

CHAPTER-II: Taxes on Sales, Trade etc.

2.1 Results of audit

Test check of sales tax assessments, refund cases and other connected records conducted during the year 2005-06 revealed under assessments of sales tax amounting to Rs.241.06 crore in 960 cases, which broadly fall under the following categories:

Sl. No.	Particulars	Number of cases	Amount (Rupees in crore)
1.	Under assessment of turnover under CST Act	224	34.15
2.	Application of incorrect rates of tax	105	5.28
3.	Incorrect computation of turnover	10	3.41
4.	Non levy of interest	35	1.29
5.	Non levy of penalty	11	0.19
6.	Other irregularities	574	45.65
7.	Review on "Evasion in sales tax"	1	151.09
	Total	960	241.06

During the year 2005-06, the Excise and Taxation Department accepted under assessments of tax of Rs.1.07 crore involved in 95 cases of which 67 cases involving Rs.0.33 crore had been pointed out in audit during 2005-06 and the rest in earlier years. An amount of Rs.0.95 crore had been recovered in 60 cases during the year 2005-06, of which Rs.0.71 crore recovered in 21 cases related to earlier years.

A few illustrative cases involving Rs.5.74 crore and a review on "Evasion in sales tax" involving Rs.151.09 crore highlighting important cases are mentioned in this chapter.

2.2 Evasion in sales tax

Highlights

Notwithstanding departmental instructions of conducting regular survey to detect unregistered dealers, no survey was conducted.

(Paragraph 2.2.7)

HUDA and HSAMB divisions and Haryana Police Housing Corporation supplied cement valuing Rs.31.46 crore to contractors. The contractees neither recovered from the contractors nor paid sales tax resulting in evasion of tax of Rs.11.32 crore (including penalty).

(Paragraph 2.2.8.1)

Sales tax of Rs.53.40 crore including penalty on rental charges of electric meters collected by Haryana Bijli Vitran Nigam at Panchkula and Hisar during 2000-01 to 2004-05 was not paid.

(Paragraph 2.2.9.1)

Five dealers purchased goods amounting to Rs.975.88 crore at concessional rate for use in manufacture of goods for sale and transferred to their branches outside the State resulting in evasion of tax of Rs.33.90 crore.

(Paragraph 2.2.11.1)

Assessments were finalised without cross verification of sale/purchase of 1,399 transactions, having sale value of Rs.39.75 crore involving tax effect of Rs.3.32 crore.

(Paragraph 2.2.12)

Fifteen dealers suppressed purchase turnover of Rs.14.07 crore by either showing them as tax paid or not showing in their returns/trading accounts which resulted in evasion of tax of Rs.3.08 crore (including penalty).

(Paragraph 2.2.12.1 & 2.2.12.2)

Recommendations

2.2.1 With a view to curb the incidence of evasion, State Government may consider:

- ensuring adequate and regular market survey every year to bring unregistered dealers into tax net;

- ensuring cross verification of transactions against declaration forms with other circles/States before finalising the assessment;
- ensuring before allowing exemption/concessional rate of tax the transactions are supported by prescribed statutory declaration forms properly filled in and with evidence;
- developing internal control system to monitor proper functioning of the field offices of department to plug leakages of revenue.

Introductory

2.2.2 The Haryana General Sales Tax Act, 1973 (HGST Act) and the Central Sales Tax Act, 1956 (CST Act) and the Rules framed thereunder govern the registration of dealer, levy, assessment and collection of tax on purchases and sales of goods. Efficient tax collection machinery provides an elaborate system of controls to prevent, detect and penalise any wilful avoidance of tax. Operation of these controls by scrupulous adherence to the provisions of the Acts/Rules and procedures by departmental officers is necessary for plugging leakages of revenue through evasion. The Haryana Value Added Tax Act, 2003 repealed the HGST Act with effect from April 2003.

Organisational Set up

2.2.3 The Financial Commissioner and Principal Secretary to Government Haryana, Excise and Taxation Department is the administrative head in Government and is responsible for the administration of sales tax laws. The overall control and superintendence of the sales tax organisation vests with the Excise and Taxation Commissioner (ETC), who is assisted by six Additional Excise and Taxation Commissioners (AETCs), 10 Joint Excise and Taxation Commissioners (JETCs), 21 Deputy Excise and Taxation Commissioners (DETCs), excise and taxation officers (ETOs), assistant excise and taxation officers (AETOs), taxation inspectors and other allied staff for the purposes of administering the sales tax laws.

Audit Objectives

2.2.4 The review was conducted with a view to ascertain:

- the extent of compliance of procedures, codal provisions and executive instructions to ensure regular survey and inspection of business premises or goods carrier of a dealer during roadside checking to check the incidence of evasion of tax and to detect unregistered dealers.
- whether the departmental machinery was efficient and effective in discharging its duties and responsibilities for levy, assessment and collection of tax, verification of declaration forms and for initiating penal action against defaulters.
- whether internal control mechanism exists to provide adequate safeguard against evasion of tax and detect frauds etc.

Audit coverage

2.2.5 Records of 12* DETC in 10 districts out of 21 DETC in 19 districts for the period from 2000-01 to 2004-05 were test checked between January 2005 and March 2006.

These districts were selected after taking into consideration the location of districts having boundaries with adjoining States like Delhi, Punjab, Rajasthan and Uttar Pradesh wherein there could be greater chances of evasion of tax by unregistered dealers. In addition two or three districts from each of the four commissionerates** in Haryana were also covered. Points of similar nature noticed in audit during 2000-01 to 2004-05 have also been included.

The results of the review are contained in the succeeding paragraphs:

Internal control

2.2.6 Internal audit system had not been set up in the department in respect of assessment of sales tax cases.

Non conducting of survey for registration

2.2.7 Systematic survey under the Act is one of the important tools of the department enabling it to register all those dealers who are liable for registration and prevent evasion of tax by unregistered dealers. The department emphasised in September 1993 that AETOs incharge of the circle should conduct survey in their respective circles every year in the month of April and May and send a report to headquarters by 15th June.

Test check of records of nine[#] DETCs revealed that no survey was conducted in any of the offices during 2000-01 to 2004-05 except that of DETC, Sonipat where survey was conducted only in 2002-03 and 476 unregistered dealers were registered under HGST/CST Act. Since no survey has been conducted, possibility of a large number of unregistered dealers remaining out of the tax net cannot be ruled out. This shows non implementation/compliance of headquarters instructions issued in September 1993 by the field offices and lack of monitoring at headquarters.

