

CHAPTER-III TAXES/ VAT ON SALES, TRADE, ETC.

Test check of the records relating to KVAT assessments and connected documents during 2021-22 showed under-assessment of tax and other irregularities involving ₹12.23 crore as given in the succeeding paragraphs.

3.1 Incorrect assessment in respect of works contractors leading to short levy of tax

As per Section 2(iv) of KVAT Act, 2003, “Works contract” includes any agreement for carrying out for cash or for deferred payment or other valuable consideration the construction, fitting out, improvement, repair, manufacture, processing, fabrication, erection, installation, modification or commissioning of any movable or immovable property. While finalising the assessment of a works contractor, the assessing authority shall verify the books of accounts and relevant records of the assessee to arrive at the taxable turnover correctly and apply the correct rate of tax. Normal rate of tax is 14.5 *per cent*. Concessional rates applicable to compounding scheme is seven *per cent* and that for Government work is five *per cent*. Failure of the assessing authority in arriving at the taxable turnover and in applying applicable rate of tax resulted in short levy of tax as detailed in paragraph 3.1.1 to 3.1.6.

Failure of the assessing officer to apply correct Rule led to short levy of tax and interest of ₹0.84 crore.

3.1.1 As per Section 2(iv) of KVAT Act, 2003, works contract is any agreement for carrying out construction, fitting out, improvement, fabrication etc. for a valuable consideration. Thus, it involves both material element and labour element. Rule 10(2)(a) of the KVAT Rules provides for various deductions permissible from the contract value for arriving at the taxable turnover. However, the contract receipt after deductions shall not fall below the value of the materials purchased. Rule 10(2)(b) provides for deduction of 25 *per cent* of the contract value as labour or other charges in cases where such charges are not ascertainable from the books of accounts.

M/s AZCON Construction and Properties (P) Ltd., is a registered works contractor on the rolls of the State Tax Office (Works Contract), Thrissur. As the assessee had not filed annual return or annual accounts for the year 2017-18, the assessment was done under Section 25(1) of the Act read with Section 25AA (September 2019). The assessing authority arrived at a total taxable turnover of ₹2.41 crore³⁴ creating a demand for ₹27.89 lakh.

³⁴ Turnover ₹2.17 crore and addition (25 per cent) for probable omission ₹24.50 lakh.

Audit scrutiny (December 2021) of the assessment records revealed that there was material purchase to the tune of ₹5.69 crore considered to be utilised for the contract work. However, the assessing authority failed to consider the value of material purchased in arriving at the taxable turnover as required under Rule 10(2)(a) of KVAT Rules, 2005. Since the assessing officer assessed only the turnover of ₹2.17 crore as against ₹5.69 crore, a turnover of ₹3.52 crore escaped from assessment resulting in short levy of tax and interest of ₹0.84 crore as shown in **Table - 3.1**.

Table – 3.1

Sl. No.	Particulars	Amount (₹)
1.	Purchase turnover utilised in works contract	5,68,90,777
2.	Turnover considered by the assessing authority (₹98,00,000 + ₹1,18,86,800)	2,16,86,800
3.	Turnover escaped (1-2)	3,52,03,977
4.	Tax due @14.5% on 3 above	51,04,576
5.	Interest @12% per annum for 64 months (8/2017 to 11/2022)	32,66,928
6.	Total short levy	83,71,504
		0.84 crore

In response to the audit observation, the Government stated (March 2023) that as the company did not produce the books of accounts, the taxable turnover as per Rule 10(2)(a) could not be ascertained as the requisite details such as labour charges, charges for planning and designing and the fee to the architect, cost of consumables used etc. were not available for arriving at the taxable turnover. The assessment was completed by arriving the taxable turnover as per Rule 10(2)(b) of the Kerala Value Added Tax Rules 2005 by deducting 25 per cent of the contract amount towards labour charges and other charges.

The reply is not relevant to the audit observation. Rule 10(2)(b) prescribes the manner in which the taxable turnover is arrived at in cases in which the details of labour or other charges are not ascertainable from the books of accounts of the dealer; whereas the audit observation is regarding the escaped turnover to the tune of ₹3.52 crore, which had been used for the contract work. The reply is silent about the escaped turnover.

Turnover escaped assessment resulted in short levy of tax and interest amounting to ₹0.12 crore.

3.1.2 As per Section 25 (1) of Kerala Value Added Tax Act, 2003, the assessing officer may proceed to determine the turnover escaped from assessment to tax after issuing a notice on the dealer and after making necessary enquiries.

M/s GE India Industrial Pvt. Ltd., is a works contractor in the rolls of State Tax Officer, I Circle, Kalamassery. As per the annual return for the year 2014-15 the assessee conceded AMC³⁵ receipt of ₹6.77 crore of which ₹3.87 crore is self assessed at the rate of five *per cent* and ₹2.90 crore self assessed at the rate of 14.5 *per cent* and paid ₹41.14 lakh as self assessed tax. Out of the total AMC receipt of ₹6.77 crore, ₹3.10 crore pertains to receipts from Chief Engineer, National Games Secretariat, Thiruvananthapuram.

The assessing officer while completing the assessment (January 2021) under Section 25(1) of the Act, rejected the self assessed rate of five *per cent* as the transfer value of materials in the execution of works contract is other than declared goods³⁶. The entire turnover of ₹6.77 crore was taxed at the rate of 14.5 *per cent*. Thus an additional demand of ₹32.50 lakh (tax ₹19.12 lakh and interest ₹13.38 lakh) was raised.

Audit scrutiny (August 2021) of the assessment records for the period 2014-15 revealed that the receipts from Chief Engineer, National Games Secretariat, Trivandrum was actually ₹3.60 crore against the declared amount of ₹3.10 crore. Completion of assessment without verification of supporting documents resulted in turnover escaping assessment of ₹0.50 crore and consequent short levy of tax and interest amounting to ₹0.12 crore as shown in **Table - 3.2**.

