

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 2001-2002, revealed under-assessments etc. of sales tax amounting to Rs.198.00 crore in 666 cases, which broadly fall under the following categories:

Sl. No.	Particulars	Number of cases	Amount (Rupees in crore)
1.	Incorrect computation of turnover	205	10.29
2.	Application of incorrect rate of tax	83	3.83
3.	Non-levy of interest	54	3.08
4.	Non-levy of penalty	9	0.69
5.	Under-assessment of turnover under CST, Act	85	3.14
6.	Other irregularities	229	9.69
7.	Review on 'Exemption and deferment from payment of sales tax to new industrial units'	1	167.28
	Total	666	198.00

During the year 2001-2002, the department accepted under-assessment of tax of Rs.27.80 crore involved in 104 cases of which 13 cases involving Rs.26.46 crore had been pointed out in audit during 2001-2002 and the rest in earlier years. An amount of Rs.2.46 crore had been recovered in 52 cases during the year 2001-02, of which Rs.0.61 crore recovered in 48 cases related to earlier years.

A few illustrative cases involving Rs.3.28 crore and a review on "Exemption and deferment from payment of sales tax to new industrial units" involving Rs.167.28 crore are mentioned in the following paragraphs:

2.2 Exemption and Deferment from payment of Sales Tax to new industrial units

2.2.1 Introductory

In the interest of industrial development of the State, Government of Haryana introduced (May 1989) a new scheme for exemption/deferment of payment of sales tax in respect of new industrial units and the units undertaking expansion/diversification. This was applicable to those units which were established during the operative period starting from 1 April 1988 to 31 July 1997 under Rule 28 A* of Haryana General Sales Tax Rules, 1975. The scheme was modified on 18 May 1999 effective from 1 August 1997 under Rule 28 B *ibid.* The salient features of the schemes are as under:

Under Rule 28 A

(i) New industrial units			
Name of the zone and the area comprised therein	Small scale	Medium scale large scale	Time limit
Zone A comprising Centrally and State notified backward areas	150% of fixed capital investment	125% of fixed capital investment	9 years
Zone B comprising areas other than Zones A and C	125% of fixed capital investment	100% of fixed capital investment	7 years
Zone C comprising Faridabad and Ballabgarh complex administration areas	100% of fixed capital investment	90% of fixed capital investment	5 years
(ii) Unit undertaking expansion/diversification			
Zone A comprising Centrally and State notified backward areas	100 % of additional fixed capital investment	90% of additional fixed capital investment	9 Years
Zone B comprising areas other than Zones A and C	100 % of additional fixed capital investment	90% of additional fixed capital investment	7 Years
Zone C comprising Faridabad and Ballabgarh complex administration areas	100 % of additional fixed capital investment	90% of additional fixed capital investment	5 Years

* Rule 28 A and 28 B of Haryana General Sales Tax Rule, 1975 framed under section 13 B and 25 A of Haryana General Sales Tax Act, 1973.

Under Rule 28 B

(i) Sales Tax Exemption			
Name of the zone	Small scale	Medium scale/ large scale	Time limit
Low Potential Zone	150% of fixed capital investment	125% of fixed capital investment	9 years
Medium Potential Zone	125% of fixed capital investment	100% of fixed capital investment	7 years
High Potential Zone	Not applicable		
(ii) Sales Tax Deferment			
Low Potential Zone	175 % of fixed capital investment	150% of fixed capital investment	9 years
Medium Potential Zone	150 % of fixed capital investment	125 % of fixed capital investment	7 years
High Potential Zone	125 % of fixed capital investment	100 % of fixed capital investment	5 years
(iii) Expansion/Diversification			
Low Potential Zone	150% of fixed capital investment	125% of fixed capital investment	9 years
Medium Potential Zone	125% of fixed capital investment	100% of fixed capital investment	7 years
High Potential Zone	100% of fixed capital investment	75% of fixed capital investment	5 years

2.2.2 Organisational set-up

The overall control and superintendence of the sales tax organization vests with the Prohibition, Excise and Taxation Commissioner (PETC) who is assisted by the Deputy Excise and Taxation Commissioners (DETCs), Excise and Taxation officers (ETOs), Assistant Excise and Taxation Officers (AETOs), Taxation Inspectors and other allied staff in the administration of the Acts.

Eligibility certificate in respect of small scale industry is issued at district level by the General Manager, District Industries Centre (GMDIC) after approval by the Lower Level Screening Committee (LLSC) comprising Additional Deputy Commissioner, General Manager District Industries Centre of the concerned district and Deputy Excise and Taxation Commissioner (DETC) incharge of the district. Eligibility certificate in respect of medium and large-scale industry is issued at directorate level by the Additional Director of

Industries after approval of proposal by the Higher Level Screening Committee (HLSC) comprising Director of Industries, Excise and Taxation Commissioner, Managing Director, Haryana Financial Corporation, Managing Director, Haryana State Industrial Development Corporation, representative of Finance Department not below the rank of Deputy Secretary and Additional Director of Industries. Exemption/entitlement certificate is issued thereafter by the Deputy Excise and Taxation Commissioner incharge of the district.

2.2.3 Scope of Audit

With a view to ascertaining the correctness of system regarding eligibility of units for grant of exemption/deferment from payment of tax, promptness to assess the cases of exempted units and the possible loss of revenue due to various irregularities, records of 10 sales tax districts out of 21 sales tax districts alongwith records of concerned General Manager, District Industries Centres and Director of Industries for the period 1996-97 to 2000-2001 were test-checked from July 2001 to February 2002.

2.2.4 Highlights

In 2 cases, exemption/deferment of Rs.26.38 crore was granted for expansion without fulfilling the conditions laid down in the rules.

{Paragraph 2.2.7 (i)}

Due to incorrect computation of fixed capital investment, sales tax incentives of Rs.23.34 crore in 73 units were granted in excess by the Industries Department.

{Paragraph 2.2.7 (iii)}

8 units availed exemption of Rs.3.91 crore without obtaining eligibility/exemption certificates and 9 units availed deferment of Rs.2.41 crore in excess of the quantum prescribed in the eligibility certificates.

{Paragraph 2.2.8 (a) and (b)}

In 48 cases, application of incorrect and concessional rate of tax resulted in under-assessment of tax of Rs.2.24 crore.

{Paragraph 2.2.9 (i) and (ii)}

68 dealers were allowed irregular deductions and the notional sales tax liability was calculated on taxable turnover instead of gross turnover, which resulted in under-assessment of tax of Rs.9.34 crore.

{Paragraph 2.2.9 (iii)}

In 27 cases, notional sales tax liability of Rs.2.18 crore was under-assessed due to non-levy of purchase tax and calculation mistakes.