Evasion of tax by unregistered dealers

2.2.8 Non levy of tax on contractees

2.2.8.1 Under the HGST Act, "sale" means any transfer of property in goods and includes transfer of right to use any goods (whether as goods or in some other form) for cash, deferred payment or other valuable consideration.

* Faridabad (East), Faridabad (West), Gurgaon (East), Gurgaon (West), Hisar, Jagadhari, Jhajjar, Kaithal, Karnal, Panipat, Sirsa and Sonipat.

** Ambala commissionerate: Ambala, Jagadhari, Kaithal, Kurukshetra and Panchkula; Gurgaon commissionerate: Faridabad, Gurgaon, Narnaul and Rewari; Hisar commissionerate: Bhiwani, Fatehabad, Hisar, Jind and Sirsa and Rohtak commissionerate: Jhajjar, Karnal, Panipat, Rohtak and Sonipat.

Faridabad (East), Faridabad (West), Gurgaon (East), Gurgaon (West), Hisar, Jagadhari, Jhajjar, Panipat and Sonipat.

Department clarified in December 1996 that material supplied by contractees to the contractors constitute an independent sale for which they are required to be registered and pay tax. Further, where a dealer liable to pay tax, wilfully failed to apply for registration, he shall be liable to pay penalty, in addition to the amount of tax, a sum equal to twice the amount of tax so assessed.

Audit scrutiny of the records and information received/collected from 10[#] divisions/units revealed that cement valued at Rs.31.46 crore was procured by HUDA, HSAMB and HPHC (contractees) during the years 2000-01 to 2004-05 from outside the State and supplied to contractors for use in the execution of works. Scrutiny of contractors bills and other related records, however, revealed that contractees neither recovered sales tax from the contractors nor was it deposited in Government account. This resulted in evasion of tax of Rs.11.32 crore (including penalty of Rs.7.55 crore).

The matter was brought to the notice of eight* DETCs between December 2005 and March 2006. DETC Panchkula stated in May 2006 that notices were being issued to HUDA and HPHC. DETC Hisar stated in June 2006 that notices had been issued to HSAMB Hisar. ETC stated in June 2006 that the department had initiated action against the contractees for non payment of tax. Further progress was awaited (August 2006).

2.2.8.2 In accordance with the minutes of meeting of High Powered Purchase Committee held on 12 December 2002 under the Chairmanship of Chief Minister, Haryana, it was decided that Public Works Department (Public Health), Panchkula (PH department) would procure ductile iron (DI) pipes from a Calcutta based firm against form D and supply them to HUDA and HSIDC**. Payment would be made to firm by HUDA/HSIDC with the arrangement that the sales tax would accrue to the State exchequer.

Test check of records of Executive Engineer, Public Health division, Panchkula revealed that DI pipes valued at Rs.22.09 crore were procured from the firm. Out of this, DI pipes valued at Rs.19.06 crore were consigned to HUDA and HSIDC. But PH department neither recovered sales tax from HUDA/HSIDC nor was it deposited by HUDA/HSIDC in Government account. This resulted in evasion of tax of Rs.5.72 crore including penalty of Rs.3.81 crore.

After this was pointed out, DETC Panchkula stated in May 2006 that notices were being issued to HUDA and HSIDC. The department stated in June 2006 that action had already been initiated against the contractees for non payment of tax. Further progress was awaited (August 2006).

[#] Haryana Urban Development Authority (HUDA) divisions at Faridabad, Gurgaon, Panchkula, Panipat and Sonapat; Haryana State Agricultural Marketing Board (HSAMB) divisions at Ambala, Hisar, Karnal and Panipat and Haryana Police Housing Corporation (HPHC), Panchkula.

^{*} Ambala, Faridabad, Gurgaon, Hisar, Karnal, Panchkula, Panipat and Sonapat.

^{**} Haryana State Industrial Development Corporation (HSIDC).

Non levy of tax on goods sold to registered dealers (dealers)

Non payment of tax on rental charges

2.2.9.1 Under the HGST Act, “sale” means any transfer of property in goods and includes transfer of right to use any goods (whether as goods or in some other form) for cash, deferred payment or other valuable consideration.

Audit scrutiny of the information collected from Uttar/Dakshin Haryana Bijli Vitran Nigam Limited, Panchkula and Hisar (the nigam) revealed that the nigam supplied electric meters and service lines to consumers for supply of electric energy and collected rental charges of Rs.145.69 crore during 2000-01 to 2004-05. Neither the nigam paid sales tax/value added tax (VAT) on rental charges nor was it demanded by the department. This resulted in evasion of sales tax/VAT amounting to Rs.17.80 crore, besides minimum penalty of Rs.35.60 crore.

After this was pointed out, DETC Hisar stated in June 2006 that the assessing authority raised additional demand of Rs.1.36 crore for the assessment year 2000-01 and recovered Rs.12.23 lakh. Further, the assessment proceedings for the assessment years 2001-02 and onwards were in progress. DETC Panchkula stated in June 2006 that notice had been issued to Uttar Haryana Bijli Vitran Nigam Limited, Panchkula.

Non levy of tax on goods sold to manufacturer

2.2.9.2 Under HGST Act, the State Government may, by notification, levy lower rate of tax on certain goods in respect of any class of dealers subject to such restrictions and conditions as may be specified. Entry 134 was substituted by Government vide notification dated 29 March 2001 in the rate list under HGST Act wherein goods on which rate of tax is more than four *per cent* when sold to a dealer for use by him in manufacture of goods for sale are taxable at the rate of four *per cent* subject to furnishing of a declaration by the selling dealer supplied to him by the purchasing dealer. The benefit of concessional/lower rate of tax was previously restricted to goods leviable to tax at the first stage of sale only.

Test check of records of 11* DETCs revealed between May and November 2005 that goods valued at Rs.364.70 crore were sold to dealers for use in manufacture for sale during 2001-02 and 2002-03 without charging tax against declarations in form ST 15. While finalising the assessments between February 2003 and March 2005, the assessing authorities excluded the turnover from levy of tax. This resulted in evasion of tax of Rs.14.59 crore.

After this was pointed out, State Government/ETC stated in June 2006 that no tax was leviable on the sale of goods taxable at last stage of sale when sold to dealers and entry 134 cannot take away that right of dealers. The contention of Government/department is not tenable as State Government substituted entry 134 with effect from 29 March 2001 wherein tax leviable at more than four *per cent* is required to be charged at the rate of four *per cent* on sale of

* Ambala, Bhiwani, Faridabad (W), Jagadhari, Jhajjar, Jind, Karnal, Panipat, Rohtak, Rewari and. Sonipat.

goods to dealers for use in manufacture for sale. Prior to 29 March 2001, this entry clearly covered goods leviable to tax at first stage of sale only which was removed by State Government in amended entry. Thus, all goods sold for use in manufacture, liable to tax at more than four *per cent* would be exigible to tax at the rate of four *per cent*.

