

CHAPTER-II: SALES TAX

2.1 Results of audit

Test check of records relating to sales tax assessments and other records conducted, during the year 2005-06, revealed short assessment of tax, non levy of penalty, etc., amounting to Rs.46.23 crore in 212 cases, which broadly fall under the following categories:

(Rupees in crore)

Sr. No.	Particulars	Number of cases	Amount
1.	Evasion of tax due to suppression of sales/ purchase	43	0.44
2.	Non /short levy of penalty/ interest	10	0.05
3	Under assessment of tax	117	19.06
4	Other irregularities	41	2.38
5	Dues pending collection as arrears of land revenue	1	24.30
	Total	212	46.23

During 2005-06, the department accepted under assessments of Rs.1.73 crore involved in 74 cases which had been pointed out in audit in earlier years.

After issue of draft paragraph, the department recovered Rs.19.80 lakh pertaining to a single observation during the year 2005-06.

A few illustrative cases highlighting important observations involving financial effect of Rs.2.78 crore are given in the following paragraphs.

2.2 Government dues pending collection as arrears of land revenue

Introduction

2.2.1 The Excise and Taxation Department is responsible for recovery of dues pertaining to its own department. However, if the dues cannot be recovered by the department, such dues are certified for recovery as arrears of land revenue (ALR), under the Land Revenue Act, administered by the respective collector of the State. However, powers of collectors were delegated to departmental officers of the Excise and Taxation Department in December 1990 and January 1993. Cases of arrears pending with the collectors for recovery as ALR were returned to the concerned assistant excise and taxation commissioner (AETC) for effecting recovery alongwith other cases of arrears initiated by the department itself. Cases of recovery as ALR relating to other districts within the State or outside the State were being referred to collectors of the concerned district/ or collector of the concerned district of that State.

Under the Himachal Pradesh Land Revenue Act, 1954, recovery of arrears as ALR may be done by adopting any one or more of the following processes namely by:

- service of a writ^s of demand on the defaulter;
- arrest and detention of the person;
- distress and sale of his moveable property and uncut or ungathered crops;
- transfer of the holding in respect of which the arrear is due;
- attachment of estate or holding in respect of which the arrear is due;
- annulment of the assessment of that estate or holding;
- sale of that estate or holding;
- proceedings against other immovable property of the defaulter.

Scope of audit

2.2.2 There are 11 districts offices in the state. Test check of records relating to ALR of 10* districts for the period 2000-01 to 2004-05 revealed as under:

^s Known as 'dastak'. It is little more than a reminder and shows the amount of arrear and requires the person addressed to pay it

* Bilaspur, Chamba, Hamirpur, Kangra, Kullu, Mandi, Shimla, Sirmour, Solan and Una

Position of pendency vis a vis demand recovered/quashed

2.2.3 Each AETC was required to submit monthly report to Excise and Taxation Commissioner (ETC) showing therein stages at which Government dues were pending finalisation.

A perusal of returns submitted by each AETC to ETC revealed that Government dues of Rs.73.92 crore in 713 cases were declared as ALR during 2000-01 to 2004-05, out of which, 573 cases involving Rs.57.99 crore were pending disposal in various districts as detailed below:

(Rupees in lakh)

