

CHAPTER-II VALUE ADDED TAX/ SALES TAX

2.1 Tax Administration

Value Added Tax laws and rules framed thereunder 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 offices during the year 2016-17 revealed under assessment of ₹ 35.67 crore in 325 cases which broadly falls under the following categories:

**Table 2.1
Results of Audit**

Sl. No.	Category	No. of cases	Money Value (₹ in crore)
1	Incorrect rate of tax and mistake of computation	25	10.74
2	Incorrect concession/ exemption	10	1.04
3	Non/ short levy of interest and penalty	34	4.18
4	Irregular/ excess grant of Input Tax Credit	109	7.91
5	Non/ short levy of tax due to underassessment and escapement of turnover	98	9.40
6	Other irregularities	44	2.33
7	Expenditure Audit	5	0.07
	Total	325	35.67

During the course of the year, the Department accepted underassessment of tax and other irregularities of ₹ 2.52 crore in 97 cases, which were pointed out in audit during 2016-17 and earlier years. An amount of ₹ 1.11 crore was recovered in 87 cases.

A few illustrative audit observations involving ₹ 13.24 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 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 five offices, audit noticed¹ in 23 assessments² of 21 dealers that there was short levy of VAT of ₹ 2.15 crore due to misclassification of commodities as detailed below. Besides, interest and penalty was also recoverable, wherever applicable.

2.3.1 Non levy of VAT on rice husk

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 exempted from whole of tax by entry 18 of Notification³ dated 29 April 2006 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*.

Audit observed in 19 cases of 18 dealers of three offices⁴ that the Assessing Authorities (AAs) had treated rice husk (rice bran) worth ₹ 20.61 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 ₹ 98.12 lakh excluding interest and penalty due to misclassification of goods.

The Government vide order dated 06 February 2017 confirmed the audit contention and clarified that tax is leviable at the rate of 4+1 *per cent* on sale/purchase of rice husk. The Government further intimated that it remitted the tax, interest and penalty leviable on sale/ purchase of rice husk up to the period 2014-15 except for those dealers whose cases were finalised in reassessment/ revision/ appeal under Section 41 of the VAT Act. The reason for remission of the tax was not intimated to audit.

2.3.2 Short levy of VAT due to misclassification

2.3.2.1 Under Entry 43 of Schedule-II of the GVAT Act, the goods specified as "Iron and Steel" identical to declared goods as specified in Section 14 of the CST Act, are taxable at the rate of four *per cent*. Further, "Stainless Steel Wire" and "Stranded Wire" do not fall under "Iron and Steel" as specified under Section 14 of the CST Act. Thus, "Stainless Steel Wire" and "P C Stranded Wire" fall under Entry 87 of Schedule-II of the GVAT Act and

¹ Between August 2014 and August 2016

² For the year 2009-10, 2010-11, 2011-12 and 2012-13; assessed between February 2013 and April 2015

³ No. (GHN-44)VAT-2006- S.5(2)(3)-TH

⁴ ACCT: Unit-11 and Unit-21, Ahmedabad; DCCT: Range-3, Ahmedabad

attract tax at the rate of 15 *per cent* including additional tax at the rate of 2.5 *per cent*.

Audit observed in three assessment cases in two offices⁵ that the AAs classified the Stainless Steel Wire and P C Stranded Wire worth ₹ 10.50 crore as “Iron and Steel” and levied tax at the rate of four *per cent* under Entry 43 instead of 15 *per cent* under Entry-87 of Schedule-II. This resulted in short levy of tax to the extent of ₹ 96.61 lakh excluding interest and penalty.

2.3.2.2 The Government vide Notification⁶ dated 01 April 2008 prescribed rate of tax at five *per cent* on sale of furnace oil whereas Sludge oil falls under Entry 87 of Schedule-II and is taxable at the rate of 15 *per cent*.

Audit observed in an assessment case at the office of ACCT Unit-11, Ahmedabad that the AA while assessing the case classified Sludge Oil worth ₹ 2.51 crore as Furnace Oil and levied tax at the rate of five *per cent* instead of 15 *per cent* under Entry-87 of Schedule-II. This resulted in short levy of tax to the extent of ₹ 20.78 lakh excluding interest and penalty.

