CHAPTER-II
VALUE ADDED TAX/ SALES TAX

2.1 Tax Administration

Value Added Tax laws and rules framed there under are administered at the Government level by the Additional Chief Secretary (Finance). The Commissioner of Commercial Tax (CCT) is the head of the Commercial Tax Department (CTD), who is assisted by one Special CCT, four Additional CCTs, 11 Joint CCTs, 23 Deputy CCTs, 103 Assistant CCTs and Commercial Tax Officers (CTOs). They are assisted by Commercial Tax Inspectors and other allied staff for administering the relevant Tax laws and rules.

2.2 Results of Audit

Test check of records of Commercial Tax Department during the year 2015-16 revealed underassessment of tax and other irregularities involving ₹ 23.76 crore in 398 cases which broadly falls under the following categories:

Sl. No.	Category	No. of cases	Money Value (₹ in crore)
1.	Incorrect rate of tax and mistake of computation	69	6.84
2.	Incorrect concession/exemption	5	0.19
3.	Non/Short levy of interest and penalty	34	1.17
4.	Irregular/ Excess grant of Input Tax Credit	88	4.60
5.	Non/ short levy of tax	124	8.60
6.	Other regularities	72	2.07
7.	Expenditure Audit	6	0.29
	Total	**398**	**23.76**

During the course of the year, the Department accepted underassessment of tax and other irregularities of ₹ 12.94 crore in 148 cases, which were pointed out in audit during 2015-16 and earlier years. An amount of ₹ 2 crore was recovered in 110 cases.

A few illustrative audit observations involving ₹ 13.01 crore are mentioned in the succeeding paragraphs.

2.3 Non/ Short levy of VAT due to misclassification

Section 7 of the GVAT Act, 2003 provides for levy of tax on turnover of sales of goods specified in the Schedule II or Schedule III of the Act at the rate set out against each of them. Additional tax at the rate of 2.5/1 *per cent* is also leviable from 1 April 2008. Further, as per residuary entry No. 87 of Schedule II, all goods other than those specified in Schedule I or Schedule III and in the preceding entries of Schedule II attract tax at the rate of 15 *per cent* including additional tax at the rate of 2.5 *per cent*.

During test check of the assessment records of 14 offices we noticed[1] in 55 assessments[2] of 54 dealers that there was short levy of VAT of ₹ 5.27 crore due to misclassification of commodities or incorrect application of rate of tax as detailed below. Besides, interest and penalty was also recoverable, wherever applicable.

2.3.1 As per entry 37 of Schedule II, husk of all types including groundnut husk are taxable at the rate of five *per cent* including additional tax at the rate of one *per cent*. Further, husk of all types excluding 'groundnut husk' and 'rice husk' were exempt from whole of tax by entry 18 of Notification No. (GHN-44)VAT-2006- S.5(2)(3)-TH Dated 29-4-06 u/s 5(2). Thus, 'rice husk' was taxable at the rate of five *per cent* including additional tax at the rate of one *per cent*.

In case of 38 dealers of two offices[3], the Assessing Authorities (AAs), had treated the rice husk (rice bran) worth ₹ 35.71 crore as exempted goods by classifying it as cattle feed under entry 11 of Schedule I and did not levy any tax. Thus, there was non levy of VAT to the extent of ₹ 1.70 crore excluding interest and penalty due to misclassification of goods.

We pointed out the cases to the Department in July and October 2015. The Department accepted (September 2016) our observation in all cases and raised demand of ₹ 2.80 crore including leviable interest and penalty in 29 cases. In remaining cases show cause notices have been issued.

2.3.2 Under Section 7 of the GVAT Act, electric motor stamping, parts of motor vehicles, old vehicles, food colours, food and dietary supplements, prilled ammonium nitrate (CEH:31023000), batteries, electronic weigh bridge and modular/ cable tray are taxable at the rate of 15 *per cent* including additional tax at the rate of 2.5 *per cent* under residuary entry No. 87 of Schedule II.

In case of 10 assessment of nine dealers of eight offices[4], the AAs while assessing the cases misclassified the goods valued at ₹ 31.01 crore.

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1 Between May 2013 and October 2015

2 For the year 2008-09, 2009-10, 2010-11 and 2011-12, assessed between April 2012 and March 2015

3 ACCT Unit-11, Ahmedabad and Unit-49, Nadiad

4 ACCT Unit-8, 10 and 11 Ahmedabad; DCCT: Range-1, 5 and 6 Ahmedabad; Range-23 Rajkot and DCCT Corporate Cell-2 (Div-5), Surat

This resulted in short realisation of tax of ₹ 2.57 crore as mentioned in the following paragraphs:

(i). The Government vide Notification dated 29-04-2006 and 15-02-2010 specified the transformer stamping/stamping lamination and Ammonium Nitrate (CEH:31021000) as industrial inputs which are taxable at the rate of five per cent including additional tax at the rate of one percent under Entry 42A of the GVAT Act.

