

## CHAPTER-II : SALES TAX

### 2.1 Results of audit

Test check of the records in various commercial tax offices conducted in audit during the year 2007-08 revealed under assessment of Rs. 569.46 crore in 631 cases which fall under the following categories:

(Rupees in crore)			
Sl. No.	Category	No. of cases	Amount
1.	Incorrect rate of tax and mistake in computation	69	22.60
2.	Irregular grant of set off	68	19.56
3.	Irregular concessions/exemptions	57	7.89
4.	Non/short levy of tax, interest and penalty	276	344.82
5.	Other Irregularities	160	133.86
6.	<b>Administration and recovery of deferred sales tax (A review)</b>	1	40.73
<b>Total</b>		<b>631</b>	<b>569.46</b>

During the year 2007-08, the department accepted under assessment of Rs. 10.53 crore in 115 cases and recovered Rs. 1.18 crore in 61 cases, of which 33 cases involving Rs. 89.19 lakh were pointed out during 2007-08 and rest in earlier years.

A few illustrative cases involving important audit observations and a review of **Administration and recovery of deferred sales tax** involving Rs. 134.90 crore are discussed in the following paragraphs:

## 2.2 Administration and recovery of deferred sales tax

### Highlights

- Industrial policies declared by the Department of Industries allowed deferment of sales tax in four clusters over a 20 year period from 1980-81 to 1999-2000. Under the schemes 4,118 beneficiaries availed deferments of Rs. 9,118 crore till 31 March 2007.
- A single beneficiary, namely Reliance Petroleum Ltd., availed the largest share of deferment incentive, totalling Rs. 5,336 crore, which constituted 59 *per cent* of total deferment availed since inception of the scheme in 1980.

*(paragraph 2.2.6)*

- Units did not maintain prescribed records. Audit could not verify the correctness of grant of deferment of Rs. 242.60 crore to 263 beneficiaries.

*(paragraph 2.2.8)*

- Department fixed instalments, late in case of 28 beneficiaries in eight units and short in case of nine beneficiaries in four units which resulted in non-recovery of Rs. 6.41 crore.

*(paragraph 2.2.13)*

- The benefit under the *Vechan Vera Samadhan Yojana* was restricted to dealers not enjoying other benefits under the Act. Department allowed remission of interest of Rs. 5.40 crore incorrectly to 13 beneficiaries under the Yojana.

*(paragraph 2.2.15)*

- Department allowed refund of set off of Rs. 12.97 crore to two beneficiaries in contravention of the deferment scheme.

*(paragraph 2.2.16.1)*

### 2.2.1 Introduction

The Department of Industries (DoI) of Government of Gujarat (Government) had implemented tax incentive schemes (schemes) in four clusters over a 20 year period from 1980-81 to 1999-2000, with the general objective of promoting industrialisation and balanced economic and regional growth. The schemes provided, *inter alia*, for grant of sales tax incentive in the form of exemption, deferment and composition of both at the option of the beneficiaries. This review covers deferment component of the schemes introduced in the last two clusters, namely 1990-95 and 1995-2000.

### 2.2.2 Organisation

Industries Commissioner and General Manager-District Industries Centre under DoI issued eligibility certificates to the applicant industrial units, under the schemes keeping Department of Sales Tax (DoST) informed which implemented the schemes. DoST in Finance Department (FD), headed by the Commissioner of Sales Tax (CoST), is organised in seven administrative divisions, each headed by an additional/joint commissioner (Addl/JC). A division has 'circles', each headed by a Deputy Commissioner (DC); there are 25 circles in the State. A circle would have assessment units each headed by Assistant Commissioners/Sales Tax Officers (ACs/STOs); there are 103 units in the State. Besides, there are staff positions in the office of CoST for inspection, audit *etc.*, dealing, *inter alia*, with matters relating to redemption of deferred sales tax. Assessing Officers (AOs) have the direct responsibility of watching correctness of the availment of deferred sales tax facility by the eligible beneficiaries, and of its recovery after the deferment has run its course. DC of circles, Addl/JC of Divisions, CoST along with his officers of inspection and audit has the constructive responsibility of monitoring implementation of the scheme.

### 2.2.3 Scope of audit and methodology

Audit requested DoST (November 2007) and IC (January 2008) to furnish universal data on incentive holders to enable it to draw up suitable statistical sample for audit review. In the absence of data, audit could not construct any statistical sample; and, was constrained to select the units on the basis of number of beneficiaries. During the period between November 2007 and May 2008, audit examined the records maintained by the JC (Admn), nine circles (47 *per cent* of all circles dealing with deferments) and 14 units<sup>1</sup> (26 *per cent* of all units dealing with deferments) of DoST, besides related and available documents of beneficiaries under 1990-1995 and 1995-2000 schemes maintained by DoI, IC and FD. The number of selected beneficiaries for audit analysis consisted 52 *per cent* of total number of beneficiaries (1,350) and covered 73 *per cent* of total sanctioned amount (Rs. 8,579 crore) under the two schemes.

<sup>1</sup> 11 Ahmedabad, Ankleshwar, Bharuch, 1,2 Bhavnagar, Gandhinagar, 3 Jamnagar, 2 Junagadh, Kadi, Kalol, 1,2 Surendranagar, 7 Vadodara and 2 Vapi.

### 2.2.4 Audit objectives

The review was conducted with a view to ascertain:

- whether the Government Resolutions (GRs) issued contain sufficient provisions to prevent its misuse and misapplication;
- whether the systems are in place to ensure that the revenue forgone due to grant of concessions is adequately mitigated by industrial and economic development as envisaged;
- whether DoST had systems in place to identify and track beneficiaries to whom the incentive of deferred sales tax payments was provided;
- whether the department diligently followed up cases to redeem deferred payments after the scheduled period; and
- the quality of internal control procedure and internal audit systems to watch recovery of deferred sales tax, and to identify possible misuse of the schemes.

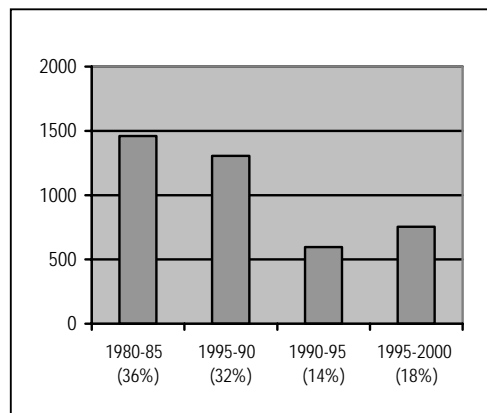
### 2.2.5 Acknowledgement

Indian Audit and Accounts Department acknowledges the cooperation of the DoI, Finance Department and CoST in providing necessary information and records for audit. The draft review was forwarded to CoST and the Government in August 2008; with a request to forward the reply and also to discuss the topic. The Audit Review Committee meeting was held on 4 December 2008. The views of the Department/Government have been incorporated in the review.