Audit pointed out these cases to the Department and Government in May 2017. Their replies have not been received (September 2017).

2.4 Short levy of tax due to application of incorrect rate of tax

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 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 five offices, audit noticed⁷ in six assessments⁸ of five dealers that there was short levy of VAT of ₹ 2.98 crore due to incorrect application of rate of tax as detailed below. Besides, interest and penalty was also recoverable, wherever applicable.

2.4.1 Under Section 2(23) read with Section 2(24) of the GVAT Act, the supply⁹ of Ready Mix Concrete (RMC) at site alongwith other incidental activities of pouring, pumping etc. amounts to sale. The sale of RMC is taxable at the rate of 15 *per cent* including additional tax at the rate of 2.5 *per cent*.

⁵ ACCT: Unit-25, Kalol and Unit-44, Vadodara

⁶ No. (GHN-16) VAT -2008-S.5 (2) (22)-TH

⁷ Between September 2013 and August 2016

⁸ For the year 2008-09, 2009-10, 2010-11 and 2011-12; assessed between July 2012 and March 2016

⁹ The view was upheld by the Hon'ble Supreme Court in case of GMK Concrete Mixing Pvt. Ltd. Vs. Commissioner of Service Tax [2014] 36 STR 913 (SC)/ [2015] 51 GST 719 (SC) dated 06 January 2015

Audit observed in the assessment case of one dealer at the office of the ACCT Unit-5, Ahmedabad that the AA in assessment treated the sale of RMC worth ₹ 16.21 crore as civil works contract and tax was levied at lump sum rate of 0.6 *per cent* instead of 15 *per cent*. This resulted in short levy of tax to the extent of ₹ 2.02 crore excluding interest and penalty.

2.4.2 Tax is leviable at the rate of 15 *per cent* including additional tax at the rate of 2.5 *per cent* on the sale of gas metering skids and parts of telecom towers under GVAT Act.

Audit observed in assessment cases of two dealers in two offices¹⁰ that 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*, on sale of gas metering skids and parts of telecom towers worth ₹ 10.19 crore. This resulted in short levy of VAT to the extent of ₹ 84.36 lakh, excluding interest and penalty, due to application of incorrect rate of tax.

2.4.3 The Government *vide* Notification dated 11 October 2006 fixed the rate of lump-sum tax at two *per cent* on execution of works contract related to erection of mobile towers and electrical installations while the rate of lump-sum tax for the civil works contract was fixed at 0.6 *per cent*. Further, the sale of used trailer and loader are taxable at the rate of 15 *per cent* under GVAT Act.

Audit observed in three assessment cases in two offices¹¹ that in respect of two cases of one dealer, the AAs had levied lump-sum tax at the rate of 0.6 *per cent* instead of two *per cent* on works contract receipts of ₹ 3.90 crore where the dealer was engaged in execution of works related to erection of mobile towers and electrical installations. In case of another one dealer, the AA levied a lump-sum tax of ₹ 5,000 instead of correct tax at the rate of 15 *per cent*, on sale of used trailer and loader worth ₹ 48.60 lakh. The application of incorrect rate of tax resulted in short levy of tax to the extent of ₹ 11.95 lakh excluding interest and penalty.

Audit pointed out these cases to the Department and Government in May 2017. The Department accepted (August 2017) our observation in case of one dealer where lump-sum tax of ₹ 5,000 was levied. The reply of the Department in remaining cases has not been received (September 2017).

2.5 Non/ short reduction/ reversal of 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 provisos as provided under the Section.

¹⁰ ACCT Unit-11, Ahmedabad and Unit-58, Surat

¹¹ ACCT Unit-06, Ahmedabad and Unit-104, Gandhidham

During test check of assessment records of 20 offices audit noticed¹² in 31 assessments¹³ of 30 dealers that the AAs had allowed excess tax credit of ₹ 4.01 crore, excluding interest and penalty, as detailed below:

2.5.1 Short reduction of ITC on branch transferred goods

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.

