

CHAPTER 2: SALES TAX

2.1. Results of audit

Test check of records relating to sales tax assessments and other records, conducted in audit during 2002-03, revealed short assessment of tax amounting to Rs. 9.81 crore in 202 cases, which broadly fall under the following categories:-

(Rupees in crore)

		Number of cases	Amount
1.	Evasion of tax as a result of suppression of purchases/sales	56	0.68
2.	Non-levy/ short levy of penalty	18	0.87
3.	Non-levy of tax due to non-registration of dealers	7	0.78
4.	Under assessment of tax	114	7.44
5.	Other irregularities	7	0.04
	Total	202	9.81

During 2002-03, the Department accepted under-assessments etc., of Rs.7.51 crore involved in 86 cases which had been pointed out in audit in earlier years. In three cases, involving irregular exemption and incorrect application of tax, an amount of Rs.14.10 lakh was recovered on being pointed out in audit.

A few illustrative cases highlighting important observations involving financial effect of Rs.2.38 crore are given in the following paragraphs.

2.2. Incorrect determination of turnover

Under the Himachal Pradesh General Sales Tax (HPGST) Act, 1968, "turnover" includes the aggregate of the amounts of sales and purchases actually made by any dealer during the given period. According to departmental instructions issued in April 1978, the Assessing Authorities, while examining accounts of the dealers are required to see that sales are in agreement with the purchases and to take cognizance of any difference between the figures shown by the dealer in his returns and those reflected in the accounts.

During the course of audit of the Assistant Excise & Taxation Commissioner, Nahan, it was noticed that taxable turnovers of a dealer as per the balance sheet/trading account for the period 1992-93 and 1993-94 was Rs.6.60 crore. However, while finalising the assessments for these years between June 2001 and March 2002, the Assessing Authority incorrectly determined the taxable turnover as Rs.3.00 crore. Thus, failure of the Assessing Authority to compute the turnover correctly resulted in incorrect determination of turnover of Rs.3.60 crore having a tax effect of Rs.35.47 lakh. Besides, interest of Rs.58.46 lakh was also leviable.

On this being pointed out in audit, the Department stated in June 2003 that the case had been fixed for re-assessment and outcome thereof would be intimated. Further progress has not been received (August 2003).

The matter was reported to the Government in January 2003; their reply has not been received (August 2003).

2.3. Evasion of tax

Under the HPGST Act 1968, if a dealer has maintained false or incorrect accounts with a view to suppressing his sales or purchases, he is liable to pay by way of penalty (in addition to the tax to which he is assessed), an amount not less than 25 *per cent* but not more than one and a half times the amount of his tax liability. If a dealer fails to pay tax by the prescribed date, he becomes liable to pay interest on the tax due at the prescribed rates.

2.3.1. Cross verification of records of a dealer assessed by the Assistant Excise and Taxation Commissioner (AETC), Una, with the records of another dealer assessed by AETC, Nahan revealed that the dealer of Nahan had made purchase of Khair wood valued at Rs.78.87 lakh from the dealer of Una during the year 1995-96, 1997-98 and 1999-2000. But, the dealer of Una had not disclosed the sale in his returns. Consequently, while finalising the assessments between October 2001 and March 2002 for these years, taxable turnover of Rs.78.87 lakh escaped assessment. This resulted in evasion of tax of Rs.18.06 lakh including interest and penalty.

On this being pointed out, the Department stated in July 2003 that information was being collected from Nahan for finalisation of the case. Further development had not been received (August 2003).

The matter was reported to the Government in March 2003; their reply has not been received (August 2003).

2.3.2. During audit of the AETC, Solan, it was noticed in October 2002 that while finalising assessments between March 2000 and March 2001 of a dealer engaged in the sale/purchase of Indian made Foreign Spirit for the years 1995-96 and 1996-97; the Assessing Authority determined taxable turnover as Rs.1.58 crore on the basis of monthly returns filed by the dealer. However, a cross verification of the returns with the records of the Excise Department revealed that the taxable turnover of the dealer was Rs.1.97 crore. Thus, turnover of Rs.38.87 lakh with tax effect of Rs.5.83 lakh escaped assessment of the Assessing Authority. Interest of Rs.6.50 lakh and penalty of Rs.1.46 lakh were also leviable.