Table – 3.2

Sl. No.	Particulars	Amount (₹)
1.	Contract receipt received from CE, NGS	3,60,29,187
2.	Contract receipt declared in the Annual Return	3,10,13,935
3.	Turnover escaped assessment	50,15,252
4.	Tax due @14.5%	7,27,211
5.	Interest @12% per annum for 70 months (4/2015 to 1/2021)	5,09,048
6.	Total short levy	12,36,259
		0.12 crore

Based on the audit observation the assessment was revised (November 2021) creating an additional demand of ₹13,08,982 (Tax ₹7,27,212 and Interest ₹5,81,770). The assessee, however, opted for the amnesty scheme³⁷ of 2021-22 and remitted ₹4,36,327 (January 2022) as a full and final settlement. These facts were confirmed by the Government (March 2023).

³⁵ Annual Maintenance Contract.

³⁶ As per Section 14 of CST Act.

³⁷ The Government has unveiled an amnesty scheme to settle outstanding tax dues pertaining to the period before the introduction of GST to clear the backlog of arrear demand by waiving interest/ penalty and giving reduction in tax arrears.

Failure of the assessing authority in verification of records resulted in short levy of tax and interest amounting to ₹0.18 crore.

3.1.3 As per Section 8(a)(i) of the KVAT Act, 2003, works contractor can opt for paying tax at compounded rate of seven *per cent*. Rule 11(1) and 11(2) of Kerala Value Added Tax Rules, 2005, prescribes two conditions for opting for compounded rates viz. (a) file an application in prescribed form before the due date to the assessing authority and (b) assessing authority should grant permission after satisfying himself. The Commissioner has extended³⁸ the last date of filing option for the payment of compounded tax under Section 8 for the year 2016-17 upto 31 August 2016.

M/s Calatel Developers Pvt Ltd., is a registered dealer on the rolls of the State Tax Officer (Works Contract), Thrissur (with effect from 4 July 2016). As the assessee had not filed returns for the period 2016-17 the assessing officer completed the assessment (September 2020) under Section 25AA³⁹ based on verification of the accounts and KVATIS data. The assessment was completed assessing the suppressed turnover of ₹1.86 crore at compounded rate.

Audit scrutiny (January 2022) revealed that the assessee had filed the application for compounding only on 22 November 2016; almost three months after the due date of 31 August 2016. Moreover, the assessing officer had not granted permission to pay tax at compounded rate as per Rule 11(2)(i) of Kerala Value Added Tax Rules.

As the assessee had not filed application for compounding within the due date and as the assessing officer had not issued permission to pay tax at compounded rate, the levy of tax at compounded rate was irregular which resulted in short levy of tax and interest amounting to ₹0.18 crore as shown in **Table - 3.3**.

Table – 3.3

Sl. No.	Particulars	Amount (₹)
1.	Turnover suppression detected	1,86,07,215
2.	Exemption as per Rule 10(b) @25%	46,51,803
3.	Taxable turnover	1,39,55,412
4.	Tax due @14.5%	20,23,534
5.	Tax assessed	9,30,361
6.	Short levy of tax	10,93,173
7.	Interest @12% per annum for 67 months (5/2017 to 11/2022)	7,32,425
8.	Total short levy	18,25,598
		0.18 crore

³⁸ Vide Circular No. 13/2016 dated 19 August 2016.

³⁹ Assessment completed based on audit observation of CAG.

Based on the audit observation, notice under section 25(A) read with section 25AA of the KVAT Act 2003 has been issued to the dealer (February 2023) proposing to assess the turnover for the year 2016-17 at higher rate. These facts were confirmed by Government in March 2023.

Undue benefit by applying compounding tax to an ineligible assessee resulted in short levy of tax and interest amounting to ₹0.34 crore.

3.1.4 Any works contractor who undertake electrical works is not eligible for payment of tax under the compounded rate as per Section 8(a)(i) of Kerala Value Added Tax Act. As per Section 6(1)(f) of KVAT Act, the tax payable for the works contract receipt is 14.5 *per cent*.

M/s V Tech Electric (P) Ltd. is an electrical contractor in the rolls of State Tax Officer (Works Contract), Thrissur. The assessee filed Annual Return for the year 2015-16 in Form 10B conceding contract receipt of ₹5.07 crore. As per details of ongoing contracts/ projects, the nature of work was Electrical Contracts.

The assessing officer after verification of returns and audited statement determined total turnover as ₹5.45 crore of which taxable turnover was ₹4.47 crore and non-taxable turnover was ₹0.98 crore. The assessing officer completed the assessment (February 2020) under Section 25(1) of KVAT Act. The turnover of ₹2.11 crore was assessed as non-compounded turnover and ₹2.36 crore as compounded turnover.

Audit observed (December 2021) that as per Section 8(a)(i) of the Act, the compounding scheme is not admissible for electrical contractors; hence entire taxable turnover of ₹4.47 crore is to be assessed at the rate of 14.5 *per cent* whereas only ₹2.11 crore was assessed at 14.5 *per cent*. Assessing the turnover of ₹2.36 crore at concessional rate resulted in short levy of tax and interest amounting to ₹0.34 crore.

Based on the audit objection, the assessment was modified (March 2022) demanding tax and interest amounting to ₹0.32 crore and was advised for revenue recovery. Aggrieved by the assessment order the assessee filed appeal before the Joint Commissioner, Thrissur and the appellate authority (April 2022) disposed of the appeal by modifying the assessment order. The assessment order was modified (June 2022) demanding tax and interest amounting to ₹0.32 crore. These facts were confirmed by the Government (March 2023).

Undue benefit by applying concessional rate of compounding tax rate of seven per cent to an ineligible assessee resulted in short levy amounting to ₹8.16 lakh.

3.1.5 As per Section 8(a)(i) of Kerala Value Added Tax Act, any works contractor other than those who undertake electrical works may, opt for compounding by paying concessional rate of tax at the rate of seven per cent provided the works contractor is registered under the provisions of the Central Sales Tax Act, 1956 (Central Act 74 of 1956). In violation of this provision, an electrical contractor, M/s V Tech Electric (P) Ltd. was provided concessional rate of seven per cent as described below:

The assessment of M/s V Tech Electric (P) Ltd., an electrical contractor with Central Sales Tax registration for the year 2016-17 was completed (November 2019) by the State Tax Officer, Works Contract, Thrissur under Section 25(1) of KVAT Act, 2003 read with Section 25AA. As per the assessment order, out of the total turnover of ₹4.33 crore the assessee had a compounded turnover⁴⁰ of ₹1.06 crore, which was assessed at the rate of seven per cent and non-compounded turnover of ₹3.27 crore which was assessed at the rate of 14.5 per cent.

