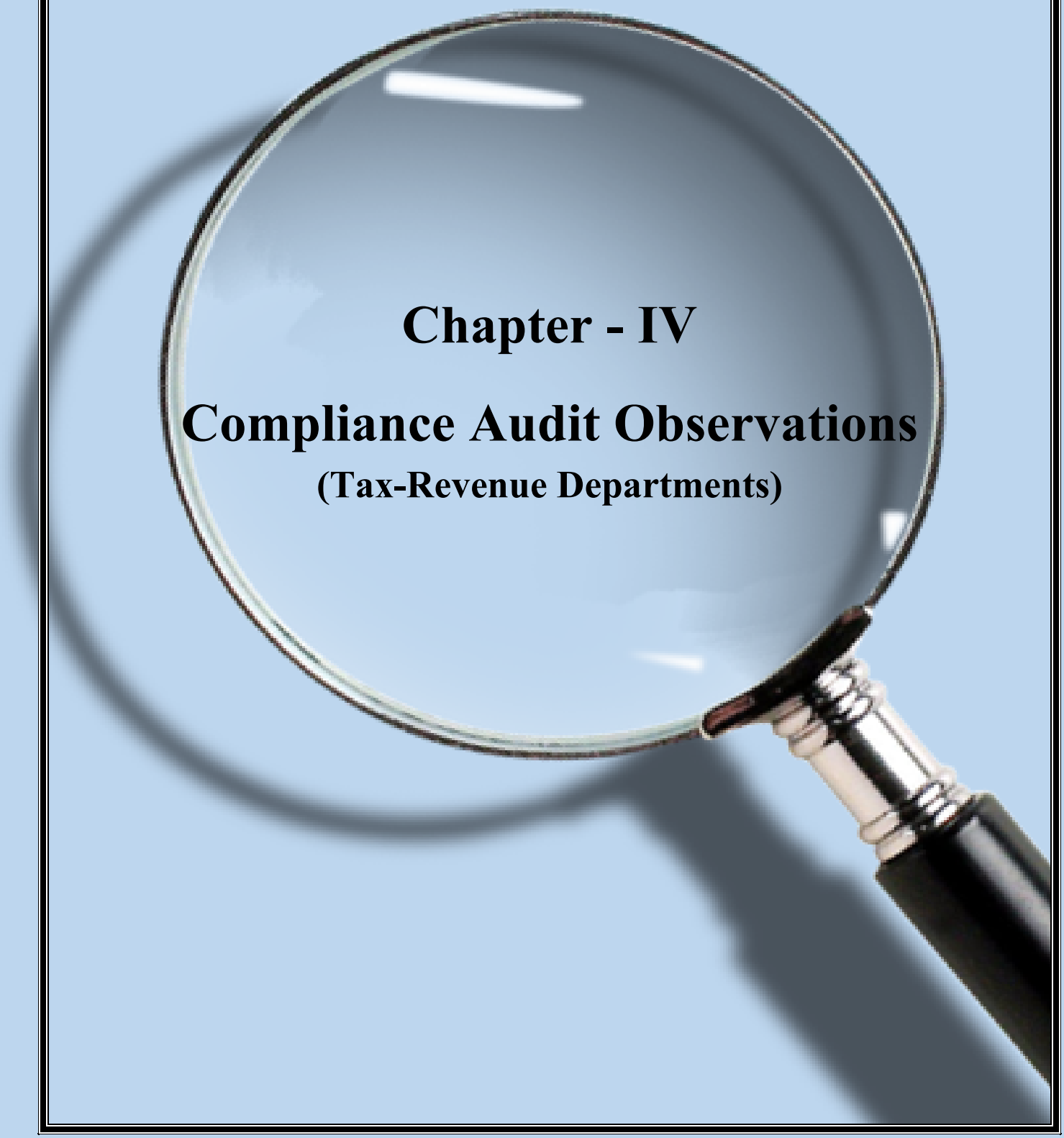


Chapter - IV

Compliance Audit Observations

(Tax-Revenue Departments)