On this being pointed out, the Assessing Authority, raised an additional demand of Rs.14.58 lakh in May 2003.

The matter was reported to the Government in November 2002; their reply has not been received (August 2003).

2.4. Non levy of tax due to non-registration of dealers

Under the HPGST Act 1968, with effect from 1st April 1991 every dealer engaged in contract work is liable to be registered if his annual gross turnover exceeds Rs.3 lakh.

2.4.1. Information collected from the Income Tax Department, revealed that gross turnover of a dealer of Shimla District engaged in contract work was Rs.79.76 lakh during 1995-96. The dealer was liable to be registered under the Sales Tax Act with the AETC, Shimla. But, scrutiny in audit revealed that neither he had applied for registration nor were any efforts made by the Department to get him registered. Non-registration of the dealer had, thus, resulted in non levy of tax of Rs.6.38 lakh on which interest of Rs.7.15 lakh was also leviable. The dealer did not pay any tax during this period.

On this being pointed out in August 2002 in audit, the Department stated in October 2002 that directions were being issued to the District Officer to initiate immediate action in the matter. Further report has not been received (August 2003).

The matter was reported to the Government in September 2002; but reply has not been received (August 2003).

2.4.2. The audit of the records of the AETC, Nahan disclosed in December 2002 that 6 suppliers of Nahan engaged in purchase and sale of timber had sold khair wood valued at Rs.1.04 crore to a firm between 1997-98 and 2001-2002. The annual turnover of each dealer exceeded Rs.3 lakh but none of them had applied for registration. The Department had also failed to detect the cases of non registration. The dealers had not paid any tax during this period. This resulted in non levy of tax of Rs.51.33 lakh including interest.

On this being pointed out, the Additional Excise and Taxation Commissioner, H.P. Shimla stated in June 2003 that AETC of the district was being directed to take necessary action.

The matter was reported to the Government in January 2003; their reply has not been received (August 2003).

Under Section 6(2) of the HPGST Act 1968, sales tax is leviable at the first stage of sale in the State. Sales to Government department are taxable at the rate of 4 *per cent* against production of declaration in form 'D'.

2.4.3. According to the information collected from 2 contractor's files maintained in the office of the AETC, Kangra, it was noticed in January 2002 that Garrison Engineer, MES Palampur had imported materials from outside the State worth Rs.43.67 lakh during the years 1996-97 to 1999-2000 and supplied it to contractors for execution of work. A scrutiny of records revealed that Garrison Engineer, MES was not registered with the Excise and Taxation Department under the Sales Tax Act and had not paid any tax on these sales. This resulted in non-levy of tax of Rs.1.75 lakh.

On this being pointed out, the Department raised in March 2002 a demand of Rs.1.75 lakh. However, the Garrison Engineer had filed an appeal before the Appellate Authority which was dismissed in February 2003. The matter had been taken up for recovery of demand.

The matter was reported to the Government in February 2002; reply has not been received (August 2003).

2.5. Short levy of tax

As per notification issued in April 1991 under the Central Sales Tax Act, 1956 tax at the rate of 1 *per cent* on the sale in the course of inter-state trade or commerce shall be levied, subject to production of declaration in form 'C'. Otherwise, tax is leviable at 10 *per cent*.

During audit of the AETC, Nahan, it was noticed in December 2002 that a dealer engaged in the manufacture and sale of newsprint had made inter-State sales of Rs.2.05 crore during the year 1998-99. Scrutiny of the records revealed that the Assessing Authority taxed the sales for the year 1998-99 at the rate of 1 *per cent* although prescribed declarations were not produced by the dealer at the time of assessment. In the absence of the declarations, the sales were taxable at the rate of 10 *per cent*. This resulted in short levy of tax of Rs.30.50 lakh including interest of Rs.12.07 lakh.

On this being pointed out, the Department stated in June 2003 that the case would be reassessed. Further progress has not been received (August 2003).

The matter was reported to the Government in January 2003; their reply has not been received (August 2003).