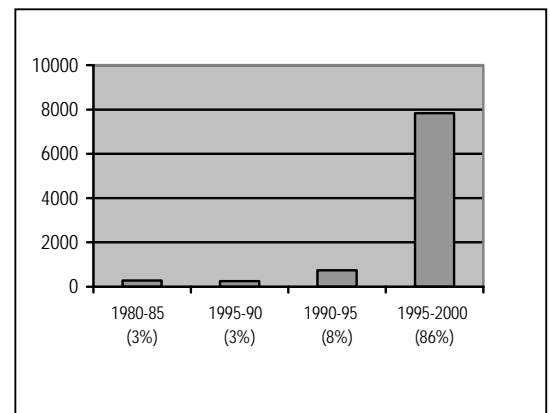
### 2.2.6 The Schemes

All the deferment schemes of four clusters from 1980 onwards covered 4,118 beneficiaries involving a total availed deferment of Rs. 9,118 crore; of this, 1,350 beneficiaries pertained to the two clusters from 1990-95 and 1995-2000, involving availed deferments totalling Rs. 8,579 crore. Charts below show the distribution graphically:

Number of beneficiaries availing deferment



Deferment availed (Rs. in crore)



(Source: DoST)

The fourth and last scheme, pertaining to the 1995-2000 cluster, accounted for 86 *per cent* of the total deferment incentives availed, in fiscal terms, up to March 2007. In terms of the number of beneficiaries, this period accounted for only 18 *per cent* of the total number of beneficiaries covered in all the four clusters. A single beneficiary, namely Reliance Petroleum Ltd., availed the largest share of deferment incentive, totalling Rs. 5,336 crore, which constituted 68 *per cent* of the total deferment incentive availed under the 1995-2000 cluster and 59 *per cent* of total deferment availed since inception of the scheme in 1980.

### **2.2.7 Analysis of cost benefit of scheme**

Audit scrutiny of DoI files revealed that DoI made no such cost benefit estimation either by itself or in consultation with Finance Department, while formulating the industrial policies. There was no periodic evaluation or impact analysis of the previous cluster of schemes either, which the Department could have used for course corrections while formulating new ones.

### **2.2.8 Improper maintenance of beneficiary records**

Report of the Comptroller and Auditor General of India (Revenue Receipts) for the year ended 31 March 2002 had brought the matter of insufficient documentation at the units to the notice of the Government/DoST (*vide* paragraph 2.2.13). The prescribed procedures of DoST (*vide*, especially, instructions dated 6 July 1983) require the units to maintain complete record of beneficiaries, with the details of amount sanctioned, amount availed, recovery effected, actions initiated on defaulters, *etc.*, periodically attested by designated officers. The units did not maintain documents as prescribed and the overall record management was poor as revealed below. This had implications on correct implementation of the scheme as well as on its monitoring. Some illustrative instances seen in the test audit are as follows:

- In nine units<sup>2</sup>, the details of availment by 90 beneficiaries having sanctioned deferment incentive of Rs. 166.27 crore were not posted in the register.
- Out of 708 beneficiary-wise recovery files, seven units<sup>3</sup> could not produce 95 files (13 *per cent*) to audit stating that those were non-traceable. The sanctioned deferment to these beneficiaries amounted to Rs. 55.25 crore.
- In eight units<sup>4</sup> in the case of 59 beneficiaries, though recovery of Rs. 16.90 crore was recorded in deferment register, the units could not produce proof of payment, *i.e.* challans. Further, the relevant recovery entries were also not countersigned by the controlling officers.

<sup>2</sup> 11 Ahmedabad, , Bharuch, Gandhinagar, 1 Junagadh, Kadi, Kalol, 2 Surendranagar, 7 Vadodara and 2 Vapi

<sup>3</sup> 11 Ahmedabad, Gandhinagar, 1 Junagadh, Kadi, Kalol, 2 Surendranagar and 2 Vapi.

<sup>4</sup> 11 Ahmedabad, Gandhinagar, 1 Junagadh, Kadi, Kalol, 2 Surendranagar, 7 Vadodara and 2 Vapi.

- Four units<sup>5</sup> did not include outstanding recovery of Rs. 2.65 crore of 10 beneficiaries in the report of defaulters. The interest recoverable from them was Rs.1.98 crore up to March 2008.
- Three units<sup>6</sup> reported outstanding dues of Rs. 1.82 crore instead of Rs. 3.35 crore in case of nine beneficiaries, less by Rs. 1.53 crore. The interest recoverable on total outstanding up to March 2008 worked out to Rs. 2.12 crore.

### 2.2.9 Position of recovery of deferred tax

JC (Admn) under CoST obtains beneficiary-wise annual reports regarding sanction, availment, recovery and details of defaulters from the field units through their respective circle and divisional offices. The industrial incentive section under JC (Admn) at DoST collates those reports for submission to CoST. Table below gives the summary of deferred sales tax recovery, constructed from those annual reports, during the five year period from 2002-03 to 2006-07.

#### Status of recovery of deferred sales tax

(Rupees in crore)

Period	Deferred tax recoverable	Recovery effected	Amount outstanding	Percentage of outstanding with reference to recoverable
2002-03	526	392	134	25
2003-04	628	464	164	26
2004-05	723	575	148	20
2005-06	743	615	128	17
2006-07	815	711	104	13

The total outstanding recovery at the end of March 2007 as reported by DoST was Rs. 103 crore on which interest due worked out to Rs.102.15 crore.

### 2.2.10 Security under deferment scheme

GRs provide for obtaining security against the sanctioned deferment amount, in the form of *parri passu* charge or second charge on the assets of the beneficiary or personal guarantee in prescribed form of security bond. GRs also allow furnishing guarantee in the form of surety bond, if beneficiary could not furnish *parri passu* or second charge or personal guarantee. Audit found the following deficiencies in this matter:

- In four units<sup>7</sup>, 12 beneficiaries closed down their business after availing tax deferment of Rs. 3.26 crore. DoST cancelled their registration certificates before realisation of deferred tax. The security obtained in those cases was not available on record. The units started recovery action

<sup>5</sup> 11 Ahmedabad, 2 Bhavnagar, Junagadh and 7 Vadodara

<sup>6</sup> 2 Bhavnagar, 1 Junagadh and 7 Vadodara.

<sup>7</sup> 11 Ahmedabad, 2 Bhavnagar, 1 Junagadh and Kalol

much later in these cases, *i.e.* one to six years from the due date of repayment. The amount remained unrecovered.

- In unit-11, Ahmedabad, for effecting recovery of deferment due of Rs. 37.47 lakh as arrears of land revenue, AOs issued notices to three beneficiaries under Bombay Land Revenue Code, 1879. Security obtained, if any, from the beneficiaries were not available on record and the amount remained unrecovered.
- In unit-2, Surendranagar, one beneficiary, namely M/s. Kum Kum Industries availed sales tax deferment of Rs. 89.16 lakh upto January 2006; and first instalment repayment was due in May 2006. The beneficiary pledged (April 2001) their manufacturing premises as security against the deferment incentive; but sold his manufacturing premises in March 2005 to M/s. Shubha Industries (purchaser) nonetheless. The purchaser availed himself deferment incentive of Rs. 57.12 lakh during 2005-06 in the name of original beneficiary. DoST refused the purchaser's request (February 2007) to register under Gujarat Value Added Tax Act, 2003 in June 2007, as the property had been pledged by the original beneficiary. The departmental appellate authority ordered (July 2007) DoST to consider the purchaser's request for registration and to initiate separate action for recovery from the seller. DoST has not taken any effective action on this case. Meanwhile, repayments totalling Rs. 1.19 crore, including interest of Rs. 29.42 lakh up to March 2008, remain pending.

### **2.2.11 Monitoring and Internal Controls**

DoST implemented the schemes as a matter of course, without any coordination with IC to periodically monitor the implementation and to evaluate the outcome. There was little coordination either between the concerned administrative departments who had issued GRs for the schemes, namely DoI and FD for this purpose.

The schemes have had grave fiscal implications upon the State revenues. FD, in particular, did not do much to satisfy itself that the cost of deferred revenues did yield direct or indirect fiscal benefits.