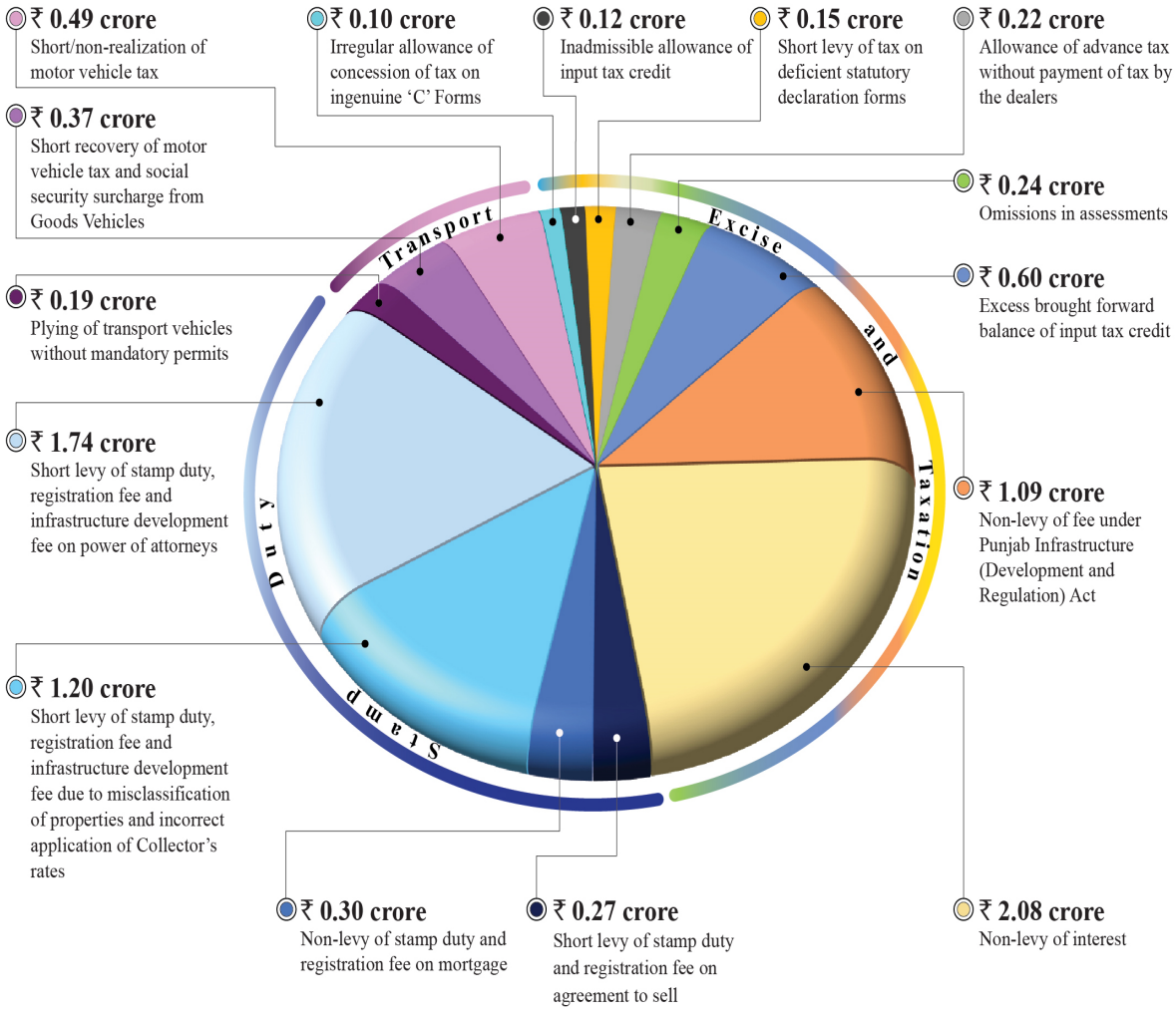
Chapter-IV

Compliance Audit Observations (Tax-Revenue Departments)

This chapter contains 15 observations covering compliance issues under Tax Revenue Departments involving financial effect of ₹ 9.16 crore in 2,151 cases. The Departments accepted audit observations involving ₹ 4.54 crore in 1,737 cases and recovered ₹ 0.12 crore in four cases. The replies provided by the authorities have been incorporated in the relevant observations. These are discussed in the following observations from paragraphs 4.1 to 4.15.

The details of audit observations are provided in **Chart 4.1** below:

Chart 4.1: Details of observations



This Chapter contains **15** Audit Observation involving ₹ **9.16 crore** in **2,151 cases**

Departments accepted **1,737 cases** involving ₹ **4.54 crore**

Recoveries of ₹ **0.12 crore** made in **four cases,** up to finalisation of Audit Report

Excise and Taxation Department

4.1 Non-levy of interest

Assessing Authorities in six ACsST raised additional demand of ₹5.18 crore in 29 assessment cases on account of non-submission of statutory declarations but did not levy interest of ₹2.08 crore.

Section 32(1) of the Punjab Value Added Tax Act, 2005 (PVAT Act) provides that if a person fails to pay the amount of tax due from him as per provisions of this Act, he shall be liable to pay simple interest on the amount of tax at the rate of half *per cent* per month from the due date of payment till the date he actually pays the amount of tax. Further, Section 9(2B) of the Central Sales Tax Act, 1956 (CST Act) provides that all the provisions of the sales tax law of each State relating to due date for payment of tax, rate of interest, assessment and collection of interest for delayed payment of tax, shall apply in relation to tax due under the CST Act.

Audit scrutiny (between July 2021 and February 2022) of 29 assessment cases finalised during 2019-20 to 2020-21 under six Assistant Commissioners[1] of State Tax (ACsST) revealed that the dealers had declared interstate sale/branch transfer/deemed export of taxable goods in their annual returns for the period from 2012-13 to 2014-15, and availed concession/exemption from Central sales tax on such sales in their annual returns. However, at the time of assessment, the dealers failed to produce statutory declarations in respect of transactions on which concession/exemption from Central sales tax had been availed in the annual returns. Consequently, the Assessing Authorities raised additional tax demands of ₹ 5.18 crore on account of differential tax amount due to non-submission of statutory declarations. Since the dealers had failed to produce statutory declarations, they were liable to pay interest of ₹ 2.08 crore at the rate of 0.5 *per cent* per month on the differential tax amount. However, the Assessing Authorities did not levy interest of ₹ 2.08 crore **(Appendix 4.1)**.

On being pointed out (between July 2021 and February 2022), the ACsST Jalandhar-II and Sangrur replied in 17 cases that Assessing Authorities have rightly not charged the interest because interest was not leviable for the period prior to date of assessment as per principles laid down by Hon'ble Supreme Court in case of J.K. Synthetics Ltd vs CTO (1994). They also referred to the cases of M/s Eicher Tractors Limited and M/s Eicher Goodearth Limited decided by Punjab and Haryana High Court on 2 December 2010 and 25 April 2013 respectively, where the High Court had relied on the principles laid down by the Apex Court in case of J.K. Synthetics Limited.

Replies of the ACsST Jalandhar-II and Sangrur were not acceptable because in the cases pointed out, audit had covered only such demands which were

[1] Jalandhar-I, Jalandhar-II, Ludhiana-I, Ludhiana-II, Bathinda, Sangrur

created due to failure of the dealers to produce statutory declarations at the time of assessment, while the dealers had already availed concessional payment of tax at the time of filing their tax returns. In the case of J.K. Synthetics Limited, the Apex Court, after considering various aspects, had ruled that tax law cannot expect the assessee to predicate the final assessment and expect him to pay the tax on that basis to avoid the liability to pay interest. That would be asking him to do the near impossible. However, in the cases pointed out by audit, the dealers had filed returns knowing the tax payable under the PVAT Act as well as under the CST Act. In order to get concessional rate of tax payable under the CST Act, the dealers knew that they had to furnish statutory declarations. They also knew that if they fail to furnish the statutory declarations, they would be liable to pay tax under the said Act. Therefore, the cases pointed out in audit are not such cases where the dealers were not aware of their liability to pay tax.

While expressing the above viewpoint, the audit had relied upon the case of M/s Maintec Technologies Pvt Ltd. vs State of Karnataka decided by High Court of Karnataka on 12 June 2014, where the dealer had failed to produce the statutory declaration form. In this case, the Court, after considering the principles laid down by the Apex Court, had decided that the dealer was conscious of his tax liability and was liable to pay interest from the date he was liable to pay tax, to compensate the delay in payment of tax. In a similar case of M/s Fosroc Chemicals (India) Pvt Ltd vs the State of Karnataka, the High Court of Karnataka had decided on 5 November 2014 that levy of interest in case of non-submission of statutory declaration forms was justified from the due date of tax payable till the date of assessment.

In addition to the above, the Government in its reply (September 2021) to a similar observation raised in the previous year, had accepted the applicability of interest at the rate of 0.5 *per cent* per month.

The matter was reported to the Government and Department (July 2022 and November 2022); their replies are awaited (February 2024).

The Government may direct the Department to fix responsibility on the Assessing Authorities concerned and avoid repetition of such errors.