Audit observed (December 2021) that as per Section 8(a)(i) of KVAT Act, compounding scheme is not admissible for electrical contractors; hence total turnover has to be assessed at the rate of 14.5 per cent. Assessing the turnover of ₹1.06 crore at incorrect rate of seven per cent resulted in short levy of tax and interest amounting to ₹8.16 lakh as shown in **Table - 3.4**.

Table – 3.4

Sl. No.	Particulars	Amount (₹)
1.	Incorrectly assessed turnover	1,06,30,977
2.	Exemption (labour charges) @20%	21,26,195
3.	Taxable turnover	85,04,782
4.	Tax @14.5%	12,33,193
5.	Tax levied	7,44,168
6.	Short levy of tax	4,89,025
7.	Interest @12% per annum for 67 months (5/2017 to 11/2022)	3,27,647
8.	Total short levy	8,16,672
		8.16 lakh

Based on the audit observation, the assessment for the year 2016-17 was completed (March 2022) by the assessing authority with additional demand of ₹0.08 crore and was recommended for revenue recovery. Aggrieved by this,

⁴⁰ Turnover of the assessee who opts for compounding of tax as per Section 8(a)(i) of KVAT Act.

the assessee filed appeal before the Joint Commissioner (Appeals), Thrissur and the Appellate Authority modified the order (April 2022) granting the benefit of concessional rate to the assessee. The assessing authority filed second appeal (May 2022) against the first appellate order i.e. the order allowing the benefit of compounding to the assessee. These facts were confirmed by the Government (March 2023).

Assessment at reduced rate of five per cent on contract receipts to ineligible contracts resulted in short levy of tax and interest amounting to ₹0.21 crore.

3.1.6 As per Section 8(a)(i) of Kerala Value Added Tax Act, 2003, any works contractor who is registered under the provisions of the CST Act, 1956 can opt to pay KVAT at the rate of seven *per cent* of the whole contract amount for all works contracts undertaken by him. However, the rate shall be five *per cent* for the works awarded by Government of Kerala, Kerala Water Authority and Local Authorities.

M/s Thoppil Contractors India Pvt. Ltd. is a works contractor, in the rolls of Assistant Commissioner (Works Contract), Thiruvananthapuram. During 2017-18 the assessee was allowed concessional rate of five *per cent* for ineligible works as explained below.

The assessee had a turnover of ₹0.69 crore to be assessed at the rate of five *per cent* and ₹8.29 crore to be assessed at the rate of seven *per cent*. Audit scrutiny (September 2021) revealed that the Assistant Commissioner (Works Contract), Thiruvananthapuram assessed (September 2020) the entire turnover of ₹8.98 crore at the concessional rate of five *per cent*.

Assessment of contract receipts of ₹8.29 crore at the concessional rate of five *per cent* instead of the applicable rate of seven *per cent* resulted in short levy of tax ₹0.17 crore and interest ₹0.04 crore totaling to ₹0.21 crore as shown in **Table - 3.5**.

Table – 3.5

Sl. No.	Particulars	Amount (₹)
1.	Contract receipt as per books of accounts	23,06,87,084
2.	Turnover taxable at 5%	68,87,136
3.	Turnover taxable at 7%	22,37,99,948
4.	VAT payable @5% for ₹68,87,136	3,44,357
5.	VAT payable @7% ₹22,37,99,948	1,56,65,996
6.	Total payable	1,60,10,353
7.	VAT payable as per Assessment Order	1,43,52,889
8.	Short Levy	16,57,464
9.	Interest @ 12% per annum for 28 months (5/2018 to 8/2020)	4,64,090

Sl. No.	Particulars	Amount (₹)
10.	Total Short Levy	21,21,554
		0.21 crore

Based on the audit observation, the assessment has been rectified (April 2021) demanding tax and interest amounting to ₹0.21 crore. However, based on rectification petition filed by the assessee, the assessing officer rectified (November 2022) the assessment order. As the dealer could not adduce any satisfactory explanation with documentary evidence for the proposals, the rectified order was cancelled (March 2023) with the direction to complete the assessment afresh. These facts were confirmed by the Government (March 2023).

It is recommended that an adequate system be put in place to cross check all the mandatory records before finalising the assessment. Responsibility must be fixed for granting undue benefit to the assessee.

3.2 Short levy due to granting of irregular input tax credit

As per Section 2(xxiii) of the KVAT Act, 2003, “input tax” means the tax paid or payable under this Act by a registered dealer to another registered dealer on the purchase of goods in the course of business and includes the tax paid on the purchase of materials for the research and development in relation to any goods. Section 11 provides for claiming of input tax credit by a registered dealer subject to the conditions specified in the Act. Assessing authority granted input tax credit violating the said provision which led to short levy of tax as detailed in paragraph 3.2.1 to 3.2.6.

Irregular grant of input tax credit to an assessee under compounding scheme resulted in short levy of tax and interest amounting to ₹0.48 crore.

3.2.1 As per proviso below Section 11(4) of Kerala Value Added Tax Act, 2003, where a dealer opted for payment of tax both at compounding scheme (concessional rate) and non-compounding (schedule rate), he is not eligible for availing input tax credit for the purchases for which he pays tax under compounding scheme. Excess ITC, if availed, shall be reversed under Section 11(7) of the Act as reverse tax.

M/s Marymatha Construction Company is a works contractor in the rolls of the Deputy Commissioner (Works Contract), Mattanchery.

As per the assessment order (January 2021) for the year 2017-18, total taxable contract receipt of the assessee is ₹53.03 crore of which compounded turnover for which ITC not eligible is ₹23.38 crore (44.08 per cent of total turnover). In

the annual return the assessee claimed ₹0.78 crore as ITC in respect of purchase for works contract.