2.6. Inadmissible exemption on sales

The taxable quantum under the HPGST Act, 1968 in relation to any dealer who runs a hotel, restaurant, bakery or other similar establishment wherein food preparations including tea are served, was Rs.one lakh up to 25th May 2000 and Rs.2 lakh thereafter. Further, foods prepared and sold by halwais* and dhabawalas[@] themselves are exempt from tax.

During the audit of AETC, Shimla, it was noticed that while finalising assessments between March 2000 and November 2001 of a dealer running a restaurant, the Assessing Authority exempted sales of sweets amounting to Rs.12.08 lakh from payment of tax for the years 1998-99 to 2000-01. The dealer neither fell under the category of halwai nor a dhabawala and as such the exemption granted was incorrect and resulted in non-levy of tax of Rs.1.34 lakh including interest.

* Halwai means the owner of a small business where only customary sweets, milk, curd, namkeen, poories etc. are prepared and sold in traditional style and fashion.

[@] Dhaba means a small business of running an eating place where only traditional Indian Meals are prepared and sold and includes a tandoorwala, lohwala and chatwala.

On this being pointed out, the Department stated in October 2002 that additional demand had been raised against the assessee. Report of recovery has not been received (August 2003).

The matter was reported in September 2002 to the Government; reply has not been received (August 2003).

2.7. Irregular exemption

Under the HPGST Act, 1968, all classes of co-operative societies and persons, in whose favour certificates of genuineness had been issued by the Commissioner, constituted under the Khadi and Village Industries Commission Act, 1956, or the Board constituted under the Khadi and Village Industries Board Act, 1966, were exempted from the levy of sales tax. The exemption, was however, withdrawn with effect from 10th March 1999.

During audit of the AETC, Una, it was noticed that a unit constituted under Khadi & Village Industries made sales valued at Rs 36.08 lakh between 10th March 1999 and 31st March 2001. The Assessing Officer while finalizing the assessment in October 2001 and May 2002 incorrectly exempted the sale from payment of tax. This resulted in incorrect exemption of Rs 4.01 lakh including interest.

On this being pointed out, the Department stated in July 2003 that an additional demand of Rs.4.56 lakh had been raised in June 2003 against the dealer. Report of recovery has not been received (August 2003).

The matter was reported to the Government in March 2003; further development was awaited in audit (August 2003).

2.8. Short levy of tax due to application of incorrect rate of tax

Under the HPGST Act, 1968, readymade sewn garments including umbrella cloth covers and pillow covers etc., are taxable at the rate of four *per cent*, with effect from 1st January 1991.

During audit of the AETC, Solan, it was noticed in October 2002 that a dealer made sale of readymade garments valued at Rs.92.29 lakh between 1992-93 to 1996-97. The Assessing Officer while finalizing the assessment between August 1998 to January 2002 levied tax at the rate of 2 *per cent* instead of 4 *per cent*. This resulted in short levy of tax of Rs 4.12 lakh including interest of Rs.2.27 lakh.

The matter was reported to the Department and to the Government in November 2002; replies had not been received (August 2003).

2.9. Under assessment due to incorrect finalisation of assessment

Under the HPGST Act, 1968, “sale” means any transfer of property in goods for cash or for deferred payment or for any other valuable considerations and

includes the transfer of property in goods (whether as goods or in some other form) involved in the execution of a work contract.

During audit of the AETC, Kangra, it was noticed that assessments of a dealer engaged in the execution of works contract, for the years 1995-96 and 1996-97 were finalised on 30th November 1999 and 3rd June 2000 respectively. The Assessing Authority while finalising the assessments did not include material valued at Rs.36.59 lakh supplied to the contractor by the Executive Engineer, Himachal Pradesh Krishi Vishwa Vidyalaya, Palampur. This resulted in under assessment of tax of Rs.2.93 lakh. Besides, penalty was also leviable.

On this being pointed out, the Department stated in June 2003 that additional demand of Rs.2.74 lakh was raised in October 2002 against which the dealer had filed an appeal. Further report has not been received (August 2003).

The matter was reported to the Government in February 2002; reply has not been received (August 2003).

