

## Chapter II: Taxes on Sales, Trade etc.

### 2.1 Results of audit

Test check by audit of sales tax records during the year 2004-2005, revealed under assessments, etc. of tax amounting to Rs.23.40 crore in 382 cases which broadly fall under the following categories:

(In crore of rupees)

Sr. No.	Category	Number of cases	Amount
1.	Non/short levy of sales tax	343	8.72
2.	Non levy/short levy of penalty	5	0.16
3.	Incorrect grant of exemption from tax	13	0.55
4.	Non/short levy of purchase tax	4	0.05
5.	Other irregularities	16	1.20
6.	Working of Information Collection Centres (Sales tax check posts)	1	12.72
	<b>Total</b>	<b>382</b>	<b>23.40</b>

During the year 2004-2005, the Excise and Taxation Department accepted and recovered under assessment of Rs.71 lakh in 60 cases pertaining to previous years.

The results of Working of Information Collection Centres (Sales tax Check Posts) and a few illustrative cases involving financial effect of Rs.14.98 crore are given in the following paragraphs.

## **2.2 Working of information collection centres (Sales Tax Check Posts)**

### **2.2.1 Introduction**

Sales tax is one of the major sources of revenue of the State. With a view to prevent or check avoidance or evasion of tax, the Punjab General Sales Tax Act, 1948, (PGST Act) empowers the State Government to establish information collection centres (ICCs) (previously called Sales Tax check posts) at the entry/exit points of State at such place or places in the State, as may be notified. The PGST Act, further, requires the owner or a person incharge of a goods vehicle to carry with him a goods vehicle record, a tripsheet or a log book and a bill of sale or a delivery note containing particulars as may be prescribed, in respect of such goods meant for trade which are being carried in the goods vehicle. The owner or person incharge of a goods vehicle entering the State limits or leaving the State is also required to give, in triplicate, a declaration containing particulars, as may be prescribed, of the goods carried in such vehicle before the officer incharge of the ICC. Twenty four ICCs were established at the entry/exit points of State in October 1999 and 11 more ICCs were established raising the total number to 35 as on June 2004. Prior to this, sales tax check posts/ barriers (now called ICCs) were abolished with effect from 1 April 1995.

The emphasis and approach of the working of ICCs is on proper collection, processing and utilisation of information. Consolidated computerised dealerwise list would be sent to the districts through Excise and Taxation Commissioner (ETC) every fortnightly, quarterly and yearly. Such lists would not only be utilised at the time of final assessments of cases of the dealers but would also be cross verified by the concerned assessing authorities with the returns filed by the dealers.

### **2.2.2 Non verification of goods vehicles passing through the State**

Under the PGST Act, where a goods vehicle bound for any place outside the state of Punjab passes through the State, the owner/ incharge of such vehicle shall furnish in duplicate, to the officer incharge of ICC, a declaration in respect of (transit slip in form STXXV) entry into the state in the prescribed form and obtain from him a copy thereof duly verified. The owner or person in charge of goods vehicle, shall deliver the aforesaid copy within 48 hours to the officer incharge of ICC, at the point of its exit from the State, failing which he shall be liable to pay a penalty equal to 50 *per cent* of the value of goods involved. (Prior to July 2002, penalty leviable was Rs.2,000 or 20 *per cent* of value of goods whichever was higher). The ETC issued instructions in December 2001 to all the ICCs for recording entry in computer of each and every vehicle entering the state against transit slip (STXXV) both at the entry and exit point of ICC for cross verification and for proper computerisation of the accounts of transit slips.

Six hundred and thirteen vehicles carrying goods amounting to Rs.19.63 crore, bound for places outside the State, entered the State from six ICCs between January 2001 and March 2004 and obtained prescribed transit slips (STXXV). On cross verification, it was noticed that out of these, 455 vehicles with goods valued at Rs.14.52 crore had not crossed the declared eight\* exit ICCs as the verified copies of declarations were not found delivered at the concerned exit ICCs which implies that the consignments were unloaded within the State. The Department did not initiate any action to trace these vehicles in the State and to impose penalty for violation of provisions of the Act. This resulted in non levy of penalty of Rs.5.80 crore (besides tax was also leviable at prescribed rates) as detailed below:

(In lakh of rupees)

