. No	No. of DETC	No. of dealers	Name of goods	Sale Value	Period of sales	Tax leviable	Tax levied	Tax short/ non levied	Interest
1	5	20	Guar Gum	163.11	2007-08 to 2009-10	20.39 @ 12.5 %	nil	20.39	12.54
2	12	41	High Density Polyethylene Fabric	179.74	2006-07 to 2009-10	7.19 @ 4 %	nil	7.19	4.91
3	4	7	Narrow Woven Fabric	27.85	2006-07 to 2009-10	1.11 @ 4 %	nil	1.11	0.71
4	2	2	Submersible pumps	3.21	2008-09 to 2009-10	0.40 @ 12.5 %	0.08	0.32	0.16
5	9	14	Tractor parts, Corn, Springs, Readymade garments, Lease rent	17.78	2005-06 to 2009-10	1.63 @ 4 % or 12.5 %	nil	1.63	1.08
6.	1	1	Laminated cloth, foam	16.10	2007-08 and 2009-10	2.01 @ 12.5 %	nil	2.01	---
7	1	2	Railway Track Machine	194.33	2006-07, 2008-09, and 2009-10	24.29 @ 12.5 %	7.81 @ 4 %	16.48	13.22
8	3	9	Material Handling Equipment	244.75	2007-08 to 2008-09	30.59 @ 12.5 %	9.57 @ 4 %	21.02	17.56

¹³ Ambala, Bhiwani, Fatchabad, Faridabad (E), Faridabad (W), Gurgaon (E), Gurgaon (W), Hisar, Jagadhri, Jind, Jhajjar at Bahadurgarh, Kaithal, Karnal, Mewat, Panchkula, Panipat, Palwal, Rewari, Rohtak, Sirsa and Sonipat.

Sr. No	No. of DETC	No. of dealers	Name of goods	Sale Value	Period of sales	Tax leviable	Tax levied	Tax short/ non levied	Interest
9	5	10	Pipe Fittings	73.9	2007-08 to 2009-10	9.2 @ 12.5 %	2.96 @ 4 %	6.24	5.08
10	4	10	Machinery Parts/Auto Parts	49.81	2005-06 to 2008-09	6.22 @ 12.5 %	1.99 @ 4 %	4.23	3.36
11	1	4	Scaffoldings	9.73	2008-09	1.22 @ 12.5 %	0.39 @ 4%	0.83	0.69
12	7	13	Soaps, Ready Mix Concrete, Surgical Cotton, Tiles, Leaf Springs, Mosquito Repellent, OT table, Fire fitting Equipments, PPC Poles etc.	98.66	2005-06 to 2009-10	12.33 @ 12.5 %	4.39 @ 4 %	7.94	5.67
			Total	1,078.97		116.58	27.19	89.39	64.98

On these being pointed out, the Department accepted the audit observations in exit conference (October 2013).

2.3.1.2 Section 2 (1) (zt) of HVAT Act defines Work Contract as an agreement between contractor and contractee which includes 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 immovable property. As such, agreement or contract entered into by the developers or others with prospective customers for sale of fully constructed apartments or flats before the commencement of actual construction or before completion of construction, should be treated as agreements or contracts for execution of works contract of construction of building as held by the Hon'ble Supreme Court in the case of K. Raheja Development Corporation v/s State of Karnataka (reported in 141 STC at Page 298) dated 15 August 2005.

In the office of DETC (ST) Faridabad (West), a lump sum dealer had received income of ₹ 90.32 crore from real estate projects which included material worth ₹ 81.06 crore. The dealer was liable to pay tax as work contractor on the amount received from the prospective purchasers. The dealer, however, deducted tax at source of ₹ 1.70 crore on ₹ 42.41 crore from the sub-contractors and deposited the same. The AA while finalising assessment in November 2011 also levied tax on ₹ 42.40 crore instead of correct amount of ₹ 81.06 crore. This resulted in non- levy of tax of ₹ 2.34 crore including interest of ₹ 0.80 crore.

During exit conference the Department accepted the audit observation. The ETC further stated that Hon'ble Apex court had also upheld that tax would be levied accordingly.

2.4 Evasion of tax due to suppression of sales/purchases

As per the provisions of Section 38 of HVAT Act, 2003 (Section 48 of erstwhile HGST Act), if a dealer has maintained false or incorrect accounts or documents with a view to suppress his sales, purchases, imports into State, exports out of State, or stocks of goods, or has concealed any particulars in respect thereof or has furnished to or produced before any authority under this Act or the rules made thereunder any account, return, document or information which is false or incorrect in any material particular, such authority may, after affording such dealer a reasonable opportunity of being heard, direct him to pay by way of penalty, in addition to the tax to which he is assessed or is liable to be assessed, a sum thrice (twice under Section 48 of HGST Act) 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.