4.2 Non-levy of fee under Punjab Infrastructure (Development and Regulation) Act

Assessing Authorities did not levy Punjab Infrastructure Development Fee of ₹ 1.09 crore on first stage purchase of cotton in three cases.

Section 25(1) read with Schedule III of Punjab Infrastructure (Development and Regulation) Act, 2002 (PIDR Act) provides for levy[2] of fee at the rate of

[2] Fee at the rate of two *per cent* was applicable on Cotton Seed and Cotton up to 2 February 2014 and thereafter Cotton Seed and Cotton stood were exempted vide notification no. S.O.13/P.A.8/2002/S.25/2014 dated 3 February 2014.

two *per cent* at the first stage of purchase of cotton seed and cotton. Further, Section 25(3) of the Act provides that the authorities empowered to assess and collect the tax under Punjab Value Added Tax Act, 2005 will also assess and collect the fee under PIDR Act and the provisions of PVAT Act relating to assessment and collection shall apply accordingly.

Audit scrutiny (September 2021 to January 2022) of records of two Assistant Commissioners of State Tax revealed that the Assessing Authorities did not levy fee of ₹ 1.09 crore in three cases[3] assessed between August 2019 and November 2020. In these cases, the fee under PIDR Act was leviable on the first stage of purchase of cotton valuing ₹ 54.66 crore, which was declared by the dealers in their VAT returns. However, neither did the dealers pay the applicable fee, nor did the Assessing Authorities levy fee during assessment of the cases. The omissions resulted in non-levy of fee of ₹ 1.09 crore **(Appendix 4.2)** under PIDR Act.

The matter was reported to the Government and Department (July 2022 and November 2022). ACST Mansa replied (October 2022) that fee was not levied due to oversight. Now fee of ₹ 0.91 crore had been levied in the revised assessment orders of two cases of Mansa. ACST Sangrur in one case of ₹ 0.18 crore replied (December 2022) that revision of the assessment had been taken up.

The Government may direct the Department to fix responsibility on the Assessing Authorities concerned for the lapses and ensure that provisions of Section 25(3) of Punjab Infrastructure (Development and Regulation) Act, 2002 are adhered to during assessments.

4.3 Excess brought forward balance of input tax credit

Assessing Authorities in two cases brought forward input tax credit of ₹0.60 crore, in excess of what was determined in assessment orders of the preceding year.

Section 15(4) of the Punjab Value Added Tax Act, 2005 provides that excess amount of input tax credit, if any, after adjustment of tax liability for a tax period, may be carried over to the subsequent tax period.

Scrutiny of records (November and December 2021) of Assistant Commissioners of State Tax Ludhiana-I and Mohali revealed that the Assessing Authorities, while assessing the cases of two dealers for the year 2013-14, determined the unutilised carry forward balance of input tax credit as ₹ 1.93 crore. However, audit observed that the Assessing Authorities in these cases brought forward opening balance of input tax credit of ₹ 2.53 crore in the assessment orders for the year 2014-15. This resulted in excess allowance of input tax credit of ₹ 0.60 crore (**Appendix 4.3**).

[3] Mansa (2) and Sangrur (1)

The matter was reported to the Government and Department (February 2023). Assistant Commissioner of State Tax, Mohali in one case involving ₹ 0.31 crore accepted (May 2023) the audit observation and initiated revision of the assessment case. Reply in case of Assistant Commissioner of State Tax, Ludhiana-I was awaited (July 2023).

The Government may direct the Department to ensure that due diligence is exercised by the Assessing Authorities during assessments besides fixing responsibility on the officials for such lapses.

4.4 Omissions in assessments

Assessing Authorities made omissions in assessment orders involving tax implication of ₹ 0.24 crore in four cases.

Rule 48 of PVAT Rules, 2005 provides that the designated officer, after considering the objections and documentary evidence, if any, filed by the person, shall pass an order of assessment in writing, determining the tax liability of such a person.

Audit observed (July 2021 to December 2021) that four Assistant Commissioners[4] of State Tax made omissions in assessment orders involving tax implication of ₹ 0.24 crore in four cases. The cases are discussed below.

[A] Audit scrutiny (September 2021) of a case[5] assessed by the Assistant Commissioner of State Tax (ACST), Bathinda in November 2019 revealed that the dealer purchased 'Schedule-H' goods (cotton/*narma*) worth ₹ 52.34 crore[6] during the year 2012-13, on which input tax credit of ₹ 2.30 crore[7] at the rate of 4.4 *per cent* was allowed. Gross sale of the dealer was ₹ 56.33 crore, of which Schedule 'H' or goods manufactured therefrom having value of ₹ 4.08 crore was in the course of interstate sales, on which the dealer paid Central sales tax of ₹ 0.08 crore at the rate of two *per cent*. As per provisions of Section 19(5) of the Punjab Value Added Tax Act, 2005, input tax credit admissible against Schedule 'H' or goods manufactured therefrom, which were sold outside of the State, was subject to be restricted by the amount that the dealer had paid on account of Central sales tax. Audit observed that cotton/*narma* worth ₹ 3.79 crore was included within interstate sale of ₹ 4.08 crore and input tax credit of ₹ 0.17 crore at the rate of 4.4 *per cent* (including surcharge) was availed by the dealer on such cotton/*narma*, however, Central sales tax of ₹ 0.08 crore at the rate of two *per cent* was paid during interstate sale. The Assessing Authority did not reverse the input tax credit of ₹ 0.09 crore, which was availed in excess of the

4 Bathinda, Ludhiana-I, SAS Nagar, Jalandhar-II

5 Assessment Disposal No. 288 dated 1 November 2019

6 Purchases under Section 19(1): ₹ 49.84 crore and other local purchases: ₹ 2.50 crore (₹ 2.11 crore + ₹ 0.39 crore)

7 Input Tax Credit of ₹ 2.19 crore on account of Purchase Tax paid under Section 19(1) of the Punjab Value Added Tax Act, 2005 and ₹ 0.11 crore on account of other local purchases.

limit prescribed by Section 19(5) of the Act. This omission resulted in excess allowance of input tax credit of ₹ 0.09 crore **(Appendix 4.4)**.

On being pointed out, Assistant Commissioner of State Tax, Bathinda replied (May 2023) that additional tax demand of ₹ 0.22 crore[8] (including interest) has been created. Recovery was awaited (July 2023).

[B] Audit observed (December 2021) that the Assistant Commissioner of State Tax, Ludhiana-I, while assessing the case[9] of a dealer for the year 2013-14, brought forward input tax credit of ₹ 0.36 crore from the previous year, whereas input tax credit assessed to be carried forward was ₹ 0.27 crore in the assessment order for the year 2012-13. The omission in assessment resulted in excess allowance of input tax credit of ₹ 0.09 crore to the dealer.