Internal inspection wing of DoST under DC (Inspection) conducts administrative inspection of all offices under CoST, including scrutiny of record maintenance. There was little follow up on the detailed CoST instructions issued in March 1993 regarding verification of records related to incentive scheme. Continued poor record maintenance, especially at unit level, shows that the internal inspection was all but dysfunctional in monitoring the deferment schemes.

### **2.2.12 Follow up of recovery**

GRs governing deferment benefit provide for repayment of availed amount of the deferred sales tax in six equal annual instalments. Audit test check found that the units did not raise demands totalling Rs. 16.10 crore including interest in the following cases:

- In seven units<sup>8</sup>, demand for Rs. 5.35 crore was not raised against 15 beneficiaries. The interest leviable on unrealised demand up to March 2008 worked out to Rs. 3.46 crore. After this was pointed out by audit, one (namely, Idar) unit did recover (July 2007) Rs. 25.31 lakh (including interest of Rs. 2.50 lakh) from one beneficiary.
- In six units<sup>9</sup>, 16 beneficiaries had not paid the dues of Rs. 2.05 crore. DoST did not initiate or follow up action for recovery. The interest on such outstanding amount worked out to Rs. 93.10 lakh till March 2008.
- Unit-11, Ahmedabad raised demand for Rs. 3.16 crore only, from three beneficiaries against the recoverable amount of Rs. 4.15 crore up to March 2008. There was no recovery. The interest on the outstanding worked out to Rs. 3.32 crore.

### **2.2.13 Fixation of instalments**

The first repayment instalment of the availed deferred tax should begin within sixty days from the end of financial year during which the sanctioned deferment expires.

Audit test check revealed that recovery of Rs. 6.41 crore including interest remained outstanding due to late or short fixation of instalment, as detailed below:

- In eight units<sup>10</sup>, AOs fixed date of first instalment of 28 beneficiaries late; and, recovered short by Rs. 2.70 crore (Rs. 7.75 crore against Rs.10.45 crore due) up to May 2007. The interest involved worked out to Rs. 3.34 crore up to March 2008.
- In four units<sup>11</sup>, AOs fixed the annual instalment incorrectly at Rs. 80.10 lakh against Rs. 86.21 lakh from nine beneficiaries. Incorrect fixation led to non-raising of due demand of Rs. 24.60 lakh. Interest thereon would work out to Rs. 11.98 lakh up to March 2008.

### **2.2.14 Interest on belated payment**

GRs promulgated for implementation of the schemes of deferred sales tax did not contain provision for levy of interest on delayed repayments. However, DoST levied interest on delayed repayment upon the beneficiaries, on the pattern of delayed sales tax payments as provided in GST Act. In following cases, AOs did not raise demand for interest of Rs. 1.58 crore on late repayments:

---

<sup>8</sup> Gandhinagar, Idar, 1 Junagadh, Kadi, Kalol, 2 Surendranagar and 2 Vapi

<sup>9</sup> 11 Ahmedabad, 2 Bhavnagar, Gandhinagar, Kalol, Kadi and 7 Vadodara

<sup>10</sup> Ankleshwar, 2 Bhavnagar, Gandhinagar, 1 Junagadh, Kadi, Kalol, 2 Surendranagar and 7 Vadodara

<sup>11</sup> 2 Bhavnagar, Kalol, 7 Vadodara and 2 Vapi



- In seven units<sup>12</sup>, 29 beneficiaries made late repayments of deferred tax of Rs. 11.92 crore. AOs did not raise interest demand of Rs. 1.39 crore leviable on such repayments.
- In Kalol unit, CoST allowed (June 2000) further relaxation in the number of repayment instalment to one beneficiary M/s. Sintex Industries Limited (Plastic Division), without any authority to do so in the governing GR. Although the beneficiary did pay up dues totalling Rs. 1.50 crore during the period between July 2000 and December 2001, AO did not levy due interest of Rs. 19 lakh for delayed repayment.

### 2.2.15 Vechan Vera Samadhan Yojana

The State Government introduced (March 2005, March 2006 and April 2007) *Vechan Vera Samadhan Yojana* (Yojana) for speedy recovery of outstanding tax. The Yojana allowed remission of interest and penalty on payment of outstanding tax during the currency of the Yojana. The benefit under the Yojana was not available to the beneficiaries under any other scheme.

In five units<sup>13</sup>, AOs irregularly allowed remission of interest of Rs. 5.40 crore on delayed repayment of deferred tax to 13 beneficiaries.

### 2.2.16 Other topics of interest

**2.2.16.1** In a clarificatory order of March 1996, DoST had clarified that AOs should adjust the net amount after deduction of set off against deferment incentive. In Kalol unit, in the case of two beneficiaries, AOs allowed the deferment incentive before adjusting set off on inputs and refunded amount of set off along with interest. Grant of refund of Rs. 12.97 crore including interest of Rs. 2.18 crore was irregular.

**2.2.16.2** In Kadi unit, one beneficiary, namely M/s. Satyam Cotton Industries had deferment incentive of Rs. 87.22 lakh for the period from May 2000 to May 2007. The beneficiary availed deferment incentive of Rs. 10.50 lakh during 1999-2000, *i.e.* before sanction period. The assessment record was not available to confirm the fact. The beneficiary availed entire sanctioned amount between 2000-01 and 2005-06. Though the first instalment of Rs. 14.54 lakh was due in May 2006; the beneficiary paid the amount only in May 2007. As at the end of March 2008, Rs. 19.34 lakh including interest of Rs. 4.80 lakh was due from the beneficiary, for which demand was not raised.

**2.2.16.3** In three offices, audit noticed the following deficiencies:

- In one assessment for 2003-04, DCST, Mehsana irregularly adjusted purchase tax against deferment limit instead of cash recovery. The amount due was Rs. 61.05 lakh including interest and penalty of Rs. 7.23 lakh and Rs. 20.18 lakh, respectively.

<sup>12</sup> 11 Ahmedabad, 2 Bhavnagar, Gandhinagar, Kadi, 2 Surendranagar, 7 Vadodara and 2 Vapi

<sup>13</sup> Ankleshwar, Kadi, Kalol, 2 Surendranagar and 7 Vadodara

- Tax of Rs. 6.00 lakh was adjusted short against deferment limit by AO, Kadi in one assessment for the period 2003-04 due to computation error. DoST accepted (May 2007) the audit observation, passed reassessment order and adjusted the sum against deferment limit.
- In one assessment for 2001-02, DCST, Gandhidham computed tax on inter state sales of goods valued Rs. 1.06 crore at the concessional rate of four *per cent* though the purchasing dealer did not possess registration certificate during the period of transaction, applicable rate being 10 *per cent*. This resulted in short adjustment of Rs. 6.37 lakh from deferment limit. Further, in the same assessment four *per cent* of value of goods consigned out of Gujarat was not adjusted from deferment limit. DoST accepted (February 2007) the audit observation on consignment transaction and adjusted Rs. 1.14 lakh from deferment limit.

### **2.2.17 Recommendations**

- Department of Industries and Finance Department should establish a well-structured system for monitoring of the implementation of tax incentive schemes to ensure its proper functioning.
- Government should cause a periodic joint evaluation of the scheme by Department of Sales Tax and Industries Commissioner to assure itself that both the fiscal and socioeconomic objectives of the schemes are moving forward as designed.
- The Government should introduce a system of annual reporting to the legislature of the costs and benefits of the fiscal incentive schemes in general and tax incentive schemes in particular, in a comprehensive way.
- Department of Sales Tax should consider securing recovery of deferred taxes better through bank guarantees or any other means, and should conduct annual verification of sureties.

