Chapter-II
Taxes/VAT on Sales, Trade etc.

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2.1 Tax administration

The Financial Commissioner Taxation and Principal Secretary to the Government of Punjab is overall in-charge of the Excise and Taxation Department. Subject to overall control and superintendence of the Excise and Taxation Commissioner (ETC), the administration of the Punjab Value Added Tax Act (PVAT Act)/Central Sales Tax Act (CST Act), is carried out with the help of Additional Excise and Taxation Commissioner (Addl. ETC), Joint Excise and Taxation Commissioners at the headquarters (JETCs), Deputy Excise and Taxation Commissioners (DETCs) at the divisional level and Assistant Excise and Taxation Commissioners (AETCs), Excise and Taxation Officers (ETOs) and other allied staff at the district level. The authorities performing duties within jurisdictions as specified by the Government under the PVAT Act are called as Designated Officers (DOs).

2.2 Results of audit

Test check of the records of 42 units relating to Sales Tax/VAT during 2014-15 showed under assessment of tax and other irregularities involving ₹ 460.26 crore in 383 cases under the following categories as mentioned in **Table 2.1:**

Table 2.1

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1.	***Performance Audit titled "System of assessment under VAT"***	1	281.40
2.	Excess /Inadmissible allowance of refund	78	92.89
3.	Non/Short levy of output tax	125	50.00
4.	Excess/Inadmissible allowance of ITC	103	24.75
5.	Non levy of penalty	5	0.30
6.	Non recovery of exemption availed	5	3.41
7.	Other irregularities	66	7.51
Total		**383**	**460.26**

In 2014-15, the Department accepted the audit observations in 2014 cases pertaining to the earlier years and recovered an amount of ₹ 10.23 crore there against.

A few illustrative audit observations involving ₹ 297.59 crore are discussed in the succeeding paragraphs.

2.3 Performance Audit on "SYSTEM OF ASSESSMENT UNDER VAT"

Highlights

- **Scrutiny of returns, which is the basis for selection of cases for assessment, was not done as per Act and Guidelines. In the absence of scrutiny, the identification of cases for assessment was not done scientifically.**

(Paragraph 2.3.6.1)

- **The Department had no criteria for risk based selection of cases for assessment, in absence of which, the Department could raise additional demand upto ₹ 10,000 only in 68 to 90 *per cent* assessment cases during 2012-13 and 2013-14.**

(Paragraph 2.3.6.2)

- **Assessing Authority allowed the benefit of transactions made on fake/non-genuine statutory declaration forms to a dealer amounting to ₹ 76.76 crore for the year 2009-10. The same dealer also submitted fake/non-genuine forms for ₹ 141.67 crore for the year 2008-09 and 2010-11.**

(Paragraph 2.3.9.1)

- **Tax revenue of ₹ 4.16 crore in 14 cases was foregone due to failure of the Department to utilisse information available in ICC data for cross verification of inter-state sale/purchase.**

(Paragraph 2.3.9.2(a))

- **Assessing Authority had reversed ITC of ₹ 6.44 crore against the reversible ITC of ₹ 16.91 crore in 21 cases, which resulted in short reversal of ITC of ₹ 10.47 crore on account of branch transfer.**

(Paragraph 2.3.9.3)

- **Tax exemption of ₹ 3.41 crore already availed by the dealers was not recovered from seven dealers, though they cancelled their RCs before completion of exemption period.**

(Paragraph 2.3.9.6)

- **Excess ITC of ₹ 8.19 crore was allowed in 18 cases due to suppression of purchase/sale, incorrect brought forward of ITC, non-debiting of exemption etc.**

(Paragraph 2.3.9.7)

- **Assessing Authorities had accounted for less turnover in the assessment orders in respect of 21 dealers than the actual turnover worked out on the basis of trading account, which resulted in short levy of tax of ₹ 10.22 crore.**

(Paragraph 2.3.9.15)

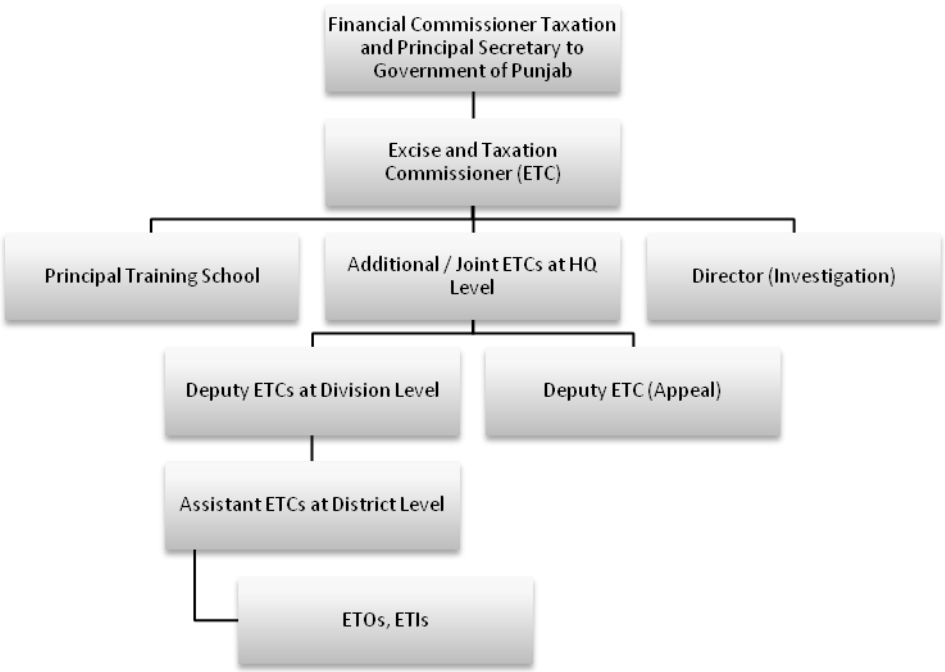
2.3.1 Introduction

Government of Punjab introduced Value Added Tax with effect from April 2005. The Punjab Value Added Tax (PVAT) Act, 2005 and Rules made there under (PVAT Rules, 2005) govern levy and collection of Value Added Tax (VAT) in Punjab at every point of sale. The Act aims at a hassle-free system for the dealers to declare the tax on self-assessment basis. VAT is a multi stage tax levied at every stage of sale in the supply chain within the State and simultaneously, tax paid if any, at the earlier stages is allowed as Input Tax Credit (ITC), by deduction from the tax payable at the subsequent stage.

2.3.2 Organisational Set-up

The Financial Commissioner Taxation and Principal Secretary to the Government of Punjab is overall in-charge of the Excise and Taxation Department and assisted by Additional ETCs, JETCs, DETCs, AETCs and ETOs.

Organogram of Excise and Taxation Department



2.3.3 Audit Objectives

The performance audit was conducted to assess whether:

- there was an adequate set of statutory provision in the Act, Rules made thereunder and notification issued by the Government;
- the selection of cases for audit of returns/assessment were made as per the prescribed criteria and the scrutiny and assessment were done according to provisions of the Act, Rules and orders; and

- there exists an adequate system of monitoring and control mechanism in the Department.

2.3.4 Scope of Audit and Methodology

The Performance Audit (PA) covering the assessment cases done during the period from 2009-10 to 2013-14 was conducted between October 2014 and June 2015 in 12[1] out of 26 Excise Districts of the State selected on the basis of probability proportional to size (PPS) method on the basis of accumulative revenue collection.

In addition, data of COVIS[2] for the period from April 2009 to March 2014 maintained by the Department was analysed by using a Computer Aided Audit Tool namely Interactive Data Extraction and Analysis (IDEA). Besides, similar cases noticed during regular audit of other districts have also been included in the Performance Audit report. An entry conference (January 2015) with Financial Commissioner Taxation and Principal Secretary to the Government of Punjab, was held wherein the scope and methodology of audit was discussed. Audit findings of the PA were reported to Government in August 2015. The report was discussed with the Department in the exit conference held on 16 September 2015 and the replies furnished by the Department have been considered and appropriately incorporated in the PA. We acknowledge the co-operation extended by the Department.

2.3.5 Audit Criteria

The above criteria were derived from the following sources:

- PVAT Act and Rules, 2005 and amendments made there under;
- CST Act, 1956;
- CST (Punjab) Rules, 1956 and CST Rules, 1957;
- Punjab Deferment & Exemption (D & E) Rules, 1991; and
- Orders/notifications issued by the Government/Department from time to time.

2.3.6 System deficiencies

Procedure for registration, assessment and recovery of tax revenue under PVAT Act, 2005 for the purpose of effecting recovery of Government dues is given in ***Appendix-I.*** Some systemic deficiencies which adversely affected

[1] Amritsar, Bathinda, Hoshiarpur, Jalandhar-I, Jalandhar-II, Ludhiana-I, Ludhiana-II, Mohali, Muktsar, Patiala, Ropar and Sangrur.

[2] Computerisation of Value Added Tax Information System.

the procedure of recovery of Government dues are listed in the following paragraphs:

2.3.6.1 Non scrutiny of returns

Rule 43 of PVAT Rules, 2005 provides that the DO shall scrutinize every return filed by the dealer under Section 26 of the Act. If during scrutiny of return, it is found that less tax has been paid than the tax actually payable as per the return, the DO shall serve a notice upon the person concerned directing him to rectify the same and to pay the amount of tax less paid. Further, the Department issued guidelines stipulating 100 *per cent* scrutiny of returns (June 2010).