Sr. No	Name of districts and ICCs	Period	Vehicles entered the State/ value of goods		Vehicles with value of goods which crossed the declared ICCs		Vehicles with value of goods which did not cross the declared exit ICCs		Amount of penalty leviable
			No.	Amount	No.	Amount	No.	Amount	
1	<b>Patiala</b> Ram Nagar	November 2003 to February 2004	8	8.85	2	3.00	6	5.85	2.61
	Devigarh	June 2001 to February 2004	30	88.78	12	35.19	18	53.59	14.92
2	<b>Ropar</b> Ghanauli	August 2001 to September 2003	21	40.04	2	0.72	19	39.32	10.86
	Dehni	August 2001 to February 2004	245	369.77	--	--	245	369.77	84.50
3	<b>Sangrur</b> Khanauri	August 2001 to March 2004	55	142.26	1	2.91	54	139.35	69.06
4	<b>Ferozepur</b> Kaller Khera	June 2001 to February 2004	118	372.70	86	274.68	32	98.02	48.01
5	<b>Hoshiarpur</b> Harsa Manesar	August 2001 to April 2003	26	61.77	23	58.84	3	2.93	0.83
6	<b>Gurdaspur</b> Madhopur	January 2001 to March 2004	110	879.18	32	135.77	78	743.41	349.55
<b>Total</b>			<b>613</b>	<b>1,963.35</b>	<b>158</b>	<b>511.11</b>	<b>455</b>	<b>1,452.24</b>	<b>580.34</b>

Though the Department prescribed a monitoring system in December 2001 to exercise control on the regular and timely inflow of information from entry point of ICCs to exit point of ICCs but it had not specified any time period within which this reconciliation was required to be carried out. The monitoring system remained only on paper as no reconciliation of both sets of data had been done as is evident from the above observation.

\* Dehni, Devigarh, Ghanauli, Harsa Manesar, Kaller Khera, Khanauri, Madhopur and Ram Nagar.

**2.2.3 Inordinate delay in finalisation of cases**

Under the PGST Act, if the officer incharge of the ICC has reason to suspect that the goods under transport are meant for trade and are not covered by proper and genuine documents or that the person transporting the goods, is attempting to evade payment of tax, he may order the detention of the goods alongwith vehicle. Such goods shall be released on furnishing a security or executing a bond with sureties in the prescribed form and manner by the consignor or consignee. All such cases shall be decided within a period of 14 days from the commencement of enquiry proceedings.

- In 54\* cases goods valued at Rs.2.36 crore detained between July 2000 and January 2004, were released against security furnished in the form of surety bonds by the owners of goods. Of these, 33\*\* cases were decided late with delay ranging from 15 days to 25 months by imposing a penalty of Rs.46.23 lakh as per details given below.

(In lakh of rupees)

Sr. No.	No. of cases	Value of goods	Amount of penalty	Months of detention	Months in which cases decided	Period of delay
1.	6	52.13	15.56	Between October 2002 to December 2003	Between November 2002 to February 2004	15 days to 30 days
2.	25	90.49	27.56	April 2000 to January 2004	July 2000 to December 2003	30 days to 12 months
3.	2	10.36	3.11	September 2001 to November 2001	October 2002 and December 2003	12 months to 25 months.
<b>Total</b>	<b>33</b>	<b>152.98</b>	<b>46.23</b>			

- The ETC while reviewing the progress of the disposal of the cases in the monthly meetings stressed that the copy of the penalty orders levied against surety bond be sent to the district office for recovery without any delay and to place the same in the dealers file.

Test check of records of ICCs Harsa Manesar and Shambhu revealed that eight cases involving value of goods of Rs.47.35 lakh were decided between January 2001 to January 2003 and penalty of Rs.13.92 lakh was imposed on the dealers, but these ICCs informed the concerned assessing authorities late about levy of penalty. The delay ranged between 15 days to 15 months for recovery of penalty of Rs.13.92 lakh imposed in the consignees.

- Under the provisions of the PGST Act, the goods detained at the ICCs shall be released on furnishing a security by the consignor or consignee if registered with the Department

\* Balongi-12, Harsa Manesar-4, Shambu (Import)-20 and Shambu (Export)-18.  
\*\* Balongi-7, Harsa Manesar-5, Shambu (Import)-19 and (Export)-2.

Test check of records of Assistant Excise and Taxation Commissioner (AETC) Fatehgarh Sahib revealed that in six cases goods valued at Rs.14.64 lakh were released between May 2001 and June 2002 against surety bonds. The cases were decided between August 2001 and September 2003 by levying penalty of Rs.4.39 lakh which could not be recovered. In two cases the registration certificates of dealers were cancelled in February 2001 by the assessing authorities issuing surety bonds to these dealers for release of goods from ICCs and in four cases the registration certificates of dealers were cancelled after the penalty was imposed. The Department had not initiated any action to recover the penalty as arrears of land revenue from the dealers or from their sureties.