On being pointed out, Assistant Commissioner of State Tax, Ludhiana-I accepted (March 2023) the omission caused due to oversight.

[C] Audit observed (October 2021) that the Assistant Commissioner of State Tax, S.A.S. Nagar, while assessing the case[10] of a dealer for the year 2013-14, adjusted the input tax credit of ₹ 0.04 crore available with the dealer from the liability of Central sales tax of ₹ 0.40 crore. Further, the dealer had paid ₹ 0.24 crore in cash towards Central sales tax. However, the Assessing Authority adjusted ₹ 0.28 crore as payment in cash by including ₹ 0.04 crore, that was paid from input tax credit. Thus, the Assessing Authority allowed benefit of ₹ 0.04 crore twice, resulting in short output tax liability of Central sales tax of ₹ 0.04 crore.

On being pointed out, Assistant Commissioner of State Tax, S.A.S. Nagar accepted (May 2023) the audit observation and informed that rectified assessment order has been issued. Recoveries were awaited (July 2023).

[D] Audit observed (July 2021) that Assessing Authority under Assistant Commissioner of State Tax, Jalandhar-II, while assessing (November 2019) the case[11] of a dealer for the year 2012-13 assessed Central sales tax liability of ₹ 0.20 crore at the normal rate of tax applicable in the State due to short 'C' forms. However, Assessing Authority omitted to levy surcharge of ₹ 0.02 crore at the rate of 10 *per cent* on the assessed tax liability of ₹ 0.20 crore in terms of provisions of Section 8-B of the Punjab Value Added Tax Act, 2005.

On being pointed out, Assistant Commissioner of State Tax, Jalandhar-II replied (April 2023) that additional tax demand[12] of ₹ 0.014 crore (including

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8 Tax Demand ₹ 7,79,206 and interest ₹ 13,91,051

9 Assessment Disposal No. 214 Dated 14 December 2020

10 Assessment Disposal No. 366 Dated 10 December 2020

11 Assessment Disposal No. 754 Dated 7 November 2019

12 Tax Demand ₹ 93,222 and interest ₹ 50,338. Recovery of ₹ 93,222 has been made.

interest) has been created, out of which recovery of ₹ 0.009 crore has been made. The remaining amount was under process of recovery.

Above matters were reported to the Government and Department (November 2022 to January 2023); their replies are awaited (February 2024).

The Government may direct the Department to recover ₹ 0.24 crore in the cases pointed out and fix responsibility on Assessing Authorities concerned for the lapses.

4.5 Allowance of advance tax without payment of tax by the dealers

The Assessing Authority adjusted tax of ₹ 0.22 crore from final tax liability of two dealers without ensuring payment of advance tax made by the dealers.

Section 6(7) of the Punjab Value Added Tax Act, 2005 provides that the taxable person shall pay tax in advance including surcharge applicable on specified goods, when a taxable person imports such goods in the State. Such payment of tax in advance shall be counted towards the final tax liability of the taxable person.

Scrutiny of two assessment cases (February 2022) for the years 2012-13[13] and 2013-14[14] assessed in Assistant Commissioner of State Tax, Sangrur revealed that the Assessing Authority adjusted ₹ 0.24 crore from the final tax liability of two dealers on the basis of amount of advance tax mentioned in their returns. Audit observed that the evidences for payment of advance tax of ₹ 0.24 crore were not available in the assessment records. Further verification by audit in respect of information available under ETTSA[15] system, related to advance tax paid by the dealers, revealed that only ₹ 0.02 crore had been paid by one of the dealers. Thus, allowance of advance tax by Assessing Authority without ensuring actual payment made by the dealers resulted in short levy of output tax of ₹ 0.22 crore (**Appendix 4.5**).

The matter was reported to the Government and Department (November 2022). Assistant Commissioner of State Tax, Sangrur in his reply (November 2022) accepted the audit observation and stated that both the assessment cases have been taken up for amendment with the permission of the Taxation Commissioner.

The Government may direct the Department to recover ₹ 0.22 crore referred to in this paragraph and fix responsibility on the Assessing Authority allowing the benefit of advance tax without verifying its realisation into the treasury.

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13 Assessment Disposal No. 84 dated 18 November 2019

14 Assessment Disposal No. 33 dated 8 October 2020

15 Computerised record maintained by Excise and Taxation Technical Services Agency in respect of Punjab Value Added Tax.

4.6 Short levy of tax on deficient statutory declaration forms

The Assessing Authority allowed benefit of concessional rate of tax on interstate sale with deficient 'C' forms which resulted in short levy of tax of ₹ 0.15 crore.

Sections 8(1) and 8(4) of Central Sales Tax (CST) Act, 1956 read with Rule 12(1) of Central Sales Tax (Registration and Turnover) Rules, 1957 provides that concessional tax at the rate of two *per cent* in case of interstate sale shall not apply unless the selling dealer furnishes to the prescribed authority, a declaration in Form 'C', duly filled and signed by the registered dealer to whom the goods are sold. Section 9(2) of Central Sales Tax Act, 1956 and Rule 2(cc) of Central Sales Tax (Registration and Turnover) Rules, 1957 provide that the prescribed authority in this case is the sales tax authority of the appropriate State.

Audit scrutiny (November 2021) of an assessment case[16] for the year 2013-14, assessed in December 2020 under Assistant Commissioner of State Tax, Ludhiana-III revealed that the Assessing Authority allowed concessional rate of tax of two *per cent* on interstate sale of ₹ 78.10 crore. However, as per VAT-20 return, the dealer had provided 709 'C' forms, the value of which was only ₹ 72.92 crore. Thus, concessional tax allowed on deficient 'C' forms having value of ₹ 5.18 crore was irregular, which resulted in short levy of tax of ₹ 0.15 crore as detailed in **Table 4.1.**

Table 4.1: Short levy of tax due to excess benefit of concessional tax

(₹ in crore)

Value of goods as per assessment orders	Details of 'C' forms		Difference	Tax Rate (*per cent*)	Short levy of tax
	Number of forms	Actual value of goods covered under 'C' forms			
78.10	709	72.92	5.18	2.95[17]	0.15

On being pointed out (November 2021), ACST Ludhiana-III replied (December 2022) that the dealer had been directed to submit the 'C' forms objected by audit. Further, ACST intimated (January 2023) that the assessment case would be taken up for revision.

The reply (December 2022) of the ACST acknowledges the fact that the Assessing Authority had allowed the concessional rate of tax without obtaining 'C' forms valuing ₹ 5.18 crore at the time of assessment and the same were being asked from the dealer only after the objection had been raised by audit.