Audit scrutiny (January 2022) revealed that the claimed ITC of ₹0.78 crore, includes ₹0.34 crore (44.08 *per cent* of ₹0.78 crore), which is the ineligible ITC for compounded turnover. The Assessing officer had failed to disallow ₹0.34 crore and reverse it as reverse tax which resulted in short levy of tax and interest amounting to ₹0.48 crore.

Based on the audit observation, the assessment has been rectified (March 2022) by reversing the amount of ITC related to compounded turnover. These facts were confirmed by the Government (March 2023).

Undue benefit of ₹0.48 crore to an assessee by allowing ineligible input tax credit.

3.2.2 Natural rubber and tread rubber have been exempted from CST on interstate sale⁴¹ provided that (a) these items have already suffered tax at the rate of five *per cent* and (b) such interstate sale is proved with C Form. In such exempted sales, as per Section 11(3), the ITC under the KVAT Act shall be limited to (a) input tax paid for the purchase turnover of such interstate sales and (b) rate in excess of five *per cent* for the tax paid on purchase. Excess ITC if availed shall be reversed under Section 11(7) of the Act as reverse tax.

M/s Malaya Rub-Tech Industries is an assessee in the rolls of Deputy Commissioner, Special Circle, Kottayam engaged in the purchase and sale of rubber and rubber products. The assessee filed annual return in Form 10 for the year 2014-15 disclosing total sales turnover of ₹55.83 crore. In the annual return the assessee conceded interstate sales turnover of ₹8.96 crore of which ₹1.89 crore was claimed as exempted sales and ₹7.08 crore as taxable sales. The assessee conceded import/ interstate purchase turnover of rubber and rubber products for ₹1.58 crore.

The assessing officer completed the CST assessment (January 2020) levying tax for the turnover of ₹7.08 crore at two *per cent*⁴² demanding tax of ₹0.14 crore.

Audit scrutiny (November 2021) of the assessment records revealed that the reverse tax paid by the assessee was less than that was required under the Act and thus claimed input tax credit (ITC) in excess of the provisions of the Act. The assessing officer failed to limit the ITC while completing the assessment (January 2020). This resulted in short levy of tax and interest amounting to ₹0.48 crore as given in **Table - 3.6**.

⁴¹ Vide S.R.O. No.753/2011 dated 30 November 2011.

⁴² Rate applicable for turnover supported with C Form.

Table – 3.6

Sl No.	Particulars	Amount (₹)
1	Import/ interstate purchase	1,57,95,850
2	Profit (as per Form 13A)	2.28%
3	Selling price corresponding to import/ interstate purchase (102.28% of Sl.1)	1,61,55,995
4	Total interstate sale	8,96,53,504
5	Sales turnover to be exempted (4-3)	7,34,97,509
6	Purchase turnover determined for the exempted sales turnover (GP @2.28%) (Sl.5 / 102.28%)	7,18,59,121
7	Reverse tax due @5% of Sl.6 as per proviso below Section 11(3)	35,92,956
8	Tax reversed in Annual return	5,21,346
9	Balance tax to be reversed	30,71,610
10	Interest @12% per annum for 56 months (5/2015 to 12/2019)	17,20,101
11	Total short levy	47,91,711
		0.48 crore

Based on the audit observation, the assessment for the year 2014-15 was completed (July 2022) with additional demand of ₹46.53 lakh. The dealer had filed appeal against the original assessment order and the appellate authority remanded the case (February 2023) for fresh disposal. The assessment was rectified (March 2023) revising the interest and creating additional demand of ₹69.08 lakh. These facts were confirmed by the Government (March 2023).

Undue benefit of ₹0.18 crore to an assessee by allowing ineligible input tax credit and refund.

3.2.3 Natural rubber and tread rubber have been exempted from CST on interstate sale⁴³ provided that (a) these items have already suffered tax at the rate of five *per cent* and (b) such interstate sale is proved with C Form. In such exempted sales, as per Section 11(3), the ITC under the KVAT Act shall be limited to (a) input tax paid for the purchase turnover of such interstate sales and (b) rate in excess of five *per cent* for the purchase. Excess ITC availed shall be reversed under Section 11(7) of the Act as reverse tax.

M/s. Midas Rubber (P) Ltd. is an assessee borne on the rolls of Deputy Commissioner, Special Circle, Kottayam engaged in the purchase and sale of rubber and rubber products. The sales turnover of the assessee for the years 2015-16 and 2016-17 had exempted interstate sales also.

⁴³ Vide S.R.O. No.753/2011 dated 30 November 2011.

Audit scrutiny of the assessment records (November 2021) revealed that the reverse tax paid by the assessee was less than that was required under the Act and thus claimed input tax credit (ITC) in excess of the provisions of the Act. The assessing officer failed to limit the ITC while completing the assessment (August 2020). The details are given in **Table - 3.7**.

Table – 3.7

(₹)

Year	Exempted interstate sales turnover as per CST assessment order	Purchase turnover for the interstate exempted sales	Reverse tax due	Reverse tax paid	Short payment of reverse tax
2015-16	5,60,31,181	4,85,62,299	24,28,114	19,05,255	9,80,449 (including refund of 4,57,590)
2016-17	9,23,49,327	8,10,43,727	40,52,186	32,35,300	8,16,886
Total					17,97,335
					0.18 crore

Based on the audit observation, the assessing authority completed the assessment for the years 2015-16 and 2016-17 (March 2022), creating additional demand of ₹18.47 lakh and ₹11.76 lakh⁴⁴ respectively including tax and interest. The assessee preferred appeal against the assessment orders and the Appellate Authority set aside the orders (July 2022). The cases have been remitted to the assessing authority for fresh disposal by determining the reverse tax on the basis of the ratio of the quantity of raw material/ finished goods send outside the State. These facts were confirmed by the Government (March 2023).

Excess refund of ITC resulted in loss of revenue amounting to ₹0.11 crore.

