

CHAPTER-II

Taxes/VAT on Sales and Trade

2.1 Tax administration

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

2.2 Results of audit

Test check of the records of 43 units relating to Sales Tax/VAT during 2016-17 revealed under-assessment of tax and other irregularities involving ₹ 330.47 crore in 453 cases as depicted below.

Table 2.1: Results of Audit

Sl. No.	Categories	No. of cases	Amount (₹ in crore)
1	Loss of revenue due to excess refund of VAT	22	3.08
2	Non/Short levy of Sales Tax/VAT	75	17.68
3	Incorrect grant of exemption from Tax	3	0.24
4	Non/Short levy of interest/penalty	85	238.52
5	Excess/Inadmissible allowance of ITC	70	18.11
6	Non/Short reversal of ITC/Short retention of ITC	52	39.79
7	Other irregularities	146	13.05
Total		453	330.47

The Department accepted and recovered ₹ 13.94 lakh in 11 cases in 2016-17 out of which ₹ 3.33 lakh involved in one case was pointed out during 2016-17 and rest in earlier years.

Significant cases involving ₹ 210.99 crore are discussed in the succeeding paragraphs:

2.3 Irregular allowance of concession of tax

The Designated Officer allowed irregular concession of ₹26.28 lakh on the basis of a non-genuine 'C' form which was not obtained from prescribed authority of the issuing State of Haryana.

Section 8(4) of the CST Act 1956 read with Rule 12(1) of CST (R&T) Rules 1957 provides that the concessional rate of tax of two *per cent* shall not be admissible unless the dealer selling the goods furnishes a declaration in Form 'C' duly filled in and signed by the registered dealer to whom the goods are sold, in a prescribed form obtained from the prescribed authority.

Scrutiny of records of AETC Ludhiana-III revealed that the DO allowed concessional rate of CST of two *per cent* on one 'C' form for ₹ 6.49 crore for the year 2012-13. The 'C' form showed that the dealer had sold goods worth ₹ 6.49 crore to a registered dealer of Haryana. On cross verification, it was found that the 'C' form was not issued to the registered dealer of Haryana by the prescribed authority of the State. Thus, the DO allowed the concession without ensuring that the form was issued by valid prescribed authority. The irregular allowance of concession resulted in short levy of tax of ₹ 26.28 lakh at the rate of 4.05 *per cent* (6.05 *per cent* minus two *per cent*).

The matter was reported to the Government/Department (April 2017); their replies were awaited.

2.4 Short reversal of input tax credit on branch transfer

In three AETCs, ITC of ₹ 12.58 lakh was reversed against the actual amount of reversal of ₹ 83.98 lakh on branch transfer of ₹ 20.51 crore resulting in short levy of tax of ₹ 71.40 lakh.

Section 13(2) of Punjab Value Added Tax Act 2005 provides that input tax credit shall be allowed only to the extent by which the amount of tax paid in the State exceeds four *per cent* on purchase of goods used in manufacture or in packing of taxable goods sent outside the State other than by way of sale (branch transfer/consignment sale) in the course of interstate trade or commerce or in the course of export out of territory of India.

Scrutiny of records of three¹ AETCs revealed that, in three assessment cases for the years 2008-09, 2010-11 and 2011-12, completed between October 2015 and March 2016, the DO reversed ITC of ₹ 12.58 lakh against branch transfer of ₹ 20.51 crore, whereas an amount of ₹ 83.98 lakh was required to be reversed on this account. Short-reversal of ITC on branch transfer resulted in short levy of tax of ₹ 71.40 lakh.

¹ Fatehgarh Sahib, Ludhiana-II and Sangrur.

The matter was reported to the Government/Department (April and May 2017); their replies were awaited.

2.5 Non-reversal of purchase tax

Purchase tax was not reversed where products manufactured from Schedule-H goods were sold in the course of interstate trade at concessional rate of tax, resulting in short levy of tax of ₹1.78 crore.