{Paragraph 2.2.10 (i) and (ii)}

2.2.5 Growth of industrial units under exemption/deferment scheme

The Industry Department/Sales Tax Department did not have the consolidated figures of benefit sanctioned to various units under exemption/deferment scheme. In the absence of this vital information, the revenue foregone by Government by way of exemptions/deferment could not be arrived at. However, as per information made available by field offices of Industry and Sales Tax Department the amount of sales tax incentives granted under the scheme as per eligibility/exemption certificates issued from 1996-97 to 2000-2001 to various industrial units were as given below:-

Year	New Industrial Units granted exemption/deferment				Total	
	Medium and Large scale units		Small Scale units			
	No. of units	Amount (Rupees in crore)	No. of units	Amount (Rupees in crore)	No. of units	Amount (Rupees in crore)
1996-97	33	178.42	360	147.91	393	326.33
1997-98	127	774.90	408	187.67	535	962.57
1998-99	60	296.08	125	43.18	185	339.26
1999-2000	49	288.13	259	244.11	308	532.24
2000-2001	26	158.63	77	54.71	103	213.34
Total	295	1,696.16	1229	677.58	1,524	2,373.74

Implementation of scheme by Sales Tax Department

The position of exemption/deferment certificates issued under various sales tax incentives schemes between the period from 1996-97 to 2000-2001 for the entire State was not available. However, in respect of 10 sales tax districts test-checked the information was as under:-

Year	Exemption		Deferment		Total	
	No. of units	Amount (Rupees in crore)	No. of units	Amount (Rupees in crore)	No. of units	Amount (Rupees in crore)
1996-97	356	312.83	34	86.30	390	399.12
1997-98	335	318.31	45	297.27	380	615.58
1998-99	146	195.89	33	183.36	179	379.25
1999-2000	98	161.50	23	117.79	121	279.29
2000-2001	68	114.70	31	130.26	99	244.97

Year	Exemption		Deferment		Total	
	No. of units	Amount (Rupees in crore)	No. of units	Amount (Rupees in crore)	No. of units	Amount (Rupees in crore)
Total	1,003	1,103.23	166	814.98	1,169	1,918.21

During the years 1996-97 to 2000-2001, 193 units (large and medium scale: 13 units and small scale: 180 units) had been closed.

2.2.6 Assessments in arrear

Under the provisions of HGST Rules, 1975, the assessment of an eligible industrial unit holding exemption/entitlement certificate shall be framed in accordance with the provisions of the Act and Rules framed thereunder as early as possible and shall be completed by 31 December in respect of the assessment year immediately preceding thereto.

During test-check of records, it was noticed (between July 2001 and March 2002) that in 10 sales tax districts, 1120 assessment cases involving tax exemption/deferment of Rs.394.74 crore were pending assessment as on 31 March 2002 as detailed below:

Year	No. of cases	Amount of exemption/deferment (Rupees in crore)
1996-97	61	49.32
1997-98	140	43.04
1998-99	239	149.69
1999-2000	324	97.89
2000-2001	356	54.80
Total	1,120	394.74

2.2.7 Irregularities in the grant of eligibility certificates

The eligibility certificates are issued by the Industries Department on the basis of recommendations of High Level Screening Committee (HLSC) and Lower Level Screening Committee (LLSC). Elaborate internal control mechanism comprising receipt of applications in the prescribed proforma, its scrutiny at various levels and decision by competent officers regarding grant of eligibility has been prescribed in the Act/Rules. Audit scrutiny revealed that the departmental authorities did not ensure the correct implementation of various provisions of the Act/Rules/Policy while granting eligibility certificates. A few illustrations of their failure are given below:

(i) Incorrect exemption for expansion of industrial units

As per Rule 28 (A) (2) (d), expansion of industrial unit for the purpose of exemption means a unit set up or installed during the operative period, which creates additional production/manufacturing facilities for manufacturer of the same product/products as of existing unit and (a) in which the additional fixed capital investment made during the operative period exceeds 25 *per cent* of the fixed capital investment (FCI) of the existing unit and (b) which results into increase in annual production by 25 *per cent* of the installed capacity of the existing unit in case of expansion. While granting eligibility certificates to the expanded units the department ignored the codal provisions which resulted in irregular benefit of Rs.26.38 crore. A few cases are discussed as under:

(a) Test-check of records of the Director of Industries, Haryana revealed (August 2001) that a firm at Rewari producing tempered safety glasses was granted (28 March 2000) eligibility certificate for the period from 1 September 1999 to 31 August 2006 for an amount of Rs.26.14 crore in respect of its expanded unit. The installed capacity of the existing unit was 15,75,000 square meters whereas the annual production of its expanded unit was 2,89,848 square meters. The increase in annual production works out to only 18.4 *per cent* and was less than 25 *per cent* as required under the HGST Rules. Thus, grant of eligibility certificate without fulfillment of the codal requirements resulted in irregular benefit of Rs.26.14 crore.

The matter was pointed out (August 2001) in audit but no reply had been received (November 2002) from the department.

(b) In Panchkula district, a firm manufacturing cement was granted eligibility certificate for its expanded unit for Rs.23.88 lakh for the period from July 1995 to 13 July 2004. It was noticed that during the year 1994-95, the annual production of the existing unit was 7,666 MT against its installed capacity of 15,000 MT and it further decreased to 6,316 MT during 1995-96. Thus, the firm was not achieving the production even upto the level of installed capacity and was thus incorrectly granted eligibility certificate resulting in irregular benefit of Rs.23.88 lakh.

On this being pointed out in audit, the GMDIC Panchkula stated (December 2001) that the prescribed production level could not be achieved due to labour problems, machinery break down, power cuts, shortage of raw material and low working capital available in the unit. The reply of the department was not tenable as there is no provision in the Rules to issue eligibility certificate without fulfillment of codal requirements.

(ii) Erroneous exemption/deferment

As per Rule 28 A (2) (f) (iv) of the Haryana General Sales Tax Rules 1975, rice mills, stone crushers, servicing units and units making steel and wooden furniture, in which the capital investment in plant and machinery including

generating set exceeds Rs.5 lakh, are not eligible for the purpose of exemption/deferment from payment of tax.

During test-check of the records of 6* DETC offices, it was noticed (between August 2001 and January 2002) that 17 industrial units whose capital investment exceeded Rs. 5 lakh (14 rice mills, one stone crusher, one wooden furniture manufacturer and one tyres retreading unit) were erroneously issued eligibility certificates. This resulted in incorrect exemption from payment of tax amounting to Rs.5.18 crore.

On this being pointed out in audit, the General Managers, District Industries Centre, Ambala, Karnal and Panchkula stated (August 2001 and January 2002) that these units were eligible as these fall under Rural Industrial Scheme having capital investment in plant and machinery below Rs.5 lakh. The reply was not tenable as it had worked out cost of capital investment incorrectly i.e. cost of generating set was not included in the cost of plant and machinery as required under Rule 28 A (2) (g). Replies from the remaining District Industries Centres had not been received (November 2002).

(iii) Incorrect computation of fixed capital investment

As per Rule 28 A (2) (g) and 28 B (3) (g) of the Haryana General Sales Tax Rules 1975, fixed capital investment means investment in land under use, new building, new plant and machinery (including generating set) tools and equipment, directly imported second hand machinery and will cover all the assets of the unit as erected at site and paid for as on any day falling within 60 days after the date of commencement of commercial production.

