CHAPTER II: TAXES/VAT ON SALES, TRADE

2.1.1 Tax administration

Sales Tax/Value Added Tax laws and rules framed thereunder are administered at the Government level by the Additional Chief Secretary (Excise and Taxation). The Excise and Taxation Commissioner (ETC) is the head of the Excise and Taxation Department who is assisted by nine Additional ETC, 10 Joint ETCs, 50 Deputy ETCs and 203 Excise and Taxation Officers (ETOs). They are assisted by Excise and Taxation Inspectors and other allied staff for administering in the relevant Tax laws and rules.

2.1.2 Results of audit

In 2013-14, test check of the records of 40 (Revenue units: 32 and expenditure unit: 8) relating to VAT/Sales tax assessments and other records showed underassessment of tax and other irregularities involving ₹ 1,308.59 crore, in 1,169 cases, which fall under the following categories in **Table 2.1.**

Table-2.1

			(₹ in crore)
Sr. No.	**Categories**	**Number of cases**	**Amount**
1.	Incorrect exemption of transit sale	1	228.07
2.	Input tax credit of VAT	1	24.22
3.	Underassessment of Tax	536	621.65
4.	Acceptance of defective statutory 'Forms'	181	160.98
5.	Evasion of tax due to suppression of sales/purchase	67	10.53
6.	Irregular/Incorrect/excess allowance of ITC	105	39.76
7.	Other irregularities	278	223.38
	Total	**1,169**	**1,308.59**

During the course of the year, the Department accepted underassessment and other deficiencies of ₹11.83 crore in 164 cases, out of which ₹ 4.40 lakh involved in 14 cases were pointed out during the year and the rest in earlier years. The department recovered ₹ 1.10 crore in 117 cases of which 14 cases involving ₹ 3.72 lakh during the year and rest in earlier years.

A few illustrative cases involving ₹ 266.99 crore are discussed in following paragraphs.

Audit Findings

2.2 Input Tax credit of VAT

In the State of Haryana, VAT was introduced with effect from 1st April 2003. A dealer is liable to pay the net tax after adjustments of ITC. The ITC can be claimed only on purchases made locally i.e. within the State and both the purchasing and selling dealers should be registered under HVAT Act. Further, Section 8 of the Act read with Schedule E and rules 20 and 40 as amended from time to time, regulates the admissibility, computation, denial and reversal of Input Tax Credit (ITC). VAT also required computerisation within the department at a certain minimum level to detect fraudulent claims of ITC and verification of sale/purchase transactions among the dealers. The Management Information System (MIS), an integral part of computerisation, helps in making the department more efficient, responsive and accountable.

Audit was conducted during March to June 2014 for the period 2008-09 to 2012-13 and covered 12[1] DETC (ST) offices out of 23 DETC (ST) offices selected on random sample selection basis by applying probability proportional to size method (without replacement). The views expressed by Government during exit conference have been considered and suitably incorporated.

2.2.1 Incorrect claim of ITC

As per the provisions of Section 8 of HVAT Act, read with corresponding rules, ITC is admissible to a dealer on account of tax paid to the State by the selling dealers on sale of goods to him against his output tax on sale of goods as such or the goods manufactured therefrom except export of goods out of the territory of India. In case the goods or the goods manufactured therefrom are disposed of in the circumstances prescribed in Schedule 'E', the ITC shall be disallowed accordingly and if the goods are disposed of partly in the circumstances specified in Schedule "E" and partly otherwise, the ITC shall be allowed on pro-rata basis. Thus, the stock of goods or the goods manufactured therefrom happens to be nil, the excess ITC remaining unadjusted, if any, shall lapse to the Government account. Further, section 38 of HVAT Act, 2003 provides for levy of penalty of a sum of thrice the amount of tax avoided besides tax.

During audit of DETC (ST) Rewari, we noticed during December 2011 and August 2013 that a dealer was included in the list of Oil Companies w.e.f. 06.10.2006. The company purchased 114176 Kilo liters (KL) petrol and diesel worth ₹ 373.03 crore after payment of VAT ₹ 16.13 crore from other oil companies in the State and sold the entire stock at lower price for

[1] Ambala, Faridabad (E), Faridabad (W), Gurgaon (E), Gurgaon (W), Jagadhri, Kurukshetra, Panchkula, Panipat, Rewari, Sirsa and Sonepat.

₹ 327.09 crore. The dealer was not entitled to claim ITC for the corresponding value of loss because no stock was left. The inadmissible claim of ITC was ₹ 3.36 crore[2] .

During exit conference the Government accepted the audit observation and stated that remedial measures were under process to rectify the mistake.