We noticed in 12 AETCs (selected districts) that scrutiny of returns was not done as per Act and Guidelines and records relating to scrutiny such as scrutiny registers, files etc. were not maintained in any of the selected district.

An effective system of scrutiny of returns is a key requirement for effective tax administration which in turn forms a strong foundation for selection of cases for assessment. In the absence of scrutiny, it is apparent that the Department has no scientific basis for identification of cases for assessment.

The Department in the exit conference (September 2015) stated that 100 *per cent* returns were not scrutinised due to shortage of manpower. Moreover, four[3] AETCs replied that due to shortage of well trained staff, 100 *per cent* scrutiny was not possible. AETC, Ludhiana-I replied that to ensure 100 *per cent* scrutiny of all returns, the Department had developed a strong mechanism of 25 points scrutiny module in which all parameters were considered to filter the tax evaders. However, 100 *per cent* scrutiny was not being carried out as no record relating to scrutiny was produced during audit in any of the selected districts.

2.3.6.2 Absence of proper criteria for selection of dealers for assessment

Section 29 of PVAT Act, 2005 provides that the Commissioner on his own motion or on the basis of information received by him may, by an order in writing, direct the DO to make an assessment of the amount of the tax payable by any person or any class of persons to the best of his judgment and determine the tax payable by him as per provisions of the Act. The Department had started using COVIS application from April 2005 but had not implemented the assessment module, which captures the proceedings, penalty and demand raised and realized in case of assessment of returns.

[3] Hoshiarpur, Ludhiana-II, Muktsar and Sangrur.

The Department issued instructions from time to time for selection of certain type of cases *viz.* exempted units and export oriented units, dealers who deal with schedule 'H' goods and dealers engaged in bogus billing apart from cases pertaining to prominent trade (commodity wise) in respective districts for assessment. We noticed the following:

a) The percentage of assessments made during the period 2009-10 to 2013-14 in test checked districts was ranging between 3.97 and 21.06 *per cent.* There was a declining trend in the assessments made in Ludhiana-I which were 2,944 (15.79 *per cent*) in 2009-10 and then reduced to 692 (3.09 *per cent*) in 2013-14.

b) Insignificant demands were raised in 68 to 90 *per cent* cases assessed during the years 2012-13 to 2013-14 by eight[4] AETCs as shown in **Table 2.2:**

Table 2.2

Sl. No.	Name of District	Year in which assessment made	No. of assessments made during the year	No. of assess-ments where the demand was 'Nil'	No. of assess-ment where demand was up to ₹10,000 (excluding 'Nil')	No. of assess-ments where demand was either 'Nil' or up to ₹ 10,000 (5)+(6)	percentage of cases where demand was either 'Nil' or up to ₹ 10,000
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	Amritsar I	2012-2013	340	31	240	271	79.71
		2013-2014	273	44	170	214	78.39
2	Bhatinda	2012-2013	741	403	151	554	74.76
		2013-2014	1,237	604	317	921	74.45
3	Hoshiarpur	2012-2013	346	41	247	288	83.24
		2013-2014	306	10	202	212	69.28
4	Jalandhar II	2012-2013	1,369	383	851	1,234	90.14
		2013-2014	834	98	501	599	71.82
5	Ludhiana II	2012-2013	733	57	520	577	78.72
		2013-2014	962	93	583	676	70.27
6	Muktsar	2012-2013	238	64	141	205	86.13
		2013-2014	225	9	146	155	68.89
7	Ropar	2012-2013	322	46	233	279	86.65
		2013-2014	422	35	336	371	87.91
8	Sangrur	2012-2013	692	106	430	536	77.46
		2013-2014	1,039	66	644	710	68.33
	Total		**10,079**	**2,090**	**5,712**	**7,802**	

[4] Amritsar-I, Bathinda, Hoshiarpur, Jalandhar-II, Ludhiana-II, Muktsar, Ropar and Sangrur.

It could be seen from the table that the percentage of assessed cases in which Department raised additional demand of upto ₹ 10,000 was ranging between 68 *per cent* to 90 *per cent* during 2012-13 and 2013-14. The Department had neither any criteria for risk based selection of cases for assessment nor any comprehensive guidelines were issued to the DOs for follow up during assessments.

Had the Department implemented the assessment module of COVIS it would have a control mechanism of capturing the proceeding related to assessment of dealer, additional demand raised and realized.

The Department in exit conference (September 2015) accepted the audit observation regarding non-availability of criteria for selection of cases for assessment and stated that rules in this regard will be framed.

2.3.6.3 Non framing of parameter for Audit of Returns

Section 28 of PVAT Act, 2005 provides that DO with a view to ascertain the correctness of the returns in general and admissibility of various claims may audit or cause to be audited any of the returns filed, documents or information or statutory forms submitted by a person. Rule 44 of Punjab VAT Rules provides that the Commissioner shall select, on the basis of the parameters as may be laid down by him, a certain number of persons for audit under Section 28 of PVAT Act, 2005.

We observed that the Department had neither framed any parameters for selection of returns for conducting audit under the Act nor carried out any audit of returns.

The Department in the exit conference (September 2015) accepted the audit observation and stated that rules in this regard would be framed.

2.3.7 Non fulfilling of statutory requirements

2.3.7.1 Non scrutiny of returns of cancelled dealer

Rule 13 of PVAT Rules, 2005 provides that the dealer shall make an application for cancellation of registration within a period of thirty days of the occurrence of the events mentioned under Sub Section (1) of Section 24 and shall submit the documents i.e. Registration Certificate (RC) and copies thereof, unused statutory forms, returns, if any, due for submission, a statement showing the value of goods imported or manufactured by him during the immediately preceding two years *etc*. along-with the application.

Further, Section 26(8) provides that a taxable person or a registered person, whose registration is cancelled under Section 24, shall file such final return, as may be prescribed, within thirty days from the date of cancellation by the DO, as the case may be and as per Rule 43 of PVAT Rules, 2005, the DO

shall scrutinize every return filed under Section 26 of the Act.

We noticed from the information provided by 11[5] AETCs that registration of 11,526 dealers was cancelled during 2009-14.

(a) Data analysis of cancelled dealers in respect of 10[6] AETCs for the period from 2009-10 to 2010-11 showed that 117[7] out of 5,612 dealers had not filed return(s) prior to cancellation of their RCs. These dealers made intra-state sales to other dealers who further claimed ITC on such purchases to the tune of ₹ 9.94 crore. Since these dealers had started defaulting in submitting returns, the possibility of non-deposit of tax could not be ruled out.

The Department failed to keep a watch on the business activities of dealers who had started defaulting on returns prior to cancellation of their RCs and could not ensure the deposit of tax involved in these sales against which purchasing dealers had claimed ITC.

AETC, Hoshiarpur and Patiala replied that assessments proceedings are in progress, Sangrur replied that RCs of these dealers were cancelled due to non-filing of returns under Section 24 of PVAT Act but the reply was silent about deposit of tax due. Other districts did not furnish any reply. However, Department in the exit conference (September 2015) assured to check the records.

(b) Rule 13(5) of PVAT Rules, provides that cancellation of registration shall be effective from the date of order of cancellation, issued in this behalf by the DO.

We noticed from the data analysis of COVIS in eight[8] AETCs that registrations of 101 dealers were cancelled by the Department from the date prior to the date of request for cancellation ranging between two and 1,538 days.

These dealers were doing business during the intervening period. This action of the Department was not only illegal but also created a situation in which all the ITC claims of purchasing dealers stood automatically rejected because the selling dealer did not have valid registration.

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5 Amritsar-I, Bathinda, Hoshiarpur, Jalandhar-I, Jalandhar-II, Ludhiana-I, Ludhiana-II, Mohali, Muktsar, Ropar and Sangrur.

6 Amritsar-I, Bathinda, Hoshiarpur, Jalandhar-I, Jalandhar-II, Ludhiana-I, Ludhiana-II, Mohali, Patiala and Sangrur.

7 49 dealers requested for cancellation and 68 were cancelled by the Department.

8 Bathinda, Hoshiarpur, Jalandhar-I, Jalandhar-II, Ludhiana-I, Ludhiana-II, Patiala and Sangrur.

AETC Hoshiarpur stated that scrutiny of the cases is under process; Ludhiana-I and Ludhiana-II stated that directions had been issued to the officers to cancel RC from date of cancellation only; Patiala stated that in rare cases RCs were cancelled prior to the date of submission of application where there was any information regarding involvement of a particular dealer in nefarious activities; Sangrur stated that RCs of dealers were cancelled immediately i.e. from the date from which the dealer had started making bogus sale/purchase in their returns. Replies were not convincing as in all these cases request for cancellation of RCs had come from the dealers. However, the Department in exit conference (September 2015) assured to check the records.

(c) Section 13(15) of PVAT Act provides that the onus to prove that the VAT invoice on the basis of which ITC is claimed, is *bona fide* and is issued by a taxable person, shall lie on the claimant.