The AAs, in one case, classified the electrical motor stamping worth ₹ 6.06 crore as transformer stamping and in another case prilled ammonium nitrate (CEH:31023000) worth ₹ 1.05 crore as ammonium nitrate (CEH:31021000) and levied tax at the rate of five *per cent* under Entry 42-A instead of 15 *per cent* under residuary Entry-87 of Schedule-II. This resulted in short levy of tax to the extent of ₹ 58.88 lakh excluding interest and penalty.

We pointed out the cases to the Department in September 2014 and January 2015. The Department accepted (September 2016) the audit observation in one case and raised demand of ₹ 93.57 lakh. The reply of Department in the other case has not been received (October 2016).

(ii). In one case, the parts of motor vehicles worth ₹ 1.10 crore were treated as machinery parts and tax was levied at the rate of five *per cent* under Entry 58-A instead of 15 *per cent*. This resulted in short levy of tax to the extent of ₹ 9.11 lakh excluding interest and penalty.

The reply of the Department has not been received (October 2016)

(iii). In one case, the sale of old vehicles worth ₹ 80.06 lakh was treated as sale of machinery and was taxed at the rate of five *per cent* instead of 15 *per cent*. This resulted in short levy of tax to the extent of ₹ 6.63 lakh excluding interest and penalty.

We pointed out the case to the Department in May 2015. The Department accepted (September 2016) our observation and initiated revision proceedings.

(iv). In one case, the food colours worth ₹ 2.76 crore were treated as dyes and tax was levied at the rate of five *per cent* under Entry 29 instead of 15 *per cent*. This resulted in short levy of tax to the extent of ₹ 22.88 lakh excluding interest and penalty.

We pointed out the case to the Department in May 2014. The Department accepted (September 2016) our observation and raised demand of ₹ 63.63 lakh including leviable interest and penalty.

(v). The Department in case of M/s Claris Life Science Ltd. determined that food and dietary supplements are taxable at the rate of 15 *per cent* including additional tax at the rate of 2.5 *per cent*.

In case of a dealer, the AAs treated the food and dietary supplements worth ₹ 15.21 crore as drugs and medicines and tax was levied at the rate of five *per cent* under entry 28A instead of 15 *per cent*. This resulted in short levy of tax to the extent of ₹ 125.97 lakh excluding interest and penalty.

The jurisdictional JCCT did not accept (April 2015) our observation and stated that the dealer manufactured 'Atta premix' which is used in hospitals, Government *Anganwadi* and mid-day meals and falls under entry 28A of 'drugs and medicines.

The reply is not correct as entry 28A of Schedule-II pertaining to drugs and medicines excludes 'food and dietary supplements'. Determination dated 17.04.2008 under Section 80 of the Act determined that food and dietary supplements are taxable under entry 28A.

(vi). We observed in two cases that the batteries worth ₹ 1.45 crore were treated as parts of IT products and electronic weight bridge worth ₹ 0.68 crore was treated as IT/ digital equipment and tax was levied at the rate of five *per cent* under Entry 45 instead of 15 *per cent* under residuary Entry-87 of Schedule-II. This resulted in short levy of tax to the extent of ₹ 17.69 lakh excluding interest and penalty.

We pointed out the cases to the Department in May 2013 and May 2014. The jurisdictional JCCT did not accept (July 2013) our observation and stated that the batteries were used in the manufacture of uninterruptible power supply (UPS) which are IT products. The reply is not correct as the dealer is not a manufacture but a trader. The batteries were sold separately and were not sold as part of UPS.

In another case relating to electronic weigh bridge, the Department did not accept (May 2016) our observation and stated that electronic weigh bridge was manufactured by the use of computer printed circuit board (PCB), printer, load cell, integrated circuit and mother board etc. Hence, it was IT equipment falling under entry 45 of Schedule II. The reply of the JCCT is not correct as it was not covered / specified as an IT product in the Notification No. GHN-21 dated 01.08.2009 issued by the State Government.

(vii). The modular cable tray worth ₹ 1.89 crore was treated as machinery parts/specified goods and tax was levied at the rate of five *per cent* under entry 58A instead of 15 *per cent* under residuary Entry 87 of Schedule-II of the Act. This resulted in short levy of tax to the extent of ₹ 15.63 lakh excluding interest and penalty.

After this being pointed out the Jurisdictional JCCT replied (October 2014) that reassessment proceedings were under process.