## **2.3 Incorrect grant of benefits under sale tax incentive schemes**

**2.3.1** Section 4A of the GST Act specifies that additional tax (AT) at the rate of 10 *per cent* of sales tax, general sales tax or purchase tax shall be levied from 1 April 2000 to 28 February 2003 on every dealer liable to pay tax under Section 3, 3A or 4 of the Act.

Under sales tax incentive schemes 1990-95 and 1995-2000, there was no provision to adjust AT against tax exemption limit<sup>14</sup>. In accordance with notification of 3 March 2001, AT was allowed to be adjusted against exemption limit. Therefore, the AT on purchase tax and sales tax was to be paid in cash by dealers holding exemption certificate up to 2 March 2001. Besides, delay in payment of tax attracts interest and penalty under the provisions of the Act.

---

<sup>14</sup> Exemption limit means an aggregate amount of tax payable by the eligible unit which is allowed to be adjusted against sanctioned amount for a specified period.

During test check of assessment of eight dealers in seven offices<sup>15</sup> for the period between January 2000 and March 2003 assessed between May 2004 and March 2007 that it was noticed between December 2006 and November 2007, AT was not levied in case of four dealers, and it was incorrectly adjusted against the ceiling limit instead of recovering in cash in case of other four dealers. This resulted in short realisation of AT of Rs. 1.94 crore including interest of Rs. 49.89 lakh and penalty of Rs. 53.18 lakh.

After the cases were pointed out, the department accepted between January 2007 and April 2008 the audit observations involving Rs. 1.89 crore in case of seven dealers and recovered Rs. 2.17 lakh from three dealers. A report on recovery and reply in the remaining case has not been received (November 2008).

The matter was reported to the Government in April 2008; their reply has not been received (November 2008).

**2.3.2** Sales tax incentive schemes provide that the eligible unit<sup>16</sup> shall remain in production continuously during the period mentioned in the eligibility certificate. The eligible unit shall also furnish to the Commercial Tax Department details regarding production, availment of benefit etc. as provided in the GST Act and rules made thereunder. Further, if the eligible unit contravenes any of the conditions, the incentive shall cease to operate. Accordingly, the entire amount of tax that would have been payable on sale and purchase effected by the eligible unit shall be paid by the unit within a period of 60 days from the date of contravention. If the unit failed to do so, the AO shall recover the amount from the eligible unit as an arrear of land revenue.

During test check of the records of ACCT-11, Surat in September 2007, it was noticed that a unit enjoying sales tax exemption had discontinued production from 1999 as per the returns. The Enforcement wing of CTD had detected (January 2003) unaccounted inter-state transactions of Rs.3.25 crore during the period between 1999-2000 and 2002-03. While finalising the assessment for the period 2001-02 in March 2006, the AO incorrectly adjusted the tax of Rs. 21.67 lakh assessed on the said transaction of Rs. 3.25 crore against the exemption limit. The AO did not take any action to recover benefit of Rs.1.19 crore, including Rs. 73.15 lakh allowed earlier up to the period 2000-01 along with interest and penalty of Rs. 24.70 lakh.

The matter was reported to the department in December 2007 and the Government in April 2008; their reply has not been received (November 2008).

**2.3.3** Under the sales tax incentive schemes, eligible units are allowed to purchase raw materials, processing material, consumable stores and packing material against declaration on payment of tax at the rate of 0.25 per cent.

<sup>15</sup> Deputy Commissioner of Commercial Tax(DCCT): 14 B Ankleshwar and 12 Vadodara. Assistant Commissioner of Commercial Tax(ACCT): Ankleshwar, Kalol, 2 Nadiad, 1 Surat and Porbandar.

<sup>16</sup> Eligible unit means a unit permitted by Industries department to avail sales tax incentives of either exemption or deferment of tax.

Balance tax on purchases is calculated at the prescribed rates and adjusted against the ceiling limit of exemption. Similarly, tax saved on sale of manufactured goods is also adjusted against the ceiling limit of exemption. In the event of breach of the recitals of the declaration, purchase tax saved is to be recovered under Section 50 of the GST Act with interest and penalty.

During test check of the records of 13 offices<sup>17</sup> it was noticed between December 2006 and December 2007, in the assessment of 17 dealers for the period between 1997-98 and 2003-04 and finalised between June 2003 and April 2006 that in the case of eight dealers, tax saved on purchases valued Rs. 2.06 crore of glazed mixture, chemical, copper wire, oxygen gas, furnace oil, frit, china clay and *ayurvedic* medicines against declarations was computed at incorrect rates. Similarly, tax on sale of manufactured goods like ceramic tiles, high density poly ethylene (HDPE) bags, packing material, clock, thermoplastic sheets and yarn valued at Rs. 21.86 crore was also computed at incorrect rates in the case of nine dealers. This resulted in short levy of tax of Rs. 1.13 crore including interest of Rs. 3.26 lakh and penalty of Rs. 3.15 lakh.

After the cases were pointed out between May 2007 and February 2008, the department accepted audit observations of Rs. 9.27 lakh in four cases and adjusted Rs. 5.48 lakh between June 2007 and October 2008 in case of three dealers. A report on recovery and reply in remaining cases has not been received (November 2008).

The matter was reported to the Government in April 2008; their reply has not been received (November 2008).

**2.3.4** Under the sales tax incentive schemes, goods manufactured by an eligible unit are to be sold within the State of Gujarat. In the event of transfer of the manufactured goods by the eligible unit to its branch or to the place of business of its agent outside the State, aggregate amount computed at the rate of four *per cent* or the rate of tax applicable to the goods under the GST Act, whichever is lower, of the sale price of the goods so transferred is to be adjusted against the tax exemption limit admissible.

During test check of the records of two offices<sup>18</sup>, it was noticed between June and November 2007 in the assessment of two dealers for the period 2000 and 2003-04 finalised between December 2004 and January 2007, that the dealers had consigned/transferred the manufactured goods valued Rs. 11.71 crore to their branches outside the State. The AOs did not adjust the amount of tax computed at the rate of four *per cent* of the sale price of the goods so transferred against the ceiling limit. This resulted in non adjustment of Rs. 46.83 lakh.

After the cases were pointed out between November 2007 and February 2008, the department accepted in April 2008 the audit observation involving Rs. 36.71 lakh in case of one dealer. A report on recovery and reply in other case has not been received (November 2008).

---

<sup>17</sup>DCCT: 7 Gandhinagar and 22 Rajkot.

ACCT: 11 Ahmedabad, 1 Bhavnagar, Deesa, Mehsana, 4 and 5 Rajkot, 1 and 11 Surat, 1 Surendranagar, 2 Vapi and Viramgam.

<sup>18</sup> ACCT: Kalol and 2 Nadiad.

The matter was reported to the Government in April 2008; their reply has not been received (November 2008).

**2.3.5** Sales tax incentive scheme provides that sale of manufactured goods is exempt from payment of tax and deduction from turnover of sales against certificates prescribed under the provisions of the Act shall not be allowed. The tax computed at the rates prescribed in the schedules is to be adjusted against the exemption limit.

During test check of the records of two<sup>19</sup> offices, it was noticed between September 2004 and June 2007, in the assessment of two dealers for the period 1999-2000 to 2002-03 and finalised between July 2003 and March 2004 that tax on sales of Rs. 1.23 crore made against certificates was admitted and tax at reduced rate was adjusted against exemption limit instead of adopting the rates prescribed in the schedules. This resulted in short adjustment of tax of Rs. 11.10 lakh.