2.4.1 Non-levy of penalty for bogus ITC claim/sale suppression

During test check of assessment records of six DETC (ST) Offices¹⁴ between May 2008 and June 2013, we noticed that the AAs while framing assessments in 14 cases between March 2008 and March 2012 had held that:

- (a) Eight dealers had claimed ITC of ₹ 4.79 crore on bogus purchases;
- (b) Three dealers had suppressed sales involving tax of ₹ 1.52 crore; and
- (c) Three dealers had claimed interstate sale as branch transfer out of state against F forms involving tax of ₹ 165.21 crore.

For the above defaults, tax and penalty were required to be levied as per the provisions of Section 38 of HVAT Act, 2003. The AAs, however, rejected the ITC claims and levied tax only but did not levy penalty of ₹ 440.76 crore.

On this being pointed out, the AAs Faridabad (W) and Panipat had created demand of ₹ 423.55 crore in five cases. The Department also accepted the audit observation during exit conference (October 2013) and the ETC directed departmental officers to examine the cases in detail and to register cases/lodge FIRs against such fraudsters under the Act.

2.4.2 Suppression of sale

- (i) In five DETC (ST) Offices¹⁵, we noticed that 13 dealers had suppressed sale of ₹ 29.11 crore during 2005-06 to 2008-09 involving tax effect of ₹ 2.07 crore, besides penalty of ₹ 6.23 crore is also leviable.

On this being pointed out, the AAs Faridabad (W) and Gurgaon had created demand of ₹ 2.25 crore in three cases. The Department also accepted the audit observations during exit conference.

¹⁴ Faridabad (E)-2; Faridabad (W)-3; Jagadhri-2; Panipat-4; Rewari-2 & Sonipat-1.

¹⁵ Faridabad (E); Faridabad (W); Gurgaon (E); Gurgaon (W) and Karnal.

(ii) In six DETC (ST) Offices¹⁶, in eight cases, it was confirmed suppression of sale/purchase worth ₹ 21.25 crore due to filing of incorrect returns; submission of incorrect accounts and verification conducted, though was on records, yet the AAs framed assessments in these cases without considering the same. This resulted in non-levy of tax of ₹ 0.93 crore, besides penalty of ₹ 2.79 crore is also leviable.

On this being pointed out, the AA Faridabad (West) had created demand of ₹ 5.13 lakh in one case. The department also accepted the audit observations during exit conference (October 2013).

2.4.3 Deduction/rate concession against fake forms

In 11 DETC (ST) Offices¹⁷ 19 dealers had claimed deductions/rate concessions on consignment out of State/sale under Sections 6A and 8 of CST Act, 1956 against “F/C” forms respectively in 20 cases. Further scrutiny of these forms showed that six dealers claimed deduction against “F” forms worth ₹ 5.60 crore and 13 dealers (14 cases) claimed rate concession against “C” forms worth ₹ 13.18 crore. On verification by audit on TINXSYS and through correspondence with other States, these forms were found fake. The AAs, however, admitted these forms without verification, resulting in tax evasion of ₹ 1.51 crore, besides penalty of ₹ 4.54 crore was also leviable.

During exit conference, the Department accepted the audit observations. The ETC stated that matter would be taken up with the Commissioners of other States to take action against the defaulting purchasing dealers.

2.4.4 Misclassification of sales

As per provisions of Section 4 (2) of CST Act, 1956 a sale or purchase of goods shall be deemed to take place inside a state, if the goods are within the State:

- (a) In the case of specific or ascertained goods, at the time the contract of sale is made; and
- (b) In the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation.

In five DETC (ST) Offices¹⁸, 15 dealers (15 cases) had effected sale worth ₹ 84.26 crore during 2004-05 to 2008-09 to the state dealers and claimed benefit of concessional rate of tax against “C” forms obtained from these dealers treating the sale as interstate sale on the plea that the goods were consigned by the purchasing State dealers to the outstate dealers which was not correct in view of the provisions of the Act *ibid* because the goods were within the State at the time of contract of sale between the State dealers and as such tax was leviable under the local Act. While framing assessments in these cases, the AAs had also admitted the claims of the dealers. This resulted in

¹⁶ Ambala; Faridabad (W); Gurgaon (E); Kaithal; Panipat and Sirsa.