2.2.2 ITC allowed on Petroleum Products

As per provisions of Section 8 of HVAT Act read with Schedule 'E' (item-1) no ITC is admissible on petroleum products when used as fuel. The issue was also confirmed (August 2011) by the State Government.

During test check of record of four DETC (ST) offices[3], we noticed that four dealers in four cases purchased HSD, Furnace Oil and LPG worth ₹ 4.72 crore during 2006-07 to 2010-11 and used the same as fuel. As such, no ITC was admissible to the dealers. The AAs, while finalising the assessment in these cases between November 2009 and February 2013 allowed ITC. This resulted in excess grant of ITC of ₹ 38.48 lakh.

During exit conference the Government accepted the audit observation.

2.2.3 ITC allowed on goods not sold

As per provisions of Section 8 of HVAT Act 2003, ITC on purchase of goods is admissible against tax liability on sale of goods as such or the goods manufactured therefrom in the State or interstate trade and commerce except export of goods outside the territory of India. The Government also clarified (April 2013) that no ITC was admissible if the Duty Entry Pass Book (DEPB)/import license purchased is not sold and is used for adjustment of customs duty payable.

During test check of record of four DETC (ST) offices[4], we noticed that nine dealers in nine cases purchased DEPB/Import License worth ₹ 16.36 crore after payment of VAT of ₹ 0.66 crore during 2006-07 and 2009-10. The dealers used the same for adjustment of customs duty payable by them. As the goods were not sold by the dealers, no ITC was admissible. The AAs, while finalising assessments in these cases between March 2010 and March 2013, allowed ITC claims of the dealers. This resulted in incorrect grant of ITC of ₹ 0.66 crore.

During exit conference the Government accepted the audit observation and stated that remedial measures were under process to rectify the mistake.

2.2.4 Incorrect/ less reversal of ITC

As per provisions of Section 8 of HVAT Act, 2003 read with corresponding Rules and entry 5 (iii) & (iv) of Schedule 'E', if ITC in respect of any goods

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2 Including brought forward loss of ₹ 1.33 crore for the year 2006-07.
3 Faridabad (W), Gurgaon (E), Kaithal and Panipat.
4 Faridabad (W), Gurgaon (E), Rewari and Sonepat.

purchased from within the State has been availed of, but such goods are sold as tax free or subsequently used or disposed of in the circumstances mentioned in the Schedule *ibid,* ITC in respect of such goods shall be reversed.

During test check of record of 11 DETC (ST) offices[5], we noticed that 29 dealers in 30 cases transferred/consigned goods out of State or disposed of them otherwise than by sale or sold tax free worth ₹ 874.81 crore and therefore, ITC of ₹ 8.03 crore was reversible in view of aforesaid provisions of the Act. The AAs, while finalising assessments in these cases between March 2009 and March 2013, had reversed ITC of ₹ 3.01 crore only. This resulted in short/less reversal of ITC of ₹ 5.02 crore.

On this being pointed out between March 2010 and May 2014, the department stated (October 2014) that in six cases, demand of ₹ 9.62 lakh had been created which had been recovered/adjusted.

During exit conference the Government accepted the audit observation and stated that remedial measures were under process to rectify the mistake.

2.2.5 Incorrect ITC allowed on Pre-Owned Cars

As per provisions of Section 45 of HVAT Act, read with Schedule 'G', tax on first sale of pre-owned cars (POCs) by a dealer registered under the Act is ₹ 3,000 per car having engine capacity upto 1000 CC and ₹ 5000 per car having engine capacity above 1000 CC. When tax is payable/charged at a lump sum rate, no ITC is admissible to the dealer.

2.2.5.1 During audit of three DETC (ST) offices[6], we noticed during April and May 2014 that three dealers in 12 cases purchased POCs worth ₹ 26.34 crore from a registered dealer of Gurgaon (East) during 2005-06 to 2009-10 after payment of VAT ₹ 3.29 crore at the rate of 12.5 *per cent*. The dealers paid tax on the sale of these cars at a lump sum rate in view of the aforesaid provisions of the Act and claimed ITC. The AAs, while finalising assessments in these cases during April and May 2014 allowed ITC claims of the dealers. This was not correct as the POCs were sold at a lump sum rate and ITC in these cases was not allowable which resulted in incorrect allowing of ITC of ₹ 3.18 crore[7] .

2.2.5.2 In another case of DETC (ST) Jagadhri, we noticed during May 2014 that a dealer in five cases purchased vehicles (Including POCs) worth ₹ 148.92 crore during 2005-06 to 2009-10 and claimed ITC of ₹ 18.59 crore. The AA, while finalising assessments during March 2009 and March 2010 disallowed ITC claim of ₹ 10.69 lakh for the year 2005-06 and 2006-07 after due deliberation whereas the AAs, while finalising assessments between March 2011 and March 2013, failed to do so for the years 2007-08 to 2009-10.