Sr. No.	Name of district.	Opening balance as on 1.4.2000	Addition during last five years (2000-01 to 2004-05)	Total	Period to which arrear relates	Amount of demand recovered	Amount of demand quashed [@]	Balance as on 31.3.2005
		Cases/ amount	Cases/ amount	Cases/ amount		Cases/ amount	Cases/ amount	Cases/ amount
1.	Bilaspur	12/1.83	46/93.11	58/94.94	Between 1983-84 and 2003-04	23/14.03	10/21.78	25/59.13
2.	Chamba	01/0.15	05/4.42	6/4.57	Between 1982-83 and 1999-2000	01/0.77	--	5/3.80
3.	Hamirpur	--	38/60.05	38/60.05	Between 1990-91 and 2001-02	08/0.85	01/0.89	29/58.31
4.	Kangra	34/80.70	15/30.89	49/111.59	Between 1985-86 and 2001-02	11/20.05	--	38/91.54
5.	Kullu	13/6.16	15/131.71	28/137.87	Between 1981-82 and 2003-04	15/31.75	01/12.84	12/93.28
6.	Mandi	15/47.51	11/121.08	26/168.59	Between 1996-97 and 2003-04	07/44.44	01/14.06	18/110.09
7.	Shimla	12/47.38	63/657.01	75/704.39	Between 1987-88 and 2003-04	03/215.54	--	72/488.85
8.	Sirmour	47/73.56	35/933.10	82/1,006.66	Between 1977-78 and 2003-04	08/77.04	04/192.26	70/737.36
9.	Solan	149/672.43	87/3,432.62	236/4,105.05	Between 1980-81 and 2001-02	26/265.61	10/224.02	200/3,615.42
10.	Una	--	115/998.48	115/998.48	Between 1978-79 and 2001-02	03/376.49	08/80.44	104/541.55
	Total	283/929.72	430/6,462.47	713/7,392.19 say Rs.73.92 crore		105/1,046.57 say Rs.10.47 crore	35/546.29	573/5,799.33 say Rs.57.99 crore

It would be seen from above that position of recovery was 14 per cent of the total ALR cases. ETC reported in June 2006 that details of yearwise recovery of arrears was not available. No norms were fixed for finalisation of cases for any authority performing the duty of collectors/ assistant collectors.

[@] The cases were remanded by appellate authorities to the AETCs for re-assessment. Thereafter, the arrears were deleted. Further information regarding reassessment was not made available.
In district Kinnaur there were no arrears.

Intra and inter state transfer of cases

2.2.4 Cases where defaulter had shifted from one district to another were required to be transferred to the concerned district through district collector.

Cross verification of information obtained from five AETCs with the records of concerned district collectors revealed that AETCs had sent 57 LAR cases involving Government revenue of Rs.28.53 crore to district collectors for onward transfer of cases to the districts where the defaulters had shifted their business. Against these, the district collectors depicted 63 LAR cases involving Rs.10.74 crore in their records. Thus there was discrepancy in six cases involving Rs.17.79 crore as detailed below:

Sr. No.	Name of district	Figures as per AETC office		Figures as per Distt. Collector office	
		No. of cases	Amt.(Rs. in lakh)	No. of cases	Amt.(Rs. in lakh)
1.	Shimla	--	--	1	2.36
2.	Kangra	5	20.75	2	1.89
3.	Sirmour	32	325.04	4	26.91
4.	Solan	20	2,507.68	39	547.58
5.	Una	--	--	17	495.08
	Total	57	2,853.47	63	1,073.82

It was further noticed that no separate register regarding these cases was maintained either at AETCs office or in district collector's office. Consequently, no check could be exercised by the controlling authority. It is recommended that registers may be maintained and above discrepancy be reconciled.

2.2.5 It was noticed that AETC Mandi reported four ALR cases involving Rs.0.48 crore to ETC on 31 March 2005 against Rs.0.71 crore shown in the ALR register. Thus there was a discrepancy of Rs.0.23 crore. In another case, AETC Bilaspur declared Rs.7.31 lakh as ALR in October 2001, against which Rs.5.62 lakh were shown in arrear statements submitted to ETC indicating therein less reporting of Rs.1.69 lakh. The discrepancies need reconciliation.

Internal Control

2.2.6 Demand register

A demand register of ALR cases namely “Running Register” was being maintained in the office of each collector for keeping detailed particulars of cases received for recovery as ALR.

