

CHAPTER II: TAXES/VAT ON SALES, TRADE

2.1 Tax administration

The Haryana Value Added Tax Act, 2003 (HVAT Act) and rules framed thereunder are administered by the Additional Chief Secretary (Excise and Taxation). The Excise and Taxation Commissioner (ETC) is the head of the Excise and Taxation Department, is assisted by Additional ETCs, Joint ETCs (JETCs), Deputy Excise and Taxation Commissioner (DETCs) and Excise and Taxation Officers (ETOs). They are assisted by Excise and Taxation Inspectors and other allied staff for administering the relevant tax laws and rules.

2.2 Results of audit

In 2019-20, test check of the records of 34 (Revenue 32 + expenditure 02) units (53,498 assessment cases were audited out of total 1,84,419 assessment cases) out of 45 units relating to VAT/Sales tax assessments and other records revealed under assessment/evasion of tax and other irregularities involving ₹ 1,388.90 crore in 1,160 cases (15.44 *per cent* of the receipt of ₹ 8,998 crore for the year 2018-19) under the following categories as depicted in the **Table 2.1**.

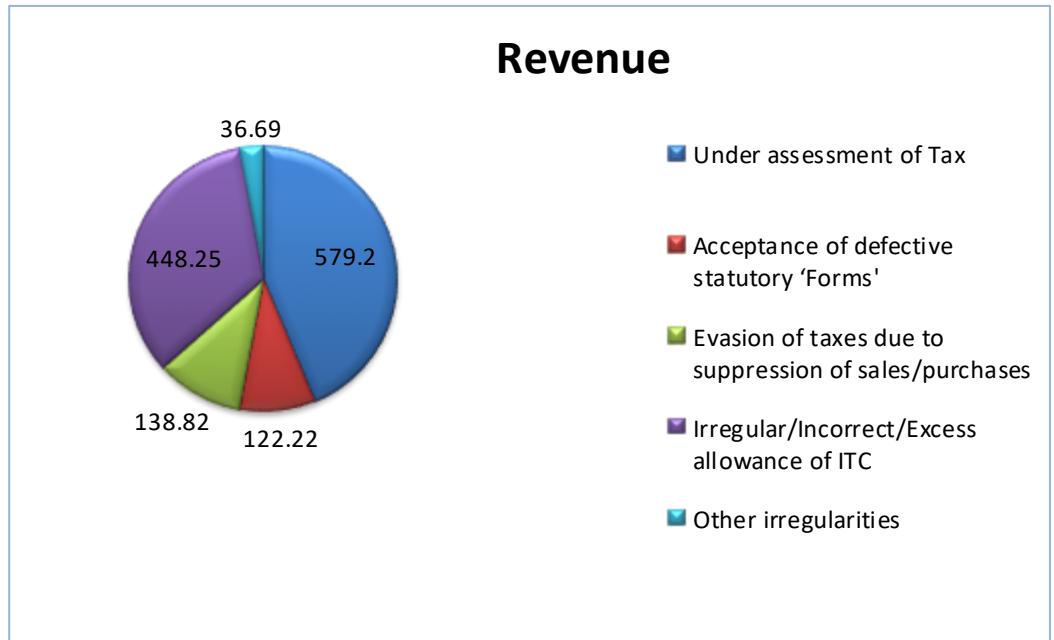
Table-2.1 – Results of Audit

Revenue			
Sr. No.	Categories	Number of cases	Amount (₹ in crore)
1.	Under assessment of Tax	413	579.20
2.	Acceptance of defective statutory 'Forms'	81	122.22
3.	Evasion of taxes due to suppression of sales/purchases	73	138.82
4.	Irregular/Incorrect/Excess allowance of ITC	403	448.25
5.	Other irregularities	135	36.69
	Total (I)	1,105	1,325.18
Expenditure			
1.	Non-auctioning of obsolete vehicles	13	0.16
2.	Non-maintenance of cash book	07	0.00
3.	Non-entering of VAT G-4 invoice in stock	05	0.00
4.	Other irregularities	30	63.56
	Total (II)	55	63.72
	Grand Total (I+II)	1,160	1,388.90