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5 Faridabad (E), Faridabad (W), Gurgaon (E), Gurgaon (W), Jhajjar, Panchkula, Palwal, Panipat, Rewari, Rohtak and Sonepat.

6 Faridabad (E), Gurgaon (W) and Jagadhri.

7 (₹ 3.29 crore ITC claimed less disallowed ₹ 0.11 crore during 2006-07 in one case).

During exit conference the Government stated that the matter would be reviewed by the Higher Authorities of the Department.

2.2.6 Incorrect ITC allowed on Paints

During test check of two DETC (ST) offices[8], we noticed that two dealers in eight cases purchased paint worth ₹ 6.12 crore from VAT dealers after payment of VAT of ₹ 75.92 lakh and claimed ITC. The paint was used in service/repair and maintenance of POCs as there was no output tax on paint, no ITC was admissible to the dealers. The AAs, while finalising assessments in these cases between March 2009 and March 2013 admitted the claim of the dealers. This resulted in allowing of incorrect ITC of ₹ 75.92 lakh. It would also be pertinent to mention here that the AA had disallowed ITC of ₹ 1.54 lakh on this account in the case of same dealer for the years 2005-06 and 2006-07.

During exit conference the Government agreed to review the facts in five cases of DETC (ST) Gurgaon.

2.2.7 Non levy of tax and penalty on bogus claim of ITC

Section 38 of the Act provides for penal action (Tax avoided/benefit claimed and three times penalty) for claims on the basis of bogus documents, false information and incorrect accounts etc.

In two DETC (ST) offices[9], we noticed between February 2012 and April 2014 that three dealers in three cases claimed ITC of ₹ 1.70 crore on purchases of ₹ 14.54 crore (₹ 2.11 crore after manipulating the documents in two cases and ₹ 12.43 crore from a non- existing dealer in one case) during 2005-06 and 2009-10. In first two cases the *mens-rea* of the dealers was very much proved in the orders passed by the AA/RA wherein ITC of ₹ 14.93 lakh was disallowed but penalty of ₹ 44.78 lakh was not levied. The AA, while finalising assessment during December 2012 in one case, allowed ITC without verification of purchases which resulted in incorrect grant of ITC of ₹ 1.55 crore and penalty of ₹ 4.66 crore was also not levied.

During exit conference the Government agreed to issue necessary instructions/guidelines in this regard.

2.2.8 Excess benefit of ITC

ITC is admissible on purchases of the dealers made from within the State after payment of VAT and paid to the State by the selling dealers. The purchases are adopted as per the books of accounts/returns and reconciliation statement filed by the dealer.

[8] Gurgaon (W) and Jagadhri.
[9] Faridabad (W) and Panchkula.

During audit of records of eight DETC (ST) offices[10], we noticed between March 2010 and May 2014 that 14 dealers in 14 cases claimed ITC of ₹ 225.44 crore as per the returns/accounts filed. The AAs, while finalising assessments in these cases between March 2009 and March 2013, allowed ITC of ₹ 229.32 crore. This resulted in excess grant of ITC of ₹ 3.88 crore.

On this being pointed out, the department stated (October 2014) that in three cases demand of ₹ 3.11 lakh had been created and adjusted/recovered and two cases had been sent to Revisional Authority for suo motu action.

During exit conference the Government stated that in one case, a dealer had three units and the material was transferred from the main unit to another unit. The main unit did not claim ITC on the transferred goods and the receiving units claimed such ITC though these were not booked in the purchase account but such purchases are booked by the purchasing unit/transferring unit. The reply of the Government was not tenable as the unit was availing the benefit of deferment and as such assessment was to be framed with respect to the restrictions and conditions governing the scheme and ITC was required to be allowed as per the allocation made by the dealer in respect of this unit.

2.2.9 Incorrect carry forward of Input Tax Credit

As per the provisions of Section 8 of HVAT Act read with corresponding rules, ITC is admissible to a dealer on account of tax paid to the State by the selling dealers on sale of goods to him against his output tax on sale of goods as such or the goods manufactured therefrom. In case the goods or the goods manufactured therefrom are disposed of in the circumstances prescribed in Schedule 'E', the ITC shall be disallowed accordingly and if the goods are disposed of partly in the circumstances specified in Schedule "E" and partly otherwise, the ITC shall be allowed on *pro rata* basis. Thus, if the stock of goods or the goods manufactured therefrom happens to be nil or sold tax free, the excess ITC remaining unadjusted, if any, shall lapse to the Government accounts.