2.3.3 The Government *vide* Notification dated 11.10.2006 fixed the rate of lump-sum tax at 2 *per cent* on works contract related to electric works,

mechanical works and fabrication while the rate of lump-sum tax for the civil works contract was fixed at 0.6 *per cent*.

In case of three works contractors falling under the jurisdiction of ACCT-104 Gandhidham, engaged in the execution of works contract related to electrical, mechanical and fabrication works that the AAs in assessment treated these works valued at ₹ 14.69 crore as civil works contracts and levied lump-sum tax at the rate of 0.*6 per cent* instead of correct rate of two *per cent*. This resulted in short levy of tax to the extent of ₹ 20.56 lakh excluding interest and penalty.

We pointed out the cases to the Department in May 2014. The Department accepted (July and September 2016) our observation in all the cases and raised demand of ₹ 42.58 lakh including leviable interest and penalty.

2.3.4 As per Rule 28(8)(vi-a)(i) of the GVAT Rules, 2006 a works contractor shall not be allowed the benefit of paying tax at lump-sum rate of two *per cent*, if the goods used in the execution of the works contract are purchased in the course of inter-State trade or commerce. In case of contravention the dealer shall be liable to pay tax at the rate of 15 *per cent* under Section 7 from the date of such contravention.

In case of a dealer of office of ACCT Unit-6, Ahmedabad, the goods which were purchased in the course of interstate trade or commerce were used in the execution of the works contract. However, the AA levied tax on the lump-sum basis at the rate of two *per cent* instead of 15 *per cent* leviable under Section 7 of the Act. This resulted in short levy of tax to the extent of ₹ 30.27 lakh excluding interest and penalty.

We pointed out the cases in September 2015 and the reply of the Department has not been received (October 2016).

2.3.5 Under Section 14D of the GVAT Act, a dealer who is engaged in the business of sale of eatables in any form served, delivered or given in packing from the place of business of dealer may be permitted to pay lump-sum tax at the rate of four *per cent* in lieu of the amount of tax leviable under this act in respect of sales of eatables. Further, under Section 41 of the GVAT Act, the Government *vide* Notification dated 23.07.2008, remmitted the whole of the tax payable under Section 7 of the Act, excluding additional tax payable under sub-section (1A) thereof, on the sales of goods by an eligible tourism unit subject to the condition that the eligible unit shall not be entitled to the option for payment of lump sum tax under Section 14D in lieu of tax at the rate of 15 *per cent* payable under Section 7 of the Act.

In one case of ACCT Unit-94, Rajkot, the dealer holding permission for the remission of tax under Section 41 of the Act as a tourism unit up to 31.07.2008 was simultaneously granted by the Department the permission for payment of lump-sum tax under Section 14D of the Act w.e.f. 01.04.2008. During the remission period, the benefit of lump-sum tax was irregular and tax was required to be levied at the rate of 15 *per cent* instead of lump-sum rate of

4 *per cent* on sale value of ₹ 91.36 lakh upto 31.07.2008. This resulted in short levy of tax to the extent of ₹ 7.49 lakh excluding interest and penalty.

We pointed out the cases to the Department in January 2014. The Department accepted (August 2016) our observation and raised demand of ₹ 27.48 lakh including interest of ₹ 8.76 lakh and penalty of ₹ 11.23 lakh.

2.3.6 Entry 18 of Schedule II of the GVAT Act pertaining to 'chemicals' which were taxable at the rate of five per cent was deleted w.e.f. 01.08.2009 *vide* the Gujarat Value Added Tax (Amendment) Act No. 12 of 2009. As a result w.e.f. 01-08-2009, chemicals other than those notified as 'industrial inputs' fall under residuary entry No. 87 of Schedule II and attract VAT at the rate of 15 *per cent* including additional tax at the rate of 2.5 *per cent*. Further, under Section 7 of the GVAT Act, CNG kits used in motor vehicles, fall under residuary entry No. 87 of Schedule II and attract VAT at the rate of 15 *per cent* including additional tax at the rate of 2.5 *per cent*.

In case of two dealers of two offices[5], the AAs while assessing the cases levied tax at the rate of five *per cent* including additional tax at the rate of one *per cent* instead of correct rate of 15 *per cent* including additional tax of 2.5 *per cent*, on sale of Chemicals valued at ₹ 3.04 crore (w.e.f. 01.08.2009) in one case and on sale of CNG kits valued at ₹ 2.02 crore in another case. This resulted in short levy of VAT to the extent of ₹ 41.89 lakh, excluding interest and penalty, due to application of incorrect rate of tax.

We pointed out the cases to the Department in September 2013 and April 2014. The Department accepted (September 2016) our observation in both the cases and raised the demand of ₹ 1.46 crore including leviable interest and penalty.