Test check of records of 10 AETCs* revealed that though the register of ALR cases was being maintained but particulars such as registration certificate number, date of order, additional demand, penalty, interest, brief reference of action taken prior to declaration of ALR i.e. penalty, action against surety etc. with dates and other details, date with progress i.e. date of visit to the dealer’s premises, were not found recorded in the relevant columns of the register. Further, the said register was not reviewed by any officer other than the official responsible for its maintenance. Thus, the very purpose of maintaining the register was defeated.

2.2.7 Internal audit wing

The internal audit wing of Excise and Taxation Department consists of one Deputy Controller (Finance and Accounts), one Assistant Controller (Finance and Accounts) and six section officers working under the control of Finance Department.

During the course of audit of 10* AETCs, it was noticed that no ALR case was checked by internal audit wing. The wing has also intimated in April 2006 that these cases were not monitored by them.

Non recovery of ALR cases pertaining to defaulters residing in other States

2.2.8 Under Revenue Recovery Act, 1890, when a sum recoverable as an ALR is payable to a collector by the defaulter who has left the State, the collector may send a certificate in the prescribed form to the collector of the district where the defaulter is situated, to recover the amount as if it was an ALR which had accrued in his own jurisdiction.

* Bilaspur, Chamba, Hamirpur, Kangra, Kullu, Mandi, Shimla, Sirmour, Solan and Una

Analysis of a few cases is given below:

Name of district	Number of ALR cases	Amount (Rs. in lakh)	Period to which relates	Date of declaration of ALR	Remarks
Solan	7	127.00	1978-79 to 1997-98	Between 2000-01 and 2003-04	These cases were returned by the District Collector to AETC, Solan in October 2004 with the remarks to ascertain the addresses of concerned collectors at Delhi in whose jurisdiction these defaulters fall so that non recovery certificates (NRC) could be issued to the concerned collector at Delhi. In one case, period to which recovery related was also not known to the department. Necessary information was not furnished to the district collector by the AETC.
Sirmour	10	46.70	2000-01 to 2003-04	Between June 2000 and March 2004	The cases pertained to the defaulters who had left the State but were not sent to the district collector, Sirmour by the AETC Sirmour, for taking up further action for recovery .
-do-	1	199.00	1989-90 to 1992-93	July 2001	Collector Sirmour took up the matter in November 2001 with his counterparts at Chandigarh, New Delhi and Jalandhar for recovery of the amount from defaulters of a firm having three directors residing outside the State under Revenue Recovery Act, 1890. Neither the collectors of other States reported the progress of recovery nor were these pursued by the AETCs and district collectors.
-do-	1	20.04	1991-92 to 1999-2000	February 2002	As the dealer had left the State, therefore, a NRC was issued in June 2000. The certificate was returned by the Collector, Yamunanagar in July 2002 for want of proof of action taken by the department from time to time for the recovery of amount. The action of the Collector, Yamunanagar was uncalled for as the NRC had been issued after exhausting all channels of recovery. This point was not contested by the district collector, Sirmour. No further action had been taken by the department.
-do-	1	11.80	1988-89 to 1991-92	April 2001	Collector, Sirmour issued NRC in September 2001 to the District Collector, Yamunanagar. As per report on NRC received from Tehsildar Jagadhari (under jurisdiction of Collector Yamunanagar), out of three directors of the firm, one director was having residential house which was mortgaged with the Himachal Pradesh State Financial Corporation (HPSFC). The ETC took up the matter in December 2004 with the HPSFC to allow the share of the department. Latest position in the matter was not known to the department (March 2006). Whereabouts of the remaining two directors were not known. No action was taken by the department to trace the defaulters and pursue the case with HPSFC.
Total	20	404.54 Say Rs.4.05 crore			

Short declaration of arrears as arrears of land revenue

2.2.9 As per Revenue Recovery Act, 1890, arrear certificate shall be issued for all the dues payable by the defaulter to Government.