During test check of record of four DETC (ST) offices[11], we noticed between May 2012 and June 2014 that eight dealers in eight cases purchased goods or reflected loss in the accounts worth ₹ 313.23 crore on which ITC of ₹ 12.53 crore was claimed. The goods worth ₹ 305.40 crore were sold at a lower price with output tax of ₹ 12.22 crore and thus, ITC worth ₹ 31.60 lakh was carried forward in excess.

On this being pointed out, the department stated (October 2014) that in three cases, matter had been referred to revisional authority for suo motu action and the matter was under examination in one case. In four cases replies of the department were not relevant to the observations raised.

[10] Gurgaon (E), Gurgaon (W), Jagadhri, Jhajjar, Karnal, Panchkula, Panipat and Rewari.

[11] Faridabad (W), Panipat, Rewari and Sirsa.

2.2.10 Non production of records

Audit had requisitioned 427 assessment files involving tax amount of ₹ 7,096.69 crore during audit in 12 DETC (ST) offices against which only 354 files involving tax amount of ₹ 4,962.06 crore were produced. The remaining 73 assessment files involving tax amount of ₹ 2,134.63 crore were not produced to audit despite several reminders.

2.2.11 Computerisation

Computerisation in a department facilitate easy verification of tax, identification of bogus and fraudulent claims and track dealers. Further, it makes the department more efficient, responsive and accountable. It was, however, noticed in audit that even a minimum level of the computerisation did not exist within the department inspite of a lapse of more the 11 years since the commencement of HVAT Act in the State. In the absence of proper computerisation within the department, the departmental machinery had not been able to dispose of the cases promptly, locate bogus/non-existing dealers, invalid sale/purchase transactions, verification of tax deposit, fraudulent claim of ITC and bogus forms etc. The ETC Haryana issued instructions in March 2006 for cross verification of all purchase/sale transactions totaling more than ₹ one lakh from a single VAT dealer in a year.

In 12 DETC (ST) offices, we noticed that assessments in 302 out of 316 cases test checked were finalised without verification of sale/purchase transactions worth ₹ 29,210.36 crore involving ITC of ₹ 1,418.65 crore. Thus, the verification was 4.43 *per cent* in respect of dealers, 0.77 *per cent* in respect of purchases and 0.92 *per cent* in respect of ITC.

During exit conference the Government stated that the computerisation of the department is under process.

Thus, irregular allowance of ITC in respect of sale of petroleum products (four cases), goods not sold (nine cases), pre-owned cars (12 cases), paints (eight cases), bogus claim of ITC (three cases), excess benefit of ITC (14 cases) and incorrect carry forward of ITC (eight cases) resulted in inadmissible claim of ITC of ₹ 24.22 crore.

The above points were reported to the Government (July 2014); their reply is still awaited (November 2014).

2.3 Transit sale

Section 6 (2) of the Central Sales Tax Act, 1956 (CST Act) stipulates that where a sale of any goods in the course of interstate trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one state to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer, shall be exempt from tax provided the dealer furnishes a certificate in prescribed form E1 or E-II obtained from the selling dealer(s) and declaration Form 'C' obtained from purchasing dealer (s).

Under Section 2 (zg) of Haryana Value Added Tax Act, 2003 (HVAT Act), sale price means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed at the time of sale as cash or trade discount according to the practice, normally prevailing in trade, but inclusive of any sum charged for anything done by a dealer in respect of the goods at the time of or before the delivery thereof and the expression "purchase price" shall be construed accordingly.

2.3.1 Incorrect exemption of Transit Sale

2.3.1.1 Deduction to turnkey contractors

During scrutiny of records of the office of nine DETCs[12] between November 2010 and March 2014, we noticed that 19 contractors executed works contracts on Turnkey Basis for Haryana Power Generation corporation Limited (HPGCL), Haryana Vidyut Prasaran Nigam Limited (HVPNL), Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL), Uttar Haryana Bijli Vitran Nigam Limited, (UHBVNL) and Indian Oil Corporation Limited (IOCL) etc. While finalising assessments between April 2009 and March 2013, in 22 cases of 19 dealers (contractors) for the years 2006-07 to 2009-10, the AAs, allowed deduction of ₹ 1,786.09 crore to turnkey contractors on account of transit sale. The deduction allowed does not qualify for exemption under Section 6 (2) of CST Act, 1956 read with definition of sale price. Therefore, allowing wrong deduction of transit sale to turnkey contractors resulted into underassessment of tax of ₹ 79.08 crore. As a clause was inserted in the contract agreement to the effect that for supply of material, the contractee will issue Form 'C' to contractor to enable him to show the said sale as sale in transit, hence the deduction was not allowable to the contractor.