During test-check of the records of 9** offices for the period 1996-97 to 2000-2001, it was noticed (between July 2001 and January 2002) that while fixing the quantum of tax exemption/deferment of 73 units, ineligible articles/elements were included in the Fixed Capital Investment (FCI) for allowing sales tax exemption/ deferment of tax. This resulted in excess grant of exemption/deferment of tax of Rs.23.34 crore as per details given below:-

Sl. No.	Name of Offices	No. of units	Name of inadmissible items/Nature of irregularities	Fixed Capital Investment excess allowed	Eligibility excess allowed	Departmental replies
				(Rupees in lakh)		
1.	Director of Industries, Haryana, Chandigarh	30	Cost of old machinery (not imported), old building, travelling expenses, unapproved technical know-how, transformer, stamp duty, air tickets, payments beyond 60 days, telephone charges	1,715.71	1,913.94	In one case, Director of Industries, stated (March 2002) that the case will be placed in next HLSC and in another case stated (October 2001) that cost of old machinery (not imported) was

* Ambala, Gurgaon, Karnal, Panchkula, Rewari and Yamunanagar.

** Director of Industries and General Manager, Ambala, Bahadurgarh (Jhajjar), Gurgaon, Panipat, Panchkula, Rewari, Sonipat and Yamunanagar

Sl. No.	Name of Offices	No. of units	Name of inadmissible items/Nature of irregularities	Fixed Capital Investment excess allowed	Eligibility excess allowed	Departmental replies
			etc. were included in FCI.			allowed by the Secretary Industries. Reply was not tenable as there is no such provision for inclusion of the cost of machinery under the rule. Reply in the remaining 28 cases was awaited (November 2002).
2.	GMDIC, Ambala	4	Cost of thermic oil and cost of transformer were included in FCI. Besides calculation error was noticed.	15.30	23.04	Departmental reply was awaited (November 2002).
3.	GMDIC, Gurgaon	7	Cost of staff quarters, old machinery (not imported) and payment beyond 60 days were included in FCI. Calculation mistakes were also found.	53.91	87.13	GMDIC, Gurgaon stated (February 2002) that tax exemption of Rs.2.69 lakh has been reduced in two cases. Reply in the remaining 5 cases was awaited (November 2002).
4	GMDIC, Bahadurgarh (Jhajjar)	11	Cost of old machinery (not imported), transformer, old building and stamp duty were included in FCI.	55.63	77.88	GMDIC, Bahadurgarh stated (March 2002) that tax exemption of Rs.2.70 lakh has been reduced in one case. Reply in the remaining 10 cases was awaited (November 2002).
5.	GMDIC, Panipat	2	Cost of transformer was included in FCI.	3.24	3.80	GMDIC, Panipat stated (October 2001) that transformer was part of FCI. This was not tenable as transformer does not form part of FCI under the Act.
6.	GMDIC, Panchkula	2	Cost of Transformer, Electric security and more than 50 per cent of cost of building were included in FCI.	3.68	6.02	GMDIC, Panchkula stated (December 2001) that one case will be placed before the LLSC meeting. The final reply in another case was awaited (November 2002).
7.	GMDIC, Rewari	3	Interest more than 5 per cent of plant and machinery, cost of idle land, security to HSEB, payment made after 60 days were included in FCI.	21.08	31.63	GMDIC, Rewari stated (January 2002) that 2 cases were being placed to the next lower level screening committee meeting whereas reply in one case was awaited (November

Sl. No.	Name of Offices	No. of units	Name of inadmissible items/Nature of irregularities	Fixed Capital Investment excess allowed	Eligibility excess allowed	Departmental replies
						2002)
8.	GMDIC, Sonipat	5	Cost of staff quarters, old building, unapproved technical know-how and transformer were included in FCI.	35.63	48.50	GMDIC, Sonipat stated (January 2002) that quantum of tax exemption in 3 cases had been reduced by Rs.5.84 lakh. Reply in the remaining 2 cases was awaited (November 2002).
9.	GMDIC, Yamunanagar	9	Cost of old machinery (not imported), thermic fluid, transformer and more than 50% of cost of building, payment beyond 60 days were included in FCI. Calculation mistakes were also noticed.	111.51	142.16	Reply from GMDIC, Yamunanagar was awaited (November 2002).
	Total	73		2,015.69	2,334.10	

(iv) Incorrect acceptance of applications

As per Rule 28 A (5) (a) of the HGST Rules 1975, every eligible industrial unit shall make an application in prescribed Form* to the General Manager, District Industries Centre alongwith attested copies of documents within 90 days of the date of its going into commercial production. No application shall be entertained if not preferred within time.

(a) During test-check of records, it was noticed that fifteen industrial units applied for tax benefits late by 1 day to 195 days but tax exemption/deferment of Rs.40.05 crore was granted as per details given in the following table:

Sl No.	Offices	No. of units	Exemption/deferment allowed (Rupees in lakh)
1.	Director of Industries, Chandigarh	4	3,580.35
2.	GMDIC, Ambala	4	44.02
3.	GMDIC, Gurgaon	1	61.22
4.	GMDIC, Karnal	1	14.46
5.	GMDIC, Panchkula	2	35.58
6.	GMDIC, Rewari	1	9.44
7.	GMDIC, Sonipat	1	215.82
8.	GMDIC, Yamunanagar	1	44.31
	Total	15	4,005.20

* ST-70 Application form for the issue of eligibility certificate for exemption/deferment from payment of sales tax.

Thus entertainment of applications beyond the prescribed date resulted in irregular benefit of Rs.40.05 crore to the dealers.

(b) Test-check of records of DETCs, Panipat and Panchkula revealed that in case of 17 units, eligibility certificates were issued without obtaining the change of land use (CLU) certificates (prescribed in the application form) from the competent authority resulting in irregular monetary incentive of Rs.8.39 crore. Though the eligibility certificates were withdrawn (June 1997) in case of 6 units, the amount of exemption of Rs.22.87 lakh already availed by them was not recovered. In case of remaining 11 units, no reply had been received (November 2002) from the department.

(v) *Incorrect determination of zones*

During test-check of records of General Manager, District Industries Centre, Ambala for the year 1996-97, it was noticed that Ambala block was declared as backward with effect from 20 February 1996 and 3 units earlier located in Zone B were shifted to Zone A to give benefit from retrospective date which was irregular under Rule 28 A (4) A of HGST Act, 1975. This resulted in grant of excess exemption of Rs.11.94 lakh.

The matter was brought (August 2001) to the notice of the department; reply had not been received (November 2002).

(vi) *Grant of exemption without eligibility certificates*

As per Rule 28 A (5) (h) of the HGST Rules 1975, the eligibility certificate which forms the basis of granting exemption/entitlement certificate is required to be issued by the Additional Director of Industries in cases approved by the Higher Level Screening Committee within a period of 45 days from the date of receipt of application in the office of the General Manager District Industries Centre.