3.2.4 Input tax credit available to a registered dealer under the KVAT Act serves as a relief from the output tax chargeable under the Act. Hence, proviso below Section 11(3) of the Act provides for limits to the ITC for exempted interstate transactions viz. (a) input tax paid for the purchase of exempted transaction (b) rate in excess of five *per cent*. Excess ITC availed shall be reversed under Section 11(7) as reverse tax. As per Rule 12A of the KVAT Rules, where the taxable goods are used during a return period for taxable and non-taxable transactions, the ITC shall be limited in proportion of the taxable transaction.

⁴⁴ 2015-16 - Tax ₹12.23 lakh and interest ₹6.24 lakh; 2016-17 - tax ₹8.17 lakh and interest ₹3.59 lakh.

M/s SUD Chemie India Private Limited is an assessee in the rolls of Assistant Commissioner, I Circle, Kalamassery. The assessee filed annual returns for the years 2015-16 and 2016-17 disclosing total sales turnover of ₹196.53 crore and ₹194.42 crore respectively including tax exempted interstate stock transfer (out).

CST assessments for the period 2015-16 and 2016-17 were completed by the assessing authority (December 2018) considering interstate stock transfer (out) of ₹12.04 crore and ₹14.53 crore respectively as conceded by the assessee. The assessee applied for refund of ₹0.13 crore and ₹0.14 crore respectively as excess tax remitted remaining unadjusted at the end of the year. The assessing authority issued refund (August 2020) of ₹0.13 crore and ₹0.14 crore based on the refund application.

Audit scrutiny (August 2021) revealed that the assessing officer issued refund without deducting the reverse tax due (₹3.95 lakh and ₹4.62 lakh) as envisaged in Rule 12A of Kerala Value Added Tax Rules read with Section 11(3) of Kerala Value Added Tax Act. The excess refund of ₹0.11 crore including interest is shown in **Table - 3.8**.

Table – 3.8

(₹)

Sl. No.	Particulars	2015-16	2016-17
1	Total turnover	1,96,53,24,907	1,93,88,66,742
2	Interstate stock transfer out – exempted transactions	12,03,81,084	14,52,61,742
3	Exempted transaction as a percentage of total turnover	6.12	7.49
4	Total Local purchase turnover	18,32,12,951	18,82,31,140
5	Proportionate purchase turnover for exempted transaction (4 x 3)	1,12,12,633	1,40,98,512
6	Reverse tax due under Section 11(7) (5 per cent of Sl.No.5)	5,60,631	7,04,926
7	Reverse tax paid by the assessee	1,66,076	2,42,741
8	Balance tax to be paid (excess ITC to be reversed)	3,94,555	4,62,185
9	Refund allowed in the refund order as excess ITC	13,47,035	13,75,360
10	Excess refund made	3,94,555	4,62,185
11	Interest @12% per annum for 28 months (9/2020 to 12/2022)	1,10,475	1,29,412
	Total	5,05,030	5,91,597
	Grand Total	10,96,627 (0.11 crore)	

Based on the audit observation, the assessments were revised (November 2021) reversing the excess refund granted and created additional demand.

Aggrieved by the order, the assessee preferred appeal before Deputy Commissioner (Appeals), Ernakulam. The Appellate Authority dismissed the appeal (February 2022). The assessee filed second appeal before the Kerala Value Added Tax Appellate Tribunal, Ernakulam, the case is pending and collection of arrears is under stay. These facts were confirmed by the Government (March 2023).

Failure of the assessing authority to verify necessary documents for granting concessional rate of tax resulted in short levy of tax and interest amounting to ₹3.84 crore.

3.2.5 As per proviso below Section 6(1)(f) of Kerala Value Added Tax Act, 2003, where sale of goods made in the State is for Kerala State Electricity Board (KSEB), is taxable at five *per cent* subject to the condition that assessee shall produce Form 48⁴⁵. This exemption is not applicable to petroleum products which are under KGST.

M/s Anchor Structurals, is a manufacturer and dealer of concrete poles, in the rolls of the Deputy Commissioner, Works Contract, Mattancherry.

The details of turnover conceded by the assessee, verified by the assessing officer and tax assessed by the assessing officer for the years 2012-13, 2015-16 and 2016-17 (August 2019) are given in **Table - 3.9**.

Table – 3.9

Sl. No.	Particulars	Amount (₹ in crore)		
		2012-13	2015-16	2016-17
1	Turnover conceded by the assessee	4.93	10.40	16.24
2	Turnover determined by the assessing officer	7.62	23.18	23.21
3.	Turnover assessed as supplies to KSEB (taxed at the rate of five <i>per cent</i>)	7.52	11.09	19.70
4	Tax assessed by the assessing officer	0.38	1.40	1.23

Audit scrutiny (January 2022) revealed that the assessee had not filed Form No.48 declaration for the years 2012-13, 2015-16 and 2016-17 for the turnover of ₹7.52 crore, ₹11.09 crore and ₹3.68 crore respectively. Hence the assessee is not eligible for concessional rate of five *per cent* for this turnover. However, the assessing authority failed to verify the declaration in Form 48 while

⁴⁵ Rule 12C (5) of Kerala Value Added Tax Rules, 2005 – A manual declaration issued by KSEB/ KWA/ KSRTC/ Railways while purchase of the goods, stating that the goods are intended for exclusive use by them. .

assessing the turnover at concessional rate of tax. Grant of irregular concessional rate resulted in short levy of tax and interest amounting to ₹3.84 crore for the years 2012-13, 2015-16 and 2016-17 as detailed in **Table - 3.10**.

Table – 3.10

Sl. No.	Particulars	Amount (₹)		
		2012-13	2015-16	2016-17
1	Taxable turnover determined by assessing officer in respect of sale of poles assessed at five <i>per cent</i> .	7,51,78,413	11,09,17,669	19,70,13,310
2	Turnover supported with Form 48	Nil	Nil	16,01,77,029
3	Turnover taxable @13.5%/14.5%/ 14.5%	7,51,78,413	11,09,17,669	3,68,36,281
4	Short levy of tax at the differential rate of 8.5% / 9.5%/ 9.5%	63,90,165	1,05,37,178	34,99,447
5	Interest	73,48,690 (5/2013 to 11/2022) – 115 months	83,24,371 (5/2016 to 11/2022) -79 months	23,44,629 (5/2017 to 11/2022) – 67 months
Total short levy		1,37,38,855	1,88,61,549	58,44,076
Grand Total		3,84,44,480 (3.84 crore)		

Based on the audit observation, the assessment for the years 2012-13, 2015-16 and 2016-17 has been rectified (December 2022) after granting concessional rate for the turnover proved with Form 48 declarations and assessing balance turnover at higher rate creating additional demand of ₹0.58 crore, ₹0.29 crore and ₹0.63 crore respectively.

