

CHAPTER-IV GOODS AND SERVICES TAX/ VALUE ADDED TAX/ SALES TAX

4.1 Tax Administration

Value Added Tax laws and rules framed thereunder are administered at the Government level by the Additional Chief Secretary (Finance). The Chief Commissioner of State Tax (CCST) is the head of the State Tax Department (STD), who is assisted by one Special CST, four Additional CsST, 11 Joint CsST, 23 Deputy CsST, 103 Assistant CsST and State Tax Officers (STOs). They are assisted by State Tax Inspectors and other allied staff for administering the relevant Tax laws and rules.

4.2 Results of Audit

There are 158 auditable units in the State Tax and Commercial Tax Department wherein 1,04,325 assessments were finalised. Out of these, audit selected 66 units for test check wherein 51,474 assessments were finalised. Out of these, audit test checked 15,699 assessments (approx. 30.5 per cent) during the year 2018-19 and noticed irregularities in 405 cases (2.58 per cent of the audited sample). Further, subject specific compliance audit of 'Registration under GST' was also undertaken. Thus, there was underassessment of ₹ 83.80 crore in 406 cases. These cases are illustrative only as these are based on test check of records. Audit has pointed out some of the similar omissions in earlier years also. Not only these irregularities persist, but also remain undetected till next audit is conducted. There is a need for the Government to improve the internal control system including strengthening of internal audit so that recurrence of such cases can be avoided. Irregularities noticed broadly fall under the following categories:

Table 01: Results of Audit-2018-19

Sl. No.	Category	No. of cases	Money Value (₹ in crore)
1	'Registration under GST'	1	0
2	Incorrect rate of tax and mistake of computation	28	32.94
3	Incorrect concession/exemption/grant of set-off	9	0.21
4	Non/Short levy of interest and penalty	106	13.59
5	Irregular/excess grant of Input Tax Credit	129	11.34
6	Non/short levy of tax	80	20.75
7	Other regularities	45	4.89
8	Expenditure Audit	8	0.08
	Total	406	83.80

During the course of the year, the Department accepted under-assessment of tax and other irregularities of ₹ 20.63 crore in 218 cases and recovered ₹ 3.39 crore in 120 cases, which were pointed out in audit during 2018-19 and earlier years.

A few illustrative cases involving ₹ 70.89 crore have been mentioned in the succeeding paragraphs:

4.3 Audit of “Registration under GST”

4.3.1 Introduction

The Goods and Services Tax (GST) came into effect from 01 July 2017 in the State of Gujarat.

Goods and Services Tax Network (GSTN) has been set up (28 March 2013) to facilitate and provide IT infrastructure and services to various stake holders including the Centre and the States. GSTN provides front-end modules to the taxpayers namely registration, payment of tax and filing of returns. GSTN also develops back-end modules for Model-II¹ States wherein modules regarding assessment, audit and enforcement, refunds, adjudication and appeals, etc. and various MIS (Management Information System) reports are provided. Gujarat being a Model-II State, both front-end and back-end modules have been developed by the GSTN.

The division of existing and new dealers is done as per the turnover of the dealers as under:

- Dealers having turnover less than or equal to ₹ 1.5 crore were allocated between Central GST Department and the State Tax Department in the ratio of 10:90 and
- the Dealers having turnover more than ₹ 1.5 crore were allocated between the Central and State GST Departments in the ratio of 50:50.

The division of new taxpayers is being done by computer using stratified random sampling on the basis of the geographical location and type of the taxpayers.

4.3.2 Provisions related to Registration

Registration under GST Act covers following aspects in the process of registration: -

1. Registration process for allocation of registration
2. Amendment of registration
3. Cancellation of registration
4. Revocation of cancellation of registration

The registration of taxpayers fulfilling requisite conditions is important for ensuring successful implementation of the GST. It is imperative to ensure that registration provisions of Section 22 to 30 read with Section 139 wherever applicable under CGST/GGST Act 2017 and relevant provisions of Rules 8 to 26 of CGST/GGST Rules 2017 are complied with by the taxpayers/ Department.

¹ Model-II States are the one for whom GSTN has to develop back-end modules and host the same at central data centre location. Access to these States is provided over a secured network. Model-I States have their own back-end modules.

4.3.3 Reasons for selection of this topic

Government of India (GoI) implemented the Goods and Service Tax (GST) w.e.f. 01 July 2017 across the country. During audit of ‘Transition from VAT to GST’ conducted during 2017-18 it was observed that almost 11 *per cent*² of the dealers registered under the VAT regime as on 30 June 2017 were not migrated to GST regime. So, it was felt appropriate to conduct audit on this subject to ascertain the system of registration under the GST regime.

4.3.4 Audit Objective, Scope and Methodology

Audit was conducted to determine efficiency and effectiveness of the Department in registration of taxpayers under GST regime with special emphasis to ascertain:

- the compliance to rules, notifications, circulars, etc., issued in relation to registration process in GST.
- to analyse the strategies of the Department in handling the issues relating to registration including technical glitches.
- whether effective internal control and monitoring mechanism exists to ensure compliance to the provisions relating to registration.

The records relating to the registration under GST for the period between July 2017 and March 2019 were verified by Audit during January 2019 to April 2019 at seven³ Assistant Commissioner of State Tax (ACST) offices falling under six Divisions⁴ out of total 11 Divisions⁵ in the State along with Chief Commissioner of State Tax (CCST) office, Ahmedabad on judgmental⁶ basis.

Audit constraints

With automation of the collection of Goods and Service Tax (GST) having taken place, it is essential for Audit to transition from sample checks to a comprehensive check of all transactions, to fulfil the CAG’s Constitutional mandate. The State Government did not provide access to the data related to GST. This is in violation of constitutional provisions (Article 149) and the Section 18 of the Duties, Powers & Conditions of the Services of CAG Act 1971. Not having access to the data pertaining to all the GST transactions has come in the way of comprehensively auditing the GST. The following audit observations are based on limited access as one time exception.

² 54,792 out of 5,15,948

³ Offices of ACST: 11 and 21 Ahmedabad, 25 Kalol, 39 and 40 Vadodara, 68 Surat and 100 Jamnagar

⁴ Ahmedabad-I and II, Gandhinagar-III, Vadodara-V, Surat-VIII and Rajkot-XI

⁵ Ahmedabad-I and II, Gandhinagar-III, Mehsana-IV, Vadodara-V and VI, Surat-VII and VIII, Bhavnagar-IX, Rajkot-X and XI.

⁶ Units have been selected from auditable units available in the approved annual Audit Plan for the year 2018-19 ensuring that one unit from each of the remaining divisions is selected.

4.3.5 Trend of Registration

The details of registration under Pre/ Post-GST regime during June 2017 to June 2019 is shown as under:

Table 02: Trend of Registration

Particulars	VAT	GST							
	30 June 2017	30 September 2017	31 December 2017	31 March 2018	30 June 2018	30 September 2018	31 December 2018	31 March 2019	30 June 2019
1	2	3	4	5	6	7	8	9	10
Taxpayers ⁷	4,08,944	6,88,228	7,18,618	7,62,473	8,19,503	8,41,112	8,62,795	8,91,598	9,40,265
Composite taxpayers	1,07,004	85,803	1,13,619	1,19,605	1,14,888	1,13,846	1,12,799	1,12,472	1,11,296
Total	5,15,948	7,74,031	8,32,237	8,82,078	9,34,391	9,54,958	9,75,594	10,04,070	10,51,561

(Source: Information furnished by the office of the CCST as received through email from GSTN)

The above table indicates that with overall increase of 104 *per cent*, the number of registered taxpayers as on 30 June 2019 was 10,51,561 as against 5,15,948 as on 30 June 2017. Though there was substantial increase of 129.93 *per cent* in the taxpayers, the number of composite taxpayers increased marginally by 4 *per cent* only. One of the main reasons for marginal increase in the number of composite taxpayers by 4 *per cent* was the increase in the threshold turnover of ₹ five lakh under VAT to ₹ 20 lakh under GST.