On this being pointed out, DETC (ST) Rohtak stated in May 2014 that the case had been sent to Revisional Authority for taking suo-motu action. DETCs Faridabad (East), Gurgaon (East), Kaithal, Karnal and Kurukshetra stated in May/October 2014 that deduction was rightly allowed after due verification of declarations in form E-1 and C along with other documents and the goods were directly delivered to the customers as per terms and conditions of contract. These goods were duly incorporated in the works contracts. DETC (ST) Sirsa stated in May 2014 that deduction was rightly allowed as there was a clause in the agreement that the supply of material will be shown as transit sale. DETCs (ST) Faridabad (East), Gurgaon (East), Jagadhri and Panipat stated in May 2014 that deduction was rightly allowed in view of judgements of various courts and decision of HTT in case of BPCL Vs. State of Haryana 40 PHT 178 HTT-LB and U.B Engg. Co. Vs. State of Haryana and the tax was leviable in the State from where the movement of goods commenced.

The Replies of DETCs were not tenable in view of definition of sale price and judgement of Hon'ble Apex Court of India in case of Hindustan Shipyard Ltd Vs. State of Andhra Pradesh (2000) 119 STC (533) (SC) has laid down clear

[12] DETC Faridabad (East) (five cases), Gurgaon (East) (six cases), Jagadhri (One Case), Kaithal (one case), Karnal (one case), Kurukshetra (one case), Panipat (three cases), Rohtak (one case) and Sirsa (three cases).

guidelines to ascertain whether an 'activity' is a transaction of sale or works contract. The Apex Court has observed that if the thing to be delivered has any individual existence before the delivery as the sole property of the party who is to deliver it then it is a sale. If 'A' transfers property for a price in a thing in which we had no previous property then the contract is a contract for sale. The transactions effected by the contractors are squarely covered under the contract of sale in view of the said judgement. Hon'ble High Court of State of Karnataka Vs. A & G Projects and Technologies Ltd. (2008)13 VST 177 (Karn) also support the version of audit.

2.3.1.2 Incorrect deduction of transit sale where goods were dispatched directly to ultimate purchaser

During scrutiny of records of the office of nine DETCs (ST) [13] between July 2011 and February 2014, we noticed that while finalising assessments during February 2011 to March 2013 in 32 cases of 28 dealers for the years 2007-08 to 2009-10, the AAs allowed deduction of ₹ 1,005.02 crore on account of transit sale against production of E-1 & C forms. But as per the assessment records it transpired that the goods were dispatched by first sellers direct to ultimate purchasers. As such the deduction of transit sale was not admissible to such dealers as subsequent sale was not proved and the goods were delivered directly to the ultimate purchasers. Accordingly, allowing inadmissible deduction resulted in underassessment of tax of ₹ 32.69 crore.

On this being pointed out, the department stated (October 2014) that in five cases of DETC (ST) Ambala, Revisional Authority had created additional demand of ₹ 46.63 lakh. In the cases of DETCs (ST) Ambala, Faridabad (East) and Karnal, cases had been sent to Revisional Authority for taking suo-motu action. In the cases of DETC (ST) Faridabad (East), Faridabad (West), Gurgaon (East) and Rohtak, deduction was rightly allowed after verification of E-1 and C forms. DETCs (ST) Faridabad (East), Faridabad (West), Gurgaon (East), Karnal and Sonepat stated (May 2014) that deduction was rightly allowed in view of the decision of Haryana Tax Tribunal (HTT) in case of BPCL Vs. State of Haryana. Further, DETC (ST) Karnal stated in May 2014 that the dealer company had its branch in Gurgaon and the goods were consigned directly to the branch and there was no impropriety in issuing E-1 Form in the name of the Gurgaon dealer. In one case, the reply of DETC (ST) Karnal was not correct as no dealer was registered in Gurgaon. Replies submitted by DETCs in remaining cases were not correct in view of definition of sale price and the judgement of Hon'ble High Court of Kerala in the case CINZAC Technical Services Vs. State of Kerala (2009) 25 VST 165 (Ker) which held that subsequent sale was not proved as the lorry receipts contained the address of ultimate purchaser.

[13] DETC (ST) Ambala (six cases), Bhiwani (one case), Faridabad (East) (11 cases), Faridabad (West) (two cases), Gurgaon (East) (six cases), Gurgaon (West) (one case), Karnal (three cases), Rohtak (one case) and Sonepat (one case).

2.3.2 Incorrect deduction of high seas sale to Turnkey Contractors

2.3.2.1 Section 5 (2) of CST Act provides that a sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

During test check of the records of DETC (ST) Faridabad (East) & Gurgaon (East) in July 2011 and March 2014, we noticed that four dealers executed works contracts on turnkey basis in the State of Haryana. While finalising assessments of four dealers (contractors) in March 2012 and March 2013 for the years 2007-08 to 2009-10, the AAs allowed deduction of high sea sale worth ₹ 2,173.62 crore to turnkey contractors. The deduction allowed does not qualify for exemption under Section 5 (2) of CST Act read with definition of sale price. Therefore, allowing inadmissible deduction resulted into under assessment of tax of ₹ 113.55 crore.