We noticed from the data analysis of COVIS in respect of 11[9] AETCs for the period from 2009-10 to 2010-11 that 944 dealers made intra state purchases from cancelled dealers (after cancellation of their RCs) as declared by the buyers in Form VAT 24. The buyers also claimed ITC of ₹ 16.25 crore on these purchases.

AETC Patiala stated that assessment proceedings have been initiated, AETC Muktsar and Ropar stated that verification of the cases is pending. However, the Department in the exit conference (September 2015) assured to check the cases and recover the amount, if any.

2.3.7.2 Absence of mechanism to track the business activities of dealers who defaulted in filing returns

Section 29(2) provides that DO may, on his own motion or on the basis of information made by him, order or make an assessment of the tax, payable by a person to the best of his judgement and determine the tax payable by him where a person fails to file a return under Section 26. Rule 51A of PVAT Rules provides that if any person fails to furnish a return or returns or annual statement by the prescribed date or has filed incomplete or incorrect return, the DO may lock his Tax Identification Number (TIN).

a) We noticed from the data analysis of COVIS for the years 2009-10 and 2010-11 in respect of 12 AETCs that 13,807 and 24,596 dealers failed to file their quarterly and annual returns respectively. AETC Patiala, Ludhiana-I, Ludhiana-II and Hoshiarpur stated that TIN of the dealers are locked in case of non-filing of returns. Reply is not convincing as locking of TIN only

[9] Amritsar-I, Bathinda, Hoshiarpur, Jalandhar-I, Jalandhar-II, Ludhiana-I, Ludhiana-II, Muktsar, Patiala, Ropar and Sangrur.

restricts interstate transactions and not intra-state transactions. Also the system locks TIN only in case of non-filing of quarterly returns and not in case of annual returns.

b) Data analysis of these dealers further showed that 223 dealers in 11[10] AETCs who failed to file quarterly as well as annual returns were in-fact carrying business during 2009-11 and were issuing taxable invoices to purchasers who had also availed ITC of ₹ 18.42 crore there against. Tax amount deposited by these dealers (return defaulters) was called for but no reply was furnished. Moreover, COVIS database does not contain information on the status of assessments of dealers. In view of non-receipt of any assurance from the Department, chances of non-deposit of tax by non-filler of returns cannot be ruled out.

The TINs of these 223 dealers were also blocked for inter-state transactions. However, even after blocking of TIN there is no check on the intra-state transactions of the dealers despite having a database to monitor dealers who were carrying business without filing returns.

AETCs Muktsar, Patiala and Ropar stated that the cases were pending for verification. Final action and replies in respect of other districts were awaited.

2.3.7.3 Non assessment of cases selected by Commissioner

Section 29(3) of PVAT Act, 2005, provides that the Commissioner on his own motion or on the basis of information received by him may, by an order in writing, direct the DO to make the assessment of the amount of tax payable by any person or any class of person for such period, as may be specified in this order.

The Department listed 53,007 cases in 12 AETCs for assessment for the years 2005-06 to 2008-09 under PVAT Act 2005, and the same were uploaded on the Department's website. The ETC issued instructions (October 2010 and June 2011) regarding timely disposal of assessment cases and maintenance of records. In three[11] AETCs, we noticed that out of 12,818, only 8,043 assessments were framed. We further observed that 3,814 cases which pertain to Ludhiana II and Muktsar have become time barred and for remaining 41,150 cases, no information was provided by *nine* districts regarding assessments completed and time barred cases.

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[10] Amritsar-I, Bathinda, Jalandhar-I, Jalandhar-II, Ludhiana-I, Ludhiana-II, Mohali, Muktsar, Patiala, Ropar and Sangrur.

[11] Ludhiana-II, Hoshiarpur and Muktsar.

The Department in the exit conference (September 2015) accepted the audit observation and stated that the issue would be examined.

2.3.8 Non- existence of timeline for deciding appeal cases

Sub Section 4 of Section 18A of CST Act, 1956 provides that the highest appellate authority of a State may, as far as practicable, hear and decide such appeal within a period of six months from the date of filing of the appeal.

We noticed in 10[12] AETCs that VAT demands amounting to ₹ 84.28 crore in 180 cases and CST demands of ₹ 19.08 crore in 72 cases were raised as per assessment disposal registers/assessment files assessed during the year 2009-10 to 2013-14 but could not be realized due to non finalisation of appeal cases by appellate authorities within six months.

We observed that no time line was fixed for disposal of appeal cases, although Section 35(4A) of Central Excise Act provides that the Commissioner (Appeals) shall, wherever it is possible to do so, hear and decide the appeal within six months from the date on which it is filed. Similar provision also exists in Section 128A (4A) of Customs Act.

AETC, Muktsar stated (September 2015) that seven (out of eight) cases were under appeal in various courts and in one case, recovery proceedings had been initiated and AETC Ludhiana-I stated that the recommendation under consideration. However, Department, in the exit conference (September 2015) accepted the audit observation and stated that timeline in this regard would be framed.

2.3.9 Compliance deficiencies

2.3.9.1 Inter-state transactions against fake statutory forms

Section 8 of CST Act, 1956 read with Section 6A provides that every dealer, who in the course of inter-state trade or commerce sells to a registered dealer, shall be liable to pay tax at concessional rate. For this purpose, he may furnish to the assessing authority declarations in prescribed forms.

In AETC, Bathinda, we noticed from the records relating to assessments framed during the year 2014-15 for the financial year 2009-10 that a dealer made inter-state sale and branch transfer of ₹ 151.23 crore against Forms C and F. The Economic Intelligence Unit (EIU) had cross-verified from respective States, the status of dealers and genuineness of the statutory declarations forms C and F as submitted by the dealer and found that out of ₹ 151.23 crore sale, the forms worth ₹ 84.70 crore were fake/non-genuine.

[12] Bathinda, Hoshiarpur, Jalandhar-I, Jalandhar-II, Ludhiana-I, Ludhiana-II, Mohali, Muktsar, Ropar and Sangrur.

However, the DO at the time of assessment allowed transactions of ₹ 76.76 crore.

We further cross verified declaration forms from respective Commercial Tax Departments of the issuing States to this dealer wherein we found that the statutory forms worth ₹ 141.67[13] crore for the years 2008-09 and 2010-11 were fake since these were not issued by the respective Tax Departments.

The matter was brought to the notice of the Government/Department (August 2015). Reply was awaited.

2.3.9.2 Short levy of output tax due to non-verification of sales/purchases with ICC data

Rule 51A of PVAT Rules provides that if any person, who is registered under Section 21 of the PVAT Act, has filed incomplete or incorrect return or has conducted huge transactions as per Information Collection Centre (ICC) data available in the computer system but has not filed corresponding returns, DO may lock his Tax Identification Number, without prejudice to other action which may be taken against him under the Act or the Rules.

(a) We noticed in 14 cases of seven[14] AETCs for the period from 2009-10 to 2013-14 that there were differences in inter-state purchase of ₹ 51.77 crore and inter-state sale of ₹ 40.62 crore between those shown in assessment orders and ICC data. In these cases, the Department neither utilized the information available in ICC data to cross verify/reconcile the inter-state sales and inter-state purchases at the time of assessment nor recorded anything contrary about ICC transactions in assessment orders. The difference of sales/purchases had tax implication of ₹ 4.16 crore. Hence the very objective of assessment was not met in these cases.

(b) We further noticed from data analysis in respect of 11 AETCs for the period 2009-10 and 2010-11 that in 1,124 returns out of 3,67,167 returns, there was difference of more than ₹ two crore in inter-state sale reported at ICC and that declared in inter-state sales in VAT-20, in each return. Similarly, in 918 returns out of 3,67,167 returns, there was difference of more than ₹ two crore in each return between inter-state purchase reported at ICC and that declared in inter-state purchases in VAT-20.

AETC, Hoshiarpur in its reply stated that such differences were due to incorrect punching of data. The reply was not convincing as the Department

[13] 2008-09: ₹ 124.21 crore and 2010-11: ₹ 17.46 crore.

[14] Fatehgarh Sahib, Jalandhar-II, Ludhiana-I, Ludhiana-II, Ludhiana-III, Mohali and Sangrur.

was making use of this basic data in all their scrutiny and other modules. AETCs Sangrur and Ropar agreed to take up the cases for assessment. Reply in remaining cases was awaited.

2.3.9.3 Non/short reversal of ITC on account of branch transfer

Section 13A of PVAT Act 2005 provides that subject to provisions of the Act, a taxable person shall be entitled to ITC in respect of tax paid by him under the Punjab Tax on Entry of Goods into Local Area Act, 2000, if such goods are for sale in the State or in the course of inter-state trade or commerce or in the course of export or for use in the manufacturing, processing and packing of taxable goods for sale within the State or in the course of inter-state trade or commerce or in the course of export. Further, Rule 24 of PVAT Rules provides that where a taxable person makes branch transfer and identification of goods involved in branch transfer is not possible, the amount of ITC shall be reduced proportionately.

We noticed in 21 cases of nine[15] AETCs that against branch transfer of ₹ 1,035.38 crore, ITC of ₹ 16.91 crore was to be reversed whereas ITC of only ₹ 6.44 crore was reversed which was in contravention to the provisions *ibid*. This resulted in excess allowance of ITC of ₹ 10.47 crore.