#### **2.2.4 Short levy of penalty**

Under the provisions of PGST Act, if the officer incharge of the ICC is satisfied that the documents as required are not furnished at the ICC with a view to evade the tax due, a penalty equal to 50 *per cent* of the value of the goods involved shall be leviable.

In 17\* cases involving goods amounting to Rs.34.15 lakh where the vehicles crossed the ICCs between September 2000 and February 2004 without clearance of documents with the intention to evade tax, a penalty of Rs.10.35 lakh was levied against penalty of Rs.17.08 lakh. This resulted in short levy of penalty of Rs.6.73 lakh.

After this was pointed out in audit, the officer incharge Madhopur stated in December 2004 that minimum penalty from 20 to 30 *per cent* was leviable. The reply was not tenable as the vehicles crossed the ICCs through escape routes with intention to evade the tax so the penalty at the rate of 50 *per cent* was leviable. No reply was furnished by other ICCs (September 2005).

#### **2.2.5 Short assessment of Central Sales Tax**

If a dealer has maintained false or incorrect accounts with a view of suppressing his sales, purchase or stock of goods or has concealed any particulars of his sales or purchases or has furnished to or produced before, any authority under this Act or the Rules made thereunder, any account, return or information, which is false or incorrect in any material particular he is liable to pay penalty in addition to the tax.

- Test check of records of AETC, Faridkot and Fatehgarh Sahib, revealed that while assessing three dealers for the year 2000-2001 and 2002-2003 between June 2001 and October 2003 the concerned assessing authorities levied tax of Rs.6.78 lakh on interstate sale of goods valued at Rs.3.46 crore as per returns filed by the dealers. Cross verification of data supplied by ICC revealed that the dealers actually sold goods valued at

\* Balongi – 3, Dehni-1, Devigarh-I, Khanauri –I, Madhopur-I, RamNagar-2, Shambhu (Import) –5 and Shambhu (Export)-3.

Rs.4.17 crore as interstate sale. This resulted in escapement of turnover of Rs.71.60 lakh by the dealers and evasion of tax of Rs.10.38 lakh including penalty.

After this was pointed out between February 2003 and August 2004, it was intimated by the Department in April 2004 that the case of Faridkot was taken up suo moto for recovery of tax evaded. No reply was furnished in the cases of Fatehgarh Sahib. Further progress was awaited.

- As per data supplied by ICCs, three dealers of Jalandhar-I district made interstate sales/purchases of goods amounting to Rs.74.45 lakh during the years 2000-2001 and 2002-2003. While finalising their assessments between January 2003 and March 2004, the concerned assessing authorities did not account for above turnover. The sales were assessed as per returns filed by the dealers and on the basis of affidavits of dealers which denied the transactions included in the data supplied by the ICC as pertaining to them. This resulted in loss of revenue of Rs.5.12 lakh.

After this was pointed out in audit between June 2004 and March 2005, the assessing authority intimated in June 2004 in the case of one dealer that the sales/purchases were verified from accounts books and turnover as intimated by ICC and was not assessed to tax on the basis of affidavit filed by the dealer. The reply is not tenable as the assessing authority failed to get the transaction crossed verified from the concerned importers/exporters of other states. Non verification of transactions resulted in loss of revenue. The replies in other cases were not furnished (September 2005).

### **2.2.6 Non deposit of Government share**

Article 266 and 283 of the Constitution of India provide that all receipts of the State should be credited to the Consolidated Fund of the State and withdrawal of money therefrom should be regulated as per laws made by the Legislature of the State.

As per procedure laid down by ETC in November 1999 for collection, distribution and utilisation of information at ICCs, the owner of goods vehicle shall submit the original copy of sale bill or delivery note and tripsheet or goods receipts before the person manning the computer center at ICC who shall enter the relevant information in computer and return these documents alongwith STXXIV-A in triplicate or STXXV in duplicate and will charge Rs.5 for each form. The data entry contractor shall deposit the proceeds of collection after deducting his share as per the contract. The ETC sent the proposal to the Government on 30 December 1999 that the total amount collected by the data entry operator would be deposited in separate account to be opened, out of which amount due to contractors to be determined on the basis of performance and the rates approved by Government, would be released to them on weekly basis.

The ETC in September 2000 directed all the officers incharge of ICCs to open separate account in the bank near the ICC. The instructions of ETC to keep the money in separate account in the bank was irregular and at variance with instructions already issued in November 1999 and Punjab Financial Rules Volume I.