2.10. Non levy of tax on sales made against declaration forms

As per notification issued in February 1992 under the HPGST Act, 1968, the rate of tax on goods to be utilised as raw material in the manufacture of goods was reduced from 2 per cent to 1 per cent with effect from 11th December 1992, subject to the production of declaration form RM-1*.

During audit of the AETC, Solan, it was noticed that a dealer engaged in the manufacture and sale of M.S Ingots, made local sales amounting to Rs.27.42 lakh against form RM-I, between April 1992 and February 1993. The Assessing Authority while finalising re-assessment in July 2001 on a remanded case, did not tax the sales valued at Rs.27.42 lakh. This resulted in non levy of tax of Rs.1.44 lakh (including interest).

On this being pointed out, the Department stated in January 2003 that additional demand of Rs.1.47 lakh including interest upto November 2002 had been raised against the dealer. Report of recovery has not been received (August 2003).

The matter was reported to the Government in November 2002; their reply has not been received (August 2003).

2.11. Non levy of interest

Under the HPGST Act, 1968, if a dealer fails to pay the tax due by the prescribed date, he shall be liable to pay interest at the prescribed rates.

During audit of the AETC, Kangra, it was noticed in November 2002 that assessment of a dealer for the year 1996-97 was finalised on 28th November 2001 and an additional demand of tax of Rs.1.30 lakh was raised. However, the Assessing Authority had not levied interest of Rs.1.07 lakh for delayed

* Form issued by the Assessing Authority of the district concerned for carrying single transaction exceeding Rupees twenty five thousand.

payment. This had resulted in short realisation of Government revenue of Rs.1.07 lakh.

On this being pointed out, the Department stated in June 2003, that on reassessment, against the additional demand of Rs.1.07 lakh, Rs.0.25 lakh had been recovered. Report of recovery of balance amount has not been received (August 2003).

The matter was reported to the Government in January 2003; their reply has not been received (August 2003).

2.12. Internal Audit System of Sales Tax Department

Introduction

Internal Audit Wing of the Excise and Taxation Department was responsible for audit of the records relating to Sales Tax. This wing headed by the Deputy Controller, is functioning under the direct control of the Excise and Taxation Commissioner.

For regulating functioning of the Internal Audit Wing, procedure/guidelines were issued by the Excise and Taxation Commissioner in February 1987 which provide annual audit of records relating to sales tax. Guidelines further provide for maintaining a register showing details of auditable units. Audit programme are to be chalked out in advance so as to cover all units due for audit during the year. Reports of audit findings are required to be issued to the concerned units, within 20 days from completion of audit and the first annotated replies from the concerned units are required to be received within two months from the issuance.

Pendency of Inspection Reports and Paras

The number of inspection reports/paras issued and their settlement during the years 1999-2000 to 2002-03 by the Internal Audit Wing, were as under:-

Year	Opening balance		Addition during the year		Clearance during the year		Balance at the close of the year		Percentage disposal	
	IRs	Paras	IRs	Paras	IRs	Paras	IRs	Paras	IRs	Paras
1999-00	92	691	6	112	0	101	98	702	0	13
2000-01	98	702	8	167	3	144	103	725	3	17
2001-02	103	725	8	286	2	186	109	825	2	18
2002-03	109	825	7	188	2	133	114	880	2	13

Percentage disposal of Inspection reports and paras during the year 1999-2000 to 2002-03 ranged between zero to three and 13 to 18 respectively. Reasons for less settlement was stated to be due to the quasi judicial process involved in re-assessment.

A test check of records of Internal Audit Wing relating to inspection report of Sales Tax Department for the years 1999-2000 to 2002-03, revealed the following:

- Neither any register showing details of auditable units has been maintained nor advance annual audit planning is done. Besides, no register has been maintained to keep records of the objection raised and their further disposal.
- Out of 44 units to be audited during the years 1999-2000 to 2002-2003, only 29 units were audited. Out of 29 inspection reports issued, no reply has been received in respect of 18 inspection reports. Replies of remaining 11 inspection reports were received late (beyond permissible two months) with delay ranging between 24 to 246 days. As the observations made by the Internal Audit Wing was not replied/attended to promptly, it is quite evident that the Internal Audit was not given adequate importance.

The above points were brought to the notice of the Department. Reply to which is awaited (September 2003).