4.3.6 Registration of Taxpayers

As per Section 22 of the GGST Act, every supplier making taxable supply of goods or services or both needs to be registered if aggregate turnover⁸ in a financial year exceeds ₹ 20 lakh. As per Section 25 and 26 of GGST Act read with Rule 8 to 11 of GGST Rules, an application (Form GST REG-01) with the following required information/ documents (Table 03) has to be submitted online through the common portal within 30 days from the date when liability to register arises.

The details of documents to be uploaded in the common portal along with the application are as shown under:

Table 03: Details of documents

Sl. No.	Type of field	Nature of documents to be uploaded
1	Business Details (Constitution of Business)	Partnership Deed in case of Partnership Firm, Registration Certificate/ Proof of Constitution in case of Society, Trust, Club, Government Department, Association of Persons or Body of Individuals, Local Authority, Statutory Body and Others etc.

⁷ Other than composite taxpayers under GST.

⁸ Aggregate value of all taxable supplies, exempt supplies, Exports, and inter-State supplies but excludes taxes.

2	Proof of Principal/ Additional Place of Business	For Own Premises: Any document in support of ownership of the premises viz. latest Property Tax / Municipal <i>Khata</i> / Electricity Bill. For Rented/ Leased Premises: Valid Rent/ Lease Agreement or affidavit to that effect with any document in support of the ownership of the premises of the Lessor viz. latest Property Tax / Municipal <i>Khata</i> / Electricity Bill Other than Own/ Rented Premises: Consent letter with any document in support of the ownership of the premises of the Consenter viz. Municipal <i>Khata</i> / Electricity Bill
3	Bank Details ⁹	Scanned copy of the first page of Bank Passbook or the relevant page of Bank Statement or cancelled cheque containing name of the Proprietor or Business entity, Bank Account No., MICR, IFSC and Branch details including code.
4	Authorization Form	For each Authorized Signatory mentioned in the application form, Authorization or copy of Resolution of the Managing Committee or Board of Directors to be filled in the prescribed format.

The Proper Officer¹⁰ is required to scrutinize the registration application within three working days and ask for further clarification/ documents, if needed. If no communication regarding acceptance/ rejection is sent to the applicant within the said period of three days, registration shall be deemed to have been granted.

4.3.6.1 Registration of normal, migrated, composite and casual taxpayers

Audit analysis of the data/records extracted from GSTN revealed the following discrepancies in the approval of application for registration of taxpayers under GST.

Table 04: Deficiencies in the Registration Application

No. of cases test checked (number of offices)	Type of the Taxpayers (No. of cases of observation)				Nature of deficiency
	Normal	Migrated	Composite	Total	
1,102 (7 ¹¹)	7 ¹²	1	NIL	8	Prescribed documents for business details were not uploaded
	9	31 ¹³	2	42	Prescribed documents for authorization of authorized signatories were not uploaded
	202	218	43	463 ¹⁴	Prescribed documents for principal place of business were not uploaded

⁹ Made optional effective from 27 December 2018

¹⁰ The Commissioner or the officer of the State Tax who is assigned the function to be performed under the GGST Act.

¹¹ Offices of the ACST: 11 and 21 Ahmedabad, 25 Kalol, 39 and 40 Vadodara, 68 Surat and 100 Jamnagar

¹² Including two cases where business details could not be verified by Audit due to technical glitches in GSTN

¹³ Including three cases where authorization could not be verified by Audit due to technical glitches in GSTN

¹⁴ Including 26 cases (Normal: 07, Migrated: 16, Composite: 03) where principal place of business could not be verified by Audit due to technical glitches in GSTN

	18	23	14	55	Verification of the information furnished in the registration application by the authorized signatory was either incomplete or was left blank. Thus, applications were accepted by GSTN without authentication of the information by the Authorized signatory.
	44	52	NIL	96	Though applicant had declared additional place of business in the registration application, there was no option in the GSTN module to upload supporting document (s) for additional place of business so declared.
	4	NIL	NIL	4	Incorrect documents relating to bank details were uploaded in respect of applications made prior to 27 December 2018.
Casual Taxpayer¹⁵					
28 (3 ¹⁶)	10 ¹⁷			10	Prescribed documents for principal place of business were not uploaded
Total				678	

Thus, there were discrepancies in the applications for registration in 678 cases out of 1,130 cases (selected on judgmental sampling basis out of 58,213 cases) which constituted 60 *per cent* of the cases test checked by audit.

Lack of validation of mandatory key fields in the GSTN system compounded by the general ignorance of the applicants, resulted in incomplete applications for registrations being uploaded. Further, absence of due verification by proper officer within time frame prescribed in the Act/ Rules resulted in the registrations being issued without valid documents.

On this being pointed out in audit, the office of the jurisdictional ACST¹⁸ stated (between January and April 2019) that matter being technical would be taken up with higher authorities/ GSTN and notices would be issued to taxpayers for verification of uploaded documents and necessary action.

Thus, the registrations under GST regime were granted without due verification of the application and documents in support of the declarations made by the applicants in their applications. This may have enabled an applicant to obtain registration without proper verification and hence to be considered as legal supplier entitling him to collect tax from customers, claim input tax credit and utilize the same.

¹⁵ Section 27 read with Rule 13 provides for grant of registration to the casual and non-resident taxable person who is required to apply for the registration in Form GST REG-09 at least five days prior to commencement of the business. The certificate of registration issued shall be valid for the period specified in the application for registration or 90 days from the effective date of registration, whichever is earlier.

¹⁶ Offices of the ACST: 11 Ahmedabad, 39 Vadodara and 100 Jamnagar

¹⁷ Including two cases where principal place of business could not be verified by Audit due to technical glitches in GSTN

¹⁸ Offices of the ACST: 11 Ahmedabad, 25 Kalol, 39 and 40 Vadodara, 68 Surat and 100 Jamnagar

4.3.6.2 Registration of persons deducting/ collecting tax at source

As per Rule 12 of GGST Rules, any person required to deduct tax at source (TDS) under Section 51 of the GGST Act or a person required to collect tax at source (TCS) under Section 52 of the Act *ibid*, shall electronically submit an application in Form GST REG-07 for the grant of registration. The proper officer may grant registration after due verification and issue a certificate of registration in Form GST REG-06 within a period of three working days from the date of submission of the application. As per Form GST REG-07¹⁹, the applicant has to upload prescribed proof of principal place of business. These include latest Property Tax/Municipal *Khata*/Electricity Bill, Valid Rent/ Lease Agreement, Consent letter and Letter of authorization/ copy of resolution passed by BoD/Managing Committee and Acceptance letter as proof of appointment of Authorized Signatory.

Scrutiny of the GSTN system and other relevant records revealed deficiencies in 69 applications for tax deductor/collector at source out of 76 cases test checked (selected on judgmental basis out of the total 346 cases) as shown under:

Table 05: Deficiencies in the registration of tax deductor/ collector

No. of cases Test checked (number of offices)	Type of the Taxpayers (No. of cases of observation)	Nature of audit observation
	TDS/TCS	
76 (6 ²⁰)	13	Prescribed documents for principal place of business/ office address were not uploaded.
	68 ²¹	Prescribed documents as proof of appointment of Authorized Signatory were not uploaded.