Non levy of tax on PVC[#] pipes

2.2.9.3 As per Government notification dated 3 February 1999, PVC pipes are exigible to tax at the rate of 12 *per cent* at the first stage of sale and exempt from tax if sold as component parts of agricultural pumping sets of all kinds including submersible pumps and sprinkler system equipment and drip irrigation system.

Test check of records of seven^{*} DETCs revealed between November 2004 and September 2005 that 12 dealers sold PVC pipes (not as components of agricultural pumping sets) valued at Rs.22.28 crore during 1999-2000 to 2002-03 to dealers/customers without payment of tax. While finalising the assessments between July and September 2003, the assessing authorities incorrectly allowed deduction treating the sale as tax free. This resulted in evasion of tax of Rs.2.67 crore besides penalty.

After this was pointed out, the department stated in June 2006 that assessing authorities had been instructed to take decision in this regard on case to case basis and tax these goods wherever applicable. Further, DETC Hisar intimated in June 2006 that rectification notice stands issued to the dealer in one case.

Acceptance of incomplete/invalid declaration forms

2.2.10.1 Under the CST Act read with HGST Act, no tax is leviable on sales made in the course of export outside the territory of India. The last sale or purchase of any goods preceding the sale or purchase, occasioning the export of these goods out of the territory of India, is also deemed sale or purchase in the course of such export, if such last sale or purchase takes place for complying with the agreement or order for or in relation to such export. Exemption in such cases is available only when the sales are supported by valid certificates (form H/ST 15A) along with proof of export.

Test check of records of eight^{**} DETCs revealed between February and December 2005 that while finalising the assessment of 68 dealers for the years from 1997-98 to 2002-03 between June 2002 and March 2005, the assessing authorities allowed deduction of Rs.296.33 crore on account of export out of India supported by declarations in forms H/ST 15A. Audit scrutiny of forms H/ST 15A revealed that these forms did not contain particulars such as number and dates of purchase orders/agreements of the foreign buyers with the exporters and thus were incomplete/invalid and were liable to be rejected. This resulted in non levy of tax of Rs.17.46 crore.

[#] Poly vinyl chloride.

^{*} Ambala, Bhiwani, Hisar, Jhajjar, Kurukshetra, Rewari and Rohtak.

^{**} Faridabad (West), Hisar, Jagadhari, Jhajjar, Kaithal, Karnal, Panipat, and Sonipat.

After this was pointed out, DETC Kaithal stated in June 2005 that requisite formalities had either been got completed in some cases or were being got completed from the dealers. However, the department failed to get the compliance verified in audit. DETC Faridabad (West) stated in October 2005 that purchase orders as pointed out by audit were being obtained. Further the department stated in June 2006 that incomplete declarations as pointed out by audit are being got completed.

2.2.10.2 The Hon'ble Supreme Court of India held* that production of original 'C' forms for claiming concessional rate of tax is mandatory to prevent the forms being misused for the commission of fraud and collusion with a view to evade payment of tax.

During test check of records of DETC Faridabad (West) and Karnal, it was noticed in May and November 2005 that the assessing authorities, while finalising the assessments between December 2004 and March 2005, allowed the benefit of concessional rate of tax to two dealers for turnover of Rs.1.40 crore for the years 2000-01 to 2002-03 against duplicate copies of form 'C'. These duplicate forms were liable to be rejected as production of original form C is mandatory for claiming concessional rate of tax. This resulted in evasion of tax of Rs.5.78 lakh besides interest and penalty.

After this was pointed out, DETC Faridabad (West) stated in May 2005 that the dealer had been directed to produce the original 'C' forms. Reply from DETC Karnal had not been received (August 2006).

2.2.10.3 Under the HGST Act, no sale of tax paid goods at a subsequent stage shall be exempt from tax unless the dealer effecting the sale at such subsequent stage, furnishes to the assessing authority in the prescribed form (ST 14), a certificate duly filled in and signed by the dealer from whom the goods were purchased to the effect that the tax on such goods has been paid at the first stage of sale. The department issued instructions in September 1985 that the assessing authorities should not accept incomplete/wrongly or vaguely filled in declaration forms (ST 14), as, such forms, besides being invalid gave considerable scope of evasion of tax.

During test check of records of four** DETCs, it was noticed between February and December 2005 that the assessing authorities, while finalising the assessments between June 2002 and March 2005, allowed deductions amounting to Rs.83.47 crore involving tax of Rs.4.25 crore to nine dealers in 15 cases during 2000-01 to 2002-03 on account of tax paid purchases against declarations in form ST 14. Audit scrutiny of forms revealed that these forms did not contain particulars of tax deposited by the first seller. In the absence of complete particulars in the declaration forms, tax paid by the first seller on such goods could not be verified in audit.

After this was pointed out, the department stated in June 2006 that incomplete declarations as pointed out by audit were being got completed.

* Delhi Automobiles Pvt. Ltd. Vs Com. of ST (1997) 104 STC 75 (SC).

** Hisar, Karnal, Panipat and Sonapat.

2.2.10.4 Under the CST Act, benefit of indirect export sale* shall not be admissible unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled in and signed by the exporter to whom the goods are sold in a prescribed form H/ST 15 A obtained from the prescribed authority. Production of original form H is mandatory with effect from 11 May 2002.

During test check of records of DETC Karnal, it was noticed in November 2005 that a dealer exported wheat and rice valued at Rs.1,032.70 crore against form H/ST 15 A during 2002-03. Out of this, he furnished duplicate, photocopies of original/duplicate and counterfoils of forms H/ST 15 A for Rs.106.33 crore. While finalising assessment in August 2004, the assessing authority accepted these forms which was irregular. As such, the possibility of evasion of tax of Rs.4.25 crore cannot be ruled out.

After this was pointed out, the department stated in June 2006 that the case was under examination.

Misuse of declarations forms

2.2.11.1 Under the HGST Act, where goods taxable at first point of sale are sold by one dealer to another dealer, tax is leviable at a lower rate, if the purchasing dealer furnishes a declaration in form STD 4 certifying that the goods are meant for use in manufacture of goods for sale. In September 1998, department issued instructions to ensure that manufacturers availing facility of concessional rate of tax supported by STD 4 are not allowed to transfer goods to their branches in other States otherwise than by way of sale. Further, if the dealer availing the benefit of concessional rate of tax violates any of the conditions/restrictions imposed, penalty not exceeding one and half times of the tax involved may be imposed in addition to the tax payable.