Test check of the records of 12 ICCs revealed that in 10 ICCs, the data entry contractors collected Rs.81.09 lakh during the period between December 1999 and November 2000. No Government share was deposited into treasury as per instruction of ETC of November 1999 i.e. prior to opening separate bank account. Orders as to the share of contractor and of Government were not furnished to audit. However, as per the records maintained at ICC (Import) Shambu, the Government share was Rs.2.10 out of Rs.5. Keeping in view this, the Government share comes to Rs.34.06 lakh during the above period which was not deposited by the data entry contractor into treasury.

It was further noticed that in respect of remaining two ICCs Shambu (Import and Export) the contractors deposited Rs.2.67 lakh short out of total Government share of Rs.28.76 lakh during the above period. Thus an amount of Rs.36.73 lakh was recoverable as Government share from data entry contractors for which Department did not take any action.

- **Retention of Government receipts out of Government Account**

Under the Punjab Financial Rules, utilisation of departmental receipts towards expenditure is strictly prohibited. Further under State Treasury Rules, all moneys received by or tendered to Government servants on account of revenue of the Government, shall without undue delay be paid in full into the treasury. Further, the Government of Punjab in November 2001 created a society “Excise and Taxation Technical Service Agency (ETTSA)” to establish a WEB enabled information technology based computerisation project to maximise collection of taxes, duties, levies etc. The Government in March 2002 ordered that Government share collected from data entry contractors at ICCs may be paid to this society.

Scrutiny of data collected from ETC, revealed that an amount of Rs.6.29 crore collected by ICCs on account of data entry fee during the year 2002-2003 and 2003-2004 was transferred to ETTSA instead of depositing into the treasury.

The orders of the Government regarding transfer of public money to ETTSA and utilising the receipts towards departmental expenditure were against rules.

### **2.2.7 Non reconciliation of deposits**

Punjab Financial Rules, Vol. I provide that departmental receipts collected and remitted into treasury during the month be reconciled by officer incharge of ICC with the figures appearing in the treasury records by 15<sup>th</sup> of the next month and discrepancy, if any, be reconciled. The departmental instructions issued in July 2003 also stressed the need for reconciliation to avoid misutilisation of Government money.

It was noticed that an amount of Rs.64.97 crore was deposited into treasury by 13\* ICCs between December 1999 and March 2004 but no reconciliation was done with treasury by the Department. Non reconciliation may lead to embezzlement and frauds which would remain undetected.

### **2.2.8 Internal control mechanism**

- **Under reporting of arrears**

Test check of records maintained by ETC revealed that an arrear of Rs.3.94 crore as on 31 March 2004 was recoverable from 399 dealers on account of goods released against surety bonds. Cross verification of the position of arrears by audit with the records of all ICCs, revealed that an arrear of Rs.2.23 crore recoverable from 219\*\* dealers pertaining to seven ICCs was not included in the arrear statement maintained by ETC. This resulted in under reporting of the exact position of arrears to State Government. In addition, failure of internal control led to non pursuance of recovery at higher level.

- **Shortfall in inspections**

Departmental instructions issued in December 1999 provides that AETCs of the districts, besides checking of internal movement of goods, should also visit and inspect atleast twice a week, the ICCs located within their jurisdiction. In fact, the AETCs in whose area the ICC is located should conduct a surprise check of the inward and outward movement of trucks once in a month and check whether the same got its documents authenticated through the said ICC. Fortnightly reports are required to be forwarded to the AETC.

Test check of records of 13\*\*\* ICCs, revealed that the inspections made during the period 1999-2000 to 2003-2004 by the AETCs were short by 5,237 against the required number of visits of 5,356 as below:

Year	No. of ICCs	No. of visits required	No. of visits made	Shortfall	Percentage of shortfall
1999-2000 (January to March 2000)	10	260	6	254	97.69
2000-2001	10	1,040	11	1,029	98.94
2001-2002	13	1,352	26	1,326	98.07
2002-2003	13	1,352	33	1,319	97.55
2003-2004	13	1,352	43	1,309	96.81
<b>Total</b>		<b>5,356</b>	<b>119</b>	<b>5,237</b>	

\* Balongi, Banur, Devigarh, Dehni, Harsa Manesar, Kallerkhera, Railway Station Ludhiana, Madhopur, Mohali, Mullanpur, Ramnagar and Shambhu (Import and Export).

\*\* Balongi-16, Harsa Manesar-11, Khanauri-5, Ram Nagar-11, Madhopur-2, Shambu (Export)-48 and (Import)-126.

\*\*\* Banur, Balongi, Dehni, Devigarh, Harsa Manesar, KallerKhera, Railway Station Ludhiana, Madhoupur, Mohali, Mullanpur, Ram Nagar and Shambu (Import & Export).