A test-check of records in the Office of Director of Industries, Haryana revealed that in 3 cases, (two of Gurgaon and one of Yamunanagar), the eligibility certificates for Rs.6.01 crore were issued after a delay of 5 to 8.5 years from the date of receipt of application. In one case, the eligibility certificate was issued after expiry of operative period and till then the dealer had already availed the full amount of exemption of Rs.1.11 crore pending issue of exemption certificates. In another two cases the dealers had already availed exemption of Rs.3.41 crore against the total exemption of Rs.4.91 crore allowed to the units.

The matter was brought (August 2001) to the notice of the department; reply had not been received (November 2002).

2.2.8 *Implementation of the Scheme by Sales Tax Department*

(a) *Inadmissible availing of tax exemption*

As per HGST Rule 1975, the eligibility certificate is required to be issued

within 45 days from the receipt of application in the office of the GMDIC. Further, the DETC will issue the exemption/entitlement certificate on the basis of eligibility certificate within 30 days from the receipt of application in his office.

In DETC, Gurgaon (East), it was noticed that 8 units applied (between May 1995 and September 1998) for sales tax exemption. In none of the cases, exemption certificate was issued but the units continued to avail of the benefit of exemption to the tune of Rs.3.91 crore from 1995-96 to 2000-2001. In one case, the eligibility certificate was cancelled by the department as the unit had closed down the business after availing exemption of Rs.33.98 lakh. In 3 cases, though eligibility certificate was issued, exemption certificate was not issued at all. In other 4 cases, no eligibility certificate was issued. Availing benefit without the exemption certificate was not permissible and resulted in inadmissible exemption of Rs.3.91 crore.

The matter was brought (November 2001) to the notice of department, but reply had not been received (November 2002)

(b) Excess availing of tax deferment

As per HGST Rules, 1975, eligible industrial unit may avail the benefit of deferment upto the quantum and period as prescribed in the eligibility certificate.

During test-check of the records of Gurgaon (East) and Faridabad (West), it was noticed that tax of Rs.18.18 crore was due against which deferment of tax amounting to Rs.20.59 crore was availed by 9 units for the period from 1992-93 to 2000-2001. Though, deferment of tax of Rs.2.41 crore availed in excess of the quantum prescribed in the eligibility certificate was to be recovered by the department, no action had been taken to recover the amount.

The matter was brought (March 2002) to the notice of the department; reply had not been received (November 2002).

2.2.9 Irregularities in assessments of exempted/deferred units

The rates of tax leviable on different commodities have been prescribed under Haryana General Sales Tax Act, 1973 and Central Sales Tax Act, 1956. Rule 28 A of Haryana General Sales Tax provide that the amount of tax payable on the sale of finished products of the exempted units shall be computed at the maximum rates specified under the local sales tax law.

(i) Under-assessment due to application of incorrect rate of tax

During test-check of the records of 6 sales tax offices, it was noticed that in 25 cases of 16 units, the assessing authorities while finalising (between 1998-99 and 2000-2001) the assessments, calculated notional tax liability at lower rates. This resulted in under-assessment of notional sales tax liability of Rs.153.43 lakh as per details in the following table:

Sr. No.	Name of District	No. of units/cases	Assessment year	Amount of tax involved (Rupees in lakh)	Nature of irregularities
1.	Ambala	6/11	Between 1996-97 and 1999-2000	55.49	Tax on mango drink, processed lime, refractory, plastic pipe and cotton seed oil was levied at a lower rate of 10, Nil, 8, nil and 1 per cent instead of correct rates of 20,10,10,10 and 4 and 7 per cent respectively.
Remarks:- The matter was pointed out in audit (August 2001) but no reply had been received (November 2002).					
2.	Gurgaon (E)	3/3	Between 1995-96 and 1997-1998	25.21	Tax on desi ghee, TV cabinet and copper-wire was levied at a lower rate of 4, 4 and 1 per cent instead of correct rates of 5, 12 and 2 per cent respectively.
Remarks:- On being pointed out in audit (between July 1999 and May 2001) the department created a demand of Rs.1.14 lakh in one case and made (January 2001) rectification in another one case. In remaining one case ETC, Haryana issued (April 2002) instructions for rectification.					
3.	Gurgaon (W)	1/1	1995-96	9.51	Tax on forging was levied at a lower rate of 3 per cent instead of 4 and 7 per cent.
Remarks:- On being pointed out in audit (March 2000), the department created (August 2000) additional demand of Rs.9.51 lakh.					
4.	Jhajjar	3/4	1997-98 and 1999-2000	8.31	Tax on footwear and toughened glass was levied at a lower rate of 3 and 2 per cent instead of 5 and 4 per cent respectively.
Remarks:- On being pointed out in audit (September 2001) the department sent two cases for suo motu action. In remaining two cases, reply had not been received (November 2002).					
5.	Kurukshetra	2/5	1992-93 and 1996-97	51.76	Tax on solvent and cotton seed was levied at lower rate of 1 and 4 per cent instead of 6 and 10 per cent respectively.
Remarks:- On being pointed out in audit (between September 1999 and September 2000) the department sent (November 1999) two cases for suo motu action. In respect of remaining 3 cases, no reply was received (November 2002) from the department.					
6.	Panipat	1/1	1994-95	3.15	Tax on mahua oil was levied at lower rate of 1 per cent instead of 4 per cent.
Remarks:- On being pointed out in audit (January 2000), the department sent the case for suo motu action.					
	Total	16/25		153.43	

(ii) Under-assessment due to application of concessional rate of tax

During the test-check of the records of 6 offices, it was noticed that 15 exempted units in 23 cases sold their finished products against STD IV Forms during the years 1996-97 to 1999-2000, but the assessing authorities, while finalising (between April 1998 and March 2001) the assessments, calculated notional sales tax liability on sale of finished products against STD IV at concessional rates instead of at the maximum rates. This resulted in under-assessment of notional tax liability amounting to Rs.70.94 lakh as detailed in the following table.

Name of district	No. of units/cases	Tax assessed	Tax assessable	Under-assessment	Remarks
		(Rupees in lakh)			
Ambala	7/15	9.82	68.96	59.14	In one case, demand of Rs.0.58 lakh was created and another case was sent (August 2001) for

Name of district	No. of units/cases	Tax assessed	Tax assessable	Under-assessment	Remarks
		(Rupees in lakh)			
					suo motu action. In remaining 13 cases reply was awaited (November 2002).
Faridabad (East)	1/1	1.73	3.46	1.73	Reply was awaited (November 2002).
Jhajjar	3/3	4.61	9.22	4.61	Reply was awaited (November 2002)
Karnal	2/2	Nil	3.36	3.36	One case was sent (December 2000) for suo motu action and in another case, demand for Rs.1.46 lakh was created (November 2000).
Kaithal	1/1	0.25	1.95	1.70	Reply was awaited (November 2002)
Panipat	1/1	Nil	0.40	0.40	Reply was awaited (November 2002).
Total	15/23	16.41	87.35	70.94	

(iii) Under-assessment of tax due to irregular deduction

During the test-check of the records of 15* DETC offices, it was noticed that 68 dealers sold/exported finished goods out of India for Rs.252.28 crore against declaration ST-15 A/Form H during the years 1994-95 to 1999-2000. The assessing authorities, while finalising (between June 1996 and March 2001) the assessments, assessed the notional sales tax liability after allowing deduction for goods either exported out of India or against declaration in Form ST 15-A from gross turnover. This resulted in under-assessment of notional sales tax liability of Rs.9.34 crore.