On this being pointed out, the department stated (October 2014) that one case of DETC (ST) Gurgaon (East), had been sent to Revisional Authority for taking suo-motu action and in another case the deduction was rightly allowed after verification of documents and agreement of high seas sale etc. Reply of the department was not correct as the agreement of high seas sale was with dealer of New Delhi and the goods were consigned directly to a West Bengal dealer. Further, in one case of DETC (ST) Faridabad (East), the dealer was authorised by contractee to take delivery of goods from foreign supplier on its behalf and in another case, the deduction was rightly allowed in view of the judgement of Hon'ble Supreme Court in the case of Indure Ltd Vs. CTO (2010) 9 SCC 461 (SC).

The Reply of DETC (ST) Faridabad (East) was not tenable as no documents in support of reply were available on the record. Further, in view of definition of sale price and clause inserted in the contract agreement to the effect that goods imported for use in works contract will be shown as high seas sale, the deduction was not admissible.

Similar cases were also pointed out in the earlier reports for t he years 2010-11 and 2011-12 and the Government accepted the audit observations during exit conference.

2.3.2.2 Sale during import

During test check of records of DETC Faridabad (East) and Gurgaon (East), we noticed in September 2013 and February 2014 that a dealer of Faridabad (East) executed works contract on turnkey basis and a dealer of Gurgaon (East) traded I.T. Products etc. While finalising assessments of two dealers in December 2012 and March 2013 for the year 2009-10, the AAs allowed the deduction of sale during import worth ₹ 68.78 crore. But the conditions for allowing such deduction were not met in view of judgement of Hon'ble High Court of Delhi in the case Goesccke & Debrient I. P. Ltd. Vs. Commissioner of Sales Tax Delhi (2012) 47 VST 343 (Delhi). Therefore, allowing wrong

deduction of sale during import resulted into underassessment of tax of ₹ 2.75 crore.

On this being pointed out, the department stated (October 2014) that one case of DETC (ST) Gurgaon (East) had been sent to Revisional Authority for taking suo-motu action. Further, in case of DETC (ST) Faridabad (East), the contractee had authorised the contractor to receive the goods from foreign suppliers. The reply of the department was not correct as no documents in support of reply were available on record. Further, no such deduction was allowed to turnkey contractor in view of definition of sale price.

Thus, irregular deduction of transit sale (19 cases), High Sea Sales (four cases) to turnkey contractors and wrong deduction of sale during import (two cases) resulted in under assessment of tax of ₹ 195.38 crore. Exempted (transit) sales against E-I and 'C' forms was incorrectly allowed in 32 cases which resulted in under assessment of VAT of ₹ 32.69 crore.

2.4 Under assessment of tax due to application of incorrect rate of tax

The rates under HVAT Act, 2003 have been prescribed as per Schedules A to G. However, under section 7 (1) (a) (iv) of the HVAT Act, any commodity other than the commodities classified in any of the schedules, is taxable at the rate of 12.5 *per cent* with effect from 1 July 2005. Further interest is also leviable under section 14(6) of the HVAT Act in case of default in payment of tax.

2.4.1 During test check of records of offices of DETC (ST), Karnal and Sonepat we noticed between June 2013 and January 2014 that three dealers sold machinery parts valued at ₹ 7.97 crore in 2009-10 and paid tax of ₹ 32.25 lakh at the rate of four/five per cent. The AAs while finalising assessments during August 2012 to March 2013 also levied tax at the rate of four/five *per cent* instead of correct rate of tax of 12.5 *per cent* as applicable in respect of unclassified item. This had resulted in short levy of tax of ₹ 67.39 lakh, besides interest of ₹ 54.94 lakh.

On this being pointed out between June 2013 and January 2014, the department stated (October 2014) that cases had been sent to the Revisional Authority for taking suo-motu action.

The matter was reported to the Government; their reply has not been received (November 2014).

2.4.2 The Financial Commissioner and Principal Secretary to Government of Haryana has clarified on 11 September, 2007 that Ultra High Temperature (UHT) sweetened flavoured milk is different from Ultra High Temperatured Milk which is covered under entry 81 of Schedule 'C' of HVAT Act. Hence, UHT sweetened flavoured milk products are taxable at general rate of tax 12.5 *per cent* and CST rate is same rate as VAT rate applicable in the State of selling dealers without 'C' forms.

