

Chapter II: Taxes on Sales, Trade etc.

2.1 Results of audit

Test check by audit of sales tax records during the year 2005-06, revealed under assessments, etc. of tax amounting to Rs.52.86 crore in 399 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/CST	297	18.66
2.	Non/short levy of purchase tax	3	0.07
3.	Non/short levy of penalty	12	1.31
4.	Incorrect grant of exemption from tax	19	3.96
5.	Other irregularities	67	18.52
6.	Review on " Exemptions allowed in sales tax assessments-cross verification of transactions ".	1	10.34
	Total	399	52.86

During the year 2005-06, the Excise and Taxation Department accepted audit observations involving Rs.1.24 crore in 75 cases and recovered Rs.78.69 lakh in 43 cases pertaining to the audit findings of the previous years.

In one case entire amount of Rs.2 lakh was recovered after the case was brought to the notice of Government.

The results of review '**Exemptions allowed in sales tax assessments-cross verification of transactions**' and a few illustrative cases highlighting irregularities involving financial effect of Rs.77