After the cases were pointed out between September 2004 and October 2007, the department accepted in January 2007 and July 2008 audit observation involving Rs. 11.10 lakh in case of two dealers and recovered Rs. 41,580 in one case. A report on recovery of the remaining amount has not been received (November 2008).

The matter was reported to the Government in May 2008; their reply has not been received (November 2008).

**2.3.6** The benefit of sales tax exemption is admissible in respect of the goods specified in the eligibility certificates issued by the Industries Department to the units. Tax on sale of the goods not specified in eligibility certificate is required to be recovered along with interest and penalty.

During test check of the records of two<sup>20</sup> offices, it was noticed in June and October 2007 that while finalising the assessments between June 2006 and March 2007 in the case of two dealers for the period between 2001-02 and 2002-03, the AOs allowed sales tax exemption of Rs. 4.18 lakh on sale of copper wire and stainless steel rod valued Rs. 1.49 crore and adjusted tax against ceiling limit though such goods were not specified in the eligibility certificate issued by the Industries Department. The amount of tax of Rs. 4.18 lakh so adjusted was required to be recovered along with interest of Rs. 2.12 lakh and penalty of Rs. 2.11 lakh.

After the cases were pointed between June and October 2007, the department accepted in May 2008 the audit observation involving Rs. 89,000 in case of one dealer. A report on recovery and reply in another case has not been received (November 2008).

The matter was reported to the Government in April 2008; their reply has not been received (November 2008).

## **2.4 Non/short levy of tax due to incorrect classification of goods**

**2.4.1** It has been judicially held<sup>21</sup> that poly propylene/high density poly ethylene (PP/HDPE) fabrics will be classified as plastic instead of textile

<sup>19</sup> ACCT: Ankleshwar and Viramgam.

<sup>20</sup> ACCT: 11 Ahmedabad and 2 Nadiad.

<sup>21</sup> Union of India V/s Pramact Plastic Pvt. Ltd.-2000(119) E.L.T.A 173 (SC)

material for the purpose of levy of central excise duty. Assessment manual of Sales Tax Department clarify that if any entry in schedule to the Act is linked with Central Excise Act, any amendment made in the Central Excise Act shall have effect in entry under the Sales Tax Act as well. In absence of clarification from the CCT, the AOs allowed HDPE fabrics as textile material (exempted goods) though tax was leviable at the rate of eight *per cent* treating it as 'plastic'.

During test check of the records of 25<sup>22</sup> offices, it was noticed between January 2007 and December 2007 for the period 2001-02 and 2004-05 finalised between November 2003 and March 2007 in the assessment of 94 dealers under the GST Act and ten dealers under the CST Act that the AOs did not levy tax on sale of HDPE fabrics. In view of the above judicial pronouncement, tax was leviable at eight *per cent* and 10 *per cent* under the GST Act and CST Act respectively. Incorrect classification resulted in underassessment of Rs. 45.74 crore.

After the cases were pointed out between May 2007 and February 2008, the department accepted in June 2008 the audit observation involving Rs. 5.84 lakh in one case. In other cases, the department did not accept the observations stating that the classification was correctly made under fabric as per the GST Tribunal decisions<sup>23</sup>. The reply is not acceptable as the judgment by Hon'ble Supreme Court was pronounced after the decisions of the Tribunal and the department had taken contradictory view on the issue of similar nature of objection.

The matter was reported to the Government (May 2008). The Government accepted (August 2008) the observation in one case; the reply in other cases has not been received (November 2008).

**2.4.2** The GST Act provides to levy tax at the rates as provided in the schedules to the Act, depending upon the classification of goods. However, where the goods are not covered under any specific entry of the schedule, rate of tax given for residuary entry is applicable.

During test check of the records of eleven<sup>24</sup> offices, it was noticed between May 2006 and November 2007 that 15 dealers paid tax at lower rate on goods valued at Rs. 77.26 crore during 2001-02 to 2005-06 due to incorrect classification of goods. The AOs while finalising the assessments between May 2005 and September 2006 failed to assess the tax at correct rate. This resulted in short realisation of tax of Rs. 10.02 crore including interest of Rs. 1.51 crore and penalty of Rs. 3.88 crore as mentioned below:

---

<sup>22</sup> DCCT: Gandhinagar  
ACCT: 11, 15, 17, 18, 21 and 22 Ahmedabad, Anand, Ankleshwar, Bharuch, 1 and 3 Jamnagar, Kadi, Kalol, 2 and 23 Rajkot, 5, 7 and 12 Surat, 1 and 6 Vadodara, 1 and 2 Vapi, Viramgam.

CTO: Visnagar

<sup>23</sup> M/s.Netlon India (2000 GSTB Part II) and M/s.B.G.Arora Extrusion Pvt. Ltd. (2000 GSTD Part II)

<sup>24</sup> ACCT: 8, 11, 14, 20, 21 Ahmedabad, 1 Bhavnagar, Deesa, 2 Nadiad, 1 Surendranagar, 2 Surat and Vadodara.

(Rupees in crore)

Sl. No.	No. of dealers	Commodity	Classified/Classifiable under entry No.	Rate of tax leviable/levied	Amount of tax non/short levied including interest and penalty
1.	8	Sugar candy	86/167	6/Nil	7.76
2.	1	Frit	19/195	12/4	1.37
3.	1	Optical brightening agent	19/195	13.2/6 13.2/12	0.46
4.	5	Other goods	Different entries	Different rates	0.43
<b>Total</b>	<b>15</b>				<b>10.02</b>

After the cases were pointed out between April 2007 and February 2008; the department accepted in April 2008 audit observation involving Rs. 5 crore in two cases. A report on recovery and reply in remaining cases has not been received (November 2008).

The matter was reported to the Government in April 2008; their reply has not been received (November 2008).

## 2.5 Loss of revenue due to time bar assessment and excess payment of interest

**2.5.1** Under Section 42 of GST Act, no order of assessment for a year or part of such year shall be made under section 41(3) or (4) at any time after the expiry of three years from the end of the year in which the last monthly, quarterly or as the case may be, annual return is filed. However, order under Section 41(2) could be passed any time by accepting the returns filed by the dealer. Further, the field units of the department maintain register no. 11 (P register) for watching timely completion of the assessments.

During test check of records of ACCT, unit-5, Ahmedabad, it was noticed in January 2007 that the AOs had finalised seven assessments of two dealers for the period from 1985-86 to 1989-90 during the period between March and September 1994. The tax assessed in the said assessments was Rs. 19.99 crore. The dealers preferred appeal against the assessment orders. The appellate authorities *viz.* Gujarat Sales Tax Tribunal and ACCT (Appeal) set aside (between March 2002 and October 2003) all the finalised assessments on the ground that orders of assessment were passed beyond the limitation period. Thereafter, the AOs finalised the assessments under Section 41(2) during the period between April 2004 and June 2005 and levied tax of Rs. 12.25 crore. The AOs did not finalise these assessments in time due to improper maintenance of the P register which resulted in loss of revenue of Rs. 7.74 crore.

The matter was reported to the department in May 2007 and Government in April 2008; their reply has not been received (November 2008).

**2.5.2** Section 54 of GST Act provides that where an amount required to be refunded by the Commissioner to any person by virtue of any other order (other than assessment order) is not so refunded to him within a period of 90

days of the date of the order, the State Government shall pay to such person interest at the rate of nine *per cent* (14 *per cent* up to 31 August 2001) from the date following the expiry of specified period to the date of refund.