We reported the matter to the Government in May 2016. The reply of the Government has not been received (October 2016).

2.4 Short levy of VAT due to incorrect determination of turnover

Section 7(1) of the GVAT Act, 2003 provides for levy of tax on the turnover of sales of goods specified in Schedule II or Schedule III at the applicable rates.Further, under Section 2(24), sale price means the amount of valuable consideration paid or payable to a dealer or received or receivable by a dealer for any sale of goods made including the amount of duties levied or leviable under the Central Excise Tariff Act, 1985 or the Customs Act, 1962 and any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof.

During test check of the assessment records of eight offices we noticed[6] in assessments of nine dealers[7] that there was short levy of tax of ₹ 1.91 crore

[5] ACCT Unit-5 and 18 Ahmedabad

[6] Between January 2013 and July 2015

[7] For the year 2007-08, 2008-09, 2009-10 and 2010-11; assessment finalised between September 2011 and March 2015

excluding interest and penalty due to incorrect determination of turnover as detailed below:

2.4.1 Under Section 2(30) of the GVAT Act, tax is leviable on taxable turnover of sales in relation to works contracts on the amount of sales (deemed sale) remaining after deducting there from the charges towards labour, service and other like charges. Further, Rule 18AA of the GVAT Rules, 2006 stipulates that where the amount of charges towards labour, service and other like charges are not ascertainable or the accounts are not sufficiently clear or intelligible, a lump sum deduction at the rate of 30 *per cent* shall be admissible in case of job-work of embroidary and civil works contract.

We observed from the assessment records of three dealers of three offices[8] that in case of two dealers the deemed sale of the goods involved in the execution of the job-work/works-contract was incorrectly arrived at due to allowance of excess deductions of labour charges of ₹ 13.38 crore than admissible deductions of ₹ 5.26 crore from the total receipts of works contract of ₹ 17.53 crore. Further, in another case of job-work, tax was not levied on paints and POP valued at ₹ 1.38 crore which were used in servicing of cars. This incorrect determination of turnover resulted in short levy of tax to the extent of ₹ 56.42 lakh in these three cases. Besides interest and penalty was also leviable.

We pointed out the cases to the Department between December 2013 and July 2015. The Department accepted (September 2016) our observation in two cases and stated that demand of ₹ 81.10 lakh including interest and penalty has been raised in one case and in another one case amount of ₹ 21.55 lakh has been recovered. In remaining one case, the reply of the Department has not been received (October 2016).

2.4.2 In case of three dealers of two offices[9], the AAs had assessed the sales turnover less than the value of goods purchased/consumed. Further, there was no mention in assessment order or in certified accounts that the dealers had incurred any loss during the assessment period. This resulted in escapement of taxable turnover of ₹ 6.63 crore and consequent short levy of tax to the extent of ₹ 47.13 lakh excluding interest and penalty.

We pointed out the cases to the Department between January 2013 and January 2015. The Department accepted (September 2016) our observation in one case and stated that revision proceedings were under process. In respect of the other two cases, the reply of the Department has not been received (October 2016).

2.4.3 Under Section 5A of the GVAT Act, the sale of goods to a unit carrying on its business in the processing area or in the demarcated area of Special Economic Zone (SEZ) shall be zero rated sale for the purpose of this Act. Provided that the sale of goods specified in Schedule III such as diesel oil, which was taxable at the rate of 21 *per cent*, shall not be zero rated sale.

[8] ACCT Unit-57, Ankleshwer; Unit-69, Surat and DCCT Corp-01 (Div.-1), Ahmedabad
[9] ACCT Unit-6, Ahmedabad and DCCT Corp-1, Vadodara

Further, the Government vide Notification dated 01.04.2008 specified that the sale of spare parts of vehicles, which were taxable at the rate of 15 *per cent*, shall not be zero rated sale to the SEZ Units.

We observed in case of two dealers of two offices[10] that the dealers sold the spare parts of vehicles worth ₹ 3.31 crore and diesel oil worth ₹ 0.38 crore to the units in SEZ area which was allowed by AAs as zero rated sale, though as per the above provisions, the sale of these goods to SEZ units was not zero rated sale. This resulted in short levy of VAT to the extent of ₹ 49.77 lakh excluding interest and penalty.

We pointed out the cases to the Department in June and July 2015. The reply of the Department has not been received (September 2016).

2.4.4 Under Section 2(23) of the GVAT Act, sale means a sale of goods made within the State for cash or deferred payment or other valuable consideration and includes supply of goods by way of or as part of any service or in any other manner whatsoever.