The matter was brought to the notice of the Government/Department (August 2015). Final reply was awaited.

2.3.9.4 Non/short reversal of ITC on account of manufacturing of tax free goods

Section 13(5) (h) provides that a taxable person shall not qualify for ITC in respect of tax paid on purchase of goods used in manufacturing, processing or packing of goods specified in Schedule 'A'. Further, Rule 24 of Punjab VAT Rules provides that where a taxable person has used the goods purchased, partially for taxable sales but is unable to maintain accounts as provided in Rule 23, and the sales made by him includes sale of tax free goods and taxable goods or consignment or branch transfers, then it shall be presumed that the goods so purchased during the tax period have been used in proportion of turnover of sales of tax free goods, taxable goods and consignment or branch transfer of the tax period or return period and accordingly ITC shall be claimed in that proportion.

We noticed in 11 cases of five[16] AETCs that ITC of ₹ 1.45 crore was required to be reversed against tax free sale. However, ITC of only

[15] Bathinda, Jalandhar-II, Ludhiana-I, Ludhiana-II, Ludhiana-III, Mohali, Muktsar, Patiala and Sangrur.
[16] Ludhiana-I, Ludhiana-II, Ludhiana-III, Mohali and Sangrur.

₹ 0.34 crore was reversed. This resulted into excess allowance of ITC of ₹ 1.11 crore.

AETC Ludhiana-III in its reply accepted the audit observation in three cases. Reply in remaining cases was awaited.

2.3.9.5 Inadmissible allowance of ITC on account of entry tax

Section 13 A of PVAT Act provides that 'subject to the provisions of the Act, a taxable person shall be entitled to ITC in respect of the tax paid by him under the Punjab tax on Entry of Goods into Local Area Act, 2000, if such goods are for sale in the State or in the course of inter state trade or commerce or in the course of export or for use in the manufacturing, processing or packing of taxable goods'. Further, Section 13(4) of PVAT Act provides that ITC on furnace oil, transformer oil, mineral turpentine oil, water methanol mixture, naphtha and lubricants, shall be allowed only to the extent by which the amount of tax paid in the State exceeds four *per cent*.

We noticed in 17 cases of seven[17] AETCs that the DOs allowed ITC of entry tax of ₹ 1.20 crore on purchases of such goods on which no ITC was allowable as per the provisions *ibid*. This resulted into inadmissible allowance of ITC of ₹ 1.20 crore.

AETC Ludhiana-II in its reply accepted the audit observation in *one* case. Reply in remaining cases was awaited.

2.3.9.6 Non recovery of exemption/incentive availed

Rule 8(1) (ii) of D&E Rules, 1991 provides that the deferment or exemption certificate granted in respect of a unit shall be liable to be cancelled if the unit has closed its business during the period of deferment or exemption. Further, Rule 9(5) provides that on the cancellation of eligibility certificate before it is due for expiry, the entire amount of tax exempted shall become payable immediately, in lump sum and the provision relating to recovery of tax, interest and imposition of penalty under the Act, shall be applicable in such cases.

We noticed in seven cases under three[18] AETCs, that dealers were allowed the benefit of exemption of ₹ 3.41 crore and got their RCs cancelled before completion of exemption period. The exemption availed by these dealers was required to be recovered immediately in lump sum on cancellation of their RCs as required under the Rule *ibid*.

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[17] Fatehgarh Sahib, Hoshiarpur, Ludhiana-I, Ludhiana-II, Ludhiana-III, Mohali and Ropar.
[18] Bathinda, Ludhiana-II and Mohali.

The matter was brought to the notice of the Government/Department (August 2015). Final reply was awaited.

2.3.9.7 Excess claim of ITC

Section 13 of PVAT Act 2005 provides that a taxable person shall be entitled to ITC in such manner and subject to such conditions, as may be prescribed, in respect of input tax on taxable goods, including capital goods, purchased by him from a taxable person within the State during the tax period.

We noticed in 18 cases in seven[19] AETCs that DOs allowed excess ITC of ₹ 8.19 crore due to suppression of purchases/sales, incorrect brought forward of ITC, non-debit to exemption etc. as detailed in ***Appendix-II*.**

AETC Sangrur in its reply stated that three cases had been taken for re-assessment. Final outcome in these cases and reply in remaining cases was awaited.

2.3.9.8 Non-reversal of Notional Input Tax Credit in respect of concessional CST Sale

Clause (ii) of Sub condition (5) of condition No.5 of New Conditions for Concessions under the Punjab VAT Act, 2005 provides that Notional Input Tax Credit (NITC) of four *per cent* can be utilized by the taxable person, purchasing goods from an exempted unit for discharging its output liability under CST Act, 1956 if the goods are sold by way of inter-state sales. The NITC shall be available only to the extent of CST chargeable under the said Act of 1956.

We noticed in eight cases in two[20] AETCs that dealers had made purchases from exempted units and sold as inter-state sales at concessional rate of two *per cent* but while assessing these cases, DO allowed excess NITC of ₹ 0.89 crore due to non restriction of credit of NITC to the extent of CST chargeable. This resulted into non/short reversal of NITC of ₹ 0.89 crore.

The matter was brought to the notice of the Government/Department (August 2015). Final reply was awaited.

2.3.9.9 Non-reversal of purchase tax in respect of concessional CST Sale

Section 19 (5)(b) of PVAT Act provides that ITC, on goods specified in schedule 'H' or the products manufactured there-from, when sold in the course of inter-state trade or commerce, shall be available only to the extent of CST, chargeable under the CST Act 1956.

[19] Bathinda, Jalandhar-II, Ludhiana-I, Ludhiana-II, Ludhiana-III, Mohali and Sangrur.
[20] Ludhiana-I and Mohali.

We noticed in seven cases of five[21] AETCs that goods worth ₹ 98.15 crore, manufactured from schedule 'H' goods, were sold at concessional rates in the course of inter-state trade or commerce. ITC of ₹ 1.35 crore was required to be reversed in view of provisions *ibid,* whereas ITC of ₹ 0.34 crore only was reversed. This resulted in non/short reversal of purchase tax of ₹ 1.01 crore.

The matter was brought to the notice of the Government/Department (August 2015). Final reply was awaited.

2.3.9.10 Non/short reversal of ITC/Purchase Tax in respect of Procurement Agencies

Rule 21(2) of PVAT Rules 2005 provides that ITC availed on the goods, which are lost, destroyed or damaged beyond repair, shall be reversed immediately on occurrence of such event.

Further, Rule 21(6) provides that where ITC has already been availed of by a taxable person against the purchase of goods, a part of which is either used in manufacturing the goods specified in Schedule 'A' or disposed of otherwise than by way of sale, the ITC so availed for such part of goods will be deducted from ITC for the relevant period of use or disposal referred to above.

We noticed in 11 cases of three[22] AETCs that the dealer purchased paddy from other than taxable persons and sent it to rice miller for milling, but the miller, after milling paddy, transferred only rice which was 67 *per cent* (as per established millings norms of paddy, 67 *per cent* rice is produced from paddy and 33 *per cent* is by-products) of paddy and there was no account of 33 *per cent* by-products *viz.* broken rice, rice kani, phuk, husk *etc*. Neither purchase tax availed in respect of by-products was reversed nor tax was levied on sale of by-products while calculating ITC of paddy. This resulted into non reversal of purchase tax of ₹ 4.41 crore**.**

The matter was brought to the notice of the Government/Department (August 2015). Final reply was awaited.

2.3.9.11 Non retention of ITC/Purchase Tax

Section 19 (4) of PVAT Act, provides that purchase tax paid by a taxable person shall not be admissible as ITC, unless the goods are sold within the State or are used for manufacturing of taxable goods in the State for sale or

[21] Bathinda, Ludhiana-I, Mohali, Muktsar and Patiala.
[22] Bathinda, Ludhiana-II and Muktsar.

are sold in the course of inter-state trade or commerce or in the course of export.

We noticed that in two cases of two[23] AETCs, ITC on purchase tax was not retained on closing stock at the time of assessment but was adjusted against output tax liability resulting in deferment of due tax. This resulted in inadmissible allowance of ITC of ₹ 5.99 crore due to non-retention of purchase tax.

The matter was brought to the notice of the Government/Department (August 2015). Final reply was awaited.

2.3.9.12 Short levy of tax due to suppression of purchase in respect of entry tax paid

Sub Section (zc) of Section 2 of PVAT Act, defines "return" as a true and correct account of business pertaining to the return period in the prescribed form.

We noticed in nine cases of three[24] AETCs that dealers showed inter-state purchases in their accounts/returns which were not in correspondence with entry tax claimed and the DO allowed the same while assessing the cases. This resulted into suppression of inter-state purchase and short levy of output tax of ₹ 0.80 crore.

The matter was brought to the notice of the Government/Department (August 2015). Final reply was awaited.

2.3.9.13 Non/short levy of tax due to misclassification of goods

Sub section (zc) of Section 2 provides that "Return" means a true and correct account of business pertaining to the return period in the prescribed form. Rule 48 of PVAT rules 2005 provides that the DO, after considering the objection and documentary evidence, if any, filed by the person, shall pass an order of assessment in writing determining the tax liability of such a person.