It would be seen that instructions of Department were not being complied with. Only 119 inspections were made out of required 5,356 inspections. The shortfall ranged between 96.81 to 98.94 *per cent* during the years 1999-2000 to 2003-2004. No fortnightly reports were furnished to headquarters.

The above points were brought to the notice of the Department and referred to the Government in March 2004; their replies were awaited (September 2005).

### **2.3 Non levy of additional tax**

- Under PGST Act and Rules made thereunder, additional tax at the rate of 10 *per cent* of the tax assessed is leviable in addition to tax.

During the course of audit of the AETC, Ferozepur, it was noticed in February 2004 that while finalising the assessments between November 2000 and January 2001 for the years 1997-1998 and 1998-1999 of a dealer engaged in the business of solvent plant and enjoying the benefit of exemption from payment of sales tax, the assessing authority omitted to levy additional tax on the amount of tax assessed of Rs.1.58 crore. This resulted in non levy of additional tax amounting to Rs.15.80 lakh.

After this was pointed out in February 2004, the AETC intimated in December 2004 that additional demand of Rs.15.80 lakh has been raised and adjusted against the exemption limit of the unit.

The matter was brought to the notice of the Department and referred to the Government in September 2004; their replies were awaited (September 2005).

- Under the provisions of the Central Sales Tax Act, 1956, (CST Act) if under Sales Tax law of the appropriate State the tax on any goods is chargeable generally at a rate lower than four *per cent*, tax leviable on inter state sale shall be calculated at such rate. Under the PGST Act, tax on cotton yarn (declared goods) is leviable at the rate of two *per cent* (upto January 2000) and four *per cent* thereafter. Additional tax at the rate of 10 *per cent* of tax assessed is also leviable.

During the course of audit of records of AETC, Ludhiana III (ward-29), it was noticed in December 2004 that while finalising in August 2003 the assessment for the year 1999-2000 of a dealer engaged in the manufacture and sale of cotton yarn and enjoying the benefit of exemption from payment of sales tax, the assessing authority levied tax at the rate of two *per cent* on inter state sales of cotton yarn valued at Rs.12.26 crore (sale upto 24.1.2000) but omitted to levy additional tax on the tax assessed of Rs.24.51 lakh. This resulted in non levy of additional tax amounting to Rs.2.45 lakh.

After this was pointed out in December 2004, the AETC intimated in May 2005 that additional demand of Rs.2.45 lakh has been raised and adjusted against the exemption limit of the unit.

The matter was brought to the notice of the Department and referred to the Government in March 2005; their replies were awaited (September 2005).

#### **2.4 Excess carry forward of exemption**

Under the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 [PGST (D&E) Rules] the unit holding deferment or exemption certificate issued under these rules, shall attach an attested copy of deferment or exemption certificate, as the case may be, to avail the deferment or exemption of tax alongwith the return till the limit fixed is fully availed of.

During test check of assessment records of AETCs, Amritsar-1 (ward-6) and Gurdaspur (ward-7), it was noticed during May 2003 and May 2004 that while finalising the assessments between May 2002 and June 2003 for the years 1999-2000 and 2000-2001 of two dealers enjoying the benefit of exemption from the payment of tax, the assessing authorities worked out the balance amount of exemption incorrectly/failed to carry forward the amount of exemption availed of in the previous year to the next year. This resulted in excess carry forward of exemption of Rs.11.06 lakh.

After this was pointed out in audit, both the AETCs intimated between December 2004 and April 2005 that the cases were reassessed and additional demands had been raised and adjusted against the exemption limit of the units.

The matter was brought to the notice of the Department and referred to the Government in August and October 2004; their replies were awaited (September 2005).

#### **2.5 Mistake in computation of tax**

- Under the CST Act, tax on interstate sale of cotton (declared goods) is leviable at the rate of four *per cent*.

During test check of assessment records of AETC, Ferozepur (ward 4, Abohar), it was noticed in September 2004 that while finalising in December 2003 the assessment for the year 2001-2002 of a dealer engaged in the business of cotton and enjoying exemption from payment of sales tax under the PGST (D&E) Rules, the assessing authority incorrectly worked out tax of Rs.24.49 lakh instead of Rs.28.49 lakh on interstate sale of Rs.7.12 crore. This resulted in short levy of tax of Rs.4 lakh.

The matter was brought to the notice of the Department in October 2004 and referred to the Government in February 2005; their replies were awaited (September 2005).

- Under the PGST Act, tax on the sale of yarn is leviable at the rate of four *per cent*. Additional tax at the rate of 10 *per cent* of the tax assessed is also leviable with effect from 7 November 2001.