Source: Data maintained by office

Chart 2.1
Results of Audit

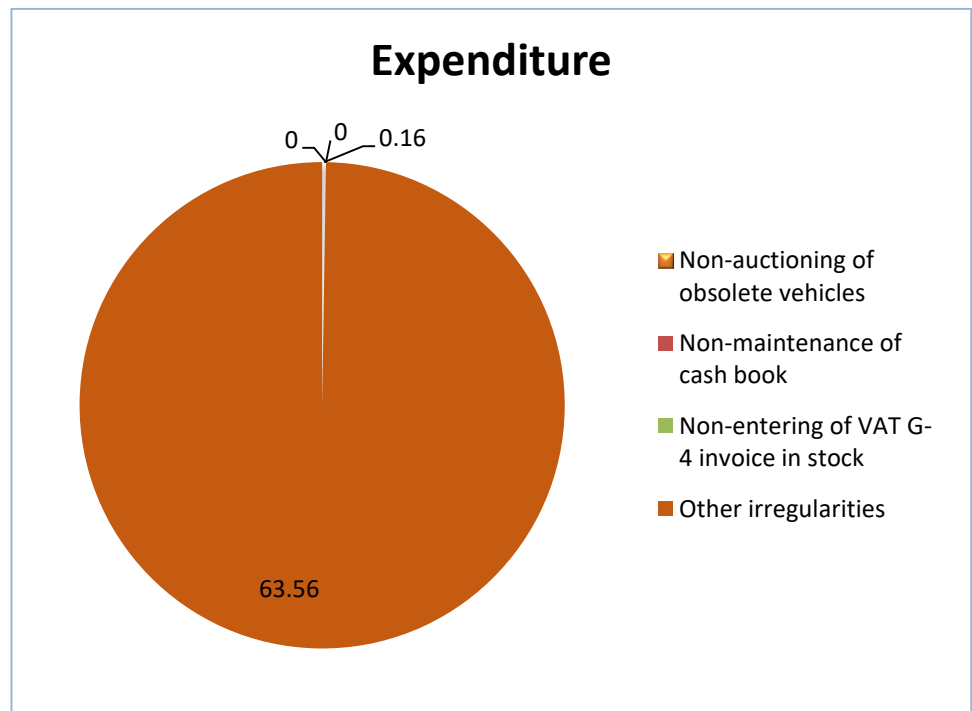
(₹ in crore)



Source: Data maintained by office

Chart 2.2
Results of Audit

(₹ in crore)



Source: Data maintained by office

The Department accepted under assessment and other deficiencies of ₹ 279.55 crore involved in 197 cases which were pointed out during the year. The Department recovered ₹ 1.00 crore in 44 cases out of which ₹ 0.77 crore recovered in 21 cases pertaining to this year and balance amount for previous years.

Significant cases involving ₹ 96.01 crore are discussed in the following paragraphs.

2.3 Non levy of tax on purchases under Composition scheme

Assessing Authority failed to levy tax on interstate purchases, importing goods and purchases from unregistered dealers, resulting in under assessment of tax amounting to ₹ 4.98 crore. In addition, an interest of ₹ 3.62 crore was also leviable.

As per Rule 49-A of Section 9 of HVAT Act 2003, a developer may pay, as an option, in lieu of tax payable by him under the Act, by way of composition of lump sum tax calculated at the compounded lump sum rate of one *per cent* to entire aggregate amount specified in the agreement. In case composition developer procure or purchase goods from dealers other than the registered dealers from within or outside the State, he shall be liable to pay an amount equal to the amount of tax that would have been payable, had the goods been purchased within the State from a registered dealer. Further, composition developer shall pay tax at the rate of four *per cent* on purchase price of goods purchased and or received from any place outside the State including imports from out of India. Further, interest was also leviable under Section 14 (6) of the HVAT Act.