Non-reversal of ineligible input tax credit resulted in short levy of tax and interest amounting to ₹6.83 lakh.

3.2.6 Input tax credit available to a registered dealer under the KVAT Act serves as a relief from the output tax chargeable under the Act. Hence, proviso below Section 11(3) of the Act provides for limits to the ITC for exempted transactions viz. (a) input tax paid for the purchase of exempted transaction (b) rate in excess of five *per cent*. Excess ITC availed shall be reversed under Section 11(7) as reverse tax. Under Rule 12C(2) of KVAT Rules, 2005, a declaration in Form No.43 to be filed by the assessee for claiming exemption on the sale of certain goods to industrial units in SEZ.

M/s Logtech Infoway Pvt. Ltd. is an assessee in the rolls of Deputy Commissioner, Special Circle, Thiruvananthapuram. The assessee filed annual return for the year 2015-16 conceding total local sales turnover of computer systems for ₹63.81 crore including ₹0.96 crore as sale of computer systems to Special Economic Zone (SEZ).

The assessment was completed (March 2021) by the assessing authority under Section 25(1) of the Act determining ₹0.90 crore as exempted sale to SEZ supported by Form No. 43. However, the assessing authority failed to reverse the proportional input tax credit (ITC) corresponding to sales to SEZ as per Section 11(7) of the Act. Short levy on account of failure to reverse the proportional ITC worked out to ₹6.83 lakh as shown in **Table - 3.11**.

Table – 3.11

Sl. No.	Particulars	Amount (₹)
1.	Sales to SEZ allowed as per assessment order	89,60,656
2.	Profit as per Form 13A	4.21%
3.	Sales turnover corresponding to purchase	85,98,653
4.	ITC to be disallowed on SEZ sales	4,29,933
5.	Interest @12% per annum for 59 months (5/2016 to 3/2021)	2,53,660
6.	Total	6,83,593
		6.83 lakh

Based on the audit observation, assessment was rectified (March 2023) creating an additional demand of ₹7.87 lakh including interest. This fact was confirmed by the Government (March 2023).

It is recommended that the Assessing Authorities shall conduct proper verification of records and ensure that ineligible input tax credit is not availed by the assessee and responsibility shall be fixed for undue benefits given to the assessee.

3.3 Non verification of essential declarations by the assessing authority to prove inter state stock transfer led to short levy of tax

As per Section 6A of CST Act, where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer and not by reason of sale, the burden of proving the movement of those goods shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time, a declaration, along with the evidence of dispatch of such goods. Failure of the assessing authority in determining the actual movement of goods transferred outside the State by

verifying declarations viz. Form 8FA, Form 8F and Form 15 led to short levy of tax as detailed in paragraphs 3.3.1 to 3.3.3.

Failure of the Assessing Authority to detect suppressed turnover while completing the assessment resulted in short levy of tax and interest amounting to ₹0.60 crore.

3.3.1 As per entry 51A of third Schedule under the Kerala Value Added Tax Act, the rate of tax on sale of gold is five *per cent*.

In the case of transportation of imported goods within the State or across the State, a declaration in Form 8FA should be furnished before the Commercial Tax Officer having jurisdiction over the place of import under Section 46(3)(e) of the Act read with Rule 66(ba) of KVAT Rules. As per Section 9 of Central Sales Tax Act, the tax payable by any dealer on interstate sale shall be levied by the assessing authority.

M/s. Swarnakamal Jewels (India) Pvt. Ltd. is a dealer borne on the rolls of O/o the Deputy Commissioner, Special Circle, Kottayam (now under STO, Taxpayer Services Circle, Kottayam Town). As per the annual return in Form 10 for the year 2016-17 filed, the assessee had conceded interstate sales of ₹0.72 crore. The Deputy Commissioner, Special Circle, Kottayam completed the CST assessment (March 2021) assessing interstate sales turnover as conceded by the assessee.

Audit scrutiny (November 2021) of the assessment records revealed that the interstate sales turnover as evident from Form 8FA declaration (Sales) was ₹8.91 crore, whereas the assessee conceded ₹0.72 crore only. This has resulted in short assessment of turnover of ₹8.19 crore leading to short levy of tax of ₹0.41 crore and interest of ₹0.19 crore totalling to ₹0.60 crore as shown in **Table – 3.12**.

Table – 3.12

Sl. No.	Particulars	Amount (₹)
1.	Turnover as per declaration in Form 8FA	8,91,29,449
2.	Interstate turnover conceded by the assessee	72,68,764
3.	Turnover escaped assessment	8,18,60,685
4.	Tax @5%	40,93,034
5.	Interest @12% per annum for 46 months (5/2017 to 2/2021)	18,82,796
6.	Total Short levy	59,75,830
		0.60 crore

Based on the audit observation the assessment was completed (June 2022) creating additional demand of ₹0.41 crore as tax. The dealer filed appeal against the order and the appellate authority dismissed the appeal (November

2022); the assessment order was modified (March 2023) demanding ₹0.62 crore including interest. These facts were confirmed by the Government (March 2023).

Failure of the assessing authority to cross verify interstate stock transfer resulted in short levy of tax and interest amounting to ₹0.50 crore.

3.3.2 As per Section 6A(1) of Central Sales Tax Act, 1956, interstate stock transfer for purposes other than sales is exempt from CST. The onus of proof of such transfer is not sale is on the assessee. Such transfers other than sales are to be proved by declaration in Form F and Delivery Note in Form 15. As per Section 6A(2) the assessing authority has to satisfy himself of such transfers after making such enquiry as he may deem necessary.