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16 Assessment Disposal No. 571 dated 15 December 2020

17 4.95 *per cent* (including surcharge) applicable rate of tax *minus* 2.00 *per cent* already paid. The rate of 4.95 *per cent* has been applied by adopting conservative audit approach as the dealer is also dealing in goods with higher tax rate but due to non-identification of specific commodity involved in interstate sale from the document available with Audit, the lower tax rate applicable to dealer's commodities has been applied by Audit. The Department may apply actual rate of tax on the basis of commodities involved in the pointed out 'C' forms.

The above matter was reported to the Government and Department (December 2022 and January 2023); their replies are awaited (February 2024).

The Government may direct the Department to recover ₹ 0.15 crore and fix responsibility on the officials concerned for allowing concessional rate of tax in the assessment order without obtaining statutory declaration forms from the dealer.

4.7 Inadmissible allowance of input tax credit

The Assessing Authority allowed input tax credit of ₹ 0.12 crore on goods which were not used towards taxable sale.

As per provisions contained under Section 13(1) of Punjab VAT Act, 2005, the tax paid on purchase of taxable goods within the State is available as input tax credit only when the goods are used in manufacture, processing and/or packing of taxable goods for sale.

Audit scrutiny (December 2021) of assessment records of Assistant Commissioner of State Tax, Ludhiana-I revealed that the Assessing Authority, while assessing the assessment case[18] of a dealer for the year 2013-14, allowed credit of tax that was paid by the dealer on purchases of taxable goods, however, all such purchased goods were not used towards taxable sale. Audit observed that the dealer had taxable purchases worth ₹ 8.32 crore on which input tax credit of ₹ 0.50 crore (including surcharge) was availed. Further, the dealer used tax paid purchases worth ₹ 8.13 crore towards sales, out of which only sale valuing ₹ 5.06 crore was tax paid. The remaining sale valuing ₹ 3.07 crore was tax-free. The dealer was not entitled for the input tax credit of ₹ 0.16 crore involved in the goods of ₹ 3.07 crore, which were cleared without paying tax. However, the dealer reversed only ₹ 0.04 crore in his return. The Assessing Authority did not reverse input tax credit of ₹ 0.12 crore during assessment resulting in inadmissible allowance of input tax credit of ₹ 0.12 crore (**Appendix 4.6**).

On being pointed out, Assistant Commissioner of State Tax, Ludhiana-I accepted (January 2023) the monetary implication to the extent of ₹ 0.03 crore. However, the reply of the ACST was not acceptable because calculations presented by the Department did not address the audit observation on input tax credit. No reply was given on the fact that input tax credit on purchases of ₹ 8.32 crore was availed, whereas output tax on ₹ 5.06 crore was determined. Therefore, in contravention of the provisions contained under Section 13(1) of Punjab VAT Act, 2005, input tax credit was allowed on such purchases against which output tax was not paid.

The matter was reported to the Government and Department (December 2022 and January 2023); their replies are awaited (February 2024).

[18] Assessment Disposal No. 443 dated 4 December 2020

The Government may direct the Department to recover ₹ 0.12 crore referred to in this paragraph and fix responsibility on Assessing Authority for the lapses.

4.8 Irregular allowance of concession of tax on ingenuine 'C' Forms

The Assessing Authority allowed irregular concession of Central Sales Tax of ₹ 0.10 crore in one assessment case without ensuring that 'C' forms were genuine.

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

Scrutiny of records (December 2021) in Assistant Commissioner of State Tax, Ludhiana-I revealed that the Assessing Authority allowed concessional tax (CST) of two *per cent* in one assessment case[19] of a dealer for the year 2013-14 against interstate sale of goods worth ₹ 3.76 crore on the basis of 17 'C' forms. Out of these 17 'C' forms, audit noticed that 12 'C' forms involving ₹ 2.59 crore were suspicious as they were not found on TINXSYS[20]. Audit verified these suspected 12 'C' forms from the respective issuing taxation authorities[21] and found that these forms were not issued by the concerned taxation authorities, and hence were not genuine. The Assessing Authority allowed the concessional rate of tax without ensuring that the forms were genuine. CST of ₹ 0.15 crore at the normal rate of 6.05 *per cent* was leviable on the goods of ₹ 2.59 crore, whereas CST of ₹ 0.05 crore at concessional rate of two *per cent* was levied. This resulted in irregular allowance of concessional tax of ₹ 0.10 crore[22].

The matter was reported to the Government and Department (November 2022 and December 2022). Assistant Commissioner of State Tax, Ludhiana-I replied (March 2023) that permission of the Commissioner has been sought for revision of the assessment case so that issue pointed out by audit may be addressed.

The Government may direct the Department to recover ₹ 0.10 crore and investigate the source of the fake statutory forms to fix responsibility on the person(s) involved.

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19 Assessment Case Disposal No. 147 dated 23 November 2020

20 Tax Information Exchange System (TINXSYS) is a project to facilitate effective tracking of inter-State transactions. The project is designed to facilitate Commercial Tax Departments of various States and Union Territories to exchange the data regarding the interstate trade and help them in checking evasion of tax.

21 Haryana: 2 'C' forms (HR/C 4276890, HR/C 4453120), Himachal Pradesh: 4 'C' forms (HP A/I 4521968, HP A/I 4521344, HP A/I 4523897, HP A/I 4522710), Uttar Pradesh: 3 'C' forms (423814356, 423764220, 423761234), Jammu Kashmir: 3 'C' forms (07V-908765, 07V-808510, 07V-712345)

22 Tax of ₹ 10,48,162 at the differential rate of tax of 4.05 *per cent* on value of ₹ 2,58,80,552 of 12 'C' forms

Department of Revenue, Rehabilitation and Disaster Management

4.9 Short levy of stamp duty, registration fee and infrastructure development fee on power of attorney

Joint Sub-Registrar Zirakpur and Sub-Registrar Derabassi did not levy stamp duty, registration fee and infrastructure development fee at applicable rates to conveyance, on power of attorney granting irrevocable and unequivocal rights to the developers for development, construction and sale of immovable property resulting in short levy of stamp duty, registration fee and infrastructure development fee of ₹ 1.74 crore.

The Supreme Court of India in SLP (C) No. 13917 of 2009 observed that power of attorney transactions were resorted to by persons, *inter alia*, who deal in real estate to avoid multiple stamp duties/registration fees so as to increase their profit margin. Thereafter, the Government of Punjab amended (October 2016) Entry 48(f) of Schedule I-A of the Indian Stamp Act, 1899 as applicable to Punjab and levied stamp duty on power of attorney at the rate as applicable to conveyances (Entry 23), when power of attorney was given for consideration and the attorney was authorised to sell any immovable property.