Scrutiny of the records (November 2018) revealed that in the office of {(DETC) (ST)} Gurugram (East), four developers who had opted for composition scheme and made interstate purchases, imported goods and made purchases from unregistered dealers amounting to ₹ 66.84 crore for execution of works contract. While finalising assessment (November 2017) for the year 2014-15, the Assessing Authority (AA) did not levy tax at the rate of four *per cent* on goods purchased and or received from any place outside the state including imports from out of India and at the rates of 13.125 *per cent* on purchases made from dealers other than the registered dealers from within or outside the State, which resulted in under assessment of tax of ₹ 4.98 crore. In addition, interest of ₹ 3.62 crore was also not levied.

The matter was reported to the Government in September 2020, During exit conference (March 2021), the Department accepted the audit observations and stated that case had been sent to the Revisional Authority for examination in

March 2019. Thereafter, the revisional proceedings have been started under Section 34 of the HVAT Act.

2.4 Loss of revenue due to non-reversal of Input Tax Credit

Assessing Authority did not reversed proportionate Input Tax Credit of ₹ 2.33 crore, resulting in loss of revenue to the Government. In addition, interest of ₹ 1.76 crore was also leviable.

As per notification issued in September 2015 under Schedule 'E', Entry 3 (b) (iii) read with Section 8 (1) of the HVAT Act, when goods are sold at a sale price lower than the purchase price, input tax is admissible to the extent of output tax liability, if any, on the sale of such goods. Further, interest is also leviable under Section 14 (6) of the HVAT Act.

Scrutiny of the records (between August and October 2019) revealed that in the office of DETC (ST) Ambala Cantt, a dealer purchased mobile phones valuing ₹ 201.97 crore during the year 2015-16, of which the AA allowed input tax credit (ITC) of ₹ 9.43 crore on the local purchase of ₹ 112.47 crore. Further, as per Trading Account the dealer had shown loss of ₹ 49.95 crore on which proportionate ITC was required to be reversed as the benefit of ITC was admissible only to the extent of output tax liability as per notification, *ibid*. The AA, while finalising assessment (November 2018) did not reverse the proportionate ITC of ₹ 2.33 crore resulting in loss of revenue to the Government. Further, interest of ₹ 1.76 crore was also leviable.

The matter was reported to the Government in November 2020. During exit conference (March 2021), the Department accepted the audit observation and stated that the case had been sent to the DETC-cum-Revisional Authority, Ambala for taking *suo motu* action in September 2019 and final outcome of the case has not been received (May 2021).

2.5 Inadmissible Input Tax Credit

Assessing Authority allowed benefit of Input Tax Credit without verification of purchases from selling dealers, resulting in incorrect grant of Input Tax Credit of ₹ 9.27 crore.

Under Section 8 of the HVAT Act, input tax in respect of any goods purchased by a VAT dealer shall be the amount of tax paid to the State on the sale of such goods to him. ETC Haryana, issued instructions in March 2006 and July 2013 that cent *per cent* verification of ITC up to the stage of actual payment of tax shall be done. Further, Section 38 of the HVAT Act provides for penal action (three times of tax avoided as penalty) for claims on the basis of false information and incorrect accounts or documents etc.

Scrutiny of the records (between January and October 2018) revealed that while finalising the assessment of 24 dealers of eight¹ DETC (ST) for 2013-14 and 2014-15 (between September 2016 and March 2018), the AAs allowed benefit of ITC of ₹ 9.27 crore without verification of purchases and actual payment of tax from selling dealers as detailed in **Table 2.2** below:-

Table 2.2**Details of irregular ITC claimed**

(₹ in crore)