Test check of records of four districts revealed that in 12 cases, interest of Rs. 1.64 crore^ε for the period between May 1986 and July 2004, was due from the defaulter at the time of declaration of arrears as ALR. The same was not included in the arrear certificate resulting in short declaration of Government revenue to that extent.

2.2.10 In another case of Nalagarh in Solan district, an amount of Rs. 1.14 crore for the period 1995-96 to 2002-03, was declared as ALR on 11 July 2003. Excise and Taxation Officer (ETO) Nalagarh revised the assessment to Rs.1.78 crore in November 2004 and total arrears recoverable as ALR worked out to Rs. 2.69 crore. ETO Nalagarh requested AETC Solan in February and April 2005 to declare the additional arrears of Rs. 1.55 crore as ALR, yet the same had not been declared. This resulted in short declaration of ALR to that extent.

Non auction of attached property

2.2.11 Under Land Revenue Act, if arrear declared as ALR remains unpaid by the defaulter after the issue of writ of demand, the property of the defaulter may be got attached by the concerned AETCs.

In eight districts, properties of 18 defaulters were attached for auction. But permission for their auction, as required under rules, was not obtained from the respective divisional commissioners. This resulted in non realisation of Government revenue of Rs.19.93[&] crore as under:

(Rupees in crore)

Name of district/ AETC	Number of cases	Nature of irregularities	Amount
Bilaspur, Hamirpur, Kangra, Kullu, Sirmour, Solan and Una	16	The properties were attached between June 2001 and September 2004 but no action was taken by the AETCs to seek permission from the divisional commissioner for auction.	1.32

^ε Bilaspur: one case: Rs. 0.01 crore, Kangra: four cases: Rs. 0.16 crore, Mandi: one case: Rs. 0.03 crore and Solan: six cases: Rs. 1.44 crore

[&] Bilaspur: one case: Rs.0.06 crore, Hamirpur: two cases: Rs. 0.06 crore, Kangra: four cases: Rs.0.45 crore, Kullu: one case: Rs.0.12 crore, Shimla: one case: Rs.0.65 crore, Sirmour: one case: Rs.0.40 crore, Solan: two cases: Rs.18.01 crore and Una: six cases: Rs.0.18 crore

(Rupees in crore)

Name of district/ AETC	Number of cases	Nature of irregularities	Amount
Solan	1	The case was sent by AETC Solan to DC Shimla thrice. On two occasions i.e. in May 2004 and January 2005 the DC returned the case as it was found incomplete. The case was finally sent to DC in May 2005 but permission to auction was still awaited.	
Shimla	1	The case was sent by AETC Shimla in July 2001 to Divisional Commissioner Shimla for sale of property. However, the case was found incomplete and returned on five occasions, last occasion being December 2004. The case is pending with AETC.	0.65
Total	18		19.93

Non pursuance of recovery

2.2.12 A dealer of Solan district assessed in March 1994, for the years 1991-92 to 1992-93, was liable to pay sales tax of Rs. 5.12 lakh. The arrear was declared as ALR in May 2004. Writ of demand was issued in June 2004, which could not be served upon the dealer as he had already sold his business premises and his present address was not known. Though the dealer furnished surety of Rs. 0.35 lakh at the time of registration and fixed deposit of Rs. 0.15 lakh, neither the surety was invoked nor the amount of fixed deposit was encashed. The department also made no efforts to trace the defaulter. Thus, Government revenue of Rs.5.12 lakh remained unrecovered.

Arrears pending due to inadequate action

2.2.13 It was noticed in four districts that arrears in nine cases relating to sales tax, passengers and goods tax, pertaining to period 1984-85 to 2002-03 were certified for recovery as ALR between July 2001 and April 2004. However department did not take any concrete steps to recover the amount as detailed below:

Name of district	No. of cases	Amount. (Rs. in lakh)	Period to which relates/ Date of assessment	Month in which ALR was declared	Remarks
<u>Kullu</u> PGT	one	16.30	1994-95 to 1999-2000/ NA	October 2001	Notices were issued to the defaulter five times. These were received undelivered as the defaulter was not available. There was nothing on record to indicate that copy of notices was pasted on conspicuous place near the property to which it relates as required under sub section 5 of section 6 of Land Revenue Act. Neither the sureties were invoked nor did the department take any action to attach the property.