During test check of two <sup>25</sup> offices, it was noticed in the assessment of two dealers for the periods 1985-86 to 1989-90 finalised during 2005-06 under Section 41(2) that interest on refund was computed from the date of order instead of from 90 days of the date of order. This resulted in excess payment of interest of Rs. 10.89 lakh.

After the cases were pointed out between August 2007 and December 2007, the department accepted in August 2007 audit observation involving Rs. 4.18 lakh in case of one dealer. A report on recovery and reply in remaining case has not been received (November 2008).

The matter was reported to the Government in April 2008; their reply has not been received (November 2008).

## **2.6 Short levy of tax**

Section 55 B of the GST Act allows a dealer whose aggregate turnover of specified sales (rent income) of shamiyana, electrical fans, electrical goods, furnitures or utensils exceeds one lakh rupees in a year to pay composition tax of Rs.2,000 for each Rs. 1 lakh or part thereof in excess of Rs. 1 lakh during a year. As per Rule 33B of GST Rules, composition amount is to be computed on the aggregate turnover of specified sales.

During test check of the records of ACCT, Unit-8, Ahmedabad in September 2007, it was noticed that aggregate turnover of specified sales of the dealer included the turnover of exempted specified sales. The AO levied composition tax on turnover allowing deduction of amount of exempted specified sales instead of aggregate turnover of specified sales. This resulted in short levy of tax of Rs.25.49 lakh.

The matter was reported to the department in February 2008 and Government in May 2008; their reply has not been received (November 2008).

## **2.7 Non/short levy of penalty**

Section 45(6) of GST Act provides that where the amount of tax assessed or reassessed exceeds the amount of tax paid with the returns by a dealer by more than 25 *per cent*, penalty not exceeding one and one half times of difference shall be levied. Further, the Commissioner vide circular dated 3 June 1992 has laid down slab rates for levy of penalty. By virtue of section 9(2) of the CST Act, the above provisions apply to assessments under the CST Act as well.

During test check of the records of 20<sup>26</sup> offices, it was noticed between October 2004 and February 2008 in the assessment of 29 dealers for the assessment period between 1994-95 and 2004-05 that though the difference between tax assessed and tax paid with returns exceeded by 25 *per cent* of the

---

<sup>25</sup> ACCT: 22 Ahmedabad and 6 Vadodara.

<sup>26</sup> DCCT: 4 Ahmedabad, 7 Gandhinagar, 24 Jamnagar and 18 Valsad.

ACCT: 8 and 21 Ahmedabad, 1 Anand, 1, 2 Bhavnagar, 24 Gandhinagar, Kalol, Palanpur, 4 Rajkot, 1 and 11 Surat, 1 and 20 Surendranagar, 1 and 3 Vadodara and 2 Vapi.



amount of tax paid, the assessing authority while finalising the assessments between September 2003 and March 2007 did not levy penalty at the rates prescribed in the Commissioner's circular of June 1992. This resulted in non/short levy of penalty of Rs. 1.70 crore.

After the cases were pointed out between May 2007 and February 2008, the department accepted between May 2007 and November 2007 audit observations involving Rs. 1.08 crore in case of ten dealers and recovered Rs. 9.92 lakh in case of two dealers. A report on recovery and reply in remaining cases has not been received (November 2008).

The matter was reported to the Government in April 2008; their reply has not been received (November 2008).

## **2.8 Non/short levy of central sales tax**

**2.8.1** As per Rule 12(10) of the Central Sales Tax (Registration and Turnover) Rules, 1957, the dealer has to furnish to the prescribed authority, a certificate in form H, duly filled in with all details *viz.* agreement number and date relating to such export, particulars of goods along with evidence of export of such goods in support of his claim for export.

During test check of the records of 11<sup>27</sup> offices, it was noticed between May 2007 and December 2007 in the assessment of 31 dealers for the period between 1996-97 and 2005-06 finalised between March 2004 and 2007 that the AOs allowed export sales valued at Rs. 398.25 crore either without production of form H/bill of lading or against incomplete certificates in form 'H'. This resulted in underassessment of Rs. 20.62 crore including interest of Rs. 76.19 lakh and penalty of Rs.79.02 lakh.

The matter was reported to the department between December 2007 and February 2008 and Government in May 2008; their reply has not been received (November 2008).

**2.8.2** Under the CST Act, tax leviable on inter state sale of goods shall be at the rate of 10 *per cent* or at the rate applicable for sale or purchase of such goods inside the State, whichever is higher. In the case of declared goods, tax shall be calculated at twice the rate applicable to the sale of such goods inside the State. However, in case of inter state sale supported by declaration in form C or certificate in form D, tax is leviable at the rate of four *per cent* or the rate applicable to the sale or purchase of such goods inside the State, whichever is lower. In respect of the dealers availing tax exemption benefit vide entry 255 or 69 under section 49(2) of GST Act, tax shall be computed at the concessional rate on production of form 29 or 43, or else tax shall be computed at the applicable rates for adjustment against exemption limit.

<sup>27</sup> DCCT: 11 Vadodara.

ACCT: 8, 11 and 15 Ahmedabad, 24 Gandhinagar, , Jamkambalia, 2 and 4 Rajkot, 10 and 11 Surat and 1 Vapi.

During test check of the records of 27<sup>28</sup> offices, it was noticed between December 2005 and 2007 in the assessment of 43 dealers for the period 1989-90 and 2005-06 finalised between May 1995 and March 2007 that sales of various goods valued at Rs. 196.49 crore were not supported by form 'C' or form 29 or 43. However, AOs levied/computed tax at the concessional rate. This resulted in short levy of tax of Rs. 5.10 crore including interest of Rs. 1.08 crore and penalty of Rs. 1.02 crore.

After the cases were pointed out between September and December 2007, the department accepted in August 2007 audit observations involving Rs. 44.84 lakh in case of seven dealers and recovered Rs. 11.97 lakh in case of five dealers. A report on recovery of balance amount and reply in the remaining cases has not been received (November 2008).

The matter was reported to the Government in May 2008; their reply has not been received (November 2008).

**2.8.3** Section 5(2) of the CST Act provides that a sale or purchase of goods shall be deemed to take place in the course of import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the custom frontiers of India. Further, Section 41(3) of GST Act provides that the assessing authority after considering all the evidences which may be produced in support of declaration made by the dealer shall assess the amount of tax due from the dealer.

During test check of the records of ACCT Unit-3, Jamnagar, it was noticed in June 2007 in the assessment of a dealer for the period 2001-02 finalised in March 2006 that AO allowed deduction of high sea sales<sup>29</sup> of Rs. 4.03 crore but did not keep the prescribed documents *viz.* agreement between the importer and purchaser, bill of entry endorsed in favour of the purchaser, sales bill, proof of payment of customs duty etc. on record in support of the deduction. Before allowing the deduction of high sea sales, the AO should have considered and kept the prescribed documents on record as evidence in support of the deduction. In the absence of relevant documents, correctness of deduction allowed from turnover could not be verified. The tax involved in these transactions worked out to Rs. 34.50 lakh including interest of Rs. 8.70 lakh and penalty of Rs. 9.67 lakh.

The matter was reported to the department in November 2007 and Government in April 2008; their reply has not been received (November 2008).