We noticed in two cases of AETC Mohali that the dealer claimed and the DO considered the tax liability after allowing tax-free sales without specifically mentioning (i) the basis in the assessment order and (ii) misclassifying the sale of motorcycles as sale of gold, and assessed the tax at lower rate resulting in short levy of output tax of ₹ 2.39 crore**.**

The matter was brought to the notice of the Government/Department (August 2015). Final reply was awaited.

[23] Ludhiana-II and Muktsar.
[24] Fatehgarh Sahib, Ludhiana-III and Sangrur.

2.3.9.14 Short levy of tax on goods incorporated in works contract

Section 8 (2-A) of PVAT Act 2005 read with Rule 15 of PVAT Rules 2005 provides that every person executing works contracts, shall pay tax on the value of goods at the time of incorporation of such goods in the works executed at the rates applicable to the goods under this Act.

We noticed in 11 cases of five[25] AETCs that tax of ₹ 1.66 crore was levied short in case of works contract due to allowing of inadmissible deductions under Rule 15 of PVAT Rules 2005. DOs were required to cross check sales and purchases before allowing deductions as per provisions *ibid*.

AETCs Ludhiana-III, Sangrur and Ropar accepted the audit observation and have taken up three cases[26] for re-assessment. Final outcome and reply in the remaining cases was awaited.

2.3.9.15 Short levy of tax due to suppression of sales/purchases

Sub Section (zc) of Section 2 of PVAT Act, defines "return" as a true and correct account of business pertaining to the return period in the prescribed form.

We noticed in 21 cases of seven[27] AETCs that the DOs had accounted for less sales in the assessment orders than the actual gross sales worked out on the basis of trading accounts. This resulted in short levy of tax of ₹ 10.22 crore as detailed in ***Appendix-III***.

AETC Jalandhar-I in its reply stated that two cases had been taken for re-assessment. Reply in the remaining cases was awaited.

2.3.9.16 Incorrect levy of concessional rate of tax on account of non/short submission of statutory declarations

Sub Section 3 and 4 of Section 5 of CST Act 1956 provides that a transaction shall not be treated as indirect export unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority.

Further, Sub Section 1 and 4 of Section 8 of CST 1956 provides that inter-state sale to a registered dealer will be taxed at the rate of two *per cent* or the rate applicable to the sales tax law of the State whichever is lower only if the dealer selling the goods furnishes to the prescribed

[25] Jalandhar-II, Ludhiana-III, Mohali, Ropar and Sangrur.
[26] One each in Ludhiana-III, Ropar and Sangrur
[27] Bathinda, Jalandhar-I, Jalandhar-II, Ludhiana-I, Ludhiana-II, Ludhiana-III and Mohali.

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 a prescribed form obtained from the prescribed authority.

We noticed in six cases in three[28] AETCs that while finalizing assessments, undue benefit of concessional rate of tax on inter-state sales was allowed without supporting statutory declarations which resulted in short levy of output tax of ₹ 2.16 crore.

AETC Hoshiarpur in its reply stated that two cases had been taken for re-assessment. Final outcome and reply in remaining cases was awaited.

2.3.10 Recovery of tax demands

2.3.10.1 Non deposit of tax demands raised under assessments

Section 29(11) of the PVAT Act, provides that when any tax, interest, penalty or any other sum is payable in consequence of any order passed, the DO shall serve upon the person a notice of demand in the prescribed form specifying the sum so payable.

Rule 51 of the PVAT Rules provides that if any sum is payable under the Act or these rules, the DO shall serve a notice in Form VAT-56 upon him specifying the date, not less than 15 days and not more than 30 days from the date of service of notice, on or before which, payment shall be made and he shall also fix a date on or before which, the person shall furnish the treasury challan in proof of such payment.

In 10 AETCs, we noticed from assessment disposal registers/assessment files that tax demands of ₹ 910.85 crore, out of which ₹ 711.15 crore[29] for the period from 2009-10 to 2013-14 were raised in assessments. These demands were still lying outstanding in the disposal registers. None of the AETCs maintained demand and collection registers in Form VAT-55 (Rule 82) to watch recovery of outstanding demands. In the absence of this, position of outstanding recovery in respect of tax demand of ₹ 910.85 crore could not be ascertained.

Five[30] AETCs in their reply stated that major demands were non-recoverable due to pendency before appellate authorities. AETC Muktsar also replied that records of demands for ₹ 8.52 lakh were not available and in remaining cases, the status would be given after verification. AETC, Sangrur replied that directions had been issued to ETOs to maintain demand and collection register in Form VAT-55. Reply of remaining AETCs was awaited.

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[28] Hoshiarpur, Ludhiana-I and Mohali.

[29] Ludhiana-I (₹ 99.50 crore), Ludhiana-II (₹ 102.23 crore), Mohali (₹ 509.42 crore)

[30] Hoshiarpur, Ludhiana-I, Ludhiana-II, Muktsar and Ropar.

2.3.10.2 Non levy of interest on delayed payment of tax

Section 32(4) of PVAT Act provides that if the amount of tax or penalty due from a person is not paid by him within the period specified in the notice of demand, or if no period is specified, within thirty days from the service of such notice, the person shall in addition to the amount of tax or penalty, be liable to pay simple interest on such amount at the rate of one and half *per cent* per month from the date immediately following the date on which the period specified in the notice or the period of 30 days.

In 10[31] AETCs, we noticed from assessment disposal registers/assessment files that in 1,257 cases for the period 2009-10 to 2013-14, tax of ₹ 17.22 crore was deposited with delay ranging between one to 30 months on which interest of ₹ 0.61 crore was leviable but not levied.

AETC Muktsar admitted the delay and stated that the delay was due to late serving of assessment order; AETC Sangrur replied that notices to recover the due interest had been issued. Reply in respect of other districts was awaited.

2.3.10.3 Non/short levy of interest and penalty

Section 32(1) of PVAT Act, provides that if any person fails to pay the amount of tax due from him as per provisions of PVAT, he shall, in addition to the amount of tax, be liable to pay simple interest on the amount of tax due from him at the rate of half *per cent* per month from the due date for payment till the date he actually pays the amount of tax. Section 53 of PVAT Act, states that if a person registered under this Act, fails to pay the amount of tax in accordance with the provisions of this Act, he shall be liable to pay, in addition to the tax and the interest payable by him, a penalty, at the rate of two *per cent* per month on the tax, so due and payable from the date, it had become due to the date of its payment, or to the date of the order of the assessment, whichever is earlier. The amount of penalty payable under this Section shall be calculated by considering part of the month as one month.

In three[32] AETCs, we noticed that in six cases that the Department levied interest and penalty of ₹ 20,000 only instead of ₹ 4.29 crore on account of delayed payment of tax of ₹ 2.07 crore. It resulted into non/short levy of interest and penalty of ₹ 4.29 crore.

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[31] Bathinda, Hoshiarpur, Jalandhar-I, Jalandhar-II, Ludhiana-I, Ludhiana-II, Mohali, Muktsar, Ropar and Sangrur.

[32] Bathinda, Ludhiana-I and Ropar.

Further, data analysis of COVIS database in respect of 12 AETCs for the period 2009-10 to 2013-14, showed that in 22,284 cases tax of ₹ 1,756.91 crore was deposited with delay ranging from one to 49 months. AETCs Hoshiarpur, Muktsar and Ropar in their replies stated that cases were being verified. In the remaining cases, the replies were awaited.

2.3.11 Internal control

2.3.11.1 Internal Audit

Internal Audit Organisation (IAO) is a vital component of the internal control mechanism. IAO was set up in October 1981 as an independent organization under the State Finance Department and was entrusted *inter-alia*, with the internal audit of revenue receipts to safeguard against any loss or leakage of revenue arising under the various revenue heads including VAT.

Additional Director intimated (June 2015) that 5,387 units were planned for audit during 2009-2010 to 2013-2014 whereas, only 1,312 units were audited as detailed below:

Year	No. of units planned	No. of units audited	Percentage
2009-10	807	4	0.50
2010-11	965	39	4.04
2011-12	1,088	5	0.45
2012-13	1,261	165	13.08
2013-14	1,266	1,099	86.80
Total	**5,387**	**1,312**	

It could be seen from the table that percentage of units audited against the units planned during 2013-14 had increased from previous years.

2.3.11.2 Lack of control on assessment disposal register

We noticed that each DO maintained his own assessment disposal register and entered the details of assessments which were conducted and finalized by him. It was further noticed that whenever a new incumbent took charge of a particular ward, another disposal register was opened for entering assessments. Thus, there was no institutionalized mechanism for issuing disposal registers and there was no reliable source on the number of assessment disposal registers operative in a ward.

In the absence of such a internal control mechanism, audit could not give reasonable assurance regarding production/non-production of assessment disposal registers.

The matter was brought to the notice of the Government/Department (August 2015). Final reply was awaited.

2.3.11.3 Improper maintenance of Daily Collection Register

Sub Rule (6) of Rule 37 of PVAT Rules 2005 provides that "there shall be maintained in the AETC office of each district, a daily collection register in Form VAT 54, wherein particulars of every challan received in proof of payment of tax or penalty or any other amount due under the Act shall be recorded".