¹⁷ Ambala, Faridabad (E), Gurgaon (E), Gurgaon (W), Hisar, Jhajjar, Kaithal, Kurukshetra, Palwal, Panipat and Sonapat.

¹⁸ Faridabad (E), Faridabad (W), Gurgaon (E), Gurgaon (West) and Jhajjar.

underassessment of tax of ₹ 6.77 crore, besides penalty of ₹ 20.31 crore was also leviable.

During exit conference, the Department stated that due tax had been levied in the hands of the State purchasing dealers and to this effect necessary certificates from the concerned DETCs along with facts of the case would be submitted but the Department failed to establish this fact.

2.4.5 Evasion of tax by registered dealers

2.4.5.1 During test check of records of DETC (ST) Gurgaon (East), we noticed in November 2011 that two dealers entered into a collaboration agreement to construct a commercial mall on 50:50 share basis for the prospective buyers. As per the agreement, the land belonged to first party whereas the second party was to construct/develop the commercial mall at its cost. Each party was liable to discharge its fiscal/tax liability in respect of its share. Total material amounting to ₹ 76.00 crore was used for construction of the said mall during the years 2006-07 to 2009-10 and second party paid tax of ₹ 1.52 crore at four *per cent* on its share of ₹ 38.00 crore as lump sum contractor while first party neither reflected the same in its returns/accounts nor paid tax on it. This resulted in underassessment of tax of ₹ 3.94 crore, besides penalty of ₹ 11.83 crore was also leviable.

During exit conference, the Department accepted the audit observation and stated that assessment in the case of defaulting dealer had been framed and levied tax.

2.4.5.2 During verification of VAT payment by audit in DETC (ST) Panchkula, it was noticed that a dealer had sold holographic weapon sight for AK-47 rifle worth ₹ 3.88 crore including VAT of ₹ 43.08 lakh at the rate of 12.5 *per cent* during 2010-11. The dealer was registered since 27 September 1996 and was filling nil return with effect from 2007-08. The annual return (VAT R-2) for the assessment years 2009-10 and 2010-11 were not filed by the dealer. This resulted in evasion of tax of ₹ 0.43 crore, besides penalty of ₹ 1.29 crore was also leviable.

During exit conference, the Department accepted the audit observations and stated that re-assessment of the case was under process.

2.4.6 Non-accountal of purchases/sales

A dealer had purchased paddy worth ₹ 4.05 crore on commission basis and as per the trading account, his sale of paddy was at ₹ 1.36 crore. Thus, total assessable turnover worked out to ₹ 5.82 crore (Self account and commission account after adding profit element) but the assessment was framed with GTO of ₹ 83.47 lakh. In this way, sale of ₹ 4.99 crore had escaped assessment involving tax effect of ₹ 19.96 lakh, besides penalty of ₹ 59.86 lakh was also leviable.

During exit conference, the Department admitted the audit observations and stated that necessary directions for re-assessments and levy of tax had been issued to the DETC.

These observations were issued to Department/Government (July 2013); the replies given at the time of exit conference (October 2013) were incorporated in the respective paras.

2.5 Non/Short levy of interest

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. The ETC, Haryana issued instructions in September 1993 that it is the duty of every AA to finalise penal proceedings along with the assessment and if, for any reason, the penal action is kept pending that should be completed within six months of the assessment.

In two DETC (ST) offices in three cases, while finalising the assessment for the year 2008-09 in March 2012, the AA levied tax of ₹ 7.77 crore but did not levy interest in two cases and levied short interest in one case. This resulted in non/short levy of interest of ₹ 5.85 crore as per details given in **Table 2.11**.

Table 2.11

Sr. No.	Name of DETC	Assessment year and date of assessment	Tax due on which interest was not levied	Amount of interest			Remarks
				Leviable	Levied	Non/short levy	
				(₹ in lakh)			
1.	DETC (S) Gurgaon (West)	2008-09 (March 2012)	4.17	3.42	Nil	3.42	AA levied interest amounting to ₹3.42 lakh in March 2013.
2.	DETC (S) Gurgaon (West)	2008-09 (March 2012)	15.15	12.73	2.14	10.59	AA levied interest amounting to ₹11.33 lakh in April 2013.
3.	DETC (S) Gurgaon (East)	2008-09 (March 2012)	757.84	570.69	Nil	570.69	The AA had rectified the order and levied interest of ₹ 6.13 crore for the non-payment of tax as per returns in April 2013.
Total			777.16	586.84	2.14	584.70	

During exit conference (October 2013), the Department accepted the audit observations.