Sr. No.	DETC	No. of cases	Bogus Purchase	Rate Of Tax	Bogus ITC claimed	Penalty u/s 38	Total Amount
1	Narnaul	2	29,31,71,181	5%	1,46,58,559	4,39,75,677	5,86,34,236
2	Gurugram (South)	3	10,13,98,164	5 to 13.125 %	76,64,713	2,29,94,139	3,06,58,852
3	Faridabad (East)	2	18,27,75,458	5.25 to 13.125 %	98,71,064	2,96,13,192	3,94,84,256
4	Gurugram (North)	1	23,60,269	5.25 and 13.125 %	2,80,386	8,41,158	11,21,544
5	Panipat	11	43,30,50,930	5.25 and 13.125 %	4,88,61,955	14,65,85,865	19,54,47,820
6	Jind	2	5,45,76,182	5.25 to 13.125 %	29,77,310	89,31,930	1,19,09,240
7	Jhajjar	1	10,20,02,872	5.25 to 8.40 %	55,73,698	1,67,21,094	2,22,94,792
8	Kaithal	2	2,66,66,657	5 and 13.125 %	28,58,113	85,74,339	1,14,32,452
Total		24	1,19,60,01,713		9,27,45,798	27,82,37,394	37,09,83,192

Source: Calculated by Audit

On cross-verification of sale/purchase lists of concerned dealers by audit, it was noted that either the selling dealers had not shown any sales to these dealers or RC of selling dealers were cancelled. This resulted in incorrect grant of ITC of ₹ 9.27 crore. In addition, penalty of ₹ 27.82 crore was also leviable.

The matter was reported to the Government in December 2020. During exit conference (March 2021) the Department accepted the audit observations and stated that in seven cases demand of ₹ 7.18 crore had been created of which ₹ 7.12 lakh had been recovered in two cases and in one case of DETC Panipat, the assessee had filed an appeal. In 12 cases letters have been issued for purchase verification/statutory notices in form VAT N-2. Two cases were sent

¹ Faridabad (East): 2; Gurugram (North): 1; Gurugram (South): 3; Jind: 2; Jhajjar: 1; Kaithal: 2; Narnaul: 2 and Panipat: 11.

to DETC (I) cum revisional authority for revision and in remaining two cases revision/re-assessment proceedings are under process.

Department to ensure putting in place stringent mechanism of allowing benefit of ITC after due verification and the responsibility of the AAs may be fixed.

2.6 Evasion of tax due to non-accountal of inter-state purchases

The Assessing Authority did not take action to assess cases of suppressed turnover on inter-state purchases, resulting in loss of revenue of ₹ 27.89 crore, including penalty of ₹ 20.92 crore.

Under Section 38 of the HVAT Act, if a dealer has maintained false or incorrect accounts or documents with a view to suppressing his sales, purchases, imports into State or stocks of goods, or has concealed any particulars or has furnished to or produced before any authority any account, return, document or information which is false or incorrect, such authority may direct him to pay by way of penalty, in addition to the tax to which he is assessed or is liable to be assessed, a sum thrice the amount of tax which would have been avoided had such account, return, document or information as the case may be, been accepted as true and correct.

Scrutiny of the records (April 2019) of DETC (ST) Panipat revealed that statutory declaration forms 'C' and 'F' were issued to six dealers. These dealers had made interstate purchases worth ₹ 53.13 crore against the declaration forms during 2014-15 from the MP dealers on Forms 'F' and 'C'. The Commercial Tax Department, Madhya Pradesh requested (January 2017) to verify the genuineness of these declaration forms and transactions. DETC Panipat after verification informed the Madhya Pradesh authority that the dealers were cancelled or have not shown any purchase from MP dealers.

Further, Audit observed (January to April 2019) that four dealers had not filed any returns and two dealers had not disclosed any interstate purchases. However, Registration Certificates of all six dealers were cancelled w.e.f. 30 June 2015 (dated July and September 2015). Though there was sufficient information with the assessing authority, yet the AA did not take any appropriate action to assess these cases. Therefore, non-assessment of tax and non levy of additional tax including penalty for suppression of interstate purchases resulted in loss of revenue of ₹ 6.97 crore. In addition, a penalty of ₹ 20.92 crore was also leviable.

The matter was reported to the Government in December 2020. During exit conference (March 2021), the Department accepted the audit observations and

stated that in four cases, additional demand of ₹ 15.25 crore was created and recovery proceedings have been started. In one case, the dealer had not filed any returns for 2013-14 to 2015-16 hence, case was not assessed and one case has been sent to Revisional Authority for *suo motu* action.