2.5.1.1 Audit observed in assessment cases of three dealers of three offices¹⁴ that the goods worth ₹ 795.98 crore were consigned or dispatched for branch transfer outside the State or used as raw materials in the manufacture or in the packing of goods which were dispatched for branch transfer outside the State. The tax credit of ₹ 31.84 crore at the rate of four *per cent* of such goods was required to be reduced, but during assessment the AAs incorrectly reduced an amount of ₹ 30.76 crore due to arithmetical mistakes. This resulted in short reduction of tax credit to the extent of ₹ 1.08 crore, excluding interest and penalty.

Audit pointed out these cases to the Department and Government in May 2017. The Department accepted (August 2017) our observation in case of one dealer¹⁵. The reply in case of remaining two dealers has not been received (September 2017).

2.5.1.2 Audit observed in assessment case of one dealer assessed at office of ACCT Unit-57, Ankleshwar that the AA while assessing the case did not reduce the tax credit of taxable goods worth ₹ 2.73 crore¹⁶ which were used as raw materials in the manufacture of goods. The goods so manufactured were dispatched by the dealer for branch transfer or to his agent outside the State. This non-reduction of tax credit by the AA resulted in non-realisation of tax to the extent of ₹ 10.92 lakh in the form of tax credit, excluding interest and penalty.

When this was pointed out, the Jurisdictional JCCT¹⁷, Division 6, Vadodara did not accept audit observation and stated (February 2016) that the reduction in ITC was not applicable as the goods were purchased during the financial year only. The reply was not correct as Section 11(3)(b) stipulated reduction in

¹² Between May 2014 and October 2016

¹³ For the year 2008-09, 2009-10, 2010-11 and 2011-12, assessments finalised between March 2013 and March 2016

¹⁴ ACCT: Unit-7, Ahmedabad; DCCT: Petro-1, Ahmedabad and Range-25, Gandhidham

¹⁵ of DCCT, Range-25, Gandhidham

¹⁶ which was held as opening stock

¹⁷ of ACCT, Ankleshwar

tax credit in case of branch transfers irrespective of the year of purchase. As such, reduction in ITC should have been made.

Audit pointed out the case to the Department and Government in May 2017. Their reply has not been received (September 2017).

2.5.2 Short reduction of tax credit on goods sold in the course of inter-State Trade or Commerce

Under Section 11(6) of the GVAT Act, the Government vide Notification No. GHN-14 dated 29 June 2010 specified reduction of tax credit at the rate of two *per cent* of the purchase turnover of goods, for which tax credit is admissible as specified in the notification, when such goods are sold/used as input including raw material in the manufacture of goods which are sold in the course of inter-State Trade or Commerce w.e.f. 01 July 2010.

Audit observed in 19 assessment cases of 18 dealers of 12 offices¹⁸ that the AAs reduced the tax credit of ₹ 5.33 crore instead of ₹ 7.39 crore on the goods worth ₹ 369.73 crore. These goods were resold/ used as raw material in the manufacture of goods sold in the course of inter-State trade or commerce. The omissions were on account of arithmetical mistakes, incorrect reduction of tax credit, etc. This resulted in short reduction of tax credit to the extent of ₹ 2.06 crore excluding interest and penalty.

When this was pointed out, the Department accepted (December 2016 and September 2017) our observations in six assessment cases of five dealers. The Government accepted (September 2017) our observations in three cases of two dealers¹⁹. Their replies in remaining cases have not been received (September 2017).

2.5.3 Irregular allowance of tax credit on purchase of goods used for inadmissible purposes

Section 11 of the GVAT Act, *inter alia*, provides that tax credit shall not be allowed for purchases of goods used in the manufacture of tax free goods. Further, Rule 18(B) of the GVAT Rules, provides for grant of refund of the tax paid to the registered dealer on purchases of taxable goods in case of the textile units which are issued Certificate of Entitlement for remission of tax and engaged in the manufacture of tax free goods.

2.5.3.1 Audit observed in assessment cases of four dealers of four offices²⁰ that the AAs had irregularly allowed tax credit of ₹ 36.86 lakh on purchases of goods worth ₹ 7.89 crore which were used in manufacture of tax free goods such as fabrics, newspaper, shading net and dairy products.