Section 19(5) of PVAT Act provides that ITC on goods specified in Schedule-H (paddy, wheat, cotton, sugarcane and milk) or products manufactured therefrom, when sold in the course of inter-state trade or commerce, shall be available only to the extent of central sales tax chargeable under the Central Sales Tax Act, 1956.

Scrutiny of records of two² AETCs revealed that, in two assessment cases for the year 2008-09 and 2012-13, products worth ₹ 692.06 crore, manufactured from Schedule-H goods (cotton), were sold in the course of inter-state sale at concessional rate of tax of two/three *per cent*. However, the DO did not reverse the purchase tax of ₹ 1.78 crore under provision mentioned *ibid*. The non-reversal of purchase tax resulted in short levy of tax of ₹ 1.78 crore.

The matter was reported to the Government/Department (April and May 2017); their replies were awaited.

2.6 Short levy of tax due to non-utilisation of Information Collection Centre data

The Designated Officer did not reconcile sales/purchases with data of Information Collection Centre and trading account which resulted in short levy of tax of ₹57.17 lakh in four cases.

Section 2 (zc) of the PVAT Act provides that return means a true and correct account of business pertaining to the return period in the prescribed form. Further, Rule 48 (1) of PVAT Rules (Rules) provides that the DOs, after considering the objections and documentary evidence, if any, filed by the person, shall pass an order of assessment in writing, determining the tax liability of a person. Further, Rule 51A of the Rules *ibid* envisaged that data available in the Information Collection Center³ (ICC) will be tallied while determining assessment.

Scrutiny of the records of three AETCs revealed that in four cases, the DOs levied short tax of ₹ 57.17 lakh due to non-utilisation of ICC data as depicted below.

² Ludhiana-III and Sangrur.

³ Information Collection Centre is a centre established at entry/exit points of the State under Section 51 of the PVAT Act with a view to prevent or check avoidance or evasion of sales tax/VAT under the Act.

Table 2.2: Short levy of tax

Sl. No.	Name of unit	Period/ Date of Assessment	Short levy of tax (₹ in lakh)/ (rate of tax)	Nature of Irregularities
1	Fatehgarh Sahib	2009-10 08.02.2016	6.18 (four <i>per cent</i>)	Interstate purchase as per ICC data was of ₹ 4.27 crore whereas the assessee had shown purchases of ₹ 2.73 crore. Difference of ₹ 1.54 crore was neither verified/reconciled nor taxed.
		2010-11 08.02.2016	6.13 (four <i>per cent</i>)	Interstate purchase as per ICC data was of ₹ 3.39 crore whereas the assessee had shown interstate purchases of ₹ 1.86 crore. Tax on the difference of ₹ 1.53 crore was not levied.
2	Ludhiana-II	2010-11 16.10.2015	39.02 (6.05 <i>per cent</i>)	Interstate purchase as per ICC data was ₹ 30.24 crore whereas as per trading account, the same was ₹ 23.79 crore. Thus, the difference of ₹ 6.45 crore was neither verified/reconciled nor taxed.
3	Mohali	2012-13 30.03.2015	5.84 (four <i>per cent</i>)	Interstate sale as per ICC data was ₹ 22.64 crore whereas in assessment order, the interstate sale was shown as ₹ 21.18 crore. Difference of ₹ 1.46 crore was neither verified/reconciled nor anything contrary was mentioned at the time of assessment.
Total			57.17	

The matter was reported to the Government/Department (between March and April 2017); their replies were awaited.

2.7 Short reversal of ITC on account of manufacturing of tax free goods

In four cases, the designated officers reversed ITC of ₹ 48.86 lakh against the reversal of ITC of ₹ 114.94 lakh on tax free sales resulting in short levy of tax of ₹ 66.08 lakh.

Section 13(5) (h) of PVAT Act 2005 provides that a taxable person shall not qualify for ITC in respect of tax paid on purchase of goods used in manufacturing, processing or packing of tax free goods.