During test check of records of four# DETCs, it was noticed between February 2005 and March 2006 that five dealers purchased goods valued at Rs.975.88 crore at concessional rates of tax against declaration in STD 4 for use in the manufacture of goods. However, the manufactured goods were transferred to their branches outside the State otherwise than by way of sale during 1994-95 to 2001-02. The assessing authorities, while finalising the assessments between March 2002 and March 2005, omitted to levy tax at the rates applicable to these goods. This resulted in evasion of tax of Rs.33.90 crore besides penalty.

After this was pointed out, the department stated in June 2006 that dealers are authorised to purchase such goods at concessional rates as manufactured goods are sold ultimately. The reply of the department is not tenable as the manufacturers availing concessional rate of tax supported by form STD 4 are required to sell the manufactured goods and not to transfer the same to their branch offices outside the State.

* Export by a dealer through exporters (holding licence for export).

Faridabad (East), Faridabad (West), Hisar and Jhajjar.

2.2.11.2 Under the HGST Act and CST Act, no tax is exigible on export sale subject to the condition that prescribed declaration in form 'H' (when the goods are exported through an exporter situated outside the State) and form ST 15 A certificate of export (when export sale is through local dealer) is obtained by the dealer from the exporter duly filled in. Thus, use of form 'H' by local dealer/exporter instead of form ST 15 A is not permissible.

Test check of records of DETC Karnal revealed in November 2005 that a dealer exported wheat and rice valued at Rs.1,032.70 crore during 2002-03 against declaration in H/ST 15 A forms. Audit scrutiny, however, revealed that the dealer submitted H forms valued at Rs.164.57 crore obtained from three local dealers (one each of Panchkula, Panipat and Sonipat) instead of ST 15 A forms. While finalising assessment of the dealer in August 2004, assessing authority accepted these forms which was incorrect. This resulted in non levy of tax of Rs. 6.58 crore besides penalty and interest.

After this was pointed out, the department admitted the facts and stated in June 2006 that all cases pointed out by audit were being examined and forms were being got completed.

Non compliance of departmental instructions regarding cross verification

2.2.12 In order to ensure genuineness of the transactions and detect evasion of tax by dealers, the ETC in August 1988 emphasised the need of cross verification of sale and purchase transactions exceeding Rs.10,000 in the case of ETO and Rs.5,000 in the case of AETO.

During test check of records of seven[#] DETCs, it was noticed that cross verification of 1,399 transactions (each exceeding Rs.50,000) aggregating to sale value of Rs.39.75 crore involving tax of Rs.3.32 crore during 1999-2000 to 2002-03 was not done and assessments were finalised. However, cross verification of 802 transactions (including 604 out of 1,399) by audit revealed irregularities as discussed below:

2.2.12.1 Under the HGST Act, if a dealer has maintained false or incorrect accounts or documents with a view to suppress his sales, purchases or stock of goods or has concealed any particulars of his sales or purchases or has furnished to or produced before any authority any accounts, return, document or information which is false or incorrect, he shall be liable to pay penalty, in addition to the tax to which he is assessed or is liable to be assessed, a sum not less than twice and not more than three times the amount of tax which would have been avoided. Further, every dealer is required to submit to the assessing authority a monthly or quarterly return and pay tax due as per returns within the prescribed period.

During test check of records of five^{*} DETCs, it was noticed that 10 dealers were allowed deduction of Rs.6.89 crore on account of sales made to 14^{**} dealers during the year 2002-03 on the strength of registration certificate without payment of tax. Cross verification of records of these offices revealed

[#] Faridabad (West), Hisar, Jagadhari, Jhajjar, Kaithal, Karnal and Sonipat.

^{*} Faridabad (West), Jhajjar, Kaithal, Karnal and Panipat.

^{**} Gurgaon:1; Faridabad (West):5; Jhajjar:3; Kaithal:1; Karnal:3 and Panipat:1.

that 10 dealers did not account for purchases of Rs.5 crore, two dealers did not file returns for purchases of Rs.66.50 lakh and two dealers to whom sales of Rs.1.23 crore were made had closed down their business. Failure on the part of assessing authorities to cross verify the transactions and monitor the submission of returns resulted in evasion of tax of Rs.73.81 lakh besides minimum penalty of Rs.1.48 crore.

After this was pointed out, the department stated in June 2006 that the matter in all these cases was under examination.

2.2.12.2 Test check of records of DETC Hisar revealed that a dealer sold goods (iron and steel) valued at Rs.7.18 crore to a dealer of Panipat during movement of goods from Rourkela against declaration in form 'C' during 2001-02. These goods were liable to be taxed in the state at the first point of sale. Cross verification of records of DETC Panipat revealed that the dealer of Panipat had accounted for these goods as tax paid goods in State supported by declaration (ST 14) furnished to him by the dealer of Hisar. While finalising the assessment in June 2003, the assessing authority could not detect the suppression of facts from the accounts submitted by the dealer and excluded the turnover from levy of tax. Failure of DETC Panipat to cross verify the transaction with DETC Hisar resulted in evasion of tax of Rs.28.73 lakh besides minimum penalty of Rs.57.47 lakh.

2.2.12.3 As per HGST Act, no time limit for finalisation of returns has been prescribed. However, ETC issued instructions in January 1982 to finalise the assessments within three years.

Cross verification of records of DETC, Faridabad (East) with that of DETC Hisar revealed that a dealer purchased iron and steel of Rs.1.05 crore (Rs.14.97 lakh in 2001-02 and Rs.90.07 lakh in 2002-03) from a dealer of Hisar during movement of goods from outside the State against form 'C'. The dealer of Faridabad did not account for the goods in his return for the year 2001-02 and had not submitted return for the year 2002-03 (the return for 2001-02 has not been finalised so far). Thereafter, he closed down his business without intimation to the department. Non monitoring of submission of returns and non conducting of cross verification of transactions by DETC Faridabad resulted in evasion of tax of Rs.4.20 lakh besides penalty of Rs.8.40 lakh.

After this was pointed out, DETC Faridabad (East) stated in June 2006 that the matter had been taken up with District Magistrate, Jhunjhunu for locating the dealer in December 2005 and also with all DETCs for disallowing the benefit of suspected misuse of declaration forms. The department, however, further, stated in June 2006 that the matter was under examination.

2.2.12.4 In 10 cases, verification of 149 transactions having sale value of Rs.3.07 crore involving tax effect of Rs.30.33 lakh could not be verified in audit as the relevant records/files were not made available to audit in five* DETC offices. Evasion in the remaining cases could not be ruled out.

* Faridabad (East), Faridabad (West), Gurgaon (West), Karnal and Panipat.