¹⁸ ACCT: Unit-5, 7 and 14 Ahmedabad; Unit-57, Surat and Unit-41, Vadodara; DCCT: Petro-1- Ahmedabad; Corporate Cell - Gandhinagar; Range-7 Gandhinagar; Corporate Cell IV- Mehsana; Range-13- Nadiad; Range-23- Rajkot and Range-11- Vadodara

¹⁹ of DCCT Range-11, Vadodara

²⁰ ACCT: Unit-5, Ahmedabad; Unit-56, Bharuch; DCCT: Range-5, Ahmedabad and Corporate Cell-1, Div. 3, Gandhinagar

Out of these, in case of one dealer, the Department even granted the refund of tax credit of taxable goods which were purchased during the tax remission period but remained as closing stock on the date of completion of such remission period. The refund of tax credit on closing stock was not admissible as these goods were used in manufacture of tax free goods after the completion of remission period. This resulted in irregular allowance/ refund of tax credit to the extent of ₹ 36.86 lakh, excluding interest and penalty.

When this was pointed out, the jurisdictional JCCT²¹, Division 2, Ahmedabad, did not accept our observation in case of a dealer where refund of tax credit was granted and stated (August 2014) that the refund of tax credit of taxable goods purchased during the tax remission period was granted as per the provisions of Rule 18(B) of the GVAT Rules. The reply was not correct as the proviso under Rule 18(B) stipulated that the goods so purchased should be used in the manufacture of goods. In the instant case, goods were not used in manufacture during the remission period but remained as closing stock on completion of remission period and subsequently used in manufacture of tax free goods. As such, the tax credit was not admissible.

Audit pointed out these cases to the Department and Government in May 2017. Their replies have not been received (September 2017).

2.5.3.2 Under Section 11 of the GVAT Act, tax credit shall not be allowed for purchases of vehicles of any type except when the purchasing dealer is engaged in the business of sales of such goods. As per Section 2 (5) second-hand plant and machinery does not fall within the definition of capital goods.

Audit observed in the assessment cases of four dealers of four offices²² that the AAs had allowed tax credit of ₹ 39.93 lakh on purchases of capital goods/ plant and machinery worth ₹ 4.82 crore. Out of these four cases, in case of three dealers, the capital goods included purchase of motor vehicles such as hydraulic excavator, hydraulic mobile crane, tipper/ lorry which were used in execution of works contract or for providing services. In another case, the dealer purchased plant and machinery which was damaged and unfit for use. As such, the tax credit on purchase of motor vehicles used for the purposes other than resale and defective plant and machinery, was not admissible, but the AAs allowed it during the assessment. This resulted in irregular allowance of tax credit to the extent of ₹ 39.93 lakh excluding interest and penalty.

When this was pointed out, the CTO, Unit 29, Prantij did not accept our observation in case of one dealer and stated that tax credit was admissible on purchase of tipper/ lorry as capital goods meant for quarry work. The reply was not acceptable as Section 11 of the GVAT Act did not allow tax credit on purchase of any type of motor vehicle other than for resale.

Audit pointed out these cases to the Department and Government in May 2017. Their replies have not been received (September 2017).

²¹ of DCCT Range 5, Ahmedabad

²² ACCT: Unit-7 and Unit-11, Ahmedabad; Unit-39, Vadodara and CTO-29 Prantij

2.6 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 six offices audit noticed²³ in assessments of nine dealers²⁴ that there was short levy of tax of ₹ 1.22 crore excluding interest and penalty due to incorrect determination of turnover as detailed below:

2.6.1 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 sale (deemed sale) remaining after deducting therefrom 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 prescribed rate shall be admissible in case of civil works contract.

Audit observed in assessment cases of two dealers of two offices²⁵ that:

- In case of a dealer, as per the certified accounts, the deemed sale value of the goods as a result of works contract was ₹ 11.13 crore. The AA while finalising the assessment levied tax on turnover of ₹ 5.37 crore. This resulted in under assessment of turnover to the extent of ₹ 5.76 crore having tax effect of ₹ 46.38 lakh. The basis on which ₹ 5.37 crore was worked out was not found on record.
- In case of another dealer assessed at office of ACCT Unit-44 Vadodara, the deemed sale of the goods involved in the execution of works contract was incorrectly arrived at, due to allowance of deductions of labour charges of ₹ 4.47 crore rather than admissible deductions of ₹ 2.38 crore under Rule 18AA, at the rate of 30 *per cent* from the total receipts of works contract of ₹ 7.93 crore. This resulted in under assessment of turnover to the extent of ₹ 2.09 crore having tax effect of ₹ 9.90 lakh.