We noticed that daily collection register in Form VAT 54 and demand and collection register in Form VAT 55 were not being properly maintained. In the absence of this, correct realization of due tax could not be ascertained as discussed in **Para 2.3.10.1**.

AETC Sangrur in its reply stated that directions had been issued to ETOs to maintain demand and collection register in VAT-55. Final reply in respect of other districts was awaited.

2.3.12 Conclusion

There was no institutionalised system in the Department for selection of returns for audit and selection of cases for assessment. Department made assessments without framing any parameters. Non-adherence to procedures mentioned in PVAT Act and Rules led to avoidance and evasion of tax. Failure of DOs to follow prescribed procedures also led to undue benefit to the dealers and loss of revenue in the form of bogus transactions, non/short levy of tax, under declaration of output tax, excess allowance of ITC etc. There was no monitoring mechanism for recovery of tax demands after assessment. There were cases of non levy of interest on delayed payment of tax and shortfall in conducting internal audit of planned units. In the absence of properly maintained daily collection register as well as institutionalised mechanism for issuing disposal register, correct realization of due tax could not be ascertained.

2.3.13 Recommendations

It is recommended that the Department should consider:

i) scrutiny of returns for effective tax administration and maintenance of proper records thereof;
ii) framing parameters as provided in Rule 44 *ibid* for selecting the returns to be audited so that correctness of returns and admissibility of various claims can be checked;

iii) framing a set of comprehensive guidelines specifying the parameters for risk based selection of dealers for assessment which involves cross verification of statutory declarations including vehicles used for transportation of goods to ascertain the genuineness of transactions;
iv) enforcing the provisions of maintenance of taxable person wise ledger in VAT 55 to check the realization of demands raised;
v) framing timeline to finalise the appeal cases pending with departmental appellate authorities; and
vi) improving the reliability of data of ICC barriers besides capturing of all transactions at ICC barriers.

2.4 Excess allowance of Notional Input Tax Credit

Non restricting of notional ITC upto the limit of CST paid resulted into excess allowance of NITC of ₹21.93 lakh, in one case by AETC Ferozepur.

Condition No. 5(5(ii)) read with condition No. 5(6) of New Conditions for concessions under the PVAT Act 2005 and the PGST (D&E) Rules, 1991 provides that a taxable person purchasing goods from an exempted unit shall utilize the permissible NITC against the output tax liability arising out of sale of such goods only and in case of interstate sale, the taxable person shall be entitled for ITC only up to the limit of liability of CST paid.

(a) We noticed (February 2015) in a case of a dealer for the year 2008-09 (assessed on 14 November 2013) under AETC Ferozepur that the dealer purchased goods worth ₹ 44.45 crore from an exempted unit. The dealer made interstate sale of ₹ 25.30 crore at the rate of two *per cent* out of gross sale of ₹ 102.57 crore. The DO allowed full NITC of ₹ 1.78 crore at the rate of four *per cent* on ₹ 44.45 crore whereas NITC in respect of goods used in interstate sale was required to be limited to CST paid. Non-observance of condition No. 5(5(ii)) *ibid* resulted into non-reversal of NITC of ₹ 21.93 lakh[33].

(b) We noticed (January 2014) in a case of a dealer for the year 2008-09 (assessed on 4 December 2012) under AETC Barnala that the dealer purchased goods worth ₹ 7.29 crore from an exempted unit but ITC on this purchase was not reversed. It resulted into excess allowance of NITC of ₹ 4.01 lakh.

[33] ₹ $\frac{25.30*44.45*2}{102.57*100}$ = ₹ 21.93 lakh.

The matter was reported to Government/Department (June 2015); their replies were awaited (November 2015).

2.5 Excess allowance of Input Tax Credit

Incorrect calculation/computation of ITC in two AETCs, resulted into excess allowance of ITC of ₹ 13.35 lakh. Further, in five AETCs, the ITC on inter-state sale of Schedule 'H' goods/tax free goods was not reversed which resulted in excess allowance of ITC of ₹ 34.15 lakh.

(a) Rule 48 of PVAT Rules 2005 provides that the DO, after considering the objections and documentary evidence, if any, filed by the person, shall pass an order of assessment in writing, determining the tax liability of such a person. Section 8 (1) of PVAT Act 2005 provides that the rate of tax applicable on purchase or sale of declared goods shall not exceed four *per cent* or such rate, as specified in clause (a) of Section 15 of the CST Act, 1956.

We noticed (August 2012 and February 2014) in two assessment cases of two AETCs[34] for the years 2009-10 and 2010-11 that the dealers were allowed excess ITC of ₹ 13.35 lakh in contravention to the provisions of the PVAT Act as per detail given in **Table 2.3** :

Table 2.3

Sl. No.	Name of Unit	Period of Assessment	Excess ITC allowed (₹ in lakh)	Nature of irregularity
1	AETC Kapurthala	2010-11	7.12	ITC of ₹ 35.60 lakh, on purchase of rice of ₹ 7.12 crore was allowed at the rate of 5 *per cent*, instead of allowable ITC of ₹ 28.48 lakh at the rate of 4 *per cent*, resulting in excess carry forward of ITC.
2	AETC Moga	2009-10	6.23	CST liability was determined at ₹ 9.40 lakh, whereas at the time of adjustment against ITC, only ₹ 3.17 lakh was adjusted
Total			**13.35**	

The matter was reported to the Government/Department (April 2014 and May 2014); their replies were awaited (November 2015).

[34] Kapurthala and Moga.

(b) Non reversal of ITC on account of Schedule 'H' goods/tax free goods

Section 19 (5) of PVAT Act 2005 provides that ITC, on goods specified in Schedule 'H' or the products manufactured there-from, when sold in the course of inter-state trade or commerce, shall be available only to the extent of CST, chargeable under the CST Act 1956. Condition No. 5(5) (ii) of New Condition of D & E Rules provides that if any dealer made purchases from exempted unit sold by way of inter-state sales, NITC shall be available only to the extent of the CST.

Rule 24 of PVAT Rules 2005 provides that where a taxable person has used the goods purchased, partially for taxable sales, but is unable to maintain accounts as provided in Rule-23 and the sales made by him include sale of tax free goods and taxable goods or consignment or branch transfers, then it shall be presumed that the goods so purchased during the tax period have been used in proportion of turnover of sales of tax free goods, taxable goods and consignment or branch transfers of the tax period or return period and accordingly ITC shall be claimed in that proportion.

We noticed (between January 2014 and December 2014) from six assessment cases of dealers under five AETCs[35] that ITC of ₹ 34.15 lakh was allowed to the dealers in contravention to various provisions of the Act as per details given in the **Table 2.4**:

[35] Amritsar-II, Barnala, Ferozepur, Kapurthala and Mansa.

Table 2.4

Sl. No.	Name of AETC	Period of refund/ Assessment	Amount (₹ in lakh)	Nature of irregularity
1.	Mansa Barnala	2011-12 2008-09	14.03	ITC on inter-state sale of Schedule 'H' goods valuing ₹ 11.10 crore was not reversed which resulted in excess allowance of ITC.
2.	Kapurthala	2010-11	3.17	Against tax free purchase of ₹ 2.52 crore, the dealer made tax free sale of ₹ 3.53 crore. The DO omitted to reverse the ITC of ₹ 3.17 lakh on account of tax free sale.
3.	Ferozepur	2007-08	5.06	Paddy of ₹ 6.33 crore was purchased and consumed in production of rice. Reversal of 20 *per cent* on paddy consumed in production of husk was not made which resulted in excess allowance of ITC.
4.	Amritsar-II	2011-12	11.89	Against the purchase value of goods for ₹ 93.29 crore on which ITC was claimed, sale value shown in profit and loss account was ₹ 91.12 crore. Thus, there was difference of ₹ 2.16 crore on which reversal at the rate of 5.5 *per cent* was not made.
Total			**34.15**	

The matter was reported to the Government/Department (between April 2014 and June 2015); their replies were awaited (November 2015).

2.6 Short levy of purchase tax

Application of incorrect rate of purchase tax of 2.75 per cent on the purchase of sugarcane between April 2011 to December 2011 against the actual rate of purchase tax of 5.5 per cent resulted in short levy of purchase tax of ₹19.91 lakh in one case of AETC, Gurdaspur.

Section 19 of PVAT Act provides that there shall be levied VAT on taxable turnover of purchase of goods specified in Schedule-H at a rate of VAT applicable to such goods as per the schedules.

Sugarcane, a Schedule-H item, was taxable at the rate of five *per cent* under Schedule-B up to 20 December 2011 and thereafter at the rate of 2.5 *per cent* under Schedule-E.

We noticed (March 2015) in one case for the year 2011-12 (assessed on 30 January 2014) pertaining to AETC Gurdaspur that the dealer purchased sugarcane of ₹ 7.25 crore between April 2011 and December 2011 on which purchase tax at the rate of 5.5 *per cent* (including 10 *per cent* surcharge) was

required to be paid. However, the DO levied purchase tax at the rate of 2.75 *per cent* on all the purchases. The omission resulted into short levy of purchase tax of ₹ 19.91 lakh (2.75 *per cent* of ₹ 7.25 crore).