Department may strengthen its internal control mechanism for reviewing such cases and fix responsibility of the Assessing Authority.

2.7 Non/short levy of interest

The Assessing Authorities failed to levy interest on late/non payment of tax, resulting in non-levy of interest of ₹ 20.71 crore.

Under Section 14 (6) of the HVAT Act, 2003, inter alia states that if any dealer fails to make payment of tax in accordance with the provisions of the Act and Rules made thereunder, he shall be liable to pay, in addition to the tax payable by him, simple interest at one *per cent* per month if the payment is made within ninety days, and at two *per cent* per month if the default continues beyond ninety days for the whole period, from the last date specified for the payment of tax to the date he makes the payment.

Scrutiny of the records (between February 2018 and April 2019) revealed that 16 dealers of seven² DETCs (ST) had not paid tax in accordance with the provisions of the Act and Rules. While finalising assessments (between May 2017 and March 2018) for 2014-15 and 2015-16, AAs failed to levy or short levy interest of ₹ 20.71 crore on late/non payment of the tax due. This resulted in non levy of interest of ₹ 20.71 crore.

The matter was reported to the Government in December 2020. During exit conference (March 2021), the Department accepted the audit observations and stated that AAs Ambala City, Gurugram (West) and Yamunanagar levied interest of ₹ 0.54 crore, in four cases and the same has been adjusted/recovered against the excess credit available during assessment years 2014-15 and 2015-16. In one case, AA Panipat charged interest of ₹ 0.18 crore. AAs Gurugram (West and East) and Sonapat stated that in six cases additional demand of ₹ 21.60 crore had been created. One case of AA Panipat was referred back for fresh assessment to Jt. ETC (A), Rohtak and another case was sent to Revisional Authority for *suo motu* action. In three cases, AA Gurugram (West), issued notices to the dealer for re-assessment.

² Ambala City 2, Gurugram (East) 3, Gurugram (West) 5, Panipat 3, Sirsa 1, Sonipat 1, Yamunanagar 1.

The Department may ensure recovery of the interest amount and fix the responsibility of the AAs for not implementing the prescribed provisions of the Act.

2.8 Evasion of tax due to suppression of sales

The Assessing Authorities did not verify/cross verify sale/purchase, which resulted in evasion of tax of ₹ 4.61 crore. In addition, penalty of ₹ 13.83 crore was also not levied.

Under Section 38 of HVAT Act, if a dealer has maintained false or incorrect accounts, returns or documents with a view to suppressing the sales, purchases, imports into State or stocks of goods, or has concealed any particulars or has furnished to or produced before any authority any account, return, document or information which is false or incorrect, such authority may, direct him to pay by way of penalty, in addition to the tax to which he is assessed or is liable to be assessed, a sum thrice the amount of tax which would have been avoided had such account, return, document or information as the case may be, been accepted as true and correct.

In order to prevent the tax evasion by issuing forged tax invoices or fictitious accounting of goods, the ETC, Haryana issued instructions (March 2006) for verification of all sale/purchase transactions amounting to more than ₹ one lakh from a single VAT dealer in a year.

Scrutiny of the records between (November 2017 and April 2019) revealed that 17 dealers in the office of nine DETC (ST)³ did not show the sales of ₹ 47.70 crore, out of total sales worth ₹ 122.43 crore in their quarterly/annual returns for 2013-14 to 2016-17. The AAs while finalising the assessment did not verify details of suppression of sales with reference to the records of the purchaser resulting in suppression of sale of ₹ 47.70 crore. This resulted in evasion of tax of ₹ 4.61 crore, in addition, penalty of ₹ 13.83 crore was also leviable.