Inadmissible deduction

2.2.13.1 Under the 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 to a dealer shall be exempt from tax provided the dealer furnishes a certificate in prescribed form E I or E II and a declaration in form 'C' obtained from purchasing dealer. The Hon'ble Supreme Court also held* that furnishing of a certificate in form E I and E II alongwith the declaration in form 'C' from the dealer to whom goods are sold was mandatory in order to claim concessional rates of tax under the Act.

During test check of records of DETC Rohtak and Sirsa, it was noticed in May 2005 that six dealers sold goods valued at Rs.49.98 crore by way of transfer of documents of title to goods during their movement from one State to another between 1995-96 and 2002-03. Audit scrutiny revealed that transactions of Rs.30.43 crore were not supported by declaration form 'C'. While finalising the assessments between July 2004 and September 2004, the assessing authorities allowed deduction of entire turnover treating it as exempt from tax against production of declaration form 'C'. This resulted in evasion of tax of Rs.2.91 crore besides interest and penalty.

After this was pointed out, DETCs Rohtak and Sirsa stated in May and October 2005 that dealers were allowed deductions against E I form without production of form 'C' relying upon the judgment** of Hon'ble Sales Tax Tribunal Haryana. The reply of the department is not tenable as furnishing of declaration in form 'C' obtained from dealer to whom goods were sold alongwith certificate in form E I was mandatory in order to claim concessional rate of tax under the CST Act.

2.2.13.2 Under CST Act, the use of 'C' forms within the State is permissible only when a dealer sells goods during their movement from one State to another by transfer of document of title to such goods.

Test check of records of DETC Karnal revealed in November 2005 that a dealer sold rice valued at Rs.93.98 crore in inter State trade or commerce out of which sale of Rs.78.24 crore was supported by 'C' forms. Audit scrutiny revealed that out of declaration forms for Rs.78.24 crore, the dealer furnished form 'C' for Rs.20.04 crore from two local dealers of Panchkula and Sonipat. These forms were liable to be rejected as there was no sale in transit by way of transfer of documents of title to such goods during their movement from one State to another. While finalising the assessment in August 2004, the assessing authority accepted these 'C' forms which was irregular. This resulted in evasion of tax of Rs.80.16 lakh.

After this was pointed out, the department stated in June 2006 that the case was under examination.

* M/s Phool Chand Gupta Vs. State of Andhra Pradesh (1997) 9 PHT 349 (SC).

** M/s Punjab Trading Company Vs. State of Haryana- (1988) PHT 83 (STT).

2.2.13.3 Under the CST Act, where any dealer claims that he is not liable to pay tax in respect of any goods transferred to any other place of his business or to his agent or principal, he may furnish a declaration in form 'F' duly filled in and signed by the principal officer of other place of business along with evidence of despatch of such goods. Production of form 'F' is mandatory for claiming exemption from payment of tax with effect from 11 May 2002.

Test check of records of four* DETCs revealed that while finalising the assessments for the year 2002-03 between January 2004 and March 2005, the assessing authorities allowed deduction of Rs.36.64 crore in 22 cases. These deductions were not supported by forms 'C' which was mandatory for claiming exemption. This resulted in non levy of tax of Rs.2.75 crore besides interest and penalty.

After this was pointed out, DETC Kaithal stated in June 2006 that forms 'F' valued at Rs.2.85 crore had been obtained in four cases. Reply from remaining DETCs had not been received (August 2006). The matter needs to be pursued by the Department.

Non levy of interest and penalty

2.2.14 Under HGST Rules, exemption/entitlement certificate granted to an eligible industrial unit shall be liable to be cancelled by the DETC concerned either in the case of discontinuance of its business by the unit any time for a period exceeding six months or its closing down during the period of exemption/deferment. Further, on cancellation of eligibility certificate or exemption/entitlement certificate, the entire amount of tax exempted/deferred shall become payable immediately in lumpsum alongwith interest and penalty.

During test check of records of DETCs, Hisar and Jhajjar, it was noticed that five units after availing exemption of Rs.1.09 crore during 1993-94 to 1999-2000 discontinued their manufacturing processes during the currency period of exemption/deferment. Though the DETCs cancelled the exemption certificates between March 2001 and March 2003 and issued demand notices for the amount of exemption availed of Rs.1.09 crore, but interest and penalty was not levied. This resulted in non levy of interest of Rs.1.11 crore and penalty of Rs.2.85 crore.

After this was pointed out in March 2005, DETC Hisar stated in June 2006 that recovery proceedings were under process in the case of two units as arrears of land revenue and third unit had been declared sick. DETC Jhajjar raised a demand of interest of Rs.17.27 lakh in the case of one unit.

Incorrect allowance of concessional rate

2.2.15.1 Under the CST Act, tax on inter state sale (ISS) of declared goods shall be calculated at twice the rate applicable to the sale of such goods inside the appropriate State and in the case of goods, other than declared goods, at the rate of 10 *per cent* or at the rate applicable to the sale whichever is higher when such sales are not supported by form 'C'. Production of declaration in

* Jind, Kaithal, Karnal and Panipat.

form 'C' is mandatory with effect from 11 May 2002 for claiming concessional rate of tax even though the rate of tax is below four *per cent*.

During test check of records of nine* DETCs, it was noticed that 36 dealers made ISS of goods valued at Rs.97.51 crore during 2002-03 without furnishing declaration form 'C'. While finalising the assessments between April 2003 and April 2004, the assessing authorities levied tax at lower rate instead of correct rates. This resulted in short levy of tax of Rs.5.97 crore.

After this was pointed out, six** DETCs stated between April 2005 and June 2006 that C forms valued at Rs.2.25 crore were obtained in five cases and additional demand of Rs.11.98 lakh was raised in four cases. Notices for furnishing C forms were issued in 13 cases and C forms were not required in nine cases as the assessments were framed under self assessment/deemed scheme. The contention of the DETCs was not tenable in view of amendment in CST Act with effect from 11 May 2002 which made furnishing of declaration form 'C' mandatory. Replies from remaining DETCs had not been received.

2.2.15.2 During test check of records of four*** DETCs, it was noticed that six dealers made ISS of brass/copper sheets, sunflower oil and mustard oil valued at Rs.49.21 crore without furnishing declaration form 'C' during 1995-96 to 1999-2000. While finalising the assessments between December 2001 and September 2004, the assessing authorities, however, levied tax at lower rate of one and two *per cent* instead of correct rate of 10 *per cent*. This resulted in evasion of tax of Rs.4.11 crore.