Name of district	No. of cases	Amount. (Rs. in lakh)	Period to which relates/ Date of assessment	Month in which ALR was declared	Remarks
<u>Kangra</u> Sales Tax	one	0.93	1995-96/ 30.08.2000	June 2002	A sum of Rs.0.20 lakh out of total arrears of Rs. 0.93 lakh was recovered in April 2002. No action was taken by the department to recover the remaining amount by attachment of property etc.
-do-	one	1.88	1994-95 to 1996-97/ 15.6.96 and 12.11.99	August 2001	The defaulter deposited Rs. 0.20 lakh in March 2004 and promised to pay the arrears by July 2004, but he failed to pay the same. He had immovable property in the form of land and shop building at Palampur, but no action was taken by the department to attach the same.
<u>Hamirpur</u> PGT	one	3.26	1997-98 to 1999-2000/ 31.08.2000	July 2001	Teshildar Jaisinghpur was approached in October 2001 by AETC to attach the property. However, the property was not attached. It was further seen that no reminder was sent by AETC to the concerned tehsildar. Lack of pursuance resulted in non attachment of property (April 2006).
<u>Solan</u> Sales Tax	one	0.27	1984-85 and 1985-86/ 31.03.1990	April 2004	The arrear was declared as ALR after 14 years, when not only the dealer but his surety had already closed his business as informed by ETO in February 2004.
-do- PGT	one	2.52	1998-99 to 1999-2000/ 18.07.2000	December 2001	The writ of demand was issued in December 2001. Thereafter, recovery notices were issued to the sureties in March 2002 and to the defaulter in August 2003. The property of the defaulter was not identified and no reference was made to the concerned tehsildar to inquire about the property owned by the defaulter.
-do- Sales Tax	one	27.62	1991-92 to 1993-94/NA	September 2001	Writ of demand was issued in September 2001. The case was not pursued thereafter.
-do-	one	39.41	1996-97 to 2002-03/ NA	October 2003	The arrears were declared as ALR in October 2003. However, at the time of declaration essential documents like jamabandi, tatima* were not available with the department as these were not supplied by the concerned tehsildar though called for.

* Map of particular land

Name of district	No. of cases	Amount. (Rs. in lakh)	Period to which relates/ Date of assessment	Month in which ALR was declared	Remarks
-do-	one	25.95	1989-90 to 1994-95/ NA	October 2001	Last notice was issued to defaulter in February 2001. The business was stated to be closed down by the dealer who had reportedly left the state and was residing at Ludhiana. Sureties had also closed down their business. Scrutiny by audit revealed that the said case was not sent to the Collector Solan for issuing NRC.

Inadequate action on the part of department in the above cases resulted in non recovery of ALR of Rs. 1.18 crore.

Conclusion

2.2.14 The department had not fixed norms for finalisation of ALR cases for any authority performing the duty of collector/assistant collector. No system exists between AETCs and district collector's office to reconcile the ALR cases sent to the collectors of other states. The functioning of the internal audit wing of the department was not existent.

These points were reported to the department and to Government between May 2005 and March 2006; their reply had not been received (September 2006).

2.3 Short levy of tax on manufacturing units

According to a notification issued in January 1997, sales tax was leviable at rate of one *per cent* in respect of goods manufactured and sold by an industrial unit. However, in respect of goods, that do not amount to manufacture, tax was payable at the rates prescribed in Himachal Pradesh General Sales Tax Act (HPGST Act). Hon'ble Supreme Court of India held that retreading[♥] of tyres does not amount to manufacture as no new and distinct article is formed.