On being pointed out (between June 1997 and December 2001) the department sent 30 cases for suo motu action, in 9 cases the sales tax liability was increased by Rs.69.96 lakh. However, the department in 2 cases of Panipat and Sonipat stated that no tax was leviable on goods exported out of India, which was not tenable because notional sales tax liability was to be calculated on gross turnover including sale price of goods exported out of India. No reply had been received in respect of remaining cases (November 2002).

(iv) Under-assessment due to non-levy of tax on branch transfer/consignment sale

Explanation given under Sub-Rule 2 (n) (ii) of Rule 28-A of Haryana General Sales Tax Rules, 1975, the branch transfers or consignment sales inside or outside the State of Haryana shall be deemed to be the sale within the State and in the course of inter-State trade or commerce. Further, as per condition No. (ii) of Sub-Rule 11 (a), of Rule 28 A ibid the beneficiary unit after having availed of the benefit shall not make sales outside the State for next five years by way of transfer or consignment of goods manufactured by it.

* Ambala, Faridabad (East), Faridabad (West), Gurgaon (East), Gurgaon (West), Hisar, Jhajjar, Jind, Karnal, Kaithal, Panipat, Panchkula, Rewari, Sirsa and Sonipat.

(a) Three dealers in three cases (2 cases of DETC, Gurgaon (West) and one case of DETC, Jhajjar) made branch transfers/consignment sales valued Rs.1.16 crore during the years 1994-95 to 1996-97. The assessing authority, while finalising (between January 1997 and May 2001) the assessments, allowed deduction of Rs.1.16 crore from gross turnover. This resulted in under-assessment of Rs.4.63 lakh.

On being pointed out (September 1997 and January 2002), DETC, Gurgaon (West) replied (June 2001) that proceedings for recovery of the exempted amount alongwith interest thereon are under progress and the reply in the other case was awaited. DETC, Jhajjar rectified the assessment and created a demand of Rs.1.83 lakh.

(b) In another case of DETC, Hisar, the dealer made branch transfer valued at Rs.54.02 lakh within five years after availing of the benefit of exemption of Rs.20.60 lakh and the assessing authority allowed (March 1998) deduction of Rs.54.02 lakh from the gross turnover. This resulted in non-recovery of exemption amount of Rs.20.60 lakh beside interest of Rs.15.36 lakh.

On being pointed out, the case was sent for suo motu action and the revisional authority increased (May 2001) notional sales tax liability by Rs.20.60 lakh.

2.2.10 Under-assessment of notional sales tax liability

Under the HGST Act, 1973, goods when purchased within State without payment of tax and used in the manufacturing of taxable and tax free goods, are taxable at the stage of last purchase.

(i) During test-check of the records of 6 DETCs (Ambala, Hisar, Jhajjar, Kaithal, Panipat and Sonipat) it was noticed that nineteen units in 22 cases availing exemption from sales tax, purchased oil seeds/cotton (taxable at the stage of last purchase) and PVC and HDPE granules valued at Rs.54.74 crore from within the State without payment of tax on the strength of registration certificates during the years between 1994-95 and 1999-2000 and used the same in manufacturing of taxable and tax free goods. While finalising (November 1997 to May 2000) assessments, the assessing authorities failed to levy purchase tax. This resulted in under-assessment of notional sales tax liability of Rs.1.77 crore as under:

Sl. No.	Name of district	No. of units/cases	Assessment year	Name of goods	Value of goods (Rupees in crore)	Amount of tax short levied (Rupees in lakh)
1.	Ambala	6/6	Between 1996-97 and 1998-99	Oil seeds	20.36	40.72

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Sl. No.	Name of district	No. of units/cases	Assessment year	Name of goods	Value of goods (Rupees in crore)	Amount of tax short levied (Rupees in lakh)
<p>Remarks:- On being pointed out in audit (between March 2000 and September 2001), the department sent (August 2001) two cases for suo motu action and raised (March 2001 and January 2002) a demand of Rs.11.37 lakh in two cases. Reply in remaining 2 cases was awaited (November 2002).</p>						
2.	Hisar	½	1997-98 and 1998-99	Cotton	6.00	23.99
<p>Remarks:- On being pointed out in audit (May and July 2000), the department sent one case for suo motu action. Reply in another case was awaited (November 2002).</p>						
3.	Jhajjar	1/1	1995-96	PVC	1.29	2.85
<p>Remarks:- On being pointed out in audit (March 1998), the department rectified (June 1998) the assessment and created (June 1998) demand for Rs.2.15 lakh.</p>						
4.	Kaithal	2/4	Between 1995-96 and 1996-97	Oil seed	14.23	56.90
<p>Remarks:- On being pointed out in audit (May 2000), the department sent all the cases to revisional authority for suo motu action.</p>						
5.	Panipat	5/5	Between 1994-95 and 1999-2000	Cotton and HDPE granules	11.01	45.21
<p>Remarks:- On being pointed out in audit (between January 2000 and October 2001), the department levied tax of Rs.1.94 lakh in one case and sent three cases for suo motu action. In one case, reply was awaited (November 2002).</p>						
6.	Sonipat	4/4	Between 1996-97 and 1998-99	Cotton	1.85	7.37
<p>Remarks:- On being pointed out in audit (between March 1999 and December 2000), the department created (September 2000 and January 2002) demand for Rs.7.37 lakh.</p>						
	Total	19/22				177.04

(ii) Test-check of the records of DETCs, Panchkula, Gurgaon (West), Ambala and Panipat revealed that in five cases of 5 units, the notional sales tax liability was calculated short by Rs.40.56 lakh due to calculation mistake during the years 1995-96 to 1998-99.

On being pointed out (between March 2001 and February 2002), the DETCs, Gurgaon (West), Panchkula and Panipat rectified the assessments and increased (May, June 2001 and February 2002) the notional sales tax liability by Rs.37.77 lakh. Reply from DETC, Ambala in two cases had not been received (November 2002).

2.2.11 Non-monitoring of exempted/deferred units

To ascertain the amount of sales tax deferred/exempted, the Deputy Excise and Taxation Commissioner of each district was required to review the performance of each eligible industrial unit and to send a quarterly report to the Excise and Taxation Commissioner in the following month but none of the Commissioners of the 10 districts test-checked sent the quarterly performance reports to the Excise and Taxation Commissioner, Chandigarh. Thus, non-monitoring of exempted/deferred units resulted in non-recovery of tax of Rs.37.32 crore as detailed below:

(i) Disposal of fixed assets

As per HGST Rules, 1975, the eligibility certificate granted to an industrial units shall be liable to be withdrawn at any time during its currency by the appropriate screening committee in case of disposal or transfer by the unit of any of its fixed assets.