Scrutiny of records of two AETCs⁴ revealed that in four assessment cases, the assessee had shown tax free sales of ₹ 148.28 crore. The DO was required to reverse the ITC of ₹ 1.15 crore on tax free sales as per the provision of Section 13(5) *ibid* but an amount of ₹ 48.86 lakh only was reversed. The short reversal of ITC resulted in short levy of tax of ₹ 66.08 lakh.

⁴ Amritsar-II and Ludhiana-III

The matter was reported to the Government/Department (March 2017); their replies were awaited.

2.8 Deliberate alteration of figures to evade taxes

A dealer under AETC Fazilka deliberately altered figures of four 'H' forms and increased the value of the export by ₹ 1.61 crore. The Designated Officer accepted the altered figures and allowed exemption from tax resulting in short levy of tax of ₹6.42 lakh.

Section 5(3), 5(4) of Central Sales Tax (CST) Act 1956 and Rule 12(10) of CST (R&T) Rules 1957 provides that the last sale or purchase of goods preceding export of those goods out of the territory of India shall also be deemed to be in the course of such export provided the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration in Form-H duly filled and signed by the exporter to whom the goods are sold. Further, Rule 48 of PVAT Rules provides that the DO, after considering the objections and documentary evidence filed by the person, shall pass an order of assessment in writing, determining the tax liability of such a person.

Scrutiny of records of AETC Fazilka revealed that, in an assessment case for the year 2008-09, the assessee had claimed the benefit of indirect export of ₹ 3.44 crore on the basis of four 'H' forms which was allowed by the DO in October 2015. However, as per the detail of invoices covered under these forms and list of local and interstate sales in Form VAT-18 and VAT-23 respectively, the actual value of indirect export was ₹ 1.83 crore and was inflated to ₹ 3.44 crore by deliberately altering the figures, which was overlooked by the designated officer. The deliberate alteration of figures resulted in short levy of tax of ₹ 6.42 lakh on inflated value of ₹ 1.61 crore (₹ 3.44 crore - ₹ 1.83 crore).

The matter was reported to the Government/Department (May 2017); their replies were awaited.

2.9 Short retention of Purchase Tax/ITC

In seven cases, purchase tax/ITC of ₹ 26.84 crore was retained by Designated Officers on closing stock of Schedule-H goods against the actual amount of ₹42.64 crore, resulting in short levy of tax of ₹15.80 crore.

(a) Section 19 (4) of PVAT Act, provides that purchase tax paid by a taxable person shall not be admissible as input tax credit, unless the goods are sold within the State or are used for manufacturing of taxable goods in the State for sale or are sold in the course of inter-state trade or commerce or in the course of export.

Scrutiny of records of three⁵ AETCs revealed that in six cases, purchase tax of ₹ 42.44 crore was required to be retained by the DOs on closing stock of Schedule-H goods worth ₹ 1,044.53 crore that were neither sold nor used in manufacturing, processing or packing of taxable goods during the year. However, the DOs retained purchase tax of ₹ 26.72 crore only. The short retention of purchase tax resulted in short levy of tax of ₹ 15.72 crore in the assessment years.

(b) Government of Punjab amended⁶ (November 2013) first proviso to Section 13(1) of PVAT Act 2005 effective from 1 April 2014 whereby input tax credit shall not be available unless such goods are sold within the State or in the course of interstate trade or commerce or in the course of export or are used in manufacture, processing or packing of taxable goods for sale within the State or in the course of inter-state trade or commerce or in the course of export.

Scrutiny of records of AETC Jalandhar-I revealed that, in an assessment case for the year 2014-15, ITC of ₹ 19.06 lakh was required to be retained on closing stock of raw material of ₹ 3.59 crore as per provision *ibid*. However, ITC of only ₹ 10.60 lakh was carried forward. The short retention of ITC resulted in short levy of tax of ₹ 8.46 lakh.

The matter was brought to the notice of the Government/Department (April 2017); their replies were awaited.

2.10 Inadmissible allowance of input tax credit

The Designated Officer allowed set off of ITC of ₹149.88 lakh instead of allowable ITC of ₹107.52 lakh brought forward from previous year which resulted in short levy of tax of ₹42.36 lakh.