During test check of the records of two[&] AETCs, it was noticed between September 2005 and March 2006 that two units engaged in tyre retreading were incorrectly allowed concessional rate of tax during the years 2001-02 to 2003-04 by treating these units as manufacturing units. As transfer of material in the shape of rubber used for retreading of tyres was involved, sales tax at the rate of eight *per cent* was leviable. Allowance of concessional rate of tax resulted in short levy of sales tax of Rs.4.44 lakh including interest.

[♥] Tamil Nadu State Transport Corporation Ltd. Vs Commissioner of Income Tax (1999) 239 ITR 375

[&] Chamba and Hamirpur

The matter was reported to the department and Government between October 2005 and April 2006; their replies had not been received (September 2006).

2.4 Incorrect exemption/grant of concessional rate of tax

Under HPGST Act, flour mills are not eligible for sales tax incentives. State Government clarified in August 1995 that “roller flour mills” were included in the wider term “flour mills” and were not eligible for sales tax incentives. Further, if a dealer failed to pay the tax due by the prescribed date, he became liable to pay interest at the prescribed rates.

2.4.1 During audit of records of AETC, Solan, it was noticed in December 2005 that a flour mill dealer registered with Industries Department for manufacture of wheat products viz atta, maida, suji etc. started production from March 1994. The assessing authority while finalising the assessments for the years 2001-02 and 2002-03 in January 2005, incorrectly exempted sales valued at Rs.16.15 crore from levy of tax, treating it as an exempted sale. This resulted in non levy of sales tax of Rs.56.53 lakh. Besides, interest of Rs.30.69 lakh was also leviable.

The matter was reported to the department and Government in January 2006; their reply had not been received (September 2006).

2.4.2 Under HPGST Act, polishing and grinding units are not eligible for sales tax incentive. As per clarification dated 16 February 1999 issued by the department, grinding of haldi and spices does not tantamount to manufacture but is merely processing; as such no concessional rate of tax was admissible to units dealing with haldi and spices. Haldi and spices are taxable at the rate of four *per cent*.

During audit of records of AETC, Mandi, it was noticed in December 2005 that four* dealers engaged in grinding of haldi and spices and sale thereof, were assessed for the years 1997-98 to 2002-03 by the assessing authorities between December 2001 and March 2005. The assessing authorities incorrectly allowed concessional rate of one *per cent* on taxable turnover of Rs. 3.43 crore.

This resulted in short realiation of tax of Rs. 10.31 lakh for sales valued at Rs.3.43 crore. Besides, interest of Rs.9.39 lakh was also leviable.

The matter was reported to the department and Government in January 2006; their replies had not been received (September 2006).

* M/s Joyti Enterprises Mandi: Rs. 13.33 lakh, M/s K.V. Spices, Nerchowk: Rs. 2.83 lakh, M/s Sanjay Enterprises Lunapani, Mandi: Rs. 2.68 lakh, and M/s Nav Durga Udhyog Mandi: Rs. 0.86 lakh

2.5 Under assessment due to non withdrawal of concession

Under HPGST Act, tiny industrial unit falling in “C”[@] category of industrial block is entitled for concessional rate of tax of one *per cent*, for a period of six years from the date of commencement of production.

During audit of records of AETC, Solan, it was noticed in December 2005 that a dealer engaged in the manufacture of plastic containers and bottles commenced its production from 25 September 1995 and was entitled for concessional rate of tax for a period upto 24 September 2001. However, the assessing authority while finalising the assessments for the years 2001-02 to 2003-04 in March and April 2005, allowed concessional rate of tax on taxable turnover of Rs. 32.04 lakh, beyond admissible period. This resulted in non realisation of revenue of Rs. 3.05 lakh including interest.

The matter was reported to the department and Government in January 2006; their reply had not been received (September 2006).

[@] For the purpose of concessional rate of sales tax, the State has been divided into three categories of industrial blocks i.e. “A”, “B” and “C”