After this was pointed out between May 2004 and March 2006, the department admitted in June 2006 that 'C' forms are mandatory under the Act. The details of the additional demand raised and recovered may be intimated to audit.

Conclusion

2.2.16 The lapses enumerated in the foregoing paragraphs indicate lack of internal control mechanism in the department to check evasion of tax. The department did not conduct adequate survey of market and contractee departments to detect unregistered dealers. There was evasion of tax due to non checking of genuineness and validity of declaration forms, acceptance of incomplete/invalid declaration forms and non conducting of cross verification of transactions (each exceeding Rs.50,000) from other circles/States before finalising the assessments by the assessing authorities. As a result of these failures, the department lost revenue to the extent of Rs.151.09 crore in respect of only test checked cases.

* Faridabad (West), Hisar, Jagadhari, Jind, Kaithal, Karnal, Panchkula, Rohtak and Sonipat.

** Hisar, Jagadhari, Jind, Kaithal, Panchkula and Rohtak.

*** Faridabad (East), Jagadhari, Karnal and Sirsa.

Acknowledgement

2.2.17 Audit findings as a result of test check of records of Excise and Taxation Department, Haryana were reported in May 2006 to Government with a specific request in June 2006 for attending the meeting of the Audit Review Committee so that the viewpoint of Government may be taken into account before finalising the review. The meeting was held on 21 June 2006 which was attended by the ETC Haryana and AETC and views thereof incorporated in the review.

2.3 Under assessment due to inadmissible deduction

2.3.1 As per HGST Act, PVC compound and granules (HDPE, LDPE) and LLDPE, PVC and plastic polymers etc. are taxable at the stage of first sale in the State.

During test check of records of the offices of four^{\$} DETCs, it was noticed between September 2004 and December 2005 that five dealers sold resins/unsaturated polyester resins valued at Rs.12.51 crore between 2001-02 and 2002-03 to dealers against declaration forms without payment of sales tax. However, the assessing authorities, while finalising the assessments between July 2003 and March 2005, incorrectly excluded the turnover from levy of tax. The omission resulted in under assessment of tax of Rs.1.25 crore.

After this was pointed out between September 2004 and December 2005, the DETCs Faridabad, Gurgaon and Rohtak stated in November 2004, June 2005 and February 2006 that resin is taxable at stage of last sale. The replies of the assessing authorities were not tenable as saturated/unsaturated polyester resins were covered by the term plastic polymers and were taxable at first stage of sale as per clarification of ETC in May 2002. Reply in respect of DETC Sonipat had not been received (August 2006).

The matter was referred to Government between December 2004 and March 2006; reply had not been received (August 2006).

2.3.2 As per HGST Act, tax on rice bran de oiled cake is leviable from 1 April 1996. Under the CST Act, ISS of goods, other than declared goods, shall be taxable at the rate of 10 *per cent* or at the rate applicable to the sale or purchase of such goods in the State, whichever is higher, if such goods are not supported by form 'C'. The Punjab and Haryana High Court also held* in February 2002 that rice bran de oiled cake is taxable at four *per cent* from 1 April 1996 and not exempt under entry 67 of Schedule B appended to HGST Act.

During test check of records of DETC, Kaithal, it was noticed in June 2005 that a dealer sold rice bran de oiled cake valued at Rs.8.66 crore during 2000-01 and 2001-02. The assessing authority, while finalising the assessments between December 2003 and November 2004, erroneously

^{\$} Faridabad (West), Gurgaon (East), Rohtak and Sonipat.

^{*} M/s Mahabir Vegetables Oil (P) Ltd. Vs State of Haryana- (2002) 127 STT 310 (P&H).

allowed deduction of Rs.8.66 crore treating the sale as tax free goods. This resulted in under assessment of tax of Rs.61.27 lakh.

After this was pointed out in June 2005, the assessing authority stated in June 2005 that purchase tax on rice bran used in the manufacturing of tax free rice bran de oiled cake and oil had been levied. Double taxation could not be made as raw material of the finished products had already suffered tax. The reply is not tenable as the assessing authority had allowed set off of entire purchase tax for the material used in the manufacturing of rice bran oil and rice bran de oiled cake during 2000-01 and 2001-02. Hence, there was no double taxation. Further reply was awaited (August 2006).

The matter was referred to Government in January 2006; reply had not been received (August 2006).

2.4 Non levy of purchase tax

As per HGST Rules, the benefit of exemption, granted under Rule 28 A to a dealer, is to be calculated on gross turnover (GTO). Cotton, paddy and oil seeds other than cotton seeds, being declared goods, are taxable at the stage of last purchase when purchased within the State.

During test check of records of DETC Rewari, it was noticed in March 2005 that two dealers, availing the benefit of exemption, purchased cotton valued at Rs.15.36 crore within the State without payment of tax on the strength of registration certificate during the years between 1994-95 and 1999-2000. The same was used in the manufacture of cotton yarn. The assessing authority, while finalising the assessments in September and November 2003, failed to levy purchase tax. This resulted in non levy of tax of Rs.61.43 lakh.

After this was pointed out in March 2005, the assessing authority rectified the mistake and raised an additional demand of Rs.61.43 lakh against both the dealers in December 2005. Demand of Rs.61.43 lakh had been adjusted against exemption limit.

The matter was referred to Government in April 2005; reply had not been received (August 2006).

2.5 Under assessment due to application of incorrect rate of tax

2.5.1 Under HGST Rules, notional sales tax liability (NSTL) means amount of tax payable by an eligible industrial unit on the sale of finished products but for an exemption, compiled at the maximum rates and not at the concessional rates specified under the local sales tax law.

During test check of records of DETC, Sirsa and ETO, Bahadurgarh, it was noticed between February 2003 and December 2004 that 11 dealers in 16 cases, availing benefit of exemption from payment of tax, sold

manufactured goods valued at Rs.8.83 crore during the years between 1997-98 and 2001-02. The assessing authorities, while finalising the assessments between December 2001 and March 2004, allowed concessional rate of tax on goods valued at Rs.8.83 crore sold against form STD 4 to dealers instead of levying tax as applicable. This resulted in under assessment of NSTL of Rs.53.85 lakh.

After this was pointed out between February 2003 and December 2004, ETO, Bahadurgarh stated in October 2004 that Hon'ble Haryana Tax Tribunal in its judgment dated 14 July 2000* held that tax on paper and packing material when sold to dealer for use by him in the manufacture of other goods subject to furnishing STD 4 is leviable at concessional rate and not at maximum rate. Reply of the department was not tenable as the judgment of the Tribunal is applicable only where the sale was made to dealers and not to an exempted unit. Moreover, the Hon'ble Haryana Tax Tribunal (HTT) also held in its judgment** that NSTL is to be computed at the maximum rate of tax applicable to the goods sold on its GTO irrespective of categories of dealers to whom goods are sold. Further action and reply from DETC Sirsa had not been received (August 2006).