Lack of validation of mandatory key fields in the GSTN system compounded by the general ignorance of the applicants, resulted in incomplete applications for registrations being uploaded. Further, absence of due verification by proper officer within time frame prescribed in the Act/Rules resulted in the registrations being issued without valid documents and proper verification of the authenticity of the organization/authorized person for deduction of TDS/ TCS.

On this being pointed out in audit, the office of the jurisdictional ACST²² stated (between February and April 2019) that notices would be issued to the concerned taxable persons and necessary action would be taken.

¹⁹ Read with 'FAQs on Registration as Tax Deductor at Source' available at '<https://tutorial.gst.gov.in>' and 'Help/ Documents required for registration as tax collector at source' available at 'www.gst.gov.in'

²⁰ Offices of the ACST: 21 Ahmedabad, 25 Kalol, 39 and 40 Vadodara, 68 Surat and 100 Jamnagar

²¹ Includes 12 cases where prescribed documents for principal place of business/ office address were also not uploaded.

²² Offices of the ACST: 25 Kalol, 40 Vadodara and 100 Jamnagar

Thus, the registrations were granted without due verification of the application and documents in support of the declarations made by the applicants in their applications. This may have enabled an applicant to deduct/collect tax from suppliers/recipients of goods or services resulting in seamless flow of credit of such tax deducted/ collected to the suppliers/ recipients.

The Department may ensure that registration applications are duly filled and the prescribed documents are uploaded before allowing registration. Further, GSTN may be approached to make provision in the portal for uploading documents in support of additional place of business to reduce the possibility of fake address and reduce possibility of taxpayer becoming untraceable.

4.3.7 Amendment in registration details

As per Section 28 of the GGST Act read with Rule 19 of the GGST Rules, every registered person shall inform the proper officer of any changes²³ in the information furnished at the time of registration or subsequent thereto, in Form GST REG-14 within 15 days of such change and proper officer fails to take action within 15 days of application, the certificate of registration shall stand amended to that extent. The proper officer may issue show cause notice (SCN) within 15 days from the date of receipt of application if documents are found to be incomplete or incorrect. The registered person shall furnish reply within seven working days and where the reply so furnished is not satisfactory or where no reply is furnished in response to the notice issued, the proper officer shall reject the application.

Audit extracted the data from the Amendment Application Register of GSTN in seven²⁴ offices. There were total 13,735 Application Reference Numbers²⁵ (ARNs) assigned in relation with the amendment of registration details during the period from September 2017 to March 2019. Out of this, 12,125 ARNs were approved by the proper officer. On analysis of the data of ARNs, Audit noticed that:

- In 2,579 cases, the applications received were approved by the proper officer beyond a period ranging from 16 days to 188 days from the date of application, while it was required to be approved or rejected within 15 working days from the date of submission of application as per the provisions of the rules.
- Similarly, in 702 cases, the proper officer had raised queries and issued SCNs to the registered persons. Out of this, in 28 cases, the applications were approved by the proper officer beyond a period ranging from 30 days to 188 days from the date of application though it was required to be

²³ Legal name of business, Principal Place of Business and details of partners/ directors/ *karta*/ managing committee/ board of directors and CEO

²⁴ Offices of the ACST: 11 and 21 Ahmedabad, 25 Kalol, 39 and 40 Vadodara, 68 Surat and 100 Jamnagar

²⁵ Unique number assigned to each transaction completed at the GST common portal and can be used for future correspondence with GSTN.

approved or rejected within 29²⁶ working days from the date of application.

Proper verification of the documents uploaded by taxpayer in respect of core field is necessary. However, the authenticity of respective core fields amended by the taxpayers and approved by the proper officer vis-à-vis the ARN based on the uploaded documents in all these cases could not be verified due to technical glitches (server not responding) in accessing the data on ARN which flashed the message “your session is expired or you don’t have permission to access the requested page”.

On this being pointed out in audit, the office of the jurisdictional ACST²⁷ stated (between January and April 2019) that matter being technical in nature, would be taken up with the higher authority/ GSTN.

4.3.8 Conclusion and Recommendations

In the applications for registration, it was noticed that Business details/ Authorization of authorized signatories/prescribed documents for principal place of business/Bank details were not uploaded. Verification of the information furnished in the registration application by the authorized signatory was either incomplete or was left blank. There was no option in the GSTN module to upload supporting document (s) for additional place of business so declared.

The Department may ensure that registration applications are duly filled and the prescribed documents are uploaded before allowing registration. Further, GSTN may be approached to make provision in the portal for uploading documents in support of additional place of business to reduce the possibility of fake address and reduce possibility of taxpayer becoming untraceable.

4.4 Non/short levy of VAT due to misclassification/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 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*. Additional tax of one *per cent* was leviable²⁸ on declared goods, as specified under Section 14 (iv) of the Central Sales Tax (CST) Act 1956, with effect from 11 April 2011. Up to 10 April 2011, declared goods did not attract additional tax.

²⁶ Seven working days for raising SCN after 15 days from receipt of application and seven working days after receipt of reply of SCNs totalling to 29 days.

²⁷ Offices of the ACST: 11 and 21 Ahmedabad, 25 Kalol, 39 and 40 Vadodara and 68 Surat.

²⁸ Vide Notification (GHN-08) VAT-2011-S5(2) (31)-TH dated 11 April 2011

During test check of the assessment records of 17²⁹ offices, audit noticed³⁰ misclassification of commodities and levy of taxes at lesser rate in 48 assessments³¹ of 30 dealers. This resulted in short levy of tax (VAT/ CST) of ₹ 11.28 crore. Besides, interest and penalty were also leviable.

Table 06: Misclassification/application of incorrect rate of tax

(₹ in lakh)

Sl. No.	Nature of observation	Amount of tax
1	<p>Rice husk (rice bran) treated as Cattle feed</p> <p>Notification³² dated 29 April 2006 provides that husk of all types excluding 'groundnut husk' and 'rice husk' are exempted from the levy of tax. The 'rice husk' was taxable at the rate of five <i>per cent</i> including additional tax at the rate of one <i>per cent</i> as per entry 37 of Schedule II. Audit observed in assessments of two dealers of two offices³³ that the Assessing Authorities (AAs), had treated rice husk (rice bran) worth ₹ 7.89 crore as exempted goods by classifying it as cattle feed under entry 11 of Schedule I and did not levy the tax of ₹ 35.71 lakh, excluding interest and penalty. This resulted in short-realisation of tax to that extent.</p> <p>On this being pointed out, the Department accepted the audit observation in one case and stated (November 2018) that reassessment orders had been passed. The tax so levied was remitted as per remission letter dated 06 February 2017 of the Commissioner of Commercial Tax issued under Section 41 of the GVAT Act.</p>	35.71
2	<p>Incorrect classification of Ready-Mix Concrete</p> <p>The Government vide Notification dated 11 October 2006 fixed the rate of <i>lump sum</i> tax for the civil works contract at 0.6 <i>per cent</i>. It has been held³⁴ by the Supreme Court that the supply of Ready-Mix Concrete (RMC) at site along with other incidental activities cannot be termed as works contract. Hence, tax at the rate of 15 <i>per cent</i> (under residuary entry 87 of Schedule II) is leviable on total sales turnover of RMC including pouring/ pumping charges as such charges form part of the sale price.</p> <p>Audit observed in six assessments (2012-13 and 2013-14) of six dealers that the AAs classified the sale of RMC worth ₹ 39.51 crore as civil works contract and levied (between October 2016 to March 2018) <i>lump sum</i> tax at the rate of 0.6 <i>per cent</i> instead of 15 <i>per cent</i>. This resulted in short levy of VAT to the extent of ₹ 3.35 crore.</p> <p>The Department/ jurisdictional JCST offices accepted the audit observations in two cases and stated (July 2019/May 2019) that</p>	335.35