The short determination of turnover in the above cases to the extent of ₹ 7.85 crore resulted in short levy of tax to the extent of ₹ 56.28 lakh excluding interest and penalty.

²³ Between April 2014 and October 2016

²⁴ For the year 2008-09, 2009-10, 2010-11 and 2011-12; assessment finalised between February 2012 and March 2016

²⁵ ACCT Unit-57, Surat and Unit-32, Vijapur

Audit pointed out these cases to the Department and Government in May 2017. The Department accepted (July 2017) our observation in case of one dealer²⁶. The reply of the Department in this case was confirmed (August 2017) by the Government. The reply of the other case has not been received (September 2017).

2.6.2 As per Section 2(24) of the GVAT Act ‘sale price’ means the amount of valuable consideration received or receivable by a dealer for any sale of goods made including the amount of duties levied or leviable under 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. The supply²⁷ of Ready Mix Concrete (RMC) at site alongwith other incidental activities of pouring, pumping etc. amounts to sale. Thus, tax at the rate of 15 *per cent* is leviable on total sales turnover of RMC including pouring/ pumping charges as such charges form the part of sale price.

Audit observed in assessment cases of two dealers of two offices²⁸ that in case of one dealer the AA did not include the central taxes namely customs duty amounting to ₹ 4.42 crore in the taxable sales turnover of ₹ 61.58 crore for levy of tax. In another case, the AA irregularly deducted the amount of pouring/ pumping charges of ₹ 78.02 lakh from the taxable turnover of RMC of ₹ 4.45 crore as labour charges. The customs duty and the charges incurred before supply of RMC formed the part of sale price and tax was leviable on gross turnover of sale including such duty/ charges. This irregular exclusion of central taxes and incidental charges of ₹ 5.20 crore from taxable turnover resulted in short realisation of VAT to the extent of ₹ 32.25 lakh excluding interest and penalty.

When this was pointed out, DCCT Corporate Cell Division-V, Vadodara did not accept the audit observation in one case and stated that the custom duty was paid by the purchasers directly to the custom authorities and thus VAT was not leviable. Reply of the AA is not acceptable since duties leviable under the Customs Act form part of sale price and are liable to VAT.

Audit pointed out these cases to the Department and Government in May 2017. Their replies have not been received (September 2017).

2.6.3 Section 14A of the GVAT Act, provides for payment of lump-sum tax by way of composition in lieu of the amount of tax payable by a works contractor, at such rate as may be fixed by the State Government. Further, the Government vide Notification dated 17 August 2006, fixed the rate of lump-sum tax at two *per cent* of total receipts of works contract in respect of painting and cable laying works.

²⁶ of ACCT Unit-32, Vijapur

²⁷ The view was upheld by the Hon’ble Supreme Court in case of GMK Concrete Mixing Pvt. Ltd. Vs. Commissioner of Service Tax [2014] 36 STR 913 (SC)/ [2015] 51 GST 719 (SC)

²⁸ ACCT Unit-57, Surat and DCCT Corporate Cell Division-V, Vadodara

Audit observed in three assessment cases of two dealers of two offices²⁹ that AAs had irregularly allowed deductions of ₹ 12.94 crore from the total works contract receipts of ₹ 20.66 crore as labour charges though lump-sum tax was required to be levied on total turnover and no deduction was admissible. This irregular deduction from the taxable turnover resulted in short realisation of tax of ₹ 25.87 lakh excluding interest and penalty.

Audit pointed out these cases to the Department and Government in May 2017. Their replies have not been received (September 2017).

2.6.4 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. Further, the Government vide Notification dated 01 April 2008 specified that the sale of spare parts of vehicles, which are taxable at the rate of 15 per cent, shall not be zero rated sale to the SEZ Units.