Rule 48 (1) of PVAT Rules (Rules) provides that the DOs, after considering the objections and documentary evidence, if any, filed by the person, shall pass an order of assessment in writing, determining the tax liability of such a person.

Scrutiny of records of AETC Sangrur revealed that the DO allowed (November 2015) carry forward of ITC of ₹ 107.52 lakh to next year in an assessment case of a dealer for the year 2008-09. However, in the assessment order of the dealer for the year 2009-10, finalised by the same DO in

⁵ Jalandhar-II, Ropar and Sangrur

⁶ Before amendment the provision stated that “provided that the goods are for sale in the State or in the course of interstate trade or commerce or in the course of export or for use in manufacture, processing or packing of taxable goods for sale within the State or in the course of interstate trade or commerce or in the course of export.”

December 2015, ITC of ₹ 149.88 lakh was brought forward against the available brought forward of ₹ 107.52 lakh from previous year. This resulted in short levy of tax of ₹ 42.36 lakh. The DO failed to link even the last year's assessment order.

The matter was reported to the Government/Department (June 2017); their replies were awaited.

2.11 Inadmissible allowance of deduction to works contractor

In AETC Kapurthala, the Designated Officer allowed inadmissible deduction of ₹ 2.01 crore to works contractor on account of material supplied by Government Department resulting in short levy of tax of ₹8.02 lakh.

Section 8(2-A) of the Punjab Value Added Tax (PVAT) Act 2005 provides that every person executing works contract shall pay tax on the value of goods at the time of incorporation of such goods in the works executed at the rates applicable to the goods under this Act. Further, Rule 15(4) of PVAT Rules provides the details of deductions that are admissible from gross sales to determine the value of goods incorporated on works. Material supplied by Contractee/Department to contractor for use on works is not listed under Rule 15(4).

Scrutiny of records of AETC Kapurthala revealed that, in three assessment cases of a dealer for the years 2005-06 to 2007-08, the DO allowed inadmissible deduction of ₹ 2.01 crore from gross sales on account of material supplied by Government Department. The omission resulted in short levy of tax of ₹ 8.02 lakh.

The matter was reported to the Government/Department (May 2017). AETC Kapurthala replied (October 2017) that an amount of ₹ 8.02 lakh shall be deducted from the refund of dealer for the year 2015-16. The reply of Government is awaited.

2.12 Non-restriction of input tax credit

In AETC Amritsar-I, the Designated Officer did not restrict ITC to the output tax where sale value of goods was lower than purchase value which resulted in excess carry forward of ITC of ₹6.81 lakh.

Rule 21(2-A) of PVAT Rules provides that input tax credit shall be allowed to a taxable person to the extent of tax payable on the resale of goods or sale value of manufactured/processed goods where such goods by the taxable person are sold at price (i) lower than purchase price of such goods in case of resale or (ii) lower than cost price in the case of manufactured/processed goods.

Scrutiny of records of AETC Amritsar-I revealed that, in an assessment case for the year 2013-14, the DO allowed ITC of ₹ 9.44 crore on goods worth ₹ 99.42 crore whereas the goods were sold for ₹ 98.51 crore and output tax of ₹ 9.37 crore was levied. Since sale value was lower than purchase value, the DO was required to restrict ITC to output tax. Non-restriction of ITC resulted in excess carry forward of ITC of ₹ 6.81 lakh.

The matter was reported to the Government/Department (May 2017); their replies were awaited.

2.13 Short debit to exemption

The Designated Officers did not include output tax while calculating quantum of exemption availed, resulting in excess exemption of ₹21.16 lakh in two cases.

Section 92 (3) of PVAT Act adopted the provisions of the Punjab General Sales Tax (Deferment and Exemption) Rules 1991 (D&E Rules). Rule 2(xii) of the D&E Rules defines the exemption certificate as a certificate granted for availing exemption from payment of sale tax or purchase tax or both as the case may be. Further, Rule 2(xxi) provides *inter-alia* that notional sales tax liability shall mean the amount of tax payable on estimated sales of finished products and estimated purchase of raw material otherwise liable to purchase tax for the purpose of determining exemption from tax.