²⁹ Offices of the ACST: Unit 1,5,6,8,9,10 and 11 Ahmedabad, 25 Kalol, 49 Nadiad, 63,64 and 68 Surat, 93 Rajkot, 103 Gandhidham; DCST: Range 6 Ahmedabad, Corporate-7 Surat and Range 12 Vadodara

³⁰ Between January 2014 and August 2018

³¹ For the year 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16; assessed between September 2012 and March 18

³² No. (GHN-44)VAT-2006- S.5(2)(3)-TH

³³ Offices of the ACST: Unit-5 Ahmedabad and 49 Nadiad

³⁴ The Supreme Court in the case of GMK Concrete Mixing Pvt. Ltd. Vs. Commissioner of Service Tax dated 06 January 2015 held that the supply of Ready-Mix Concrete (RMC) at site along with other incidental activities of pouring, pumping etc. amounts to sale and no taxable service is involved in such transaction.

	reassessment orders had been passed. In one case, the jurisdictional JCST office did not accept (August 2018) the audit observation and stated that the activity of laying RMC falls under works contract. The reply of the JCST office is not correct as the RMC was supplied at the site and it could not be treated as a part of works contract.	
3	<p>Non/ short levy of tax on motor vehicles and parts thereof</p> <p>Hydraulic excavators are motor vehicles and attract tax at the rate of 15 per cent as per residuary entry 87 of the Schedule II of the GVAT Act. As per Notification No. (GHN-21) dated 01 April 2008, motor vehicles and parts thereof are not eligible for zero rated sales to SEZs:</p> <ul style="list-style-type: none"> • Audit observed in ACST, Unit 6 Ahmedabad and Unit 103 Gandhidham offices that while finalizing the assessment between November 2013 and March 2017 for the years 2009-10, 2011-12 and 2012-13, the AAs in six assessments of four dealers treated sale of spare parts of Hydraulic excavator and Tyres to the SEZ as zero-rated sale. This resulted in short levy of tax to the extent of ₹ 21.54 lakh excluding interest and penalty. • Audit observed in two assessment cases of two dealers that the AAs (ACST, Unit- 6 and 11,Ahmedabad) while finalising the assessment for the year 2010-2011 and 2012-13, levied tax at the rate of five per cent on spares/ parts of motor vehicles viz.Yoke (Steering Column part, HSN Code 87089900) in one case while in the other case excavators were taxed at the rate of ₹ 2,000 per vehicle instead of 15 per cent. This resulted in short realisation of tax of ₹ 14.84 lakh. <p>On this being pointed out, the Department intimated (November 2018) that reassessment order had been passed in one case and the dealers had preferred appeal before the DCST (Appeal) against the reassessment order. In five assessments, Department (July 2019) accepted and in two cases amount has been recovered after reassessment and reassessment proceeding has been initiated in other three cases.</p>	36.38
4	<p>Non-civil works Contracts incorrectly treated as Civil works contract</p> <p>The Government vide Notification dated 11 October 2006, fixed the rate of lump sum tax for the civil works contract at 0.6 per cent whereas for all types of works contract other than those specified at serial no 2 and 3 of the notification, the rate of lump sum tax was fixed at the rate of two per cent. Works contract of electric street light, supply of Permanent Way (P. Way) material and bore well drilling/ percolation work do not fall under the category of civil works contract and attract tax at the rate of two per cent as per provisions of the Notification.</p> <p>Audit observed in seven assessments of three dealers that the AAs (ACST: Unit 5 Ahmedabad; 68 Surat) classified (March 2017 to March 2018) works contract of electric street light, supply of P. Way material and bore well drilling/ percolation, as civil works contract and levied lump sum tax at the rate of 0.6 per cent instead of two percent on works contract receipts of ₹ 18.29 crore for the period 2012-13, 2013-14 and 2014-15. This resulted in short levy of VAT of ₹ 25.57 lakh.</p> <p>On this being pointed out, the Department accepted (July 2019) the audit observation in two assessments of one dealer and stated that reassessment orders had been passed. In the remaining cases reply is awaited (May 2020).</p>	25.57
5	<p>Misclassification of ‘stainless steel’ as ‘iron and steel’</p> <p>“Iron and Steel”, falling under Entry 43 of Schedule-II of the GVAT Act, are taxable at the rate of four/ five per cent. However, “Stainless steel wire”</p>	125.24

	<p>does not fall³⁵ under “Iron and steel” and is covered under Entry 87 of the Schedule-II and taxable at the rate of 15 <i>per cent</i>.</p> <ul style="list-style-type: none"> Audit observed that ACST office, Unit 25 Kalol and DCST office, Range-12, Vadodara levied tax at the rate of four/ five <i>per cent</i> by incorrectly classifying “Stainless steel wire” under entry number 43 instead of entry 87 of Schedule-II of the GVAT Act. This resulted in short levy of tax of ₹ 125.24 lakh on a turnover of ₹ 14.14 crore for the period 2010-11 and 2011-12, finalised in March 2015 and March 2016. <p>On this being pointed out the Department accepted (February 2019) the audit observation in one case and stated that reassessment proceedings had been initiated.</p>	
6	<p>Levy of tax at incorrect rate</p> <p>As per provisions of the CST Act, a dealer has to furnish Form ‘C’ in original for availing concessional rate of tax of CST of two <i>per cent</i> on inter-State sales. In case of non-furnishing of the above statutory form, tax prescribed in the State Act is to be levied.</p> <p>Fenders, Frames, Bollards, Buoys and Fixtures used in ‘Marine Fendering System’ are covered under Entry No. 87 of Schedule II of GVAT Act and attract tax at the rate of 15 <i>per cent</i>.</p> <p>During test check of the assessment records of a dealer of ACST office, Unit-5, Ahmedabad (2013-14 and 2014-15: Self-assessment) audit noticed that the dealer had paid tax at the rate of five <i>per cent</i> instead of 15 <i>per cent</i> on local sales and inter-State sales (not supported by the requisite forms) of Fenders, Frames, Bollards, Buoys, and Fixtures as per entry no 43 (Iron and Steel) of the Schedule-II of the GVAT Act. The AA also accepted the self-assessment as correct. This resulted in short levy of tax (VAT/ CST) of ₹ 47.07 lakh.</p> <p>On this being pointed out the Department accepted (July 2019) the audit observation and stated that reassessment was done for the year 2013-14 and reassessment proceeding had been initiated for the year 2014-15.</p>	47.07
7	<p>Short levy of tax on CNG kit</p> <p>CNG Kit used in Vehicles has not been classified anywhere in the Schedule-II of the GVAT Act, 2003, hence it falls under entry 87 of the said Schedule.</p> <p>Audit observed in two assessment cases of one dealer of ACST office, Unit 1, Ahmedabad that the AA assessed VAT at the rate of five <i>per cent</i> instead of 15 <i>per cent</i> on sales of CNG Kits worth ₹ 75.31 lakh. This resulted in short levy of VAT to the extent of ₹ 6.06 lakh.</p>	6.06
8	<p>Short levy of tax on Syngas</p> <p>Syngas or synthesis gas is a fuel gas mixture consisting primarily of hydrogen, carbon monoxide, and very often some carbon dioxide. Synthesis gas or syngas has not been classified anywhere in the Schedule-II of the GVAT Act, 2003, hence it falls under entry 87 of the said Schedule.</p> <p>Audit observed in one assessment case of one dealer that the office of the DCST, Corporate 7 Surat assessed VAT at the rate of five <i>per cent</i> instead of 15 <i>per cent</i> on sales of syngas amounting to ₹ 7.82 crore. This resulted in short levy of VAT to the extent of ₹ 62.92 lakh.</p>	62.92

³⁵ In case of M/s Bansal Wire Industries Ltd and Anr V/s State of Uttar Pradesh and Others dated 26 April 2011.