M/s Amy Jewellery Designers is an assessee in the rolls of State Tax Office, I Circle, Kalamassery. As per the annual return in Form 10 for the period 2017-18, the assessee conceded local sales turnover of ₹1.12 crore and paid ₹0.02 crore as self assessed VAT. The assessee also conceded interstate stock transfer (out) for ₹0.39 crore assessable under the CST Act. CST assessment was completed (January 2020) by the assessing authority considering the interstate stock transfer (out) of ₹0.39 crore as conceded by the assessee in the return and levying tax of ₹780.

Audit scrutiny (August 2021) of the Form F declarations and delivery notes in Form 15 revealed that the assessee had effected interstate stock transfer (out) of gold jewellery of value ₹16.62 crore for job-work. But interstate stock transfer (in) was only ₹8.44 crore. Hence, the difference of ₹8.18 crore was to be assessed to tax. Instead, the assessing authority assessed ₹0.39 crore only. This resulted in turnover escaped assessment of ₹7.79 crore. Incorrect assessment resulted in short levy of tax and interest amounting to ₹0.50 crore as shown in **Table - 3.13**.

Table – 3.13

Sl. No.	Particulars	Amount (₹)
1.	Interstate stock transfer (out) as per Form 8F	16,62,72,594
2.	Interstate stock transfer (in)	8,44,25,470
3.	Net interstate stock transfer (out) (1-2)	8,18,47,124
4.	Interstate stock transfer (out) conceded	38,93,178
5.	Turnover escaped assessment (3-4)	7,79,53,946
6.	Tax due @5%	38,97,697
7.	Interest @12% per annum for 29 months (9/2017 to 1/2020)	11,30,332
8.	Total short levy	50,28,029
		0.50 crore

This was due to failure of the assessing authority to verify the Form F and Form 15 to satisfy himself before completing the assessment as envisaged in Section 6A(2) of CST Act.

Based on the audit observation, the assessment was revised (November 2021) demanding tax and interest amounting to ₹0.67 crore. Aggrieved by the order the assessee preferred appeal before the Deputy Commissioner (Appeals), Ernakulam and the appellate authority dismissed (February 2022) the appeal. The assessee filed second appeal (August 2022) before the Kerala Value Added Tax Appellate Tribunal and the case is under stay. These facts were confirmed by the Government (March 2023).

Irregular exemption for interstate purchase return without relevant documents resulted in short levy of tax and interest amounting to ₹0.41 crore.

3.3.3 As per Section 46(3)(d) of Kerala Value Added Tax Act, 2003, no person shall transport within the State across or beyond the notified area any consignment of goods exceeding such quantity or value, as may be prescribed, by any vehicle or vessel, unless he is in possession of declaration in Form No. 8F⁴⁶, when the vehicle or vessels enters or leaves the State limits. Thus declaration in Form 8F is the proof of transportation of goods.

M/s Park Diamonds is an assessee in the rolls of State Tax Officer, I Circle, Kalamassery. In the annual return filed by the assessee for the year 2015-16, the assessee had claimed an amount of ₹4.91 crore as interstate purchase return.

While finalising the assessment (February 2020) the assessing officer levied tax for the interstate purchase return for the turnover of ₹6.14 crore⁴⁷ as the purchase return amounting to ₹4.91 crore was not supported with Form No. 8F and Debit/ Credit Notes. The assessee filed appeal against the order before the Deputy Commissioner (Appeals), Ernakulam and the Appellate Authority disposed of the appeal (September 2020) by remitting back the case to the assessing authority to verify the documents produced by the appellant and to ascertain the admissibility. The assessment was modified (December 2020) by the Assistant Commissioner, I Circle, Kalamassery allowing exemption for the assessed interstate purchase return amounting to ₹6.14 crore stating that the assessee produced documents for proving interstate purchase return for the entire turnover.

Audit scrutiny of the assessment file (September 2021) revealed that the assessee has not furnished declaration in Form No.8F to prove interstate

⁴⁶ Rule 66(6)(a) of KVAT Rules, 2005.

⁴⁷ Purchase return ₹4.91 crore plus gross profit at the rate of 25 per cent amounting to ₹1.23 crore

movement of goods amounting to ₹4.91 crore. Being so, turnover not covered by Form No.8F has to be assessed to tax. Irregular exemption resulted in turnover escaped assessment resulting in short levy of tax ₹24.55 lakh (at the rate of five *per cent* for ₹4.91 crore) and interest of ₹16.45 lakh totalling to ₹40.99 lakh as shown in **Table - 3.14**.

Table – 3.14

Sl. No.	Particulars	Amount (₹)
1.	Turnover not covered by evidences to prove actual movement of goods (Form 8F)	4,90,92,354
2.	Tax due @5%	24,54,617
3.	Interest due @12% per annum for 67 months (4/2015 to 10/2021)	16,44,593
4.	Total short levy	40,99,210
		40.99 lakh

Based on the audit observation, the assessment was completed (November 2021) creating additional demand of tax of ₹0.31 crore and interest of ₹0.21 crore. Aggrieved by the order the assessee preferred appeal before the Deputy Commissioner (Appeals), Ernakulam and the Appellate Authority directed (July 2022) the assessing authority to consider the valid documents produced by the assessee in support of the purchase return and to modify the assessment accordingly. As the assessee failed to produce the required documents, the original assessment order was restored (September 2022) with additional demand of ₹0.55 crore (Tax ₹0.31 crore and interest ₹0.24 crore) and revenue recovery proceedings were initiated (March 2022). These facts were confirmed by the Government (March 2023).

It is recommended that the Assessing Authorities shall conduct proper verification of relevant records to ensure that there is no suppression of turnover. The responsibility may be fixed for giving undue benefit to the assessee.

3.4 Incorrect/ Erroneous assessment leading to short levy of tax

As per Section 25 of the KVAT Act 2003, the assessing authority shall finalise the assessment in such a manner to avoid under assessment, application of incorrect rate, wrong availing of rebate etc. However, failure of the assessing authority to finalise the assessment accurately resulted in short levy of tax as detailed in paragraph 3.4.1 to 3.4.2.