During test check of the records of the office of DETC (ST), Sonepat in July 2012, we noticed that a dealer sold fermented milk drink worth

₹ 2.18 crore[14] during the year 2008-09 and claimed as tax free sale. The AA, while finalising the assessment in February 2012, also did not levy tax at the general rate of 12.5 *per cent* and allowed the 'consignment sale' (without 'F' form) and 'Inter State Sale' valuing ₹ 2.18 crore as tax free. This had resulted in non levy of tax ₹ 27.24 lakh, besides interest of ₹ 22.33 lakh.

After pointed out the case in July 2012, the department stated (October 2014) that additional demand of ₹ 27.24 lakh had been created by the Revisional Authority in February 2014. The assessee had filed an appeal before HTT and same was pending.

2.5 Under assessment of tax due to calculation mistake

Under Section 19 of HVAT Act, any taxing authority or appellate authority, may, at any time, within a period of two years from the date of supply of copy of the order passed by it in any case, rectify any clerical or arithmetical mistake apparent from the record of the case after giving the person adversely affected thereby a reasonable opportunity of being heard.

During test check of the records of office of DETC (ST), Kaithal in February 2014, we noticed that a lump sum dealer made sale valued at ₹ 10.93 crore during 2009-10. The AA, while finalising the assessment in March 2013, levied lump sum tax as ₹ 4.74 lakh erroneously at the rate of four *per cent* on sale of ₹ 10.93 crore instead of correct amount of ₹ 43.74 lakh. This had resulted in underassessment of tax as ₹ 39.00 lakh[15] due to calculation mistake.

On this being pointed out in February 2014, the department stated (October 2014) that the order had been rectified by creating an additional demand of ₹ 5.48 lakh and the case had been sent to Jt. ETC Ambala for revision to levy interest under section 14(6) of HVAT Act 2003 on due demand of ₹ 5.48 lakh.

The matter was reported to the Government; their reply has not been received (November 2014).

2.6 Evasion of tax by submitting fake declaration forms 'C'

Section 8 (4) of the CST Act, 1956 provides that the concession under sub section (1) shall not apply to any sale in the course of interstate trade or commerce unless the dealer selling the goods furnishes to the Assessing Authority 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. Further, penalty was also leviable under Section 38 of the HVAT Act.

During test check of the records of the offices of DETC (ST), Faridabad (East), Karnal and Sonepat between May 2013 and March 2014, we noticed that four dealers claimed concessional rate of tax on declaration forms 'C' for sale value of ₹ 9.79 crore during the years 2009-10 to 2010-11. The AA, at the

[14] ₹ 1.82 crore consignment sale without 'F' form and ₹ 35.48 lakh interstate sale.

[15] ₹ 43.74 lakh- ₹ 4.74 lakh = ₹ 39.00 lakh.

time of rectification (May 2013) admitted the form 'C' without verification of the transaction and allowed the concession of ₹ 83.52 lakh on form 'C' which was found fake on cross verification. This resulted in evasion of tax amounting to ₹ 83.52 lakh, besides penalty of ₹ 2.50 crore.

On this being pointed out between May 2013 and March 2014, the department stated in October 2014 that the case was taken up for reassessment and order had been rectified. The dealer had filed an appeal in the case. In one case of DETC (ST) Karnal, the case had been sent to the Revisional Authority for taking suo-motu action and in another two cases of DETC (ST) Sonepat, notices had been issued to the dealers.

The matter was reported to the Government; their reply has not been received (November 2014).

2.7 Non levy of surcharge

As per Section 7(A) of Haryana Value Added Tax Act, 2003, (HVAT Act) an additional tax, in the nature of surcharge at the rate of five *per cent* on the tax was leviable w.e.f. 02 April 2010. The Principal Secretary to Government of Haryana has clarified on 10 February, 2014 that the work contractors who have exercised the option of payment of lump sum in lieu of tax are also liable to discharge the liability of surcharge under Section 7(A) of the HVAT Act.

During test check of the records of the offices of DETC (ST), Faridabad (East and West), between November 2013 to March 2014, we noticed that 66 dealers were assessed to tax valuing at ₹ 18.78 crore at the rate of four *per cent* on sale worth ₹ 469.55 crore during the year 2010-11 and 2011-12. The AAs while finalising the assessments between April 2012 and March 2013 did not levy surcharge at the rate of five *per cent* on the assessed tax of ₹ 18.78 crore under VAT. This had resulted into non levy of surcharge of ₹ 93.90 lakh.

On this being pointed out between November 2013 to March 2014, the department stated (October 2014) that in ten cases of DETC (ST) Faridabad (West) demand of ₹ 13.46 lakh had been created and the remaining cases had been sent to Revisional Authority for taking suo motu action.