Audit observed in three assessment cases of two dealers assessed at ACCT-104, Gandhidham that the dealers sold the spare parts of vehicles namely tyres worth ₹ 59.26 lakh to the units in SEZ area which was allowed by AAs as zero rated sale, though as per Notification dated 01 April 2008 these sales were taxable at the rate of 15 per cent, and not at zero rated sale to the SEZ Units. This resulted in short levy of VAT to the extent of ₹ 7.73 lakh excluding interest and penalty.

Audit pointed out these cases to the Department and Government in May 2017. The Department stated (August 2017) that in case of one dealer, deficit tax along with interest and penalty has been recovered³⁰. Their replies in remaining cases have not been received (September 2017).

2.7 Short/ Non-levy of Central Sales Tax (CST)

Under Section 6 of the CST Act, every dealer shall be liable to pay tax under this Act on all sales of goods effected by him in the course of inter-State trade or commerce during any year.

During test check of the assessment records of 11 offices audit noticed³¹ in 13 assessments³² of 12 dealers that there was non/ short levy of CST of ₹ 1.81 crore due to underassessment of taxable turnover or incorrect application of rate of tax as detailed below.

2.7.1 Non-levy of tax on job-work not supported by statutory Forms

Section 6A of the CST Act, 1956 read with Rule 12(5) of the CST (Registration and Turnover) Rules, 1957 provides for exemption from levy of CST on transfer of goods from one State to another by the dealer to his

²⁹ ACCT Unit-2, Ahmedabad and Unit-57, Surat

³⁰ of ACCT 104, Gandhidham

³¹ Between June 2014 and October 2016

³² For the year 2009-10, 2010-11, 2011-12 and 2012-13; assessed between March 2013 and March 2016

principal/ branch, provided such transfer is supported by declaration in statutory Form-F. If the dealer fails to furnish such statutory forms, then, the movement of such goods shall be deemed to have been occasioned as a result of sale and tax shall be levied accordingly.

Audit observed in eight assessment cases of seven dealers in seven offices³³ that the AAs allowed the deductions as job-work income of ₹ 19.91 crore from the taxable turnover of on account of interstate trade. No tax was levied on such receipts even though the dealers had not furnished the statutory Form-F in support of such transfers. CST at appropriate rate was required to be levied. This resulted in non-realisation of tax to the extent of ₹ 97.90 lakh excluding interest and penalty.

Audit pointed out these cases to the Department and Government in May 2017. The Department accepted (September 2017) our observation in case of one dealer³⁴. The replies in remaining cases have not been received (September 2017).

2.7.2 Short levy of CST due to application of incorrect rate of tax

Under Section 8(1) read with Section 8(4) of the CST Act, every dealer, who in the course of inter-State trade or commerce, sells goods to a registered dealer, shall be liable to pay tax at concessional rate of two *per cent* of his turnover or at the rate applicable to the sale or purchase of such goods inside the State under the sales tax law of that State, whichever is lower provided that the dealer selling the goods furnishes a declaration in statutory Form-C in original.

Further, as per Section 6A(1) of the Act, a dealer is not liable to pay tax in respect of transfer of goods by him to any place of his business or to his agent or principal, where such transfer of goods is supported by a declaration in Form-F. In case of non-furnishing of Form - C/F by the registered dealers, tax is leviable at the rates applicable on sale of such goods within the State.

Audit observed in assessment cases of three dealers of three offices³⁵ that Form-C/F were not furnished by the registered dealers. Out of three cases, in assessments of two dealers, the AAs had levied tax at the rate of five *per cent* instead of 15 *per cent* on sale of gas measuring skids and cosmetic items worth ₹ 7.20 crore. In remaining case, tax was levied on sale of tissue papers worth ₹ 12.55 crore at the rate of four *per cent* instead of five *per cent*.

Thus, application of incorrect rate of tax resulted in short levy of tax to the extent of ₹ 70.79 lakh, excluding interest and penalty.

³³ ACCT: Unit- 10, 11 and 14, Ahmedabad; Unit-103, Bhuj and Unit-25, Kalol; DCCT: Range-6, Ahmedabad and 13, Nadiad

³⁴ of ACCT Unit-103, Bhuj

³⁵ ACCT: Unit-9 and 11, Ahmedabad and Unit-70 Vyara

When this was pointed out, the Jurisdictional JCCT³⁶ Division 1, Ahmedabad accepted (January 2016) our observation in one case where tax amount of ₹ 10.86 lakh was involved.