The matter was referred to Government between February 2004 and March 2006; reply had not been received (August 2006).

2.5.2 Under Rule 28A of HGST Rules, read with section 8 of the CST Act, NSTL on sale of finished products of an eligible industrial unit made in the course of inter State trade or commerce is computed at the rate of tax applicable to such sale even if these were made against certificate of form C where tax is levied at four *per cent*. The Hon'ble Supreme Court^s upheld that a unit enjoying exemption under State Act was not entitled to exemption or benefit of concessional rate of tax under section 8 (2A) of the CST Act, as the exemption under the notification was not granted generally. The exempted unit was granted exemption from payment of tax for production of only specified goods for a specified period/circumstances or under specified conditions.

During test check of records of DETC Karnal, it was noticed in December 2005 that the assessing authority, while finalising the assessments between April 2003 and April 2005, computed NSTL at the rate of one *per cent* instead of correct rate of four *per cent* in respect of two dealers on ISS of milk products valued at Rs.61.89 crore made during 1998-99 to 2001-02. This resulted in under assessment of tax of Rs.1.86 crore.

* M/s Kagaz Print 'N' Pack (India) P Ltd. Bahadurgarh Vs. State of Haryana- STA No. 177 and 179 of 2000-01.

** M/s Dipti Packaging Sonipat Vs. State of Haryana (2005) 26 PHT 515 (HTT).

^s State of Uttar Pradesh and another Vs. Hindustan Safety Glass Works Private Limited- (1996) 101 STC 529 (SC).

After this was pointed out in December 2005, DETC Karnal stated that concessional rate of tax had been charged in accordance with the provisions of notification issued by State Government under CST Act. Reply of the department was not tenable in view of Hon'ble Supreme Court judgment that the benefit of concessional rate of tax under CST Act was not admissible to a unit during exemption period, being a case of specific circumstances and conditions for a specific period.

The matter was referred to Government in May 2006; reply had not been received (August 2006).

2.5.3 As per HGST Act, "non ferrous industrial metal products i.e. ingots, bars, slabs, sheets, circles, strips, rods, wires (not including electric wires and super enamelled copper wire), tubes, angles and scraps are taxable at the rate of four *per cent*.

During test check of records of DETC, Rohtak, it was noticed in March 2005 that a manufacturer, availing exemption of tax for the period from 14 August 2001 to 13 August 2012, sold aluminium section valued at Rs.3.96 crore (Rs.53.96 lakh upto 13 August 2001 and Rs.3.42 crore during the period 14 August 2001 to March 2003). While finalising the assessment for the years 2001-02 and 2002-03 in March 2003 and February 2004, the assessing authority levied tax at the rate of four *per cent* instead of 10 *per cent*. This resulted in under assessment of tax of Rs.23.76 lakh.

After this was pointed out in March 2005, the assessing authority stated in March 2005 that section means a part of a thing. Angles can be used both ways – as a part of a thing as well as independently and thus angles cover sections also. Reply of the assessing authority was not tenable as the list of goods enumerated in the aforesaid entry does not include aluminium section. Moreover, the Hon'ble HTT in its judgment* held that aluminium section is not covered under the aforesaid entry and is treated as general item taxable at 10 *per cent*.

The matter was referred to Government in July 2005; reply had not been received (August 2006).

2.5.4 As per HGST Act, tax on iron and steel (declared goods) is leviable at the first stage of sale at the rate of three *per cent* up to 3 March 2000.

During test check of records of DETC, Panchkula, it was noticed in May 2005 that the assessing authority, while finalising the assessment of a dealer of iron and steel for the year 1999-2000 in July 2004, applied incorrect rate of tax of two *per cent* instead of correct rate of three *per cent* on the sale of iron scrap valued at Rs.5.13 crore. This resulted in under assessment of sales tax of Rs.5.13 lakh.

* M/s Bhatia Hardware and Rang Mahal, Yamunanagar Vs. State of Haryana (2006) 27 PHT 99 (HTT).

After this was pointed out in May 2005, the assessing authority stated in August 2005 that the case had been remanded by the appellate authority and the omission as pointed out by audit would be rectified at the time of disposal of remand case. Further progress had not been received (August 2006).

The matter was referred to Government in June 2005; reply had not been received (August 2006).

2.5.5 Under the CST Act, sales made in the course of ISS of ferro alloys are taxable at the rate of one *per cent* against form 'C' under notification issued on 31 March 1999 which was rescinded vide notification dated 17 July 2000. Thus, ferro alloys are taxable at normal rate of four *per cent* after 17 July 2000.

During test check of records of DETC, Sonipat, it was noticed in August 2005 that a dealer sold ferro alloy of Rs.2.79 crore (including Rs.1.49 crore after 17 July 2000) during the year 2000-01. While finalising the assessment, the assessing authority levied tax at the rate of one *per cent* instead of four *per cent* on turnover of Rs.1.49 crore. This resulted in under assessment of tax of Rs.4.48 lakh.

The matter was referred to department in August 2005 and Government in December 2005; reply had not been received (August 2006).

2.5.6 As per Haryana Government notification issued on 28 September 1989 and 21 August 2001 under the CST Act, sale of atta, maida and suji made principally of wheat is taxable at the rate of two *per cent* upto 21 August 2001 and four *per cent* thereafter.

During test check of records of DETC, Ambala Cantt., it was noticed in September 2005 that a dealer sold atta, maida and suji valued at Rs.2.01 crore (including Rs.1.87 crore after 21 August 2001) during the year 2001-02. The assessing authority, while finalising the assessment in February 2005, levied tax at the rate of two *per cent* instead of correct rate of four *per cent* on ISS of Rs.1.87 crore after 21 August 2001. Application of incorrect rate of tax resulted in under assessment of tax of Rs.3.75 lakh.

After this was pointed out in September 2005, the assessing authority reassessed the case and raised additional demand of Rs.3.75 lakh in September 2005. The position of recovery was awaited (August 2006).

The matter was referred to Government in October 2005; reply had not been received (August 2006).

2.6 Irregular availment of exemption

Under the HGST Act, the State Government may by notification levy, subject to such restrictions and conditions, as may be specified, lower rate of tax on

certain goods in respect of any class of dealers. In case the dealer, availing lower rate of tax, violates any of the conditions or restrictions imposed, he is liable to pay penalty in addition to the tax payable by him, had the lower rate of tax not been notified.