9	<p>Short levy of tax on Aluminium foils</p> <p>Aluminium foils have not been classified anywhere in the Schedule-II of the GVAT Act, 2003, hence they fall under entry 87 of the said Schedule. Further, Rajasthan High Court in the case of Miracle Foils vs CTO Special Circle, Pali dated 01 November 2011 held that ‘Aluminium foils’ are not ‘Aluminium non-ferrous sheets.’</p> <p>Audit observed in one assessment case of one dealer that the office of the DCST, Range 6 Ahmedabad classified Aluminium foils under entry 52³⁶ of Schedule-II to the GVAT Act and levied VAT at the rate of five <i>per cent</i> instead of 15 <i>per cent</i>. This resulted in short levy of VAT to the extent of ₹ 29.93 lakh on sale of Aluminium foils valued at ₹ 3.61 crore.</p> <p>On this being pointed out in audit Department (05.08.2019) while not accepting the audit observation stated that commodity falls under entry 52 of the schedule II and tax has been levied correctly. Reply of the department is not acceptable in view of the above-mentioned court rulings.</p>	29.93
10	<p>Short levy of tax on PEB structural steel and roofing sheets</p> <p>Pre-Engineered Buildings (PEB), structural steel and roofing sheets have not been classified anywhere in the Schedule-II of the GVAT Act, 2003, hence they fall under entry 87 of the said Schedule. Further, as per provisions of the CST Act, a dealer has to furnish Form ‘C’ in original for availing concessional rate of CST of two <i>per cent</i> on inter-State sales. In case of non-furnishing of the above statutory form, tax prescribed in the State Act is to be levied.</p> <p>Audit observed in four assessment cases of two dealers falling under office of the ACST, Unit 5 and 9 Ahmedabad that the AAs assessed VAT at the rate of five <i>per cent</i> instead of 15 <i>per cent</i> on local and inter-State sales (not supported by the requisite forms) of pre-painted (Al-Zn Alloy color coated) sheet/coil and PEB steel structure worth ₹ 31.04 crore. This resulted in short levy of tax (VAT/ CST) to the extent of ₹ 256.33 lakh.</p>	256.33
11	<p>Short levy of tax on Metro Train parts</p> <p>Metro train parts have not been classified anywhere in the Schedule-II of the GVAT Act, 2003, hence they fall under entry 87 of the said Schedule.</p> <p>Audit observed in one assessment case of one dealer that the office of the ACST, Unit 25 Kalol, assessed VAT at the rate of five <i>per cent</i> instead of 15 <i>per cent</i> on sale of metro train parts worth ₹ 1.89 crore between 01 April 2009 and 30 September 2009 without assigning any reason for levy of tax at lower rate. This resulted in short levy of VAT to the extent of ₹ 18.87 lakh.</p> <p>On this being pointed out by audit, the Government (13.01.2020) accepted the audit observation and intimated that revision order has been passed.</p>	18.87
12	<p>Short levy of tax on Elevator parts</p> <p>Elevator and its parts have not been classified anywhere in the Schedule-II of the GVAT Act, 2003, hence they fall under entry 87 of the said Schedule.</p> <p>Audit observed in one assessment case of one dealer that the office of the ACST, Unit 64 Surat assessed VAT at the rate of five <i>per cent</i> instead of 15 <i>per cent</i> on sales of elevator parts valued at ₹ 67.03 lakh. This resulted in short levy of VAT to the extent of ₹ 5.39 lakh.</p>	5.39

³⁶ Non-ferrous metals and alloys

13	<p>Non-levy of tax on Yarn</p> <p>Yarn or yarn waste of all types fall under entry 86 of Schedule-II to the GVAT Act and attract tax at the rate of five <i>per cent</i> including additional tax at the rate of one <i>per cent</i>.</p> <p>Audit observed in one assessment case of one dealer that the office of the ACST, Unit 63, Surat did not levy tax on sale of Yarn worth ₹ 1.97 crore. This resulted in short levy of tax to the extent of ₹ 9.86 lakh.</p>	9.86
14	<p>Short levy of tax on domestic RO plant and its parts</p> <p>Domestic RO plant and its part (Membrane) have not been classified anywhere in the Schedule-II to the GVAT Act, 2003, hence they fall under entry 87 of the said Schedule. Further, JCST(Legal) in its determination order dated 04 November 2011 under Section 80 of the GVAT Act also held that RO plant (for domestic use) and its parts fall under entry 87 of the Schedule-II.</p> <p>Audit observed in seven assessment cases of two dealers that the office of the ACST, Unit 68, Surat levied VAT at the rate of five <i>per cent</i> instead of 15 <i>per cent</i> on sales of RO plant (for domestic use) and its part (membrane) amounting to ₹ 16.09 crore. This resulted in short levy of VAT to the extent of ₹ 133.22 lakh.</p> <p>On this being pointed out in audit, concerned JCST office accepted (October 2018) the audit observations in both the cases and stated that notices for reassessment had been issued to the dealers.</p>	133.22
Total		1,127.90

4.5 Irregularities in 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 31 offices audit noticed³⁷ in 105 assessments³⁸ of 91 dealers that the Assessing Authorities (AAs) had allowed excess tax credit/ irregular refund of tax credit of ₹ 13.37 crore as detailed below:

4.5.1 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.

³⁷ Between March 2014 and October 2018

³⁸ For the year 2007-08, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 and 2016-17, assessments finalised between March 2012 and March 2018

Audit observed in one assessment of one dealer of one³⁹ office that the AA reduced the tax credit of ₹ 91.61 lakh instead of ₹ 99.64 lakh crore on the goods worth ₹ 84.14 crore which were consigned or dispatched for branch transfer or to his agent outside the State or used as raw materials in the manufacture, or in the packing of goods which were dispatched for branch transfer or to his agent outside the State. This resulted in short reduction of tax credit to the extent of ₹ 8.03 lakh, excluding interest and penalty.

4.5.2 Non/ 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 with effect from 01 July 2010. However, vide GHN-35 dated 07 September 2010, Government of Gujarat exempted several goods (including cotton and cotton seeds) from reduction of ITC, as mentioned in the notification cited above, with effect from 01 October 2010. Thus, ITC at the rate of two *per cent* was required to be reduced on inter-State sales of cotton and cotton seeds effected between 01 July and 30 September 2010.

Audit observed in 27 assessments⁴⁰ of 26 dealers of 12⁴¹ offices that the AAs reduced the tax credit of ₹ 1.99 crore instead of ₹ 7.10 crore on the goods worth ₹ 1,391.41 crore which were resold/used as raw material in the manufacture of goods sold in the course of inter-State trade or commerce. Out of these, in case of 23 dealers the AAs adopted incorrect arithmetical calculations while in case of three dealers, the AAs did not reduce tax credit on inter-State sale of cotton/ cotton seeds effected between 01 July and 30 September 2010. This resulted in non/ short reduction of tax credit to the extent of ₹ 5.11 crore excluding interest and penalty.

On this being pointed out, the Department/ jurisdictional JCST offices accepted (between November 2018 and July 2019) audit observations in 12 assessments of 11 dealers and reassessment order was passed in one case against which the dealer preferred appeal before the appellate authority and in one case amount has been recovered. Reply in respect of remaining cases is awaited (April 2020).

³⁹ Office of the DCST Range 7, Gandhinagar

⁴⁰ Assessment period 2010-11, 2011-12, 2012-13 and 2013-14 assessed between June 2013 and March 2018.