During test check of assessment records of the AETC, Ludhiana-III (ward 30), it was noticed in March 2004 that while finalising in February 2003 the assessment for the year 2001-2002 of a dealer engaged in the business of yarn and enjoying the benefit of exemption from the payment of sale tax under the PGST (D&E) Rules, the assessing authority incorrectly worked out the taxable turnover as Rs.4.07 crore instead of Rs.5.07 crore due to arithmetical mistake. The mistake in computation of taxable turnover resulted in short levy of tax of Rs.4.40 lakh including additional tax.

After this was pointed out in audit in March 2004, the AETC intimated in April 2004 that an additional demand of Rs.4.40 lakh was raised and adjusted against the amount of exemption available.

The matter was brought to the notice of the Department and referred to the Government in March 2005; their replies were awaited (September 2005).

## **2.6 Incorrect assessment under summary scheme**

Under the CST Act, tax on interstate sales of wood and waste is leviable at the rate of two *per cent* subject to the production of prescribed declaration in Form-C. However, tax on interstate sale was leviable at the rate of four *per cent* without the production of Form-C if the gross turnover did not exceed Rs.40 lakh and the case was assessed under summary assessment scheme.

During test check of records of AETC, Amritsar-II (ward 12), it was noticed in February 2004 that while finalising between February and December 2002, the assessments for the year 2001-2002 of five dealers engaged in the business of wood and waste items of all kinds and assessed under the summary assessment scheme having turnover below Rs.40 lakh, tax on interstate sale of goods amounting to Rs.1.24 crore was levied at incorrect rate instead of correct rate of four *per cent*. Thus, incorrect assessment under summary scheme resulted in short levy of tax of Rs.2.29 lakh.

After this was pointed out, it was intimated by the AETC in April 2005, that all the cases have been taken up for suo moto action. Further development is still awaited (September 2005).

The matter was brought to the notice of Department/Government in August 2004; their replies were awaited (September 2005).

## **2.7 Non levy of purchase tax**

Under the PGST Act, 1948, if a dealer purchases taxable goods from any source without payment of tax and uses them in the manufacture of tax free goods, he is liable to pay tax on the purchase of such goods. Further, the State Government vide its notification dated 19 March 2001 made the sale of poultry feed and prawn feed including supplements as tax free.

During test check of the assessment records of the AETC, Patiala, it was noticed in July 2002, that while finalising in June 2001 the assessments for the years 1995-1996, 1998-1999 and 1999-2000 of a dealer engaged in the manufacture of poultry and cattle feed (a tax free item), the assessing authority did not levy tax on the purchase value of raw material (feed supplement) of Rs.25.99 lakh used in the manufacture of feed. This resulted in non levy of purchase tax amounting to Rs.2.29 lakh.

After this was pointed out in audit, the AETC stated that poultry feed inclusive of feed supplements was tax free. The reply is not tenable as feed supplement was made tax free with effect from 19 March 2001 whereas the assessments relates to prior period.

The matter was brought to the notice of the Department and referred to the Government in August 2004; their replies were awaited (September 2005).

### **2.8 Incorrect grant of exemption from tax**

Under the PGST (D&E) Rules, industrial units which are located in category 'A' growth areas, came into production for the first time on or after 1 April 1996 and are not included in the negative list, are eligible for exemption from payment of sales tax.

During test check of assessment records of AETC, Gurdaspur (Ward I Batala) and Amritsar-II (Ward 17), it was noticed between February and March 2003 that while finalising between June 2001 and January 2002 the assessments for the years 1999-2000 and 2000-2001 of four dealers engaged in the business of manufacturing and sale of bricks, the exemption on sale of bricks was incorrectly allowed, though brick kiln owners (BKO) were included in the negative list. Incorrect grant of exemption resulted in short levy of tax of Rs.9.83 lakh.

After this was pointed out between February and March 2003, the Department stated in May 2005 that the units were located in the focal points and were situated in 'C' growth area. The reply of the Department is not tenable as the exemption is applicable only to unit located in 'A' growth area.

The matter was referred to the Government in February 2005; their replies were awaited (September 2005).

### **2.9 Incorrect allowance of refund**

Under the PGST Act, excess tax collected by dealers from the consumer should not be retained by them. If the amount is deposited into Government account, it should not be refunded. It has been judicially\* held that a promise or agreement to refund tax which is due under the Act and realised in accordance with the law would be a fraud on the Constitution and a breach of

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\* **Amrit Vanaspati Co. Ltd. & Other Vs State of Punjab and another STI-1993-52 (SC).**

faith. The State Government vide notification dated 14 December 2001, reduced the lump sum tax payable per year by the BKO's from Rs.1.50 lakh to Rs.1.25 lakh with retrospective effect from 1 January 2001.