We observed in case of one dealer assessed at DCCT, Division-1, Ahmedabad that the dealer imported the goods and supplied them to different purchasers as per their purchase orders. The AA in assessment irregularly deducted the amount of such supplies from the taxable turnover as sales in the course of import and no tax was levied. As the dealer had imported the goods and supplied them to different customers after custom clearances, the supply of goods fell under the sale and attracted VAT at the applicable rates. This irregular deduction of ₹ 3.40 crore resulted in non-levy of VAT to the extent of ₹ 37.79 lakh excluding interest and penalty.

After this being pointed out (January 2013), the Department accepted (September 2016) our observation and stated that revision proceedings had been initiated.

We reported the matter to the Government in May 2016. The reply of the Government has not been received (October 2016).

2.5 Incorrect allowance of Input Tax Credit

As per Section 11 of the GVAT Act a registered dealer who has purchased the taxable goods shall be entitled to claim tax credit equal to the amount of tax collected from him by a registered dealer from whom he has purchased such goods or tax paid by him as purchase tax under Section 9 of the Act. The tax credit to be so claimed shall be subject to the provisions as provided under the Section.

During test check of the assessment records of 10 offices we noticed[11] in assessments[12] of 21 dealers that the Assessing Authorities (AAs) had allowed

[10] ACCT Unit-11, Ahmedabad and DCCT-14, Bharuch
[11] Between May 2012 and July 2015
[12] For the year 2006-07, 2008-09, 2009-10 and 2010-11, assessments finalised between March 2011 and March 2015

excess tax credit of ₹ 1.51 crore excluding interest and penalty as detailed below:

2.5.1 Under Section 11(3)(b) of the GVAT Act, the amount of tax credit in respect of a dealer shall be reduced by the amount of tax calculated at the rate of four *per cent*, on the taxable turnover of purchases within the State, of the taxable goods consigned or dispatched for branch transfer or to his agent outside the State or of the taxable goods which are used as raw materials in the manufacture, or in the packing of goods which are dispatched outside the State in the course of branch transfer or consignment or to his agent outside the State.

We observed, on scrutiny of assessment orders, in case of two dealers of two offices[13] that the AAs reduced the tax credit of ₹ 26.13 lakh instead of ₹ 47.40 lakh on the goods worth ₹ 11.85 crore which were consigned or dispatched for branch transfer or to his agent outside the State, due to incorrect arithmetical calculation mistakes. This resulted in excess allowance of tax credit to the extent of ₹ 21.27 lakh excluding interest and penalty.

The cases were pointed out to the Department in August 2014 and June 2015. The Department accepted (September 2016) our observation in one case and raised demand of ₹ 23.86 lakh including interest and penalty. The reply in another case has not been received (October 2016).

2.5.2 Section 9(1) of the GVAT Act provides for levy of purchase tax on purchases of goods made from unregistered dealers (URD). The Government vide Notification No. GHN-14 dated 29.06.2010 specified reduction of tax credit at the rate of two *per cent* of the purchase turnover of goods as specified in the notification, when such goods are sold/used as raw material in the manufacture of goods which are sold in the course of inter-State trade or commerce w.e.f. 01.07.2010. Further, the Government vide Notification No. GHN-35 dated 07.09.2010 (effective from 01.10.2010) exempted Cotton from reduction in tax credit on account of inter-State sales. Thus, between the period 01.07.2010 and 30.09.2010, tax credit of purchase tax was required to be reduced on purchases of cotton which was sold in the course of inter-State trade or commerce.

We observed in cases of eight dealers assessed at ACCT-11, Ahmedabad that the dealers had purchased cotton worth ₹ 12.52 crore, between 01.07.2010 and 30.9.2010 from URDs and sold in the course of inter-State trade or commerce. However, purchase tax on such purchases was neither paid by the dealers nor assesed by the AAs during audit asessment. Tax credit of ₹ 25.03 lakh was required to be reduced at the rate of two *per cent* in the event of payment of purchase tax. This resulted in non-reduction of tax credit to the extent of ₹ 25.03 lakh, excluding interest and penalty, due to non-levy of purchase tax.

We pointed out the case to the Department in July 2015. The reply of the Department has not been received (October 2016).

[13] ACCT:Unit-06, Ahmedabad and DCCT:Range-14, Bharuch

2.5.3 Rule 18(2) of the GVAT Rules, 2006, provides for adjustment of tax credit towards the payable tax under the GVAT Act and the CST Act and any amount of tax credit which remains after such adjustment, shall be carried forward to the subsequent year.

We observed, on scrutiny of assessment orders, in case of three dealers of two offices[14] that the AAs allowed tax credit of ₹ 37.12 lakh as brought forward from the previous year though the above amount of tax credit had already been refunded in the previous year. This resulted in excess allowance of tax credit to the extent of ₹ 37.12 lakh excluding interest and penalty.