Test-check of the records of DETCs, Jagadhari, Panchkula and Rewari revealed that in 4 cases (2 of Jagadhari, one each of Panchkula and Rewari), the industrial units had disposed of (between March 1990 and January 2000) fixed assets of Rs.1.36 crore during the currency of eligibility certificate. However, the exemption certificate in 2 cases of Jagadhari was cancelled in November 1997 and March 1998 (i.e. after a lapse of 7 years in one case and one year in other case). In the other case it was cancelled after being pointed out in audit in February 2002 and no action was taken in the remaining one. This resulted in non-realisation of Rs.57.93 lakh.

(ii) Non-maintenance of production level

As per HGST Rules, 1975, the benefit of tax exemption/deferment shall be subject to the condition that the beneficiary unit after having availed of the benefit, shall continue its production at least for the next five years and not below the level of average production for the preceding five years. In case the unit violates the condition, it shall be liable to make, in addition to the full amount of tax-benefit availed of by it during the period of exemption/deferment, payment of interest chargeable under the Act as if no tax exemption/deferment was ever available to it.

During test-check of records in the offices of 8 sales tax districts, it was noticed that 31 units after availing the exemption of Rs.14.36 crore, did not maintain the level of production to the extent of average production for the preceding five years and thus, they were liable to refund the full amount of tax benefit availed of by the units. Neither the units refunded the amount of exemption nor the department demanded/recovered the amount of Rs.14.36 crore from the units as per details given in the table below:

Sl. No.	Name of DETCs	No. of units	Amount of exemption/deferment availed (Rupees in crore)
1.	Ambala	1	0.65
2.	Gurgaon (E)	6	1.09
3.	Jhajjar	2	0.35
4.	Jagadhari	5	1.16
5.	Karnal	3	0.26
6.	Rewari	3	8.36
7.	Sonipat	6	1.51
8.	Panipat	5	0.98
	Total	31	14.36

The matter was brought (August 2001 and March 2002) to the notice of the department, but their reply had not been received (November 2002).

(iii) Non-recovery of tax

Under Haryana General Sales Tax Rules, 1975, the exemption/entitlement certificate granted to an eligible industrial unit shall be liable to be cancelled by the Deputy Excise and Taxation Commissioner 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, under the rules *ibid*, on cancellation of eligibility certificate or exemption/entitlement certificate before it is due for expiry, the entire amount of tax exempted/deferred shall become payable immediately in lumpsum and the provisions relating to recovery of tax, interest and imposition of penalty shall be applicable in such cases.

(a) During test-check of the records in the 10 sales tax districts, it was noticed that 155 units after availing exemption of Rs.19.85 crore during 1996-97 to 2000-2001, discontinued their manufacturing process during the currency period of exemption/deferment. Though the concerned Deputy Excise and Taxation Commissioners cancelled (between June 1997 and September 2001) the exemption certificates of these units, they did not recover the amount of Rs.19.85 crore of exemption availed by the units as detailed below:

Sl.No.	Name of DETCs	No. of units	Amount of exemption availed (Rupees in crore)
1.	Ambala	3	1.62
2.	Gurgaon (E)	8	3.69
3.	Gurgaon (W)	6	0.11
4.	Jagadhari	11	0.53

Sl.No.	Name of DETCs	No. of units	Amount of exemption availed (Rupees in crore)
5.	Jhajjar	35	1.41
6.	Karnal	48	3.72
7.	Panipat	2	0.03
8.	Panchkula	16	2.31
9.	Rewari	10	4.61
10.	Sonipat	16	1.82
	Total	155	19.85

Out of 10 units of Rewari District, 4 units availing tax exemption of Rs.80.10 lakh had gone to Bureau of Industrial Finance Reconstruction (BIFR) and 2 units availing tax exemption of Rs.26.16 lakh had gone on liquidation.

(b) Further, in 9 cases (6 of Rewari and 3 of Yamunanagar), the industrial units after availing exemption/deferment of Rs.2.53 crore discontinued their manufacturing process during the currency period of exemption/deferment but the exemption certificates were not cancelled by the DETCs. Thus, the amount of Rs.2.53 crore of exemption availed by the units remained unrecovered (November 2002).

On being pointed out in audit, the ETC, Haryana issued (April 2002) instructions to all DETCs to furnish the quarterly returns regularly to him.

2.2.12 Conclusion

The main objective of this sales tax incentive scheme was over all industrial development of the State. It did not produce encouraging results as a large number of units were closed during the currency of the incentives. The progress made in industrial development was not watched, which was evident from the fact that consolidated figures for targets fixed under the scheme, achievement of target of units established or closed during currency of the incentive etc. were not available with the department.

The delay in finalization of cases, excess availment of tax exemption/deferment, incorrect computation of fixed capital investment and non-recovery of tax due to closure of business and disposal of fixed assets by units indicate that the department lacked internal control to monitor the scheme.

The functioning of the department needs strengthening so that loss on account of receipts to the Government in implementation of various provisions of the scheme issued under the Act is avoided.

The above cases were referred (April 2002) to Government; reply had not been received (November 2002).

2.3 Non-levy of purchase tax

Under the Haryana General Sales Tax Act, 1973, goods specified in schedule-D are taxable at the stage of last purchase when purchased within the State. No deduction from dealer's gross turnover is admissible if such goods

are indirectly exported out of India. Further, a dealer is liable to pay tax on the purchase of goods (other than those specified in Schedule B) which are purchased from within the State without payment of tax and used either in the manufacture of tax free goods or in taxable goods disposed of otherwise than by way of sale.

During test-check of records of 8 offices, it was noticed (between June 1999 and March 2002) that the assessing authorities did not levy purchase tax of Rs.1.18 crore including interest in 25 cases of 20 dealers during the years 1994-95 to 1999-2000 as detailed below:

Sl. No.	No. of DETCs	No. of dealers /cases	Assessment year/month of assessment	Nature of irregularities	Turnover involved	Purchase tax /interest non/short levied
					(Rupees in lakh)	
1	1*	3/6	1995-96 to 1997-98 (between September 1997 and December 1998)	Purchased cotton from within State without payment of tax and exported the same out of India through exporters. There was no agreement between the dealers and foreign buyers for such export.	832.73	33.31
<p>Remarks:- On this being pointed out (June 1999 and March 2000) in audit, the revisional authority created (between November 2000 and January 2001) an additional demand of Rs.33.31 lakh of which a sum of Rs.18.55 lakh in two cases had been recovered in February 2001. Report on recovery of balance amount was awaited (November 2002).</p> <p>The matter was referred (May 2002) to Government; reply had not been received (November 2002).</p>						
2	4**	8/9	Between 1994-95 and 1998-99 (between March 1998 and October 2000)	Purchased paddy from within the State without payment of tax and used the same in the manufacture of rice exported out of India through exporters. There was no agreement between the dealers and foreign buyers for such export.	860.33	34.41
<p>Remarks:- On this being pointed out (between June 2000 and March 2002) in audit, the department created an additional demand of Rs.3.65 lakh against two dealers after adjusting Rs.0.15 lakh refundable to a dealer of Karnal. Further, the department also accepted the audit observation in respect of 5 cases of Jind and stated (November 2001) that proceedings had been initiated for revising the assessment orders. In case of 2 dealers of Panipat, the department intimated (March 2002) that both the cases had been sent (March 2002) to revisional authority for taking suo motu action. Further report on action taken had not been received (November 2002).</p> <p>The cases were referred (between October 2000 and April 2002) to Government; reply had not been received (November 2002).</p>						
3.	2***	4/5	1997-98 to 1999-2000 (between September 1999 and August 2000)	Purchased paddy from within the State without payment of tax and sold the same to exporters of rice outside the State. There was no agreement between the dealers and foreign buyers for such export.	584.54	23.41 9.66 (Interest)

* ETO Mandi Dabwali.