⁴¹ Offices of the ACST: 6, 10 and 11 Ahmedabad, 103 Gandhidham, 28 Idar, 89 Rajkot, 63 and 68 Surat, 44 Vadodara
Offices of the DCST: Range 04 Ahmedabad, Corporate Cell-3 Gandhinagar, Corporate Cell-11 Rajkot

4.5.3 Non/ short reduction of ITC on purchases of goods used in job work/manufacture of tax-free goods etc.

The registered dealer is entitled for the ITC of taxable purchases provided such purchase are intended to be used in the manufacture of taxable goods. Thus, no ITC is available for the purchase of taxable goods used/ intended to be used in the manufacture of tax-free goods.

Audit observed in 18 assessments of 14 dealers of 12⁴² offices that the AAs had irregularly allowed tax credit of ₹ 4.25 crore on purchases of goods worth ₹ 876.46 crore as detailed below:

- In 11 assessments of nine dealers, the AAs reduced tax credit of ₹ 12.62 crore instead of ₹ 15.96 crore on raw material/ fuel/ consumables/ stores/ machinery parts/ lubricants/ which were used in job work/ manufacture of tax free goods⁴³ etc. This resulted in excess allowance of tax credit of ₹ 3.34 crore.
- In one assessment case of a Company, the office of the DCST, Petro-II, Ahmedabad allowed tax credit of ₹ 20.26 lakh on stores and spares worth ₹ 4.10 crore purchased for Sulphur Recovery Unit (SRU). The SRU was installed by the Company as environment protection measure to recover Sulphur produced as by-product during manufacture of fuel gas. Since, the SRU was not related to the manufacture of oil and gas, the tax credit allowed was against the provisions of the GVAT Act.
- In three assessments of two dealers, the office of the ACST, Unit-103, Gandhidham allowed tax credit of ₹ 13.84 lakh on lube oil worth ₹ 79 lakh which was not transferred during the execution of works contract and hence no tax was paid by the dealers. This resulted in irregular allowance of tax credit to that extent.
- In three assessments of two dealers it was observed that the dealers had supplied goods worth ₹ 26.06 crore free of cost under warranty claims and no tax was paid on such goods. The AAs were required to reduce tax credit of ₹ 59.55 lakh on these goods. However, tax credit of ₹ 3.01 lakh only was reduced during the assessments. Thus, there was excess allowance of tax credit of ₹ 56.54 lakh.

The overall irregular allowance of tax credit involved in the above cases amounted to ₹ 4.25 crore, excluding interest and penalty.

On this being pointed out, the Department/ office of the jurisdictional JCST accepted (between December 2018 and September 2019) audit observations in 12 assessments of nine dealers and initiated proceedings for reassessment/ rectification/ issue based assessment. The amounts in three assessments of two dealers have been recovered. Reply in respect of remaining cases are awaited (April 2020).

⁴² Offices of the ACST: 10 Ahmedabad, 103 Gandhidham, 72 Navsari, 89 Rajkot, 67 Surat; DCST: Petro II, Corporate Cell-1 and Corporate Cell-2 Ahmedabad, Corporate Cell-3 Gandhinagar, Corporate Cell-8 Surat, Range 12 Vadodara, Range 18 Valsad.

⁴³ Contraceptive Pills, Dairy products, Sprinkling system, Solar energy parts, Sugar.

4.5.4 Irregular allowance of ITC on purchase from cancelled dealers

Under Section 11(5)(mmmm), input tax credit shall not be admissible for purchases made from a dealer whose certificate of registration has been suspended or cancelled and the name of such dealer has been published under sub-section (11) of Section 27 or information of dealers disclosed in public interest under Section 97.

Audit observed in 49 assessments of 43 dealers under eight⁴⁴ offices that the AAs had allowed input tax credit on purchases made from the dealers whose registration was cancelled. This resulted in irregular grant of ITC to the extent of ₹ 3.68 crore.

On this being pointed out, the Department/ office of the jurisdictional JCST accepted (between March and November 2019) audit observations in 17 assessments of 12 dealers and initiated proceedings for reassessment/issue based assessment. The amount in four assessments of three dealers has been recovered (April 2020).

4.5.5 Irregular grant of refund of ITC on Capital Goods

Rule 15 (6) of the GVAT Rules, 2006 provides for refund of unadjusted tax credit (other than tax credit on capital goods) against the output tax liability of the dealer. Thus, the Rule prohibits refund of ITC on purchases of capital goods.

Audit observed in 10 assessments of seven dealers of two⁴⁵ offices that the AAs allowed refund of ITC of ₹ 23.01 lakh claimed on Capital Goods along with interest of ₹ 2.08 lakh, aggregating to ₹ 25.09 lakh. This was against the provisions of Rule 15 (6) of the GVAT Rules. This resulted in irregular grant of refund of ITC of ₹ 25.09 lakh including interest of ₹ 2.08 lakh.

On this being pointed out, the Department accepted (June 2019) the audit observations in nine assessments of six dealers and initiated reassessment proceedings. Reply in respect of remaining one case is awaited (April 2020).

4.6 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.

During test check of the assessment records of six⁴⁶ offices audit noticed⁴⁷ in 10 assessments⁴⁸ of eight dealers that there was short levy of tax of

⁴⁴ Offices of the ACST: 09 and 10 Ahmedabad, 75 Bhavnagar, 94 Gondal, 95 Jetpur, 54 Khambhat, 37 Siddhpur and 12 Viramgam

⁴⁵ Offices of the ACST: 102 Jamkhambhaliya and DCST: Range 24 Jamnagar

⁴⁶ Offices of the ACST: 72 Navsari, 40 Vadodara

Offices of the DCST Range: 21 Junagadh, 25 Gandhidham, 24 Jamnagar

Office of the DCST Corporate Cell: 7 Surat

⁴⁷ Between December 2016 and July 2018

₹ 1.33 crore excluding interest and penalty due to incorrect determination of turnover as detailed below:

4.6.1 As per 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 any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof.

Audit observed in five assesment cases of two dealers that the AAs did not include receipt against 'handling charges' amounting to ₹ 72.54 lakh on sale of vehicles, in taxable turnover. This irregular exclusion of 'handling charges' resulted in short levy of tax of ₹ 9.46 lakh.

On this being pointed out, the Department accepted (July 2019) the audit observations and passed issue based assessment/ reassessment orders. Dealers filed the appeal before JCST against the reassessment order. Further details are awaited (April 2020).

4.6.2 As per Section 2 (23) of the GVAT Act, sale includes transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

Audit observed that the office of the ACST Unit-72, Navsari had not assessed tax of ₹ 43.09 lakh at the rate of 12.5 per cent on receipt of ₹ 3.30 crore towards 'city bus fare' for operating CNG buses during the period 2010-11.

4.6.3 As per Section 2 (23) (b) of the GVAT Act, sale includes transfer of property in goods (whether as goods or in some other form) involved in execution of a works contract. Further, as per Section 2 (24) (b) of the Act *ibid*, 'sale price' in relation to a works contract is the amount arrived at by deducting from the amount of valuable consideration paid or payable to the contractor, the amount representing labour charges.

Audit observed in one case falling under office of the ACST, Unit-40, Vadodara that the dealer had executed Civil and Mechanical works contract worth ₹ 11.62 crore. It was further observed from the invoices raised by the dealer that he had split the works contract into two parts namely (i) contract for sale of goods and (ii) service contract. The dealer had discharged his service tax liability by paying service tax of ₹ 57.44 lakh at the rate of 12.36 per cent on ₹ 4.65 crore⁴⁹. However, VAT of ₹ 33.19 lakh (at the rate of five per cent) was not paid by the dealer on the remaining amount of ₹ 6.97 crore availed as abatement.