During test check of assessment records of the AETC, Hoshiarpur (Ward-I), it was noticed in July 2004 that while finalising the assessments between September and November 2003 for the year 2000-2001 of nine dealers engaged in the business of manufacturing of bricks, the assessing authority assessed the BKO's at reduced rate under the above notification. As the goods were taxable at the rate applicable at the time of sale actually made, allowance of refund of tax collected from consumers resulted in undue benefit of Rs.2.25 lakh to the dealers.

After this was pointed out the AETC stated that assessments were framed as per notification. The reply of the Department is not tenable as the lumpsum tax was payable at the rate applicable at the time of sale actually made in view of the aforesaid pronouncement of the Supreme Court.

The matter was brought to the notice of the Department and referred to the Government in February 2005; their replies were awaited (September 2005).

#### **2.10 Non levy of tax**

- Under the PGST Act and Rules made thereunder, tax is leviable on the sale of deoiled rice bran and deoiled cake at the rate of eight *per cent* with effect from 25 January 2000 to 18 March 2001. Additional tax at the rate of 10 *per cent* of tax assessed is also leviable upto 10 April 2000.

During test check of assessment records of four\* AETCs, it was noticed between May 2003 and May 2004 that while finalising the assessments between June 2002 and June 2003, for the years 1999-2000 and 2000-2001 of five dealers engaged in the business of deoiled rice bran and deoiled cake and enjoying the benefit of exemption from the payment of sales tax, the assessing authorities exempted the sale of goods valued at Rs.3.13 crore treating the sale as tax free. This resulted in non levy of tax amounting to Rs.13.93 lakh.

After this was pointed out, the AETC Gurdaspur intimated in March 2004 that case was reassessed by raising an additional demand of Rs.11.22 lakh and adjusted against the admissible amount of tax exemption, while the AETC, Mansa intimated in May 2004 that the deoiled rice bran was not taxable from 25 January 2000 to 18 March 2001. The reply was not tenable as deoiled rice bran was not classified anywhere during this period and hence was liable to tax at the general rate of eight *per cent*.

The matter was brought to the notice of the Department and referred to the Government between January 2004 and March 2005; their replies were awaited (September 2005).

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\* Amritsar (ward-12 - 1 dealer), Ferozepur (ward 8 - 2 dealers), Gurdaspur (ward 7 - 1 dealer) and Mansa (ward-2 - 1 dealer).

- Under the PGST Act and Rules made thereunder, tax at the rate of four *per cent* is leviable on the sale of packing material (hessian cloth). Additional tax at the rate of 10 *per cent* on the amount of tax assessed is also leviable with effect from 7 November 2001.

During test check of assessment records of the AETC, Ludhiana I (Ward-6 Khanna), it was noticed in October 2004 that while finalising in February 2004 the assessment for the year 2001-2002 of a dealer engaged in the business of hessian cloth, the assessing authority exempted the sale of hessian cloth valued at Rs.69.27 lakh from payment of tax treating the sale as tax free. This resulted in non levy of tax of Rs.2.77 lakh.

The matter was brought to the notice of the Department in November 2004 and referred to the Government in February 2005; their replies were awaited (September 2005).

### 2.11 Incorrect levy of concessional rate of tax

Under CST Act, tax on inter state sale of goods made to registered dealers and supported by prescribed declarations (Form 'C') is leviable at the rate of four *per cent* or at such lower rate as applicable to the sale or purchase of such goods in the State. Tax on goods not covered by such declaration in the case of declared goods shall be calculated at twice the rate applicable in the State and in respect of other goods at 10 *per cent* or at the rate applicable to the sale of such goods inside the State whichever is higher.

During test check of assessment records of four AETCs, it was noticed between May and December 2004 that while finalising between September 2003 and February 2004 the assessments of five dealers for the assessment years 2001-2002 and 2002-2003, inter state sale of goods valued at Rs.14.51 crore were incorrectly assessed at concessional rate of tax without production of prescribed declarations in form 'C' which resulted in short levy of tax of Rs.86.29 lakh as shown below:

(In lakh of rupees)

Sr. No.	Name of districts (No. of dealers)	Assessment year Month and year of assessment	Name of commodity	Taxable turnover	Tax leviable Tax levied (rate in percentage)	Tax leviable Tax levied	Tax short levied
1.	Sangrur (one)	2002-03 January 2004	Stearic acid	1014.25	10 4	101.42 40.57	60.85
2.	Hoshiarpur (two)	2002-03 January 2004	Carbon	196.92	10 4	19.69 7.87	11.82
		2002-03 September 2003	Chemical	73.03	10 4	7.30 2.92	4.38
3.	Jalandhar-I (one)	2002-03 February 2004	Leather goods	134.05	10 4	13.40 5.36	8.04

4.	Amritsar – I (one)	2001-02 January 2004	Soap & washing powder	33.21	$\frac{4}{1}$	$\frac{1.33}{0.13}$	1.20
		<b>Total</b>		<b>1,451.46</b>			<b>86.29</b>

After this was pointed out in audit, the AETC Amritsar-I intimated in May 2005 that the case has been reassessed and additional demand of Rs.1.20 lakh has been raised and adjusted against the exemption limit. Replies from other AETCs were awaited.