The matter was reported to the Government/Department (June 2015); their replies were awaited (November 2015).

2.7 Short levy of penalty

The assessing authority levied a penalty of ₹ 3.41 lakh as per Section 56(e) of the Act on non-genuine purchases against the leviable penalty of ₹21.34 lakh, resulting in short levy of penalty of ₹17.93 lakh.

Section 56 (e) of PVAT Act provides that 'if a Commissioner or the DO is satisfied that the person, in order to evade or avoid payment of tax has availed ITC to which he is not entitled to, he shall direct that the person shall pay, by way of penalty, in addition to the tax and interest payable by him, a sum equal to twice the amount of tax, assessed on account of the aforesaid reasons'.

We noticed (March 2015) in an assessment case of a dealer for the year 2011-12 (assessed on 2 August 2013) pertaining to AETC, Barnala that the DO held in the assessment order that the dealer availed ITC on non-genuine purchase with a view to evade or avoid payment of tax. Accordingly, assessment was framed and additional tax of ₹ 10.67 lakh was assessed besides penalty under Section 56 of the Act *ibid*. However, while issuing tax demand notice (TDN) penalty of ₹ 3.41 lakh was levied instead of ₹ 21.34 lakh (twice the amount of additional tax assessed). This omission resulted into the short levy of penalty of ₹ 17.93 lakh.

The matter was reported to the Government/Department (June 2015), the Department accepted the audit observation and levied penalty of ₹ 21.34 lakh under Section 56 *ibid*. However, recovery was still awaited (November 2015).

2.8 Loss of revenue due to non adherence of appellate authority orders

Non adherence of orders of Appellate Authority to re-assess the remanded case resulted into loss of revenue of ₹ 11.38 lakh, raised during original assessment, in AETC Mohali.

Section 62 of PVAT Act provides that, an appeal against every original order passed under this Act or the Rules made there under shall lie, if the order is made by an officer below the rank of Deputy Excise and Taxation Commissioner (DETC), to the DETC. Further, Rule 71(3) of PVAT Act provides that the memorandum of appeal shall be accompanied with the payment of 25 *per cent* of amount of the demand.

We noticed (August 2013) in the refund case of a dealer under AETC Mohali that assessment for the year 2004-05 was made (January 2009) in which additional demand of ₹ 11.38 lakh was raised by the DO. The dealer had filed an appeal before DETC (Appeal) Patiala against the *ex-parte* order of the DO after depositing 25 *per cent* amount of the demand. The DETC remanded (October 2009) the case for re-assessment after giving due opportunity to the dealer to show his records within 45 days from the receipt of order. However, the Department failed to re-assess the case and allowed refund of 25 *per cent* of the amount of demand earlier deposited by the dealer at the time of appeal on the request of the dealer. This resulted in loss of ₹ 11.38 lakh to government exchequer due to non-realisation of assessed demand.

The matter was reported to Government/Department (March 2014); their replies were awaited (November 2015).

2.9 Short levy of output tax

The Assessing Authority allowed the full benefit of TDS/Entry tax but the turnover corresponding to TDS/Entry tax was not accounted for correctly for the purpose of output tax. This resulted in short levy of output tax of ₹34.55 lakh.

(a) Section 27(1) of PVAT Act provides that every contractee responsible for making payment to any person (Contractor) for discharge of any liability on account of valuable consideration, exceeding ₹ 5.00 lakh in a single contract payable for the transfer of property in goods in pursuance of a works contract, shall, at the time of making such payment to the contractor either in cash or in any manner, deduct an amount equal to four *per cent* of such sum towards the tax payable under this Act on account of such contract. Further, Section 8 (2A) provides that every person executing works contracts, shall pay tax on the value of goods at the time of incorporation of such goods in the works executed at the rates applicable to the goods under this Act.

We noticed (October 2013) from an assessment case of a dealer under AETC, Moga for the year 2010-11 that the dealer was engaged in the business of works contract. Dealer claimed and DO allowed the benefit of TDS of ₹ 28.99 lakh. The DO computed the GTO of ₹ 5.08 crore instead of ₹ 7.25 crore corresponding to TDS. Thus, the DO computed less GTO of ₹ 2.17 crore, which resulted into short levy of output tax of ₹ 8.69 lakh (four *per cent* of ₹ 2.17 crore).

Further, the dealer claimed and DO allowed the deduction on account of material supplied by the Department valuing ₹ 68.27 lakh which was not

admissible as per sections *ibid*. This resulted into short levy of output tax of ₹ 2.73 lakh (four *per cent* of ₹ 68.27 lakh).

The matter was brought to the notice of Government/Department (March 2014); their replies were awaited (November 2015).

(b) Rule-48 of PVAT Rules 2005 provides that the DO, after considering the objections and documentary evidence, if any, filed by the person, shall pass an order of assessment in writing, determining the tax liability of such a person.

We noticed (December 2013) from an assessment case of a dealer under AETC Amritsar-II for the year 2010-11 that the dealer claimed and DO allowed the benefit of entry tax of ₹ 81.80 lakh, however, the amount of purchases was shown as ₹ 15.80 crore against the actual purchases of ₹ 17.20 crore. Thus, the dealer did not take into account the purchases of ₹ 1.40 crore which subsequently resulted in suppression of sale and short levy of output tax of ₹ 7.73 lakh (5.5 *percent* of ₹ 1.40 crore).

(c) We noticed from four assessment cases of two dealers under two AETCs[36] for the years 2008-09 and 2010-12 that DO determined less output tax liability of ₹ 15.40 lakh as detailed in **Table 2.5:**

Table 2.5

Sl. No.	Name of AETC	Period of refund/ Assessment	Amount (₹ in lakh)	Nature of irregularity
1	Kapurthala	2008-09 and 2010-12	12.48	In three cases, as per annual returns, output tax of the dealer was ₹ 63.37 lakh whereas DO assessed tax of ₹ 50.89 lakh.
2.	Nawanshahar	2008-09	2.92	The DO allowed deduction of tax element of ₹ 10.73 lakh, but tax on interstate sales of ₹ 95.41 lakh was not levied.
Total			**15.40**	

The matter was brought to the notice of Government/Department (April 2014); their replies were awaited (November 2015).

[36] Kapurthala and Nawanshahar.

2.10 Loss of revenue due to inadmissible refund of entry tax on imported sugar

In three AETCs refund of entry tax of ₹ 34.27 lakh was irregularly allowed on the purchase of sugar from outside the State, but sold as tax free in the State.

Section 13-A of PVAT Act provides that, 'subject to the provisions of this Act, a taxable person shall be entitled to ITC in respect of the tax, paid by him under the Punjab Tax on Entry of Goods into Local Areas Act, 2000, if such goods are for sale in the State or in the course of inter-state trade or commerce or in the course of export or for use in the manufacture, processing or packing of taxable goods for sale within the State or in the course of inter-state trade or commerce or in the course of export.

Government of Punjab levied (November 2007) entry tax on sugar at the rate of four *per cent* and withdrew it in April 2011. Government also introduced (November 2007) entry No.152 in Schedule-B which made imported sugar taxable at the rate of four *per cent*. In view of judgment of Hon'ble Punjab and Haryana High Court (August 2008), imported sugar became tax free. However, entry tax on sugar continued till April 2011. Thus, the dealers paid entry tax on inter-state purchase of sugar and sold the same as tax free in the State.

We noticed (between January 2014 and February 2014) in three AETC offices[37] that in three refund cases for the period 2007-11, the dealers made interstate purchase of sugar and paid entry tax of ₹ 34.27 lakh. The dealers sold this sugar as tax free and the DOs allowed refund of entry tax which was in contravention to the Section mentioned *ibid* as detailed in **Table 2.6:**

[37] Barnala, Ferozepur and Sangrur.

Table 2.6

Sl. No.	Name of AETC	Period of refund/ Assessment	Amount (₹ in lakh)	Nature of irregularity
1	Ferozepur	2009-10	4.12	Refund of entry tax paid on inter sate purchase of sugar was allowed whereas sugar was sold tax free.
2.	Sangrur	2007-09	5.01	
3.	Barnala	27.2.08 to 31.3.11	25.14	
Total			**34.27**	

The matter was reported to the Government/Department (April 2014 and February 2015). The Government replied (October 2014) in case of AETC Barnala that the same issue was decided (February 2012) by VAT Tribunal, Punjab Chandigarh in case of M/s Nohar Chand Jagdish Rai, Dhuri in favour of the dealer to allow refund of entry tax paid on interstate purchase of sugar in a similar appeal. Therefore, the Department did not go for appeal in higher court.

The reply of the Government was not convincing. The Hon'ble Supreme Court in case of Mafatlal Industries vs. Union of India held that "if the person claiming refund had passed on the burden of duty to another and had not really suffered any loss or prejudice, there was no question of reimbursing him and he could not successfully sustain an action for restitution". This aspect was not ensured by the DOs while issuing refund. In view of provisions of the Act and decision of Hon'ble Supreme Court, the refund of entry tax allowed on tax free sale of imported sugar resulted into loss of revenue of ₹ 34.27 lakh.