** DETCs: Hisar, Jind , Karnal and Panipat.

*** DETCs: Jind and Panipat.

Sl. No.	No. of DETCs	No. of dealers /cases	Assessment year/month of assessment	Nature of irregularities	Turnover involved	Purchase tax /interest non/short levied
Remarks:- On this being pointed out (between February and August 2001) in audit, the department referred (March and September 2001) all the five cases to the revisional authority for taking suo motu action. Further report on action taken had not been received (November 2002).						
4	2*	4/4	Between 1996-97 and 1999-2000 (between September 1999 and June 2000)	Purchased paddy from within the State without payment of tax and used it in the manufacture of rice exported out of India through exporters. The Assessing Authority levied tax on paddy but allowed a rebate from the tax payable on paddy, which was incorrect.	356.18	14.27
Remarks:- On this being pointed out (between June 2000 and November 2001) in audit, the revisional authority disallowed the rebate and created (May and October 2001 and February 2002) an additional demand of Rs.12.44 lakh, of which Rs.1.05 lakh had been recovered. Report on action taken in remaining one case of Narwana had not been received (November 2002). The matter was referred (April 2002) to the Government; reply had not been received (November 2002).						
5	1**	1/1	1994-95 (January 1998)	Purchased spirit (taxable and used it in manufacture of IMFL (tax free goods/stock transfer). The assessing authority did not levy purchase tax on the spirit worth Rs.60.92 lakh.	60.92	2.68
Remarks:- On this being pointed out (March 2000) in audit, the department created (July 2001) an additional demand of Rs.7.87 lakh which included Rs.2.68 lakh as pointed out by audit and Rs.5.19 lakh (Tax: Rs.3.48 lakh and interest: Rs.1.71 lakh) on account of non-levy of tax on miscellaneous income. The department further stated that the dealer had preferred an appeal against the revisional order. The decision of appellate authority was awaited (November 2002). The case was referred to Government in July 2000; reply had not been received (November 2002).						
	Total	20/25			2,694.70	117.74

2.4 Non-levy of tax on lease rent

Under the Haryana General Sales Tax Act, 1973, 'sale' means any transfer of property in goods for cash or deferred payment or other valuable consideration and includes transfer of right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

During test-check of records of the Deputy Excise and Taxation Commissioner, Panchkula, it was noticed (June 2000) that a dealer dealing in cold drinks received a sum of Rs.1.13 crore as lease rent of empties from various customers during the year 1997-98. The assessing authority, while finalising (July 1999) the assessment did not levy tax on the amount of lease rent received for empty stocks (empty bottles). The omission resulted in non-levy of sales tax of Rs.11.34 lakh.

* DETC Sonipat and ETO Narwana.

** DETC Sonipat.

On this being pointed out (June 2000) in audit, the revisional authority created (June 2001) an additional demand of Rs.11.34 lakh. Report on recovery had not been received (November 2001).

The matter was referred (August 2000) to Government; reply had not been received (November 2002).

2.5 Under-assessment due to excess rebate

Under the Haryana General Sales Tax Act, 1973 and the Rules framed thereunder, tax leviable on a dealer on the sale of atta, maida and suji shall be reduced by the amount of tax paid in the State on the purchase of wheat at the first point and used in the manufacture of such atta, maida and suji. When no tax is payable on atta, maida and suji, full amount of tax already paid on wheat used in manufacture of these goods upto 14 August 1997 was refundable.

During test-check of records of the Deputy Excise and Taxation Commissioner, Panchkula, it was noticed (March 1998) that a dealer exempted from payment of tax made purchases of 194121.36 quintals wheat from the Food Corporation of India (FCI) at the rate of Rs.360 per quintal during the year 1995-96. The assessing authority, while finalising (June 1996) the assessment, allowed a rebate of tax of Rs.29.52 lakh instead of Rs.27.83 lakh worked out for tax paid on wheat used in the manufacturing of atta, maida and suji. This resulted in excess refund of Rs.1.69 lakh.

On this being pointed out (March 1998) the department created (August 2000) an additional demand of Rs.3.76 lakh including the rebate in tax of Rs.2.07 lakh disallowed on the wheat used in manufacturing of tax free goods (wheat bran).

The case was referred (January 2002) to Government; reply had not been received (November 2002).

2.6 Non-levy/under-assessment of purchase tax due to application of incorrect rate of tax.

Under the Haryana General Sales Tax Act, 1973, the rates of tax leviable on different commodities are prescribed and notified by Government from time to time. The oil seeds (Sarson and Sunflower seeds) when purchased within State and used in manufacture of oil, being declared goods, are taxable at the rate of four *per cent* at the stage of last purchase.

During test-check of records of the Excise and Taxation Officer, Shahbad Markanda (District Kurukshetra), it was noticed (July 2001) that a dealer purchased oil seeds valued at Rs.2.00 crore (Sarson-seeds: Rs.69.84 lakh, Sunflower seeds: Rs.1.30 crore) from within the State and used it in the

manufacture of oil during the year 1995-96. The assessing authority, while finalising (March 2001) assessment, did not levy purchase tax of Rs.5.19 lakh on the value of Sunflower seeds and erroneously levied purchase tax of Rs.1.54 lakh instead of Rs.2.80 lakh on Sarson seeds resulting in short levy of tax of Rs.1.26 lakh. This resulted in under-assessment of purchase tax of Rs.6.45 lakh.

On this being pointed out (July 2001) in audit, the assessing authority referred (September 2001) the case to revisional authority for taking suo-motu action. Further progress had not been received (November 2002).

The case was referred (September 2001) to Government; reply had not been received (November 2002).

2.7 Irregular deduction allowed against invalid declaration forms

Under the Haryana General Sales Tax Act, 1973, the assessing authority is required to examine the genuineness or otherwise of any sale or declaration in Form ST-15 before allowing deduction from gross turnover to a registered dealer. Lost or stolen declaration forms are declared invalid by the concerned district officer and the fact circulated to all the assessing authorities in the State to prevent deduction against such invalid declaration forms being allowed. Further, penalty is also leviable for the offence of producing before the assessing authority, any false or incorrect account, return or information. As per notifications dated 29 March and 5 July 1996 issued under the Act, stone being unclassified goods, was taxable at the rate of nine *per cent* upto 4 July 1996 and at the rate of ten *per cent* thereafter.