4.6.4 Incorporeal or intangible goods⁵⁰ falling under entry 41 of Schedule II to the GVAT Act attract tax at the rate of five per cent including additional tax at the rate of one per cent. Further, as per Section 51 (1) of the GVAT Act

⁴⁸ For the year 2008-09, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 assessments finalised between November 2012 and August 2017.

⁴⁹ After availing 60 per cent abatement on the total consideration received of ₹ 11.62 crore as per Service Tax (Determination of Value) Rules 2006.

⁵⁰ Copyright, Patent, Trademarks, Brand name, Import Licence, Goodwill, Technical know-how, export permit or quota, DEPB, carbon credit

in case of transfer of business, the transferor and the transferee are jointly and severally liable to pay tax due from the transferor up to the time of transfer.

In one assessment for the year 2008-09 finalised (November 2012) by the office of the DCST, Range-25, Gandhidham audit observed that as per order dated 09 July 2009 of the Gujarat High Court, the business of the dealer had been transferred to other company with all the assets and liability as on 01 April 2008. Scrutiny of the financial accounts of the transferor revealed that net assets for the year 2008-09 amounted to ₹ 3.34 crore whereas as per the scheme of amalgamation, the transferee was to issue shares in the ratio of 1:12 aggregating to ₹ 27.17 lakh. Thus, there was difference of ₹ 3.06 crore between the two, to be treated as 'Goodwill' and taxed at the rate of five *per cent*. However, the AA did not levy tax on the value of 'Goodwill'. This resulted in non-levy of tax of ₹ 14.59 lakh.

4.6.5 Rule 18AA of the GVAT Rules provides that where the amount of charges towards labour, service and other like charges are not ascertainable from the accounts maintained by the dealer, lump-sum deduction at the rates prescribed against the respective works contract should be allowed to arrive at the taxable turnover.

Audit observed in one assessment case for the year 2012-13 finalised (March 2017) by the office of the DCST, Range 24, Jamnagar that the AA had allowed deduction of ₹ 5.54 crore towards the labour, service and other charges at the rate of 30 *per cent* of the gross works contract receipts of ₹ 18.46 crore. It was further observed that the dealer was engaged in the works contract of laying and fixing pipelines (Under Ground piping work). As per Table below Rule 18AA, works contract of laying of pipes is eligible for lump-sum deduction of 20 *per cent*. Thus, the dealer was eligible for deduction of ₹ 3.69 crore only instead of ₹ 5.54 crore as allowed by the AA. Thus, excess deduction towards labour/service charges from the taxable turnover resulted in short levy of tax of ₹ 27.17 lakh.

4.6.6 Section 8 read with Section 61 of the GVAT Act and Rule 43 of the GVAT Rules provides for issuance of credit note to reduce tax liability as per tax invoice issued previously owing to change in consideration amount agreed previously.

In case of one dealer engaged in sale of vehicles, the office of the DCST, Corporate Cell-07, Surat while finalising (March 2016) assessment for the year 2011-12 had allowed deduction in tax liability amounting to ₹ 5.83 lakh on the basis of credit notes worth ₹ 44.72 lakh (inclusive of tax at the rate of 15 *per cent*) issued to the customers due to alteration in consideration of sale of amount. Audit observed that the dealer had issued retail invoice to its customer instead of tax invoices. Thus, provisions of Section 8 read with Section 61 of the GVAT Act were not applicable in the instant case. This irregular exclusion of turnover of ₹ 44.72 lakh from taxable turnover resulted in short levy of tax of ₹ 5.83 lakh.

4.7 Non/ Short levy of 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 four⁵¹ offices, audit noticed⁵² in assessments⁵³ of six dealers that there was non/short levy of CST of ₹ 7.06 crore due to underassessment of taxable turnover or incorrect application of rate of tax as detailed below:

4.7.1 Short levy of tax due to application of concessional 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 three/ 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. In case of non-furnishing of Form-C 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 two offices⁵⁴ that Form-C worth ₹ 35.50 crore were not furnished by the registered dealers. However, the Assessing Authority (AA) levied tax of ₹ 74.24 lakh at the rate of three/ two per cent instead of ₹ 2.08 crore at the rate of 15/ 05 per cent. This resulted in short levy of tax of ₹ 1.34 crore.

On this being pointed out, the Department accepted the audit observation in case of one dealer and stated (December 2019) that the dealer had been asked to furnish Form-C along with bills and sales details. Further reply is awaited (April 2020).

4.7.2 Non-levy of tax on turnover/ job-work not supported by Form-F

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 principal/ branch/ agent, 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. Further, the Allahabad High Court has held⁵⁵ that statutory Form-F are also required in case of inter-State movement of goods for job-work on returnable basis. The same was also upheld by the Supreme Court.

⁵¹ Offices of the ACST: 94 Gondal, 74 Vapi; DCST: Corporate-03 Gandhinagar, Range-12 Vadodara

⁵² Between March 2014 and March 2018

⁵³ For the year 2008-09, 2009-10 and 2012-13; four self-assessed and two assessed in March 2017

⁵⁴ Offices of the ACST: 94 Gondal, 74 Vapi

⁵⁵ In case of Ambica Steel Ltd. vs. State of UP dated 17 August 2007 [(2008) 12 VST 216]

Audit observed in assessment cases of two dealers under two offices⁵⁶ that the Assessing Authorities (AAs) had allowed the deductions of ₹ 13.40 crore from the taxable turnover as job work/ branch transferred goods and no tax was levied on such turnover even though the dealers had not furnished the statutory Form-F in support of such job work/ branch transfer. In such situation CST at appropriate rate was required to be levied. This resulted in non-levy of tax to the extent of ₹ 57.04 lakh excluding interest and penalty.

4.7.3 Non/ short levy of tax on turnover not supported by Form E-I/ E-II/ C

As per Section 3(b) of the CST Act, 1956, a sale or purchase of goods shall be deemed to have taken place in the course of inter-State trade or commerce if the sale or purchase is effected by a transfer of *documents of title* (Railway Receipt (RR) /Lorry Receipt (LR) etc.) to the goods during their movement from one State to another. Further, as per Section 6(2) of the Act, *ibid*, all subsequent inter-State sales to registered dealers by transfer of documents during movement of goods are exempt from sales tax on production of Form E-I (first inter-State sale) or E-II (subsequent sale by the transferors) and Form-C.

Audit observed in three assessment cases of three dealers pertaining to three⁵⁷ offices that the AAs had allowed deductions of ₹ 79.18 crore from the taxable turnover as RR sale. Out of these three cases, two dealers had not furnished the Form E-I/ E-II/ Form C in support of the fact that sale was affected during the movement of goods. In the remaining one case though Form-C were produced, the dealer failed to submit Form E-I worth ₹ 17.28 crore. Accordingly, the AA disallowed the claim of RR sale to that extent and levied tax at the rate of two *per cent* by treating the subsequent sale as inter-state sale supported by Form-C. On further scrutiny of the records, it was revealed that the 'Form-C' produced by the dealer were issued by a dealer of Gujarat. It implied that the subsequent sale was made within Gujarat. Since, claim of RR sale was disallowed by the AA and subsequent sale was within Gujarat, the AA was required to levy tax at the rate of five *per cent* applicable to local sales. In these three cases, allowance of RR sale without supporting statutory forms/ incorrect rate of tax resulted in non/ short levy of tax of ₹ 5.15 crore.

Thus, there was non/ short levy of CST of ₹ 7.06 crore due to underassessment of taxable turnover or incorrect application of rate of tax.