Failure of the assessing authority to comply with the provisions of the Act while completing the assessment resulted in short levy of interest of ₹3.12 crore.

3.4.1 As per Section 31(5) of Kerala Value Added Tax Act, 2003, if the tax assessed or due under this Act is not paid by any dealer within the time prescribed in the notice of demand, shall pay simple interest at the rate of twelve *per cent* per annum.

M/s Muthoot Fincorp Ltd. is an assessee in the rolls of the Deputy Commissioner, Special Circle, Thiruvananthapuram. The assessee filed annual return for the period 2013-14 conceding total turnover of ₹322.04 crore of gold ornaments and bullion.

Assessment was completed (September 2016) determining taxable turnover of ₹322.04 crore as conceded by the assessee demanding tax of ₹7.54 crore. The assessee filed appeal against the assessment order and the Deputy Commissioner (Appeals), Thiruvananthapuram directed (September 2019) to modify the assessment order. The assessment was modified (November 2020) demanding tax of ₹6.93 crore and interest of ₹0.35 crore.

Audit scrutiny (August 2021) revealed that while modifying the assessment, the assessing authority erroneously levied interest of ₹0.35 crore instead of the actual interest of ₹3.47 crore. Failure on the part of the assessing authority to levy interest as per the provisions of the Act resulted in loss of revenue amounting to ₹3.12 crore as shown in **Table - 3.15**.

Table – 3.15

Sl. No.	Particulars	Amount (₹)
1.	Tax due	6,93,72,271
2.	Interest due @12% per annum for 50 months (from 10/2016 to 11/2020)	3,46,86,136
3.	Interest levied	34,68,614
4.	Short levy of interest	3,12,17,522
		3.12 crore

Based on the audit observation, the assessment order has been rectified (October 2021) demanding ₹3.47 crore as interest. These facts were confirmed by the Government in March 2023.

Assessing authority granted credit to advance tax twice while completing the assessment which resulted in short levy of tax and interest amounting to ₹0.19 crore.

3.4.2 As per Section 25(1) of the KVAT Act, the assessing authority may proceed to determine the tax payable, to the best of its judgement, on detailed scrutiny of assessment records. Section 66(1) of the Act provides for

rectification of errors apparent on the face of the records within four years from the year in which such order framed is passed.

M/s. EKK & Co is a works contractor in the rolls of the Deputy Commissioner (Works Contract), Mattancherry. The assessee filed annual return for the period 2016-17 conceding total turnover of ₹7.38 crore taxable at five *per cent* being PWD works. The assessee conceded tax due of ₹0.37 crore and tax at credit of ₹0.47 crore including advance tax paid ₹0.12 crore.

The assessing authority determined the taxable turnover as ₹49.83 crore including suppressed contract receipts of ₹33.95 crore which was detected on verification of the records. The assessment was completed (March 2021) demanding ₹3.46 crore as tax.

On Audit scrutiny (January 2022), it was revealed that ₹0.12 crore paid as advance tax was given credit for two times. The failure on the part of the assessing authority to disallow the credit already allowed resulted in short levy of tax and interest amounting to ₹0.19 crore.

Based on the audit observation, the assessment order has been rectified (February 2022) by disallowing the credit. These facts were confirmed by the Government (March 2023).

It is recommended that the Assessing Authorities may be attentive while finalising the assessment and have to be vigilant so as to avoid omissions. Responsibility may be fixed on the officials for the lapses.

3.5 Turnover escaped assessment leading to resultant short levy of tax

As per Section 25 of the KVAT Act, 2003, where for any reason the whole or any part of the turnover of a dealer has escaped assessment to tax, the assessing authority may, at any time within five years from the last date of the year to which the return relates, proceed to determine, to the best of its judgment, the turnover which has escaped assessment to tax or has been under assessed. Non-compliance to the above provision by the assessing authority led to short levy of tax as detailed below:

Non remittance of collected tax by suppressing the sales turnover resulted in non-levy of tax and interest amounting to ₹0.48 crore.

As per Section 30(1) of Kerala Value Added Tax Act, 2003, a registered dealer may collect tax at schedule rates from the person to whom he sells the goods and pay it over to the Government. If the return filed by the dealer is with incorrect particulars, the assessing authority shall reject the return after issuing notice to the dealer in accordance with Section 22 of the Act.

M/s. KELTRON, a PSU of Government of Kerala is a registered dealer in the rolls of Deputy Commissioner, Special Circle, Thiruvananthapuram. The assessee filed annual return for the year 2016-17 disclosing total sales turnover of ₹123.84 crore.

Audit scrutiny (October 2021) in the Office of the Commissioner of State Tax, Thiruvananthapuram, revealed that as part of upgradation of KVATIS⁴⁸, Oracle License was procured (2016-17) through M/s KELTRON at a total cost of ₹7.44 crore and the Department paid VAT amounting to ₹0.29 crore to the assessee. Verification of the annual return of M/s KELTRON, for the year 2016-17, revealed that the dealer neither conceded the sales turnover of license nor paid tax accordingly.

Thus, turnover to the tune of ₹7.44 crore has escaped from assessment and this was not identified by the Department, though payment of VAT amounting to ₹0.29 crore was made by the Department. Failure of the assessing officer to identify the incorrect particulars submitted by the assessee, resulted in loss of revenue on account of tax ₹0.29 crore and interest ₹0.19 crore totalling to ₹0.48 crore.

Based on the audit observation, the assessing officer issued (February 2023) notice under Section 25A read with Section 25(1) and Section 30(1). Personal hearing opportunity was granted to the dealer (9 March 2023), but the dealer requested further 10 days' extension of time for producing books of accounts and the case was adjourned based on the request of the dealer. These facts were confirmed by the Government (March 2023).

It is recommended that the assessing authority shall complete the assessment and to ensure that the tax collected is duly remitted to the Government.

⁴⁸ KVATIS (Kerala Value Added Tax Information System) is the application software developed and deployed by the department to facilitate tax administration which was developed and deployed during 2007.