These cases were brought to the notice of the Department and referred to the Government between June 2004 and March 2005; their replies were awaited (September 2005).

### 2.12 Non levy of tax at first stage of sale

Under the PGST Act and Rules made thereunder, tax is leviable at the first stage on the sale of paper of all kinds, ball bearings, tractor parts, auto parts, electronic goods, plastic bags, thread, synthetic waste, timber and adhesive tapes.

During test check of records of five\* AETCs between February 2004 and December 2004, it was noticed that while finalising between April 2002 and February 2004 the assessments of 11 dealers, for the years 1997-1998 and 1999-2000 to 2001-2002, the assessing authorities allowed deductions of Rs.7.32 crore from the gross turnover on account of sale of paper, ball bearings, tractor parts, auto parts, electronic goods, plastic bags, thread, synthetic waste, timber and adhesive tapes made to registered dealers in the State against the prescribed declarations. Since these goods were taxable at the first stage of sale, the deduction allowed against these declarations was not correct. This resulted in non levy of tax of Rs.54.10 lakh.

After this was pointed in audit, the Department intimated between January and May 2005 that three AETCs (Jalandhar-I, Ludhiana-I and III) had sent cases for suo moto action. Replies from other AETCs were awaited. (September 2005)

These cases were brought to the notice of the Department and referred to the Government between August 2004 and March 2005; their replies were awaited (September 2005).

### 2.13 Application of incorrect rate of tax

Tax is payable on the sale of goods as per provisions of the PGST Act, as applicable from time to time.

\* Jalandhar –I (ward-7A), Jalandhar-II (ward-8), Ludhiana –I (ward-4 and 10 - two dealers), Ludhiana-II (ward 12 and 17A), Ludhiana-III (ward 24, 26, 29 and 29A)

During test check of assessment records of five AETCs, it was noticed between March 2004 and September 2004 that while finalising between April 2002 and October 2003, the assessments of five\* dealers for the assessment years 1997-1998, 1999-2000, 2001-2002 and 2002-2003 engaged in the business of milk powder, PVC pipes, pickles, soda water, speaker and radios, the assessing authorities levied tax at incorrect rates which resulted in under assessment of tax of Rs.13.08 lakh as tabulated below:

(In lakh of rupees)

Sr. No.	Name of district (No. of dealers)	Assessment year Month and year of assessment	Name of commodity	Rate of tax leviable levied (in percentage)	TTO	Tax leviable Tax levied	Tax short levied
1	Gurdaspur (one)	2001-2002 September 2003	Milk powder	8.8 4.4	46.89 (sale upto 6 November 2001)  30.42 (7 November 2001 to 31 March 2002)	3.75 1.88  2.68 1.34	1.88   1.34
2.	Jalandhar – I (one)	1997-98 April 2003	Speaker and radios	13.2 8	53.93	7.12 4.75	2.37
3.	Jalandhar-II (one)	2001-2002 February 2003	Soda water	20 8.8	27.63 (sale upto 30 November 2001)  13.68 (sale w.e.f. 1 December 2001 to 31 March 2002)	5.53 -  3.01 3.64	4.90
4.	Patiala (one)	2002-2003 October 2003	Pickles	13.2 4.4	13.53	1.79 0.60	1.19
5.	Ropar (one)	1999-2000 April 2002	PVC Pipes	13.2 8.8	31.74	4.19 2.79	1.40
<b>Total</b>							<b>13.08</b>

After this was pointed out, the Department intimated between December 2004 and February 2005 that an additional demand of Rs.10.44 lakh had been raised by the assessing authority of Jalandhar-II, Gurdaspur, Patiala and Ropar and adjusted against exemption admissible to the units. The reply from the assessing authority of Jalandhar-I was awaited (September 2005).

The matter was referred to the Government between October 2004 and March 2005; their replies were awaited (September 2005).

\* Gurdaspur (ward-4), Jalandhar –I (ward-5A), Jalandhar II (ward-1), Patiala (ward-3) and Ropar (Insp. Mohali).