After being pointed out to the Department in November 2013 and October 2014, the Department accepted (July and September 2016) our observations in all the three cases and stated that demand of ₹ 56.87 lakh has been raised in two cases and in remaining one case revision proceedings were under process.

2.5.4 Section 11 of the GVAT Act, *inter alia*, provides that tax credit shall not be allowed for purchases of (i) goods used in the manufacture of tax free goods (ii) capital goods used in transfer of property in goods (whether as goods or in some other form) involved in execution of works contract (iii) second hand plant and machinary and (iv) vehicles of any type and high speed diesel (HSD) except when purchasing dealer is engaged in the business of sales of such vehicles or HSD.

In case of five dealers of three offices[15], the AAs had irregularly allowed tax credit of ₹ 35.14 lakh on purchases of goods worth ₹ 6.02 crore such as capital goods used in the manufacture of tax free goods, second hand plant and machinary and capital goods and vehicles used in quarry work or execution of works contract. Further, in another case which was accepted as self-assessed, dealer had irregularly claimed tax credit of ₹ 6.32 lakh on purchase of HSD of ₹ 59.61 lakh which was used as fuel in manufacturing/ vehicles. This resulted in excess allowance of tax credit to the extent of ₹ 41.46 lakh in above five cases, excluding interest and penalty.

We pointed out the cases to the Department between December 2012 and September 2014. The Department accepted (September 2016) our observations in all the five cases and stated that after reassessment, demand of ₹ 1.37 crore, including interest and penalty, has been raised.

2.5.5 Section 11(5)(a) of the GVAT Act stipulates that tax credit shall not be allowed for purchases made from any person other than a registered dealer under this Act.

In case of two dealers of two offices[16] , the dealers had irregularly claimed the tax credit of ₹ 10.79 lakh on goods worth ₹ 2.43 crore which were purchased from the dealers whose registration certificates were cancelled by the Department before such purchases. In respect of one dealer the AA in audit

[14] ACCT:Unit-103, Bhuj and DCCT, Corp-1(Div-1), Ahmedabad
[15] ACCT:Unit-103, Bhuj;Unit-47, Godhara and DCCT:Range-6, Ahmedabad
[16] ACCT:Unit-17, Ahmedabad and DCCT:Range-07, Gandhinagar

assessment also allowed the tax credit while the other case was accepted as self assessed. This resulted in excess allowance of tax credit to the extent of ₹ 10.79 lakh excluding interest and penalty.

We pointed out the cases to the Department in December 2014 and February 2015. The Department accepted (September 2016) our observations in both the cases and stated that demand of ₹ 19.80 lakh including interest and penalty has been raised in one case. In another case, revision proceedings were under process.

2.5.6 Section 12 of the GVAT Act read with Rule 16 of the GVAT Rules require that all the dealers shall furnish in Form-108 within the prescribed period a statement of such taxable goods, held in stock on 31 March, 2006 which are purchased during the period commencing on 1 April 2005 and ending on 31 March 2006 for which the dealer intends to claim tax credit under this Act.

In case of one dealer assessed at ACCT Unit-91, Rajkot, the AA in assessment allowed the tax credit of ₹ 15.33 lakh, though the dealer had not furnished the statement of taxable goods held on 31.03.2006 in Form-108. This resulted in irregular grant of tax credit to the extent of ₹ 15.33 lakh excluding interest and penalty.

We pointed out the case to the Department in May 2012. The Department accepted (July 2016) our observation and stated that demand of ₹ 29.24 lakh including interest and penalty has been raised.

We reported the matter to the Government in May 2016. The Government confirmed (July and September 2016) the reply of the Department in case of two dealers and in the remaining cases, their reply has not been received (October 2016).

2.6 Non-levy of Entry Tax on purchases of vehicles in the course of inter-State trade or commerce

As per judgment dated 15.07.2011 of the Hon'ble Gujarat High Court in the case of *Reliance Industries Ltd. V/s State of Gujarat (SCA No. 11848 of 2005)* 'crawler cranes, loaders, mobile cranes, motor grader, road roller, fork lift, chain mounted drilling machine, pipe layer and bulldozer' are classified as motor vehicles. Section 3(1) of the Gujarat Tax on Entry of Specified Goods into Local Area Act 2001, provides for levy and collection on entry of motor vehicles into the local area, a tax on purchase value thereof at the rate of 15 *per cent*. Under Section 4(2) of the Act, the amount of tax leviable shall be reduced to the extent of the amount of tax paid under the Central Sales Tax Act, 1956 on the purchase of such vehicles in the course of inter-State trade or commerce.