Scrutiny of records of Joint Sub-Registrar, Zirakpur (September 2020) and Sub-Registrar, Derabassi (August 2021) for the years 2019-20 and 2020-21 respectively, revealed that in two cases, landowners and developers entered into Joint Development Agreements to develop the property comprising commercial showrooms and residential structures. A Power of Attorney was also executed on the same day in both cases. By virtue of Joint Development Agreement and Power of Attorney, the landowners granted irrevocable and unequivocal rights of land to the developers for development, construction and sale of residential or commercial properties against consideration amount of ₹ 24.30 crore[23]. Being power of attorneys given in lieu of consideration and authorising attorneys to sell the immovable properties, the registering authorities were required to levy stamp duty, registration fee and infrastructure development fee of ₹ 1.74 crore. However, the power of attorneys were registered by levying stamp duty, registration fee and infrastructure development fee of only ₹ 4,800. This resulted in short levy of stamp duty, registration fee and infrastructure development fee of ₹ 1.74 crore **(Appendix 4.7)**.

The matter was reported to the Government and Department (between August 2021 and March 2023). The Department in its reply (March 2023) intimated that recovery orders for ₹ 0.42 crore against Derabassi case had been

[23] (i) In case of Derabassi (JDA-18), the consideration amount of ₹ 13.50 crore had been mentioned in Annexure-B, forming part to Clause 4.2.4 of Joint Development Agreement.
(ii) In case of Zirakpur (JDA-71), the owner had agreed to receive 40 *per cent* of sale proceeds under Clause 4 titled 'Consideration' and minimum anticipated sale proceeds was mentioned as ₹ 27.00 crore. Accordingly, 40 *per cent* of the minimum anticipated sale proceeds, which worked out to ₹ 10.80 crore, had been considered in the paragraph.

issued on the basis of the audit observation. The case of Zirakpur was taken up under Section 47-A of the Stamp Act for decision. However, both the cases pointed out would be revisited for recovery of ₹ 1.74 crore in view of money value revised[24] by audit.

The Government may direct the Department to fix responsibility on the registering authorities concerned for lapses and ensure that applicable stamp duty in such cases is invariably levied.

4.10 Short levy of stamp duty, registration fee and infrastructure development fee due to misclassification of properties and incorrect application of Collector's rates

Five Sub-Registrars short-levied stamp duty, registration fee and infrastructure development fee of ₹ 1.20 crore in 36 cases due to misclassification of properties and incorrect application of Collector's rates.

Rule 3-A of the Punjab Stamp (Dealing of under-valued instruments) Rules, 1983 empowers the Collector of a district to fix the minimum market value of land/properties located in the district, locality-wise and category-wise and convey the same to the Registering Officer(s) for the purpose of levying stamp duty and registration fee on instruments of transfer of property.

Scrutiny of the records (between November 2021 and March 2022) of five Sub-Registrars[25] revealed that 36 instruments of transfer of properties were valued at ₹ 6.26 crore and registered by applying rates for agricultural properties on which stamp duty, registration fee and infrastructure development fee of ₹ 0.48 crore was levied. However, the category of these properties at the time of registration was residential/industrial as per *girdawari* report, or the properties fell in such locations for which higher rate was prescribed in the rate list. Therefore, the properties were required to be valued at ₹ 21.61 crore and stamp duty, registration fee and infrastructure development fee of ₹ 1.68 crore was required to be levied. The misclassification of properties and incorrect application of Collector's rate resulted in short levy of stamp duty, registration fee and infrastructure development fee of ₹ 1.20 crore **(Appendix 4.8)**.

On being pointed out, Sub-Registrar, Jalandhar-II intimated (January 2023) recoveries of ₹ 0.07 crore in two cases[26]. Sub-Registrar, Baba Bakala Sahib replied (November 2022) in two cases that the matter was sent to Additional Deputy Commissioner for decision under Section 47-A of Indian Stamp Act, 1899. Sub-Registrar, Ludhiana (West) reported (April 2023) recovery of

[24] Money value in the Draft Paragraph was revised in March 2023 after receipt of 'Annexure-B' forming part to Clause 4.2.4 of Joint Development Agreement (JDA-18), which was earlier not provided to audit. In the absence of Annexure-B, the audit was initially constrained to adopt the collector value of land, which was revised after receipt of Annexure-B.

[25] Baba Bakala Sahib (2), Kharar (3), Jalandhar-II (2), Ludhiana South Central (2) and Ludhiana West (27)

[26] Deed No. 3355 dated 5.10.2020 and Deed No. 3442 dated 7.10.2020

₹ 0.03 crore in one case[27] and informed that 26 cases were pending for decision under Section 47-A of Indian Stamp Act, 1899. Sub-Registrar, Kharar in three cases informed (April 2023) that the cases were sent for decision under Section 47-A of Indian Stamp Act, 1899. Sub-Registrar, Ludhiana (South Central) in two cases stated that replies would be sent after verification of records.

The matter was reported to the Government and Department (between November 2022 and January 2023); their replies are awaited (February 2024).

The Government may direct the Department to fix responsibility on the registering authorities concerned for short levies and ensure that collector rate lists are prepared accurately.

4.11 Non-levy of stamp duty and registration fee on mortgage

Sub-Registrar, Phagwara did not levy stamp duty and registration fee of ₹ 0.30 crore on mortgage against the loan of ₹ 28.00 crore secured by industrial unit from a bank for the purpose of industrial production of poultry farm feed.

Punjab Government in June 2001 allowed remission[28] from payment of stamp duty and registration fee on any instrument executed by any person for securing loan from a Bank, Cooperative Society or Banking Institution subject to the condition that the loan was secured to meet expenditure for agricultural purposes or purposes allied to it including machinery and building, which was not used for commercial purpose. Further, stamp duty and registration fee at the rate of one *per cent* each was leviable[29] on mortgage deeds registered by industrial units.

Audit scrutiny (October 2021) of records of Sub-Registrar, Phagwara for 2019-21 revealed that the Sub-Registrar registered a mortgage[30] of an industrial unit in August 2019 without levying stamp duty and registration fee of ₹ 0.30 crore. The mortgage was against the loan of ₹ 28.00 crore secured from a bank for the purpose of industrial production of poultry farm feed. As the loan was secured for the industrial production of poultry farm feed, the registration of mortgage for such commercial activity was not eligible for remission from the payment of stamp duty and registration fee. The omission resulted in non-levy of stamp duty and registration fee of ₹ 0.30 crore[31].