During test check of records of DETC, Rewari, it was noticed in December 2005 that a dealer, availing the benefit of deferment, purchased used empty glass bottles valued at Rs.1.41 crore against form STD 4 during 1999-2000 without payment of tax as the dealer company misrepresented itself as exempted unit. The assessing authority, while making assessment in June 2004, failed to detect this mistake. This resulted in non levy of tax of Rs.16.87 lakh.

After this was pointed out in December 2005, the assessing authority raised a demand of tax of Rs.16.87 lakh and penalty of Rs.0.50 lakh in February 2006. Further progress of recovery had not been received (August 2006).

The matter was referred to Government in January 2006; reply had not been received (August 2006).

2.7 Under assessment due to arithmetical mistake in calculation

Under HGST Rules, NSTL means amount of tax payable on the sales of finished products of an eligible industrial unit but for an exemption computed at the maximum rates and not at concessional rates. Tax on goods not specified in the notification specifying rates of tax (i.e general goods) are leviable at 10 *per cent* from 4 March 2000.

During test check of records of the DETC, Panchkula, it was noticed in May 2005 that a dealer, availing the benefit of exemption, sold raw material for medicines valued at Rs.1.62 crore during the year 2002-03. The assessing authority, while finalising the assessment for the year 2002-03 in July 2004, erroneously levied tax of Rs.1.62 lakh instead of Rs.16.19 lakh on sales of Rs.1.62 crore. The arithmetical mistake in calculation resulted in under assessment of NSTL of Rs.14.57 lakh.

After this was pointed out in May 2005, the assessing authority rectified the mistake in May 2005 and raised additional demand of Rs.14.57 lakh by adjusting NSTL against the exemption limit of the dealer.

The matter was referred to Government in June 2005; reply had not been received (August 2006).

2.8 Under assessment of tax due to inadmissible deduction

2.8.1 Under the HGST Act, “door and window frames” etc. were taxable at first stage of sale. For non payment of tax alongwith the returns, interest is also chargeable on the amount of tax due at one *per cent* for the first month and one and a half *per cent* per month thereafter so long as the default continues.

During test check of records of DETC, Faridabad, it was noticed in March 2005 that while finalising the assessment of a dealer manufacturing door and window frames of steel/aluminium for the year 1999-2000 in May 2003, the assessing authority allowed deduction of Rs.21.20 lakh on account of sale against form ST 15. Inadmissible deduction resulted in under assessment of tax of Rs.1.94 lakh and interest of Rs.2.34 lakh.

After this was pointed out in March 2005, the assessing authority reassessed the case in December 2005 and demand of Rs.4.28 lakh was raised. Further progress of recovery had not been received (August 2006).

The matter was referred to Government in May 2005; reply had not been received (August 2006).

2.8.2 Under the HGST Act, “non ferrous metal products” are taxable at the first stage of sale in the State. Aluminium milk cans and parts thereof are covered under non ferrous metal products and as such deduction from turnover on account of sale of such goods against prescribed declaration (ST 15) is not admissible.

During test check of records of the office of DETC, Yamunanagar, it was noticed in November and December 2005 that two dealers, manufacturing aluminium milk cans and aluminium cookers and parts thereof, sold goods valued at Rs.1.25 crore without payment of tax against declaration in form ST 15 during the years between 1999-2000 and 2002-03. The assessing authorities, while finalising the assessments in April 2004 and March 2005, incorrectly excluded the turnover from levy of tax. This resulted in under assessment of tax of Rs.6.19 lakh.

After this was pointed out in November and December 2005, the assessing authority stated in January 2006 that milk cans (drums of tins) were not covered by metal utensils and wares (bartan) under entry 33 of the list of goods taxable at first stage in Haryana in view of judgment* of Hon’ble Sales Tax Tribunal Haryana in June 1997. Reply of the assessing authority is not tenable as the judgment dated June 1997 is not applicable in this case because aluminium milk cans are specifically covered under entry 65 ‘non ferrous metal products’ and not under entry 33 ‘metal utensils and wares’ of the list of goods taxable at first stage.

The matter was referred to Government in February 2006; reply had not been received (August 2006).

2.9 Under assessment due to excess rebate

Under the HGST Rules, a dealer may reduce the amount of tax paid at the first stage of sale of goods purchased by him, from the amount of tax payable by

* M/s Bimal Industries Vs. State of Haryana-(1997) 10 PHT 219 (STT HR).

him on such goods, when sold within the State or in the course of inter State trade or commerce, or in the course of export outside the territory of India.

During audit of records of DETC, Rewari, it was noticed in March 2005 that a dealer, availing the benefit of deferment from payment of tax, showed opening balance of stock of Rs.3.10 crore for the year 2000-01 which included purchases of Rs.2.23 crore on which tax was paid at the rate of two *per cent* and for balance material of Rs.86.55 lakh at the rate of four *per cent*. However, the assessing authority, while finalising the assessment in March 2004, erroneously calculated rebate on entire opening stock of Rs.3.10 crore at the rate of four *per cent* instead of two *per cent* on purchases of Rs.2.23 crore. The mistake resulted in excess rebate of Rs.4.47 lakh.

After this was pointed out in March 2005, the assessing authority rectified the mistake and raised additional demand by increasing the amount of deferment of tax availed by Rs.4.47 lakh in January 2006.

The matter was referred to Government in April 2005; reply had not been received (August 2006).

2.10 Non levy of tax on defective spare parts replaced against warranty

Under the CST Act, 'sale' means any transfer of property in goods by one person to another for cash or for deferred payment or for any other system of payment by instalments. Hon'ble Supreme Court of India held^s that replacement of defective parts of motor vehicles of consumers within the warranty period and the price thereof received by the assessee from the manufacturer is sale and liable to tax.

During test check of records of DETC, Hisar for the year 2003-04, it was noticed in November 2004 that two dealers claimed deduction of value of spare parts of Rs.44.52 lakh replaced within warranty period from the manufacturer by way of credit notes during the years 2001-02 and 2002-03. The assessing authority, while finalising the assessment between June and November 2003, incorrectly allowed deduction of Rs.44.52 lakh from inter State purchases against the replacement of defective parts within warranty period. This resulted in under assessment of tax of Rs.4.45 lakh.

After this was pointed out in November 2004, the department sent one case relating to the assessment year 2002-03 involving tax effect of Rs.3.18 lakh to revisional authority in April 2005. Final reply had not been received (August 2006).

The matter was referred to Government in December 2004; reply had not been received (August 2006).

^s M/s Mohd. Ekram Khan and Sons Vs. Commissioner of Trade Tax, Uttar Pradesh- (2004) 24 PHT 180 (SC).