Further, Section 11(5) of the GVAT Act, 2003 stipulates that the tax credit of entry tax shall not be admissible for purchases of vehicles of any type and its equipment except when purchasing dealer is engaged in the business of sales of such vehicles.

During test check of the assessment records of two offices[17] we noticed[18] in assessments of two dealers[19] that the dealers had effected inter-State purchases of motor vehicles viz. Hydraulic Excavator, Hydraulic Backhoe, Wheel Loader etc. worth ₹ 2.45 crore. These vehicles were used in the execution of works contract in one case and for self use in another case. Though, entry tax was leviable on above purchase of vehicles, neither the dealers paid entry tax at the time of purchase of such vehicles nor the AAs levied the entry tax at the time of audit assessment. This resulted in non-levy of entry tax to the extent of ₹ 31.38 lakh excluding leviable interest and penalty.

We pointed out the cases to the Department in April and July 2014. The Department accepted (August 2016) our observation in one case and stated that an amount of ₹ 24.81 lakh had been recovered. In the other case, the jurisdictional JCCT stated (September 2015) that demand of ₹ 18.77 lakh including interest of ₹ 9.61 lakh had been raised on reassessment.

We reported the matter to the Government in May 2016. The reply of the Government has not been received (October 2016).

2.7 Non/ Short levy of interest

During test check of the assessment records of four offices we noticed[20] in seven assessments[21]of six dealers that the Assessing Authorities (AAs) had calculated interest incorrectly on delayed payment of tax due to incorrect computation/ adoption of period of delay. The AAs had levied interest of ₹ 47.84 lakh, instead of correct interest of ₹ 143.32 lakh, resulting in short levy of interest of ₹ 95.48 lakh as detailed below:

2.7.1 Under Section 30(5) of the Gujarat Value Added Tax (GVAT) Act, where a dealer does not pay the amount of tax within the time prescribed for its payment, then there shall be paid by such dealer for the period commencing on the date of expiry of the aforesaid prescribed time and ending on date of payment of the amount of tax, simple interest at the rate of 18 *per cent* per annum, on the amount of tax not so paid or on any less amount thereof remaining unpaid during such period.

In case of two dealers in three cases of two offices[22], the AAs levied interest of ₹ 29.64 lakh instead of leviable amount of ₹ 83.96 lakh on delayed payment of tax by the dealers. This resulted in non/short levy of interest to the extent of ₹ 54.32 lakh.

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17 DCCT:13-Nadiad and 25-Gandhidham

18 Between April and July 2014

19 Pertaining to the assessment period 2008-09 where assessments were finalised in December 2012

20 Between January 2014 and February 2015

21 For the year 2007-08, 2008-09 and 2009-10, assessments finalised between March 2013 and March 2014

22 ACCT: Unit-99, Jamnagar and DCCT: Enforcement Div-III Gandhinagar

We pointed out the cases to the Department in January 2014 and July 2014. The Department accepted (September 2016) our observation in all the cases and raised demand of ₹ 2.92 crore.

2.7.2 Under Section 42(6) of the Act *ibid*, where the amount of tax assessed or reassessed for any period, exceeds the amount of tax already paid by the dealer for that period, the dealer shall pay simple interest at the rate of 18 per cent per annum on the amount of tax remaining unpaid for the period of default.

In case of two dealers of two offices[23], the AAs had not levied any interest on delayed payment of tax though interest of ₹ 20.54 lakh was leviable due to non-payment of tax within the prescribed time period. This resulted in non levy of interest to the extent of ₹ 20.54 lakh.

We pointed out the cases to the Department in January 2014 and February 2015. The Department accepted (July 2016) our observation in one case and raised demand of ₹ 54.10 lakh. In another case, the Department did not accept (September 2016) our observation and stated that dealer had balance amount of ITC of ₹ 49.55 lakh at the end of the financial year 2009-10 which had been carried forward to the next financial year and hence interest was not leviable even though the tax was paid beyond the prescribed time period. The reply of the Department is not acceptable as the excess amount of tax credit of ₹ 49.55 lakh was adjusted against the tax liability for the period 2010-11 while the dealer had paid the tax, pertaining to period 2009-10, during the period 2011-12.

2.7.3 Section 30(6) of the GVAT Act stipulates that where a dealer is liable to pay interest under Sub-section (5) or under Sub-section (7) of Section 42 and he makes payment of an amount which is less than the aggregate of the amount of tax, penalty and interest, the amount so paid shall be first applied towards the amount of interest, thereafter the balance, if any, towards the amount of penalty and thereafter the balance, if any, towards the amount of tax.