2.8 Under assessment of tax due to wrong deduction of sale to SEZ units

(i) The Principal Secretary to Government of Haryana, Excise and Taxation Department has clarified on 19 February, 2013 in the case of M/s Fresh SEZ, Phase-1, Sohna (Gurgaon) that sale to developer, co-developer of a Special Economic Zone (SEZ) is not exempt from levy of tax but only the individual dealer is exempt on setting up a unit in the SEZ area.

During test check of the records of the office of DETC (ST), Sonepat in April 2013, we noticed that a dealer sold material (scaffolding) to a developer worth ₹ 71.67 lakh during the year 2009-10. While finalising the assessment in March 2013, the AA wrongly allowed deduction of ₹ 71.67 lakh to the dealer

in view of SEZ sale. This had resulted in under assessment of tax of ₹ 8.96 lakh, besides interest of ₹ 5.37 lakh.

On this being pointed out in April 2013, the department stated in October 2014 that the case has been sent to Revisional Authority for taking suo-motu action.

We reported the matter to the Government in April 2014; we had not received the reply (November 2014).

(ii) During test check of the records of the office of DETC (ST), Gurgaon (West) in January 2014, we noticed that a contractor had executed works valuing ₹ 107.16 crore in notified projects in SEZ area of Rai and Sonepat during the year 2008-09. The AA, while finalising the assessment in March 2012, wrongly allowed deduction of ₹ 107.16 crore in view of SEZ sale to the dealer. This had resulted in underassessment of tax of ₹ 4.29 crore, besides interest of ₹ 3.60 crore.

On this being pointed out in January 2014, the department stated (October 2014) that the case had been sent to Revisional Authority for taking suo-motu action.

The matter was reported to the Government; their reply has not been received (November 2014).

2.9 Non levy of tax and penalty for unauthorised collection of tax

Under Section 9 (2) of the Haryana Value Added Tax (HVAT) Act, 2003 no dealer in whose case composition under sub-section (1) is in force, shall issue a tax invoice for sale of goods by him. Further, penalty is also leviable under section 39 of HVAT Act, if any dealer who is not a registered dealer or not otherwise authorised to collect tax, shall collect in respect of any sale of goods effected by him in the State any amount by way of tax, and no registered dealer shall make any such collection except in accordance with this Act. 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 equal to the amount of tax so collected.

During test check of records of DETC (ST), Rohtak in September 2013, we noticed that a work contractor opted to pay lump sum tax under composition scheme for the year 2009-10. The contractor had made sale of ₹ 51.68 lakh at the rate of 12.5 *per cent* to a dealer in Kurukshetra and collected tax of ₹ 6.46 lakh. The transaction was got verified by AA Kurukshetra from AA Rohtak (July 2012) and DETC Rohtak had informed that since the contractor had opted to pay lump sum tax, hence no input tax credit could be allowed as per law. However, the AA while finalising the assessment in March 2013 did not take any action to levy tax valuing ₹ 6.46 lakh and had also not imposed penalty for unauthorised collection of tax though the matter was in prior knowledge of the AA. This had resulted in non levy of tax of ₹ 6.46 lakh, besides penalty of ₹ 6.46 lakh.

On this being pointed out in September 2013, the department stated in October 2014 that the case had been remanded back by the Revisional Authority to the AA for reassessment.

The matter was reported to the Government; their reply has not been received (November 2014).

2.10 Under assessment of tax due to irregular deduction allowed

Section 2(u) of the Haryana Value Added Tax (HVAT) Act, 2003 defines "gross turnover" as and when used in relation to any dealer means the aggregate of the sale prices received or receivable in respect of any goods sold, whether as principal, agent or in any other capacity, by such dealer and includes the value of goods exported out of the State or disposed of otherwise than by sale. However, deductions shall be made from the gross turnover as per Section 6(1) of the HVAT Act.

During test check of the records of the office of DETC (ST), Bhiwani in January 2013, we noticed that the gross turnover of a dealer was ₹ 49.75 crore as per profit and loss account and R-2 (final return) of the dealer during the year 2008-09. The AA while finalising the assessment in January 2012, allowed deductions of ₹ 1.84 crore on account of payment to Labour Welfare Fund as shown in reconciliation statement, whereas these deductions were not allowed from the gross turnover as per section *ibid*. This had resulted in underassessment of tax of ₹ 23.03 lakh.

On this being pointed out in January 2013, the department stated (October 2014) that the above deductions were earmarked in the memorandum of understanding (MOU) of dealer in September 2008. The reply of the department was not in consonance with the provisions of the Act. Moreover, as per clause 7 of the MOU the amount deposited in this fund shall be treated as donation to Red Cross. Hence, deduction on account of this donation was not allowable under the Act.

The matter was reported to the Government; their reply has not been received (November 2014).