On this being pointed out, the Department (August/December 2019) accepted the audit observation in case of two dealers and stated (December 2019) that in one case reassessment order was passed and in the other the dealer had been asked to furnish Form-C along with bills and sales details. In another one case, Department while not accepting the audit observation stated that the sales executed by the dealer does not fall under the RR sale and CST has been levied. Reply of the department is not acceptable as part of RR sale which are

⁵⁶ Offices of the ACST 74 Vapi and DCST Corporate-03 Gandhinagar

⁵⁷ Offices of the ACST: 94 Gondal, 74 Vapi; DCST: Range-12 Vadodara

not supported with statutory forms considered as inter-State sales which is not correct.

4.8 Non/ short levy of interest (VAT)

Under Section 42(6) of the GVAT Act, 2003 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. As per Section 30(5) of the Act *ibid* where a dealer does not pay the amount of tax within the time prescribed for its payment under this Section, 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.

Audit observed⁵⁸ in nine⁵⁹ assessment cases of seven dealers of six⁶⁰ offices that there was non/ short levy of interest of ₹ 4.34 crore as detailed below:

- The Assessing Authorities (AA) had not levied interest on the unpaid amount of tax in case of two dealers while in one case, interest was short levied on the unpaid tax due to incorrect calculation by the AA.
- In case of two assessments of two dealers, interest was not calculated from the month when tax was due after disallowance of Input Tax Credit.
- In one case (office of the DCST Range 25 Gandhidham) the exemption certificate of the dealer was cancelled and the dealer was liable to pay tax of ₹ 1.11 crore and to pay back the refund of ₹ 1.19 crore granted to him (between July 2009 and April 2010) along with interest. The AA calculated interest liability on the refund amount from the date of closure of the financial year (2009-10) (instead of date of grant of the refund) to the date of assessment (February 2014). Thus, incorrect adoption of the period by the AA resulted in short levy of interest of ₹ 6.31 lakh.
- In another case the office of the Additional CST while finalizing the assessment (March 2018) of an unregistered dealer, did not levy interest of ₹ 91.62 lakh on the amount of tax (₹ 82.91 lakh) evaded by the dealer during 2010-13.

This resulted in total non/ short levy of interest of ₹ 4.34 crore.

On this being pointed out, the Department/ office of the Additional CST (Enforcement) accepted audit observations in case of two dealers and stated (May and June 2019) that reassessments had been done. Replies in respect of remaining cases are awaited (April 2020).

⁵⁸ Between April 2015 and September 2018

⁵⁹ For the year 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 assessments finalized between February 2014 and March 2018

⁶⁰ Offices of the ACST: 10 Ahmedabad; DCST: 04 and 06 Ahmedabad, 25 Gandhidham, Corporate-06 Vadodara and Additional Commissioner of State Tax (Enforcement) Ahmedabad

4.9 Tax Deduction at Source

Section 59B of the GVAT Act 2003 read with Notification⁶¹ dated 01 April 2008 provides for deduction of tax (Tax Deduction at Source/ TDS) by the principal/ contractee at the rate prescribed against the works contract at the time of payment of the whole or part of the specified sale price⁶² in respect of a specified works contract⁶³ to the contractor/ sub-contractor. Where TDS has not been deducted, the amount shall be payable by the contractor or sub-contractor directly and penalty not exceeding 25 per cent of the amount to be deducted, is leviable. Further, the contractor/ sub-contractor is eligible for credit of the TDS against the tax liability for the relevant year on production of certificate Form 703 prescribed under Rule 65(4) of the GVAT Rules 2006.

During test check of the assessment records of three⁶⁴ offices, audit observed (between March 2013 and July 2016) non/ short deduction of tax at source/ irregular grant of credit of TDS of ₹ 88.25 lakh in three⁶⁵ assessments of three dealers as detailed below:

4.9.1 Non/ short deduction of tax at source

In two assessments of two dealers, the principal/ contractee was required to deduct tax at source of ₹ 16.24 lakh⁶⁶ at the rate of two/ 0.6 per cent of the specified sale price of ₹ 17.21 crore. However, no TDS was deducted by the principal/ contractee.

Thus, there was non/ short deduction of tax at source of ₹ 16.24 lakh excluding penalty leviable under the provisions.

On this being pointed out, the office of the JCST, Division-10, Rajkot accepted (May 2014) the audit observation in one case and raised the demand. Particulars of recovery are awaited (July 2019).

4.9.2 Irregular/ excess grant of credit of TDS

In case of one dealer falling under office of the ACST, Unit- 102, Jamkhambaliya the AA while finalizing (June 2014) assessment for the year 2011-12 allowed credit of TDS of ₹ 121.67 lakh against tax liability. Further scrutiny of the records revealed that as per Form 703, TDS of ₹ 49.66 lakh only was eligible for credit against tax liability for the year 2011-12. Thus, there was irregular/ excess grant of credit of TDS of ₹ 72.01 lakh.

⁶¹ (GHN-14) VAT-2008-S.59B (3) (1)- TH dated 01 April 2008

⁶² Amount as is arrived at as per definition given in Section 59A (c) of the GVAT Act

⁶³ A work contract the specified sale price of which exceeds ₹ one crore.

⁶⁴ Offices of the ACST: 104 Gandhidham, 102 Jamkhambaliya; DCST Petro-II Ahmedabad

⁶⁵ For the year 2006-07, 2008-09 and 2011-12 assessments finalised in April 2011, March 2013 and June 2014 respectively

⁶⁶ (₹ 4.22 crore x 2 per cent) + (₹ 12.99 crore x 0.6 per cent)

4.10 Non-levy of penalty (VAT/ CST)

During test check of assessment records of 32⁶⁷ offices, audit noticed⁶⁸ in assessments⁶⁹ of 55 dealers that the AAs had not levied penalty of ₹ 32.63 crore as detailed below:

- 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 52 dealers pertaining to 30⁷⁰ offices, the dealers had paid tax of ₹ 31.93 crore with returns against the payable amount of ₹ 53.71 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 AAs in assessments had not levied any penalty. This resulted in non-levy of penalty of ₹ 32.63 crore.

On this being pointed out, the office of the jurisdictional JCST/Department accepted (between February and September 2019) observations in case of 20 dealers and recovery was affected in one case.

⁶⁷ Offices of the ACST/ STO: 5, 7, 10, 21 Ahmedabad, 75 Bhavnagar, 103 Bhuj, 77 Botad, 35 Deesa, 81 Dhrangadhra, 94 Gondal, 28 Idar, 99 Jamnagar, 95 Jetpur, 52 Kapadwanj, 54 Khambhat, 30 Mehsana, 72 Navsari, 93 Rajkot, 37 Siddhpur, 63 and 67 Surat, 79 Surendranagar, 44, 45 Vadodara, 74 Vapi

Offices of the DCST: Range 1, 4,6, Corporate I and II Division 1 Ahmedabad, Range 7 Gandhinagar, Range 15 Surat, Corporate Cell Division 5 Vadodara

⁶⁸ Between October 2016 and October 2018

⁶⁹ For the year 2010-11, 2011-12, 2012-13 and 2013-14 assessments finalised between March 2015 and March 2018

⁷⁰ Offices of the ACST/ STO: 7, 10, 21 Ahmedabad, 75 Bhavnagar, 103 Bhuj, 77 Botad, 35 Deesa, 81 Dhrangadhra, 94 Gondal, 28 Idar, 99 Jamnagar, 95 Jetpur, 52 Kapadwanj, 54 Khambhat, 30 Mehsana, 72 Navsari, 93 Rajkot, 37 Siddhpur, 63 and 67 Surat, 79 Surendranagar, 44, 45 Vadodara, 74 Vapi

Offices of the DCST: Range 1, 4, 6 Ahmedabad, Range 7 Gandhinagar, Range 15 Surat, Corporate Cell Division 5 Vadodara