2.11 Excess allowance of refund

Non reversal of ITC on branch transfer, inter-state sale and sale as tax free goods, resulted in excess allowance of refund of ₹ 2.85 crore, in eight cases of six AETCs.

Section 39(1) of PVAT Act provides that subject to the provisions of this Act and the Rules made thereunder, the Commissioner or the DO shall, in such manner and within such period, as may be prescribed, refund to a person, the amount of tax, penalty or interest, if any, paid by such person in excess of the amount due from him and also the excess ITC over output tax payable under this Act.

We noticed (between June 2013 and July 2014) in eight refund cases pertaining to six AETC[38] offices for the period 2010-13 that dealers were allowed excess refunds of ₹ 2.85 crore in contravention to various provisions of the Act as per details given in **Table 2.7:**

Table 2.7

Sl. No.	Name of Unit	Period of Refund	Amount (₹ in lakh)	Nature of irregularity
1.	AETC, Fatehgarh Sahib	01.04.2012 to 30.06.2012	9.72	ITC of ₹ 88.91 lakh was allowed to the dealer instead of ₹ 79.18 lakh on eligible purchases of ₹ 17.49 crore.
2.	AETC, Jalandhar-II	2012-13	13.74	While issuing refund, DO considered GTO as ₹ 3.31 crore instead of ₹ 5.81 crore resulting in short levy of tax.
3.	AETC, Ludhiana-I	01.07.2012 to 30.09.2012	16.46	ITC of ₹ 16.46 lakh on account of tax free sale of ₹ 11.13 crore was not reversed which resulted in excess allowance of refund.
4.	AETC, Ludhiana-II	01.10.2011 to 31.12.2011	11.72	DO reversed ITC of ₹ 0.60 lakh instead of ₹ 12.32 lakh on account of tax free sale of ₹ 6.38 crore resulting in excess allowance of refund.
5.	AETC, Mohali	2011-12	9.25	The dealer claimed and was allowed ITC of ₹ 11.01 crore instead of admissible ITC of ₹ 10.91 crore.
6.	AETC, Sangrur	01.04.2010 to 30.06.2011	29.96	The dealer made purchases of ₹ 17.87 crore from exempted units and made ISS of ₹ 296.64 crore. While issuing refund, DO omitted to reverse the NITC.
7.	AETC, Sangrur	01.10.2011 to 31.12.2011	55.77	Out of Gross Turnover of ₹ 121.13 crore, the dealer made branch transfer of ₹ 31.27 crore. The eligible purchase was ₹ 54.02 crore. However, no reversal of ITC on account of branch transfer was made by the DO.
8.		01.01.2012 to 31.03.2012	138.07	The dealer made branch transfer of ₹ 58.12 crore out of Gross Turnover of ₹ 157.93 crore. The eligible purchase was ₹ 93.81 crore. However, no reversal of ITC on account of branch transfer was made by the DO.
Total			**284.69**	

[38] Fatehgarh Sahib, Jalandhar-II, Ludhiana-I, Ludhiana-II, Mohali and Sangrur.

The matter was reported to the Government/Department (October 2014), their replies were awaited (November 2015).

2.12 Excess refund to works contractors

Higher allowance of labour charges without any justification, non levy of tax on material and inadmissible allowance of entry tax resulted in excess refund of ₹ 191.18 lakh in 13 cases of six AETCs.

(a) Section 8(2-A) of PVAT Act provides that every person executing works contracts, shall pay tax on the value of goods at the time of incorporation of such goods in the works executed at the rates applicable to the goods under the Act.

We noticed (between October 2013 and December 2014) in five refund cases pertaining to four AETC offices[39] for the period 2009-12 that the dealers were allowed excess refund of ₹ 1.52 crore due to short levy of tax on goods incorporated in works as per details given in **Table 2.8:**

Table 2.8

Sl. No	Name of Unit	Period of Refund	Amount (₹ in lakh)	Nature of irregularity
1	AETC, Barnala	2011-12	89.93	The contractor did not pay tax of ₹ 1.23 crore on material at the time of incorporation on work. Though demand of ₹ 1.15 crore for the year 2007-08 was pending for recovery, refund of ₹ 89.93 lakh was issued to contractor.
2	AETC, Ferozepur	2010-11	29.47	The contractor claimed incorrect deduction of ₹ 6.46 crore (70.55 *per cent*) on account of labour and services instead of admissible deduction of ₹ 5.16 crore (30 *per cent* under Rule 15(6)) from GTO of ₹ 9.16 crore. The justification for allowing labour charges at a higher rate was not mentioned in the assessment order by the DO. Further, the dealer levied output tax at the rate of four *per cent* flat, whereas, ITC at the rate 5.5 *per cent* and 13.75 *per cent* was claimed.
3	AETC, Gurdaspur	2009-10	5.85	DO allowed deduction of ₹ 51.68 lakh for material issued to sub-contractor, whereas, the same was not included while calculating TTO. Further, deduction on account of material of ₹ 38.95 lakh purchased from

[39] Barnala, Ferozepur, Gurdaspur and Moga.

Sl. No	Name of Unit	Period of Refund	Amount (₹ in lakh)	Nature of irregularity
				exempted unit was also allowed which was not admissible.
4	AETC, Moga	2011-12	18.86	Deduction of ₹ 8.50 crore at the rate of 50 *per cent* of GTO (₹ 17.20 crore) was claimed and allowed to works contractor on account of labour and services instead of admissible deduction of ₹ 5.16 crore without any justification (30 *per cent* under Rule 15(6)).
5			8.37	While allowing refund, the DO allowed deduction of ₹ 1.84 crore from GTO on account of material supplied by Government on which tax was not levied.
Total			**152.48**	

The matter was reported to the Government/Department (between April 2014 and March 2015); their replies were awaited (November 2015).

(b) Inadmissible allowance of entry tax

Section 13(4) of PVAT Act provides that ITC on furnace oil and lubricants shall be allowed only to the extent by which the amount of tax paid in the State exceeds four *per cent.* Section13-A of PVAT Act provides that a taxable person shall be entitled to ITC in respect of the tax, paid by him under the Punjab Tax on Entry of Goods into Local Area Act, 2000 (Punjab Act No. 9 of 2000), if such Goods are for sale in the State or in the course of inter-state trade or commerce or in the course of export or for use in the manufacturing, processing or packing of taxable Goods.

We noticed (between October 2013 and September 2014) in eight refund cases pertaining to two AETC offices[40] for the period 2010-13 that dealers were allowed excess refund of ₹ 38.70 lakh due to entry tax paid in excess of four *per cent* on purchase of furnace oil, lubricants and diesel generator (DG) sets which were not for sale within state or in the course of inter-state trade as per details given in **Table 2.9:**

[40] Ludhiana I and Mohali.

Table 2.9

Sl. No.	Name of Unit	Period of Refund	Amount (₹ in lakh)	Nature of irregularity
1.	AETC, Ludhiana-I	1.4.2012 to 30.6.2012	3.36	Inadmissible ITC was claimed and allowed to the dealers in five cases on account of entry tax paid on purchase of Diesel Generator sets.
2.		1.1.2011 to 31.3.2011	2.06	
3.		1.1.2012 to 31.3.2012	2.76	
4.		2010-11	1.13	
5.		1.4.2012 to 30.6.2012	3.57	
6.		1.1.2011 to 31.3.2011	15.81	Inadmissible ITC was claimed and allowed to the dealers in two cases on account of entry tax paid on purchase of furnace oil/lubricants.
7.		1.10.2010 to 31.3.2012	6.58	
8.	AETC, Mohali	1.7.2012 to 30.9.2012	3.43	Inadmissible ITC was claimed and allowed on account of entry tax paid on purchase of furnace oil.
Total			**38.70**	

The matter was reported to the Government/Department (March 2014 and February 2015), their replies were awaited (November 2015).

2.13 Irregular allowance of provisional refund

Seven provisional refunds of ₹ 9.52 crore were irregularly allowed to a dealer by AETC, Sangrur without mentioning the receipt of the statutory declaration forms in respect of previous years.

Rule 52-A of PVAT Rules provides that where a refund is allowed provisionally under Sub-Section I-A of Section 39 on account of excess ITC, the provisions of Rule 52(4) shall not apply till 31 March following the close of financial year, for which refund is issued, or till the time the provisional refund exceeds ₹ one crore, whichever is earlier provided that only those taxable persons shall be eligible to apply for provisional refund who have deposited the statutory declaration forms as specified under Sub-Rule 4 of Rule 52, for all the previous financial years or have deposited the tax due on account of his failure to submit the said forms for the said previous years.

We noticed (February 2014) in refund cases pertaining to AETC Sangrur for the period from April 2010 to March 2012, that seven provisional refunds totaling ₹ 10.52 crore (₹ 5.68 crore for 2010-11 and ₹ 4.84 crore for 2011-12) were issued to a dealer. The provisional refund was more than ₹ one crore for each year which was in contravention to the provisions

ibid. The DO while finalizing the case of provisional refund of subsequent year neither mentioned about the receipt of the statutory declarations in respect of provisional refunds issued for previous years, nor levied tax in case of non-receipt of the same. The omission resulted into irregular allowance of provisional refund of ₹ 9.52 crore.

The matter was reported to the Government/Department (October 2014); their replies were awaited (November 2015).