In case of two dealers assessed at DCCT Corporate-2, Ahmedabad, the dealers had paid tax beyond the prescribed time limit. In such cases payment so made was required to be applied first towards the interest for the period of late payment, thereafter the balance towards the tax, but during assessments the AAs had not applied the said provisions and calculated the interest of ₹ 18.20 lakh instead of leviable interest of ₹ 38.81 lakh. This resulted in short levy of interest of ₹ 20.61 lakh.

We pointed out the cases to the Department in January 2015. The Department accepted (September 2016) our observation in both the cases and raised demand of ₹ 40.74 lakh.

We reported the matter to the Government in May 2016. The reply of the Government has not been received (October 2016).

[23] ACCT: Unit-99, Jamnagar and DCCT: Range-7, Gandhinagar

2.8 Non levy of penalty under VAT

During test check of assessment records of three offices we noticed[24] in assessments[25] of three dealers that the Assessing Authorities (AAs) had not levied penalty of ₹ 1.78 crore as detailed below:

2.8.1 Section 34(12) of the GVAT Act provides for levy of penalty not exceeding one and half times of the difference between the tax paid with returns and the amount assessed or reassessed where the tax assessed or reassessed exceeds 25 *per cent* of the amount of tax already paid. Further, as per Section 9(2) of the CST Act, provisions of interest and penalty enumerated in the GVAT Act also apply to the assessment under CST Act.

In case of two dealers of two offices[26], the dealers had paid tax of ₹ 2.24 crore with returns against the payable amount of ₹ 3.31 crore. The difference between the amount of tax paid with returns and the amount assessed was more than 25 *per cent* of the amount of tax already paid. As such, penalty was required to be levied at the rate of one and half times of such differential amount of tax, but the AA in assessment had not levied any penalty. This resulted in non-levy of penalty of ₹ 1.60 crore.

We pointed out the cases to the Department in February 2014 and May 2015. The Department accepted (July and September 2016) our observations in both the cases and raised demand of ₹ 49.78 lakh in one case.

2.8.2 Under Section 31(4) of the GVAT Act, 2003 if any person collects any amount by way of tax in contravention of the provisions of the GVAT Act, 2003 he shall be liable to pay, in addition to any tax payable, a penalty equal to the amount so collected. Further, as per Section 9(2) of the CST Act, provisions of interest and penalty enumerated in the GVAT Act also apply to the assessment under CST Act.

In case of a dealer assessed at ACCT Unit-11, Ahmedabad, the dealer had collected and paid CST of ₹ 60.47 lakh against the leviable amount of tax of ₹ 43.10 lakh. As the dealer had collected excess amount by way of tax in contravention of the provisions of the Act, penalty equal to the excess amount so collected was required to be levied. However, the AA in assessment had not levied any penalty. This resulted in non levy of penalty of ₹ 17.38 lakh.

We pointed out the case to the Department in July 2015. The Department accepted (September 2016) our observation and raised demand of ₹ 17.38 lakh.

We reported the matter to the Government in May 2016. The reply of the Government has not been received (October 2016).

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[24] Between February 2014 and July 2015

[25] For the year 2008-09, 2009-10 and 2010-11, assessments finalised between March 2013 and March 2015

[26] ACCT: Unit-104, Gandhidham and DCCT:Range-24, Jamnagar

2.9 Irregular benefit of exemption from tax under Economic Development of Kutchh District

The State Government *vide* Notification No. GHN-43 dated 01.04.2006 continued the tax exemptions granted under the Gujarat Sales Tax law for the sales or purchases of goods made by the industrial units to whom the Eligibility Certificate was issued by the Industries Commissioner and the Exemption Certificate was issued by the Commissioner of Sales Tax for manufacture and sale of the goods specified in the eligibility certificates issued to them.

During test check of the assessment records of ACCT-104, Gandhidham, we noticed (May 2015) in assessment[27] of one dealer that the Eligibility Certificate for Sales Tax Exemption under Economic Development of Kutchh District was issued to the dealer for manufacture and sale of Submerged Arc Welded (Saw) Pipes, Spiral Pipes, Polytehylene Coating and all types of Coating. As such, the sale of these goods was eligible for exemption from tax, whereas, sale of the scrap emerging as 'bye-product' of these goods was not eligible for any exemption. Accordingly, the Assessing Authority levied Central Sales Tax of ₹ 2.75 lakh on inter-state sale of scrap against Form 'C'. However, the AA in VAT assessment granted exemption of tax of ₹ 1.27 crore on sale of scrap of ₹ 31.79 crore. This resulted in irregular exemption from tax to the extent of ₹ 1.27 crore excluding interest and penalty.

We pointed out the case to the Department in May 2015. The Department accepted (September 2016) our observation and stated that revision proceedings were under process.

We reported the matter to the Government in May 2016. The reply of the Government has not been received (October 2016).

[27] For the assessment period 2010-11, assessment was finalised in May 2013