Audit pointed out these cases to the Department and Government in May 2017. Their replies have not been received (September 2017).

2.7.3 Short levy of CST due to incorrect determination of turnover

Under Section 2(h) of the CST Act, 1956 read with Section 2(24) of the GVAT Act, “sale price” means the amount payable to a dealer as consideration for the sale of any goods including the amount of duties levied or leviable under the Central Excise Tariff Act, 1985 or the Customs Act, 1962.

Audit observed in assessment cases of two dealers of two offices³⁷ that AA did not include the customs duty of ₹ 3.41 crore in the taxable sales turnover of ₹ 47.61 crore of a dealer for levy of tax though the amount of such customs duty formed the part of sale price for the purpose of levy of tax. In case of another dealer, the AAs irregularly deducted the amount of transportation charges of ₹ 1.17 crore from the taxable turnover. These charges were incurred by the sellers on transportation of goods before delivery of such goods to purchasers on destination basis, as such were a part of sale price. The above irregular exclusion of customs duty and transportation charges resulted in short realisation of CST to the extent of ₹ 12.44 lakh excluding interest and penalty.

When this was pointed out, the AA did not accept audit observation in one case stating that the custom duty did not form a part of sale price. Reply of the AA is not correct as duties leviable under the Customs Act form part of sale price and are taxable under Section 2(h) of the CST Act, 1956 read with Section 2(24) of the GVAT Act.

Audit pointed out these cases to the Department and Government in May 2017. Their replies have not been received (September 2017).

2.8 Non-levy of Entry Tax

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 vehicles³⁸ 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.

³⁶ of ACCT, Unit 9, Ahmedabad

³⁷ ACCT: Unit-57, Surat; DCCT: Corporate Cell, Div-5, Vadodara

³⁸ As per Honourable Gujarat High Court judgement dated 15.7.2011 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.

During test check of the assessment records of three offices³⁹ audit noticed⁴⁰ in assessments of three dealers⁴¹ that the dealers had effected inter-state purchases of motor vehicles viz. Hydraulic Excavator, Hydraulic Mobile Crane, Wheel Loader etc. worth ₹ 1.97 crore. These vehicles were not resold by the purchasing dealers, but used in the execution of works contract. Though, entry tax was leviable on purchase of these 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 ₹ 25.72 lakh excluding leviable interest and penalty.

Audit pointed out these cases to the Department and Government in May 2017. Their replies have not been received (September 2017).

2.9 Non-levy of purchase tax on purchases from unregistered dealers

Section 9(1) of the GVAT Act provides for levy of purchase tax on purchases of goods made from unregistered dealers (URDs). Notification No. GHN-14 dated 29 June 2010 specified reduction of tax credit at the rate of two *per cent* of the purchase turnover of goods mentioned in the notification when the 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 July 2010. ‘Cotton’ was exempted from reduction in tax credit on account of inter-State sales vide Notification No. GHN-35 dated 07 September 2010 (effective from 01 October 2010). Thus, tax credit was required to be reduced on purchases of ‘cotton’ between the period 01 July 2010 and 30 September 2010.

Audit observed⁴² in assessment cases⁴³ of three dealers of two offices⁴⁴ that the dealers had purchased cotton worth ₹ 6.09 crore from URDs which was sold in the course of inter-State trade between the period 01 July 2010 and 30 September 2010. However, purchase tax on such purchases was neither paid by the dealers nor assessed by the AAs during audit assessment. This resulted in non-levy of purchase tax to the extent of ₹ 12.17 lakh.

When this was pointed out, the ACCT, Unit 104, Gandhidham did not accept our observation in case of two dealers and stated that reduction in tax credit was not admissible as the goods were not purchased between the period 01 July 2010 and 30 September 2010. The reply was not relevant as the inter state trade was made between 1 July 2010 and 30 September 2011 and as such the tax credit was required to be reduced irrespective of their period of purchase. The exemption was admissible only from 1 October 2010.