During audit of records of the Deputy Excise and Taxation Commissioner, Gurgaon (West), it was noticed (March 2001) that a dealer was allowed (April 1999) deduction of Rs.21.41 lakh on account of sales of stone valued at Rs.72.48 lakh during the year 1996-97 to registered dealers against declaration forms (ST-15) which had either been declared invalid (between January 1991 and March 1998) by district officers or were issued by the unregistered /non-existing purchasing dealers. Thus, the total deduction of Rs.21.41 lakh allowed against invalid declaration forms was incorrect. This resulted in under-assessment of tax of Rs.6.36 lakh including minimum penalty of Rs.4.24 lakh.

On this being pointed out (March 2001) in audit, the revisional authority created (November 2001) an additional demand of Rs.2.14 lakh with directions to issue separate show-cause notice for imposition of penalty. Further report on action taken/amount recovered had not been received (November 2002).

The matter was referred (April 2001) to Government; reply had not been received (November 2002).

2.8 Misuse of declaration Forms

Under the Haryana General Sales Tax Act, 1973, where goods taxable at first point of sale are sold by one registered dealer to another registered dealer, tax is liable at lower rate, if the purchasing dealer furnishes a declaration in Form STD-4 certifying that the goods are meant for use in manufacturing of goods for sale. In September 1998, PETC, Haryana issued instructions to all field offices to ensure that facility of STD-4 extended to manufacturers for concessional rate of tax is not allowed for transfer of goods to other States. Further, if the dealer availing of the lower rate of tax, violates any of the conditions or restrictions imposed, a penalty not exceeding one and half times of the tax involved may, after affording the dealer a reasonable opportunity of being heard, be imposed in addition to the tax payable.

During test-check of records of the Deputy Excise and Taxation Commissioner, Gurgaon (West), it was noticed (January 2002) that a dealer purchased goods* (taxable at first point sale) valued at Rs.9.47 crore (including opening stock of goods) after payment of tax at lower rate of 4.4 and 5 *per cent* against declaration in Form STD-4 and used in manufacture of goods stock transferred otherwise than by way of sale during the year 1996-97. The assessing authority, while finalising (February 2001) assessment, omitted to levy the tax at higher rate of 8.8 *per cent*/10 *per cent*. This resulted in non-levy of tax of Rs.47.24 lakh and penalty of Rs.70.86 lakh.

The case was referred to the department and to Government in January 2002; replies had not been received (November 2002).

2.9 Non-levy of interest and penalty

Under the provisions of the Haryana General Sales Tax Act, 1973, and Central Sales Tax Act, 1956, a dealer is required to pay the full amount of tax due as per the returns required to be submitted by the prescribed dates. In the event of default, the dealer is liable to pay interest on account of tax due at one *per cent* per month for the first month and at one and a half *per cent* per month thereafter so long as the default continues. In addition, penalty not exceeding one and a half times the amount of tax is also leviable for non-payment of tax alongwith the returns.

During test-check of the records of Deputy Excise and Taxation Commissioner, Panipat, it was noticed (between January and February 2002) that six dealers in seven cases did not pay full amount of tax due alongwith the returns during the years 1996-97 to 1998-99. The assessing authorities, while finalising (between January and March 2001) assessments, created additional demands of tax aggregated to Rs.20.48 lakh and pronounced in the assessment orders that penal action for levy of interest and penalty would be taken separately, but no such action was initiated till January 2002. This resulted in

* Air Conditioners and their parts.

non-levy of interest of Rs.10.23 lakh besides penalty.

On this being pointed out (between January and February 2002) in audit, the department created (February 2002) demand for interest of Rs.2.32 lakh in two cases and stated in the order that penalty notice be issued. In two cases of two dealers, the department stated (February 2002) that proceeding for levy of interest and penalty were in progress. No reply was received in the remaining three cases of two dealers. Report on recovery and further action in respect of levy of penalty had not been received (November 2002).

The matter was referred (April 2002) to the Government; reply had not been received (November 2002).

2.10 Non-raising of demands for interest

Under the Haryana General Sales Tax Rules, 1975, if a unit holding exemption certificate contravenes any provision of the Act under which exemption certificate has been granted, it shall be liable to repay the entire amount of the tax exempted alongwith the interest payable thereon.

During test-check of records of Deputy Excise and Taxation Commissioner, Fatehabad, it was noticed (January 2002) that a dealer of Tohana was granted (June 1992) exemption from payment of tax of Rs.42.53 lakh for the period from 27 November 1991 to 26 November 2000. The dealer, after availing benefit of full exemption during the year 1993-94 to 1997-98, closed down its business and disposed of its machinery. For contravention of the provisions of Act/Rules by the dealer, the department cancelled (August 1999) the exemption certificate of the dealer and raised a demand of Rs.42.70 lakh but the demand for interest of Rs.30.01 lakh was not raised.

On this being pointed out (January 2002) in audit, the department stated that demand of Rs.42.70 lakh is pending against the dealer for which recovery proceedings are in progress. It was further stated that interest, if any, payable, shall be considered after clearance of the original demand. Reply of the department was not tenable as the firm had already gone in liquidation and assets stood disposed of by Haryana Financial Corporation (HFC). Thus due to non-raising of demand of interest, the department could not claim the amount of Rs.30.01 lakh from HFC.

The matter was referred (April 2002) to the Government; reply had not been received (November 2002).

2.11 Non-realisation of tax

The Haryana General Sales Tax Act, 1973 provides that no person shall collect any sum by way of tax in respect of sale or purchase of any goods on which no tax is payable under the Act. Further, Haryana Sales Tax Tribunal-II

held (September 2000) that an exempted unit having collected purchase tax from the payer has no business to retain the same and convert it to its own use and it should come into State coffer.

During test-check of records of Deputy Excise and Taxation Commissioners, Sonipat and Panchkula, it was noticed (between February 1999 and December 2001) that in 6 cases, three dealers who were availing benefit of exemption from payment of tax under Rule 28 A sold rice procured from paddy valued at Rs.6.57 crore to the District Food and Supply Controller (DFSC) during the years 1995-96 to 1998-99. The sale price of rice charged by the dealers from the DFSC was inclusive of purchase tax of Rs.26.30 lakh payable on the paddy used in procuring of such rice. But the assessing authority, while finalising (between September 1997 and June 2000) the assessments, failed to notice the non-payment of purchase tax so collected by the dealer from the DFSC. This resulted in non-realisation of collected tax of Rs.26.30 lakh.

On this being pointed out (between February 1999 and December 2001) the department accepted (between February 1999 and January 2002) the audit observation in all the 6 cases; of this 5 cases were sent for suo motu action while in 1 case, an amount of Rs.3.33 lakh had been recovered (December 2001). The department further stated (April 2002) that revisional proceedings had not yet been finalised.

The cases were referred (June 1999 and May 2002) to Government; reply had not been received (November 2002).