The matter was reported to the Government in December 2020. During exit conference (March 2021), the Department accepted the audit observations and stated that an additional demand of ₹ 12.10 crore had been created in six cases of DETC Faridabad (North) and Panipat. Notices have been issued by seven DETCs (ST)⁴ in nine cases and assessment proceedings were initiated/case had been sent to DETC (I) cum revisional authority. In another case of DETC Panipat, the dealer failed to file any returns for the assessment year 2013-14 to 2015-16, therefore, the case was not assessed. DETC Faridabad (South) did

³ Ambala City, Faridabad (North), Faridabad (South), Gurugram (East), Gurugram (West), Hansi, Jhajjar, Panipat and Sirsa.

⁴ Ambala City, Gurugram (East), Gurugram (West), Hansi, Jhajjar, Sirsa and Panipat.

not admit the fact and stated that the dealer received business promotion incentives. The selling dealer paid full amount of tax and the purchasing dealer claimed ITC accordingly. Reply is not acceptable as promotional incentive were not depicted in balance sheet and it was clear that the dealer suppressed the sales.

The Department may verify all sales transactions which are more than ₹ one lakh from a single VAT dealer in a year as per instructions issued by the Government.

2.9 Under assessment of tax due to allowing concessional rate of tax against invalid forms 'C'

Assessing Authority allowed concessional rate of tax without verification of statutory forms, which resulted in under assessment of tax of ₹ 5.55 crore. In addition, penalty of ₹ 16.66 crore was also not levied.

Section 8 (4) of the Central Sales Tax Act, 1956 (CST Act) provides that concession under sub section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the AA a declaration form duly filled and signed by the registered dealer to whom the goods are sold containing particulars in a prescribed form obtained from the authority. Further, Section 38 of HVAT Act, provides for penal action (three times of tax avoided/benefit claimed) for claims on the basis of false information and incorrect accounts or tax. The Government of Haryana issued instructions on 14 March 2006 and 16 July 2013 for verification of intra-State or inter-State transactions of more than one lakh rupees before allowing the benefit of tax/concession to the dealers.

Scrutiny of the records (between June 2017 and October 2019) revealed that 31 dealers⁵ in 54 cases in the office of 12 DETCs (Sales Tax) for 2013-14 to 2015-16 claimed concessional rate of tax on their inter-State sales amounting to ₹ 50.09 crore in respect of the dealers at Delhi, Rajasthan and Uttarakhand. In support of the claims, the dealers submitted 54 'C' forms⁶. Audit cross verified the Forms from the issuing authorities and found that these 54 forms were defective. The concerned AAs finalised the assessments between August 2015 and February 2019 and allowed the concessional rate of tax against the declaration forms filed without verification as per instructions, *ibid*.

On cross verification of forms, the State Tax Officer of NCT Delhi, Rajasthan and Uttarakhand intimated (between March 2019 and June 2020) that in some

⁵ Ambala Cantt:1, Bhiwani:1, Faridabad (South):1, Gurguram (North):5, Gurugram (South):2, Jind:5, Karnal:1, Kaithal:1, Palwal:1, Panipat:1, Rewari:1 and Rohtak:11.

⁶ Ambala Cantt:1, Bhiwani:2, Faridabad (South):1, Gurguram (North):8, Gurugram (South):3, Jind:16, Karnal:1, Kaithal:3, Palwal:1, Panipat:1, Rewari:1 and Rohtak:16.

of the cases forms had already been cancelled, not issued to the selling dealers, firm not available on portal or record of firm not exists in the system, firm not found functioning and dealer were also not genuine. Thus, allowing concessional rate of tax, without due verification resulted in under assessment of ₹ 5.55 crore as tax. In addition, penalty of ₹ 16.66 crore was also leviable.

The matter was reported to the Government in February 2021. During exit conference (March 2021), the Department accepted the audit observations and stated that five⁷ DETCs (ST) in seven cases had created additional demand of ₹ 5.60 crore, of which ₹ 0.14 crore had been recovered. In 14 cases of six⁸ DETCs (ST) notices had been issued/reassessment proceedings initiated. Letters for verification of 'C' forms had been issued in seven cases of three⁹ DETCs (ST), two cases pertaining to DETC (ST) Rohtak and Ambala Cantt. were sent to DETC (I) cum revisional authority. One case of DETC (ST) Gurugram (North) had been referred back.