Scrutiny of records of AETC Muktsar Sahib revealed that, in two assessment cases for the year 2008-09, the DOs at the time of determination of balance exemption available at the end of the year, did not debit output tax of ₹ 21.16 lakh from exemption in contravention of the provision *ibid*. This short debit resulted in excess exemption of tax of ₹ 21.16 lakh.

The matter was reported to the Government/Department (June 2017); their replies were awaited.

2.14 Inadmissible allowance of entry tax on furnace oil

The Designated Officer allowed inadmissible input tax credit of entry tax paid on interstate purchase of furnace oil resulting in short levy of tax of ₹7.12 lakh.

Section 13(4) of PVAT Act 2005 provides that ITC on furnace oil shall be allowed only to the extent by which the amount of tax paid in the State exceeds four⁷ per cent. Further, Section 13-A of the Act provides that entry tax paid on interstate purchases of goods will be available as input tax credit subject to the provisions of the Act.

⁷ The words "four per cent" were substituted by the words "five per cent" vide notification no.-3-Leg/2013 dated 16.01.2013.

Scrutiny of records of AETC Ludhiana-I revealed that, in an assessment case for the year 2011-12, the DO allowed inadmissible input tax credit of ₹ 7.12 lakh on account of entry tax paid on interstate purchase of furnace oil in contravention of the provisions *ibid*. The inadmissible allowance of entry tax resulted in short levy of tax of ₹ 7.12 lakh.

The matter was reported to the Government/Department (June 2017); their replies were awaited.

2.15 Non/Short levy of interest

Application of incorrect provision relating to levy of interest in assessment orders by 10 AETCs, resulted in short levy of interest of ₹190.28 crore in 38 cases.

Section 32(1) of the PVAT Act, 2005 provides that if a person fails to pay the amount of tax due from him as per provisions of this Act, he shall be liable to pay simple interest on the amount of tax at the rate of half *per cent* per month from the due date of payment till the date he actually pays the amount of tax. Further, Section 32(3) provides that if a person fails to declare the amount of tax in a return, which should have been declared, such a person shall be liable to pay simple interest at the rate of one and half *per cent* per month on such amount of tax from the due date of payment till the date he actually pays such amount of tax.

- (i) Scrutiny of records of eight⁸ AETCs revealed that 17 dealers in 36 cases failed to declare the amount of due tax which should have been declared in their annual returns during the period 2006-07, 2008-09 to 2013-14. While assessing the cases, the DOs raised additional tax demands but levied interest of ₹ 15.29 crore at the rate of 0.5 *per cent* per month under section 32(1) of the Act instead of interest of ₹ 50.11 crore at applicable rate of interest of 1.5 *per cent* per month under section 32(3) of the Act. This resulted in short levy of interest of ₹ 34.82 crore.
- (ii) In two⁹ AETCs, though the DO levied interest of ₹ 0.41 crore at the rate of 1.5 *per cent*, he levied it only on part of the additional tax demand i.e. on ₹ 0.63 crore instead of total additional demand of ₹ 9.32 crore. The amount of interest leviable on total additional demand was ₹ 6.12 crore. This resulted in short levy of interest of ₹ 5.71 crore
- (iii) In one assessment case for the year 2012-13 under AETC Mohali, the DO raised additional tax demand of ₹ 285.24 crore stating to have included interest and penalty in it. However, scrutiny of assessment order revealed that no interest or penalty was included in this additional tax demand. This resulted in non-levy of interest of ₹ 149.75 crore.

⁸ Barnala, Bathinda, Fatehgarh Sahib, Gurdaspur, Jalandhar-I, Mohali, Patiala and Ropar.

⁹ Mansa and Patiala.

The matter was brought to the notice of the Department and the Government (April 2017). The AETCs replied (between May and June 2017) that dealers were under appeal against the tax demands. The reply of the AETCs were not tenable as the reason for non-levy of interest or application of incorrect provision relating to levy of interest in the assessment orders was not furnished.