³⁹ ACCT: Unit-5 and 11, Ahmedabad and Unit-36-Unjha

⁴⁰ Between October 2015 and August 2016

⁴¹ For the year 2010-11 and 2011-12; assessments finalised between August 2014 and March 2016

⁴² July and August 2016

⁴³ For the year 2010-11 finalised between July 2014 and March 2015

⁴⁴ ACCT: Unit-104, Gandhidham and CTO-29, Prantij

Audit pointed out these cases to the Department and Government in May 2017. Their replies have not been received (September 2017).

2.10 Loss of revenue due to irregular remission

Section 41 of the GVAT Act provides for the remission of whole or any part of the tax payable in respect of any period by any dealer or a class of dealers of any specified class of sales or purchase. The benefit of sales tax exemption granted to Khadi and Gramodyog industries under the Sales Tax Act were discontinued/ withdrawn with the implementation of the GVAT Act. The Hon'ble Gujarat High Court held⁴⁵ that the certificate/notification which has been issued granting exemption for a period from 01 December 2005 to 30 November 2008 would remain in force. Further, the issue regarding grant of benefit of exemption under the newly substituted VAT Act would be either a legislative function by issuance of notification in exercise of power conferred under the statute, or it would be a matter of policy to be decided by the Government afresh in accordance with law. The Government vide Notification No. GHN-9 read with Notification No. GHN-8 dated 27 February 2009 remitted the whole of tax on the sales of products of village industries mentioned in the notification payable by a certified manufacturer who has obtained the Eligibility Certificate prior to the 01 April 2006 from the Gujarat Rajya Khadi and Gramodyog Board (the Board) and the Exemption Certificate from the CCT under the provisions of earlier law. The remission of tax shall be granted till the period as specified in eligibility certificates which were issued before 01 April 2006.

During test check of the assessment records of ACCT-103, Bhuj audit noticed⁴⁶ in two assessment cases of a dealer⁴⁷ that the Department issued a Certificate of Entitlement on 16 April 2010 for refund/ remission of tax for the period from 01 April 2009 to 31 March 2014. This certificate was issued by the Department on the basis of a renewed Eligibility Certificate obtained by the dealer on 03 February 2010 from the Board i.e. after 01 April 2006. The AA in assessment remitted the tax of ₹ 13.87 lakh on sale of goods worth ₹ 1.68 crore on the basis of the Eligibility Certificate and Certificate of Entitlement issued in February 2010 and April 2010 respectively. The irregular renewal of Entitlement Certificate by the Department and remission of tax resulted in loss of revenue to the extent of ₹ 13.87 lakh excluding interest and penalty.

Audit pointed out these cases to the Department and Government in May 2017. The Department accepted (September 2017) our observation in both the cases and stated that revision proceedings had been initiated.

⁴⁵ in the case of Kishorkumar Prabhudas Tanna and Anr. vs State of Gujarat (2009 [1] GLR 683) dated 29 December 2008

⁴⁶ In April 2016

⁴⁷ For the year 2009-10 and 2010-11; assessment finalised between December 2013 and March 2014

2.11 Non/ Short levy of interest (VAT)

Under Section 42(6) of the GVAT Act, 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 eighteen *per cent* per annum on the amount of tax remaining unpaid for the period of default.

During test check of assessment records of office of the Additional Commissioner of Commercial Tax (Flying Squad) Ahmedabad audit observed⁴⁸ in four assessments⁴⁹ of two dealers that either the AAs had calculated interest incorrectly on delayed payment of tax or had not levied interest on delayed payment of tax. In three assessments of one dealer, the AA levied interest of ₹ 9.48 crore instead of leviable amount of ₹ 9.93 crore, due to arithmetical mistakes and adoption of incorrect period of delay. In one case, though interest of ₹ 9.57 lakh was leviable due to non-payment of tax within the prescribed time period, the AA had not levied any interest on such delayed payment of tax. This resulted in total non/ short levy of interest to the extent of ₹ 54.98 lakh.

Audit pointed out these cases to the Department and Government in May 2017. The Department accepted (July 2017) our observation and reassessed all the four cases.

⁴⁸ In May 2015 and May 2016

⁴⁹ For the year 2010-11, 2011-12 and 2012-13, assessments finalised in March 2015 and March 2016