**2.8.4** Under CST Act, where sale of any goods in the course of inter state trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods (sale in transit) to the Government or to a registered dealer shall be exempt from tax. The exemption is subject to production of a certificate in

---

<sup>28</sup> DCCT: Petro 1 Ahmedabad, 4 Ahmedabad, 22 Rajkot  
ACCT: 1, 8, 10, 11, 18 and 21 Ahmedabad, Anand, Ankleshwar, 1 Bhavnagar, 24 Gandhinagar, Jamkhambalia, 1 Jamnagar, 1 Junagadh, Kalol, Mehsana, 4, 12 and 22 Rajkot, 11 Surat, 3 and 6 Vadodara, 1 Vapi and Vyara.  
CTO: Botad

<sup>29</sup> Sales of goods before crossing the custom frontiers of India, by endorsing the import documents in favour of the purchaser by importer.

from E-I or E-II duly filled and signed by the registered dealer from whom the goods were purchased and declaration in form 'C' or certificate in form 'D' obtained from the buyer.

During test check of the records of three<sup>30</sup> offices, it was noticed between February and November 2007 in the assessment of four dealers for the period between 2001-02 and 2003-04 finalised between March and May 2006 that the AOs did not levy tax though sales were not supported by 'E-1/E-II' and 'C'/'D' forms. Tax involved in those transactions worked out to Rs. 97.00 lakh including interest of Rs. 22.68 lakh and penalty of Rs. 27.86 lakh.

After the cases were pointed out between February 2007 and November 2007, the department accepted in July 2007 audit observation involving Rs. 24.52 lakh in case of one dealer. A report on recovery and reply in the remaining cases has not been received (November 2008).

The matter was reported to the Government in April 2008; their reply has not been received (November 2008).

**2.8.5** The CST Act and rules made thereunder provides that where any dealer transfer goods from one state to another not by reason of sale, he shall furnish to the AO, a declaration in form 'F', duly filled and signed by the principal officer of the other place of business, along with the evidence of dispatch of such goods. If the dealer fails to furnish such declaration, then the movement of such goods shall be deemed to have been occasioned as a result of sale.

During test check of the records of three<sup>31</sup> offices, it was noticed between September and December 2007 in the assessment of three dealers for the period 2000-01 and 2001-02 finalised between March 2005 and 2006 that the AOs allowed claim of transfer of goods to other place of business without any declaration or evidence for dispatch of such transfer. This resulted in short levy of tax of Rs. 19.22 lakh including interest of Rs. 5.08 lakh and penalty of Rs. 4.76 lakh.

After the cases were pointed out between December 2007 and February 2008, the department accepted in June 2008 the audit observation involving Rs. 1.14 lakh in case of one dealer. A report on recovery and reply in remaining cases has not been received (November 2008).

The matter was reported to the Government in April 2008; their reply has not been received (November 2008).

**2.8.6** Section 4 A of GST Act read with Section 9(2) of the CST Act provides that additional tax at the rate of 10 *per cent* on tax is chargeable from 1 April 2000 to 28 February 2003.

During test check of the records of three<sup>32</sup> offices, it was noticed between January 2007 and November 2007 in the assessment of three dealers for the period between 2001-02 and 2002-03 finalised between October 2005 and March 2007 that additional tax was not levied on inter state sales of various

<sup>30</sup> ACCT: 8, 17 Ahmedabad and 4 Vadodara

<sup>31</sup> ACCT: 15 Ahmedabad and 1 and 2 Vapi.

<sup>32</sup> DCCT: 8 Mehsana  
ACCT: Kalol and 4 Rajkot.

goods valued at Rs. 4.58 crore made after 1 April 2000. This resulted in non-levy of additional tax of Rs. 16.78 lakh including interest of Rs. 3.05 lakh and penalty of Rs 8.07 lakh.

The matter was reported to the department between May 2007 and February 2008 and the Government in April 2008; their reply has not been received (November 2008).

## **2.9 Non/short levy of purchase tax**

**2.9.1** Section 15 B of the GST Act provides that where a dealer purchases directly or through commission agent any taxable goods other than declared goods and uses them as raw material, processing material or consumable stores in the manufacture of taxable goods, purchase tax at prescribed rate is leviable in addition to any tax leviable under any other section of the Act. Purchase tax so levied is admissible as set off under the Gujarat Sales Tax (GST) Rules, 1970, provided the goods manufactured are sold by the dealer in the state of Gujarat. High Court of Gujarat<sup>33</sup> held that a dealer is liable to pay purchase tax under Section 15 B of the Act on the goods purchased from sales tax exemption holders and used in the manufacture of goods, as the goods are generally taxable goods under the Act though they may be exempted from payment of sales tax pursuant to the notification under Section 49(2) of the Act.

During test check of the records of 10<sup>34</sup> offices, it was noticed between January and December 2007 in the assessment of 16 dealers for period between 1997-98 and 2005-06 finalised between July 2004 and February 2007 that purchase tax was either not levied or levied short on purchases made from exemption holders. This resulted in underassessment of Rs. 82.80 lakh including interest of Rs. 10.02 lakh and penalty of Rs. 6.18 lakh.

After the cases were pointed out between April 2007 and February 2008, the department accepted between May and October 2008 the audit observations involving Rs. 30.27 lakh in case of six dealers. A report on recovery and reply in remaining cases has not been received (November 2008).

The matter was reported to the Government in May 2008; their reply has not been received (November 2008).

**2.9.2** Section 13 of GST Act provides that a registered dealer, on production of declaration in form '19', can purchase goods (other than prohibited goods) without payment of sales tax for use by him as raw materials or processing materials or consumable stores in the manufacture of taxable goods for sale within the State. In the event of breach of condition of declarations, the dealer is liable to pay purchase tax under Section 16 at the prescribed rates.

During test check of the records of four<sup>35</sup> offices, it was noticed between February and December 2007 in the assessment of six dealers for the period

---

<sup>33</sup> M/s. Madhu Silica (85 STC 258) and M/s Cheminova India Ltd (2001-GSTB-286).

<sup>34</sup> DCCT: 24 Jamnagar, 10 Vadodara and 18 Valsad.

ACCT: 1 Ahmedabad, Ankleshwar, Kalol, 6 Surat 2 and 5 Vadodara, and 1 Vapi.

<sup>35</sup> DCCT: 7 Gandhinagar and 24 Jamnagar  
ACCT: 1 Jamnagar and 5 Surat.

between 2000-01 and 2004-05 finalised between May 2005 and December 2006 that the dealers purchased materials valued at Rs. 4.44 crore against form 19 and used for a purpose otherwise than in manufacture. The AOs did not levy purchase tax for the breach of condition of the declarations. This resulted in non-levy of purchase tax of Rs. 26.81 lakh including interest of Rs. 5.31 lakh and penalty of Rs.5.59 lakh.

After the cases were pointed out between February 2007 and November 2007, the department accepted in June 2008 the audit observation involving Rs.35,527 in one case. A report on recovery and reply in the remaining cases has not been received (November 2008).

The matter was reported to the Government in April 2008; their reply has not been received (November 2008).

## **2.10 Non/short levy of turnover tax**

Section 10A of the GST Act provides that where the turnover of sales of a dealer, liable to pay tax, first exceeds Rs. 50 lakh, the dealer is liable to pay turnover tax at prescribed rate on the turnover of sales of goods other than declared goods after allowing permissible deduction under the Act. From April 1993, sales made against various declarations and sales exempted from tax under Section 49(2) were excluded from the permissible deductions making such sales liable to turnover tax. While working out the liability and applicability of rate of turnover tax, the taxable turnover of sales of all the branches of the dealer within the state is to be considered.

During test check of the records of seven<sup>36</sup> offices, it was noticed between March 2007 and December 2007 in the assessment of eight dealers for the period between 1993-94 and 1996-97 finalised between June 2004 and November 2006 that turnover tax was either not levied or short levied due to non-consideration of taxable sales exempted under Section 49(2) of the Act and incorrect application of slab rates. This resulted in short levy of turnover tax of Rs. 83.59 lakh including interest of Rs. 20.17 lakh and penalty of Rs. 18.37 lakh.