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27 Deed No. 3831 dated 16.09.2020

28 Order no. S.O. 26/C.A.16/1908/Ss.78 and 79/Amd./2001 dated 21 June 2001 for remission of Registration Fee and Order no. S.O. 27/C.A.2/1899/S.9/Amd./2001 dated 21 June 2001 for remission of Stamp Duty.

29 Stamp Duty at the rate of one *per cent* as per Notification No. S.O.9./C.A.2/1899/S.9/2019 dated 7 February 2019 and Registration Fee at the rate of one *per cent* subject to maximum of rupees two lakh as per Notification No. S.O. 11/C.A.16/1908/Ss.78 and 79/Amd./2019 dated 4 February 2019.

30 Registration No. 97 dated 19 August 2019

31 Stamp duty ₹ 0.28 crore at the rate of one *per cent* and registration fee at the rate of one *per cent* subject to maximum of rupees two lakh.

The matter was brought to the notice of the Government and Department (July 2022 and November 2022). The Sub-Registrar, Phagwara replied (August 2022) that the case has been referred to Deputy Commissioner, Phagwara under Section 47-A of Indian Stamp Act, 1899.

The Government may direct the Department to fix responsibility on the registering authority concerned and ensure that legislative intent behind remissions are allowed correctly.

4.12 Short levy of stamp duty and registration fee on agreement to sell

Sub-Registrar, Phagwara short-levied stamp duty and registration fee of ₹ 0.27 crore (along with social infrastructure cess and infrastructure development fee) on an 'Agreement to Sell' with delivery of possession of the property.

Entry 5(cc) of Schedule I-A of Indian Stamp Act, 1899, as applicable to State of Punjab, provides that in case an 'Agreement to Sell' is followed by or evidencing delivery of possession of the immovable property, the same stamp duty would be applicable as is leviable in case of other conveyances[32] as per Entry 23 of Schedule I-A.

The Government of Punjab levied Social Infrastructure Cess at the rate of one *per cent* in February 2013 and Infrastructure Development Fee at the rate of one *per cent* in June 2015 on the value of purchase of any immovable property mentioned under Entry 23 of Schedule I-A.

Registration fee at the rate of one *per cent* of the value of the document is chargeable, subject to minimum of ₹ 50 and maximum of ₹ 2 lakh on all documents, which are compulsorily registrable (other than leases of immovable property).

Scrutiny of records (October 2021) of Sub-Registrar, Phagwara for 2020-21 revealed that an 'Agreement to Sell[33]' for land measuring 63 *Kanal* 18 *Marla* was registered on 15 July 2020 by levying stamp duty and registration fee of ₹ 0.01 crore[34] only. As per the said agreement, the selling party had already received ₹ 5.25 crore as consideration amount and had delivered physical possession of the property to the purchasing party before registration of the instrument. Audit further observed that no conveyance deed was registered by the parties to 'Agreement to Sell' up to February 2023. As per provisions of Schedule I-A, the Sub-Registrar was required to levy stamp duty and registration fee of ₹ 0.28 crore[35] (along with social infrastructure cess and infrastructure development fee) at the time of registration of the 'Agreement to Sell', however, stamp duty and registration fee of ₹ 0.01 crore was levied by

[32] Stamp Duty at the rate of three *per cent* is applicable on other conveyances as per Entry 23 of Schedule I-A.

[33] Deed No. 67 dated 15 July 2020

[34] Stamp Duty: ₹ 4,000 and Registration Fee: ₹ 1,00,000

[35] Stamp Duty: ₹ 15,75,000, Registration Fee: ₹ 2,00,000, Social Infrastructure Cess: ₹ 5,25,000 and Infrastructure Development Fee: ₹ 5,25,000

the Sub Registrar. This resulted in short levy of stamp duty and registration fee of ₹ 0.27 crore[36] (along with social infrastructure cess and infrastructure development fee).

The matter was reported to the Government and Department (October 2021 and February 2023). The Sub-Registrar, Phagwara replied (March 2023) that audit observation has been accepted and recovery orders have been issued by the Collector.

The Government may direct the Department to fix responsibility on the registering authority concerned for the lapse and ensure that duties on agreements to sell are correctly levied.

Transport Department

4.13 Short/non-realisation of motor vehicle tax and surcharge from tourist permit buses and maxi/motor cabs

The State Transport Department did not collect motor vehicle tax and surcharge of ₹ 0.49 crore in respect of 18 tourist permit buses and 432 maxi/motor cabs. Further, Vahan 4.0 system had no provision of charging interest on delayed payments of motor vehicle tax in line with the provisions of the Act.

Section 3 of the Punjab Motor Vehicle Taxation Act, 1924, as amended by the Punjab Motor Vehicle Taxation (Amendment Act), 2007 provides for imposition of tax on every motor vehicle on year-to-year basis and empowers the State Government to fix the rates of Motor Vehicle Tax (MVT). The Government of Punjab fixed the rates of MVT for tourist buses as ₹ 7,000 and for maxi/motor cabs as ₹ 750 per seat per annum, registered in the State of Punjab. The tax was payable monthly, quarterly or annually in advance by the 15th of the month or by the 15th of the first month of the quarter or 15th April of the year, as the case may be. Further, in pursuance to Section 3(iii) of the Punjab Social Security Act, 2018, the Government of Punjab levied[37] Social Security surcharge at the rate of ten *per cent* of tax on transportation vehicles, which was payable with effect from 16 November 2018.

Further, Section 11-A of the Punjab Motor Vehicle Taxation Act, 1924 provides that vehicle owner shall pay simple interest at the rate of one and half *per cent* per month for failure to pay the due amount of motor vehicle tax.

Audit observed (July 2022) from the data analysis of Vahan 4.0 portal and scrutiny of records of the State Transport Commissioner that motor vehicle tax including social security surcharge of ₹ 0.49 crore **(Appendix 4.9)** in respect

[36] Stamp Duty: ₹ 15,71,000, Registration Fee: ₹ 1,00,000, Social Infrastructure Cess: ₹ 5,25,000 and Infrastructure Development Fee: ₹ 5,25,000

[37] Notification No. S.O./150/P.A.8/2018/S.3/2018 Dated 22 October 2018

of 18 tourist permit buses[38] and 432 maxi/motor cabs[39] was recoverable for the year 2020-21[40].

Audit further observed that there was no provision in Vahan 4.0 to charge interest on delayed payments of motor vehicle tax, whereas computerised systems are expected to be mapped with the relevant Acts and Rules for which these are designed so that the provisions of such Acts and Rules are implemented effectively.

On being pointed out in audit (July 2022), the State Transport Commissioner replied (July 2022) that recoveries would be made and intimated to audit.

The matter was reported to the Government and Department (October 2022 and January 2023); their replies are awaited (February 2024).