The Department to ensure stringent enforcement of the instructions issued for grant of concession on intra-state and inter-state sales only after verification.

2.10 Under-assessment of tax due to application of incorrect rate of tax

Assessing Authorities, incorrectly levied tax at the rate of 5/5.25 per cent against the applicable rate of 13.125 per cent, resulting in under assessment of tax of ₹ 0.93 crore. In addition, interest of ₹ 0.53 crore was also leviable.

The rates under HVAT Act have been prescribed as per schedules A to G. However, under Section 7 (1) (a) (iv) of the HVAT Act, any commodities other than commodities classified in any of the schedule is taxable at the rate of 12.5 per cent with effect from 1 July 2005. Surcharge at the rate of five per cent on the tax is leviable under Section 7 (A) of HVAT Act w.e.f 02 April 2010. Further, interest was also leviable under Section 14 (6) of the HVAT Act.

Scrutiny of the records (between May 2017 and February 2018) revealed that Assessing Authorities while finalising the assessments (between November 2015 and June 2017) in respect of three cases pertaining to three dealers in the offices of DETC (ST) Jind and Panchkula for 2013-14 to 2014-15, applied lower tax rates than the applicable rate of tax on sale of goods as mentioned in Table 2.3.

⁷ Jind, Karnal, Panipat, Rewari and Rohtak.

⁸ Bhiwani, Gurugram (North), Gurugram (South), Kaithal, Palwal and Rohtak.

⁹ Faridabad (South), Jind and Rohtak.

Table: 2.3
Details of incorrect application of rate of tax

Sr. No	DETC	Assessment year/ disposal	Commodity	Amount	Tax leviable @12.5 % plus surcharge	Tax levied (5 % or 5.25%)	Short levy of tax	Interest	Dept. reply
1	Jind	1196 dt. 13.06.17 2013-14	Cement	2,42,10,525	31,77,631	12,10,526	19,67,105	17,28,430	Additional demand of ₹22,52,564 has been created. (Dec 20)
2	Panchkula	567 dt. 02.11.15 2013-14	Electronic Goods	3,95,55,108	51,91,608	20,76,643	31,14,965	15,18,026	Suo motu action (Dec 20)
3	Panchkula	948 dt. 04.11.16 2014-15	Electronic Goods	5,37,99,225	70,61,148	28,24,459	42,36,689	20,73,153	Suo motu action (Dec 20)
Total				11,75,64,858	1,54,30,387	61,11,628	93,18,759	53,19,609	

Source: Details prepared by Audit

The application of lower rate of tax resulted in under assessment of tax of ₹ 0.93 crore. In addition, interest of ₹ 0.53 crore was also leviable.

The matter was reported to the Government in January 2021. During exit conference (March 2021), the Department accepted the audit observations and stated that DETC Jind has created an additional demand of ₹ 0.23 crore. Tax demand notice along with the order has been issued to the dealer and recovery proceeding initiated. In two cases, DETC Panchkula intimated that the cases were sent to DETC-cum-Revisonal Authority (RA) for *suo motu* action. RA adjourned the case sine-die in the light of the case of M/s. Light Graphic, Faridabad and other V/s State of Haryana in the Punjab and Haryana High Court. In the said case, Haryana Tax Tribunal had ordered that assessment order u/s 15(1) cases cannot be taken in Revision under Section 34 of HVAT Act, 2003. The Department preferred an appeal in the Hon'ble High Court against the order of Haryana Tax Tribunal and the matter is still pending in the Court (June 2021).

The Department may undertake a detailed scrutiny of all the cases in order to ensure that tax rates as per HVAT/CST Act are being levied.

The instances of deficiencies pointed out by Audit are based on test checked cases. The Department may take appropriate action to review all similar cases and persistent irregularities which were observed and reported during audit. There is a need to put in place effective controls to act as a deterrent against such acts of irregularities causing loss of revenue to the State. Department may initiate appropriate action under rules against Assessing Authorities responsible for such persistent lapse.