After the cases were pointed out between August 2007 and February 2008, the department accepted in August 2007 the audit observations involving Rs. 5.25 lakh in case of four dealers and recovered Rs. 83,000 in case of two dealers. A report on recovery and reply in the remaining cases has not been received (November 2008).

The matter was reported to the Government in April 2008; their reply has not been received (November 2008).

## **2.11 Irregular/excess grant of set off**

**2.11.1** Rule 44 of the GST Rules provides that the dealer who had paid tax on purchase of goods is eligible for set off from the tax payable on inter state sale of such goods.

<sup>36</sup> DCCT: 10 and 12 Vadodara

ACCT: 10 Ahmedabad, Bharuch, 1 Bhavnagar, Gandhinagar and 2 Junagadh.

During test check of the records of three offices<sup>37</sup>, it was noticed between February and July 2007, in the assessment of three dealers for the period between 2000-01 and 2004-05 finalised between November 2005 and March 2006 that AOs allowed excess set off of Rs. 92.51 lakh, on account of sale of cotton seeds emerged as a result of ginning process of cotton, which is not a process of manufacture, in the State in two cases, and incorrect computation of set off in one case. This resulted in excess grant of set off of Rs. 1.93 crore including interest of Rs. 32.76 lakh and penalty of Rs. 67.86 lakh.

After the cases were pointed out between August and December 2007, in two cases, the department stated in October 2007 that the total cost of purchase qualify for set off as held by the Supreme Court<sup>38</sup>. The reply is not acceptable as ratio of the judgement cannot be applied in view of the fact that the case decided involved manufacturing process whereas the two cases under scrutiny were related to resale. The determination order<sup>39</sup> passed by the Commissioner of Sales Tax in 1998 under Section 62 of GST Act shall apply in this case. Reply in the remaining case has not been received (November 2008).

The matter was reported to the Government in May 2008; their reply has not been received (November 2008).

**2.11.2** Rule 42 of GST Rules provides that a dealer who has paid tax on the purchase of goods (other than prohibited goods) to be used as raw or processing materials or consumable stores in the manufacture of taxable goods, is allowed set off at the rate applicable to the respective goods from the tax payable on the sale of manufactured goods subject to fulfillment of general conditions prescribed in Rule 47 of the Rules.

During test check of the records of 18<sup>40</sup> offices, it was noticed between August 2005 and December 2007 in the assessment of 26 dealers for the assessment period between 1999-2000 and 2005-06 finalised between March 2004 and March 2007 that AOs allowed excess set off of Rs. 27.12 lakh as detailed below:

Sl. No.	No. of dealers	Excess set-off allowed (Rs. in lakh)	Nature of irregularity
1.	2	2.70	Set off was allowed on the purchases of prohibited goods i.e. CI casting, PVC resin.
2.	5	4.68	Excess grant of set off was allowed on craft paper, sand, auto parts, sugar molasis, machinery and medicines.
3.	5	2.35	Two <i>per cent</i> of purchase price on submersible pumps, electronic machines, oil engine and its parts was not reduced from set off allowed.
4.	2	2.68	Excess set off was allowed under Rule 42(G).

<sup>37</sup> ACCT: , Jamnagar, Junagadh and Rajkot.

<sup>38</sup> M/s. Pulgaon Cotton Mills Ltd. 85-STC-220.

<sup>39</sup> M/s. Nursey Brothers 98-2-228-D.

<sup>40</sup> DCCT: 24 Jamnagar, 23 Rajkot and 12 Vadodara.

ACCT: 8, 9, 16, 18 and 21 Ahmedabad, 1 Jamnagar, 2 Junagadh, 2, 4 and 5 Rajkot, 1, 8 and 11 Surat, 5 Vadodara and 2 Vapi.

5.	11	11.82	Four <i>per cent</i> of value of goods branch transferred outside the State was not deducted from set off.
6.	1	2.89	Set off of Rs. 14.45 lakh was allowed as against Rs. 11.56 lakh.
<b>Total</b>	<b>26</b>	<b>27.12</b>	

This resulted in short recovery of Rs. 39.67 lakh including interest of Rs. 9.66 lakh and penalty of Rs. 2.89 lakh.

After the cases were pointed out between April 2007 and February 2008, the department accepted between December 2007 and January 2008 the audit observations involving Rs. 7.57 lakh in case of seven dealers and recovered Rs. 4.11 lakh from four dealers. A report on recovery and reply in the remaining cases has not been received (November 2008).

The matter was reported to the Government in May 2008; their reply has not been received (November 2008).

### **2.12 Non/short levy of interest**

Section 47(4A) of the GST Act provides that if a dealer does not pay the amount of tax within the prescribed period and if the amount of tax assessed or reassessed exceeds the amount of tax already paid by more than ten *per cent*, simple interest at the rate of 24 *per cent* per annum for the period up to 31 August 2001 and at 18 *per cent* per annum thereafter is leviable on the amount of tax remaining unpaid for the period of default. By virtue of section 9(2), the above provisions apply to assessments under the CST Act as well.

During test check of the records of 10<sup>41</sup> offices, it was noticed between February and December 2007 in the assessment of ten dealers for the period between 1993-94 and 2002-03 finalised between March 2006 and March 2007 that interest of Rs. 10.47 lakh was either not levied or levied short on the amount of unpaid tax.

After the cases were pointed out between August 2007 and February 2008, the department accepted between April and June 2008 the audit observations involving Rs. 2.35 lakh in case of three dealers and recovered Rs.50,000 in one case. A report on recovery of the balance amount and reply in remaining cases has not been received (November 2008).

The matter was reported to the Government in April 2008; their reply has not been received (November 2008).

### **2.13 Incorrect allowance of deduction from sales**

Resale for the purpose of Sections 7, 8, 10, 15 and 19B of the GST Act, means a sale of purchased goods in the same form in which they were purchased or without doing anything to them which amounts to, or results in manufacture. Section 41(3) of the GST Act further provides that the assessing officer after considering all the evidences in support of declaration made by the dealer shall assess the amount of tax due from the dealer. Further, the CoST issued instructions on 15 April 2004 that copies of trading account, profit and loss

<sup>41</sup> DCCT: Petro II Ahmedabad, 4 Ahmedabad, 24 Jamnagar and 22 Rajkot.  
ACCT: 8 and 21 Ahmedabad, 1 Bhavnagar, Palanpur, 6 Vadodara and Vyara.

account, audit report, registration details of dealers from whom purchases are made etc. shall be kept on assessment record.

During test check of the records of 11<sup>42</sup> offices, it was noticed between August and December 2007 for the period between 2000-01 and 2005-06 in the assessment of 74 dealers finalised between July 2004 and March 2007 that the AOs allowed claim of resales of the dealers of Rs. 729.22 crore though evidence in support of tax paid purchases were not available on record. The AOs did not follow the instructions issued by the CoST. In absence of details of selling dealers such as registration number of the dealers, place of business, quantity and value of goods purchased etc., the correctness in grant of deduction from taxable turnover involving tax of Rs. 42.27 crore including interest of Rs. 20.57 lakh and penalty of Rs. 28.59 lakh was not susceptible for verification.

The matter was reported to the department between December 2007 and February 2008 and the Government in May 2008; their reply has not been received (November 2008).

---

<sup>42</sup> ACCT: 1, 6, 8, 11, 14, 15 Ahmedabad, 24 Gandhinagar, Jamkhabalia, , Mehsana, and 6,11 Surat.