4.14 Short recovery of motor vehicle tax and social security surcharge from goods vehicles

Eleven Regional Transport Authorities of Punjab short-recovered Motor Vehicle Tax and Social Security Surcharge of ₹ 0.37 crore from 1,076 goods vehicles.

Section 3 of the Punjab Motor Vehicle Taxation Act, 1924, as amended by the Punjab Motor Vehicle Taxation (Amendment Act), 2007 provides for imposition of tax on every motor vehicle on year-to-year basis and empowers the State Government to fix the rates of motor vehicle tax. Government of Punjab in the Department of Transport fixed (September 2017) rates[41] of motor vehicle tax payable for Goods Vehicles registered in the State of Punjab based on Gross Vehicle Weight. The tax shall be paid in advance for full year or quarterly in four equal instalments commencing on the first day of April, the first day of July, the first day of October and the first day of January. Further, Department of Finance, Government of Punjab, in pursuance to Section 3(iii) of the Punjab Social Security Act, 2018 levied (22 October 2018) Social Security Surcharge at the rate of ten *per cent* of tax on transportation vehicles with effect from 16 November 2018.

Audit observed (between July and September 2022) from the data analysis of VAHAN 4.0 portal and scrutiny of records in 11 Regional Transport Authorities (RTAs) for the year 2020-21, that motor vehicle tax including social security surcharge of ₹ 1.20 crore was recovered from 1,076 Goods

[38] Out of 121 number of tourist buses registered with the department.

[39] Out of 19,679 number of maxi/motor cabs registered with the department.

[40] Due to Covid-19 pandemic, the Government of Punjab exempted tourist buses and maxi/motor cabs from payment of MVT from 23 March 2020 to 19 May 2020 under Section 13(3) of Punjab Motor Vehicle Taxation Act, 1924. The contract carriages up to 16 seaters (maxi/motor cabs) were further exempted from tax up to 31 December 2020. The exempted period has been excluded while calculating the MVT in the audit para.

[41] Goods Vehicles having Gross Vehicle Weight
(a) Not exceeding 1.2 tonnes: ₹ 5,000 per annum;
(b) Exceeding 1.2 tonnes, but not exceeding 6 tonnes: ₹ 7,000 per annum;
(c) Exceeding 6 tonnes, but not exceeding 16.2 tonnes: ₹ 9,500 per annum;
(d) Exceeding 16.2 tonnes, but not exceeding 25 tonnes: ₹ 15,000 per annum; and,
(e) Exceeding 25 tonnes: ₹ 22,000 per annum.

Vehicles out of total tax of ₹ 1.57 crore payable by these vehicles. This resulted in short recovery of motor vehicle tax and social security surcharge of ₹ 0.37 crore.[42]

On being pointed (between July and September 2022), the concerned RTAs replied (September 2022 and December 2022) that recoveries would be made.

The matter was reported to the Government and Department (October 2022 and November 2022); their replies are awaited (February 2024).

4.15 Plying of transport vehicles without mandatory permits

Eleven Regional Transport Authorities of Punjab did not recover permit application fee and permit fee of ₹0.19 crore from 542 transport vehicles.

Section 66(1) of the Motor Vehicles Act, 1988 provides that no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place, save in accordance with the conditions of a permit[43] granted or counter-signed by a regional or State authority. The goods vehicles having gross weight less than 3,000 kilograms are not required to obtain permits as mentioned under Section 66(3)*(i)* of the Act. Further, e-carts and e-rickshaws used for the purpose of carriage of goods and passengers are also exempt[44] from the provisions of Section 66(1) of the Act.

Plying vehicle without permit is punishable offence under Section 192A of the Act. First offence is punishable with a fine and subsequent offence is punishable with imprisonment or fine or both.

Rule 67 of the Punjab Motor Vehicles Rules, 1989 prescribes the amount of application fee for grant or renewal of permit and Rule 68 prescribes the amount of permit fee payable for different categories of transport vehicles.

Audit analysis of Vahan portal data in respect of all eleven Regional Transport Authorities (RTAs) revealed that 6,732 transport vehicles registered with the Department during the period from April 2020 to March 2021 were without permits, out of which 6,139 vehicles were exempt from the requirement of permits being e-Rickshaws[45] and goods carriers[46] having laden weight less than 3,000 kilograms. During audit examination of remaining 593 vehicles under the concerned Regional Transport Authorities, it was noticed that 51 vehicles had paid permit fee and application fee for grant or renewal of permit, leaving 542 vehicles which had not paid mandatory fee. Audit further noticed that out of 542 vehicles, 535 vehicles were plying on roads without obtaining mandatory permits as evidenced from the payment history of motor vehicle tax of these vehicles. Permit application fee and permit fee amounting

[42] Due to Covid-19 pandemic, the Government of Punjab exempted Goods Vehicles from payment of MVT from 23 March 2020 to 19 May 2020. This period has been excluded while calculating the MVT in the audit para.

[43] Duration of permit is five years from the date of issue.

[44] Order No. S.O. 2812(E) dated 30 August 2016 issued by Ministry of Road Transport and Highways, Government of India.

[45] 456 e-Rickshaws

[46] 5,683 goods vehicles

to ₹ 0.19 crore was payable by the owners of 542 vehicles, which was not recovered by the Department. Moreover, plying of transport vehicles without mandatory permits was a punishable offence, which invites action of the Department under Section 192A of the Act.

On being pointed out (between July to September 2022), seven RTAs[47] replied that recoveries would be made. RTA Hoshiarpur and Patiala replied that action would be taken after verification. RTA Sangrur replied that as per advisory of Ministry of Road Transport, the permits expired between February 2020 and October 2021 were treated as valid up to October 2021 due to Covid-19. Further, if owner approaches late for renewal of permits, the penal fee is also charged from him. Moreover, if a vehicle is found plying without mandatory permit, the penalties are imposed through traffic police by routine checking. It was also stated that amounts pointed out by audit would be recovered as per procedures mentioned above. RTA Mohali did not furnish reply.

Reply of the RTA Sangrur was not acceptable because audit had raised objection in respect of new registrations only, whereas the advisory was issued for the already expired permits.

The matter was reported to the Government and Department (December 2022 and January 2023); their replies are awaited (February 2024).

Chandigarh
The 13 May 2024

(NAZLI J. SHAYIN)
Principal Accountant General (Audit), Punjab

Countersigned

New Delhi
The 21 May 2024

(GIRISH CHANDRA MURMU)
Comptroller and Auditor General of India

[47] Amritsar, Bathinda, Faridkot, Ferozepur, Gurdaspur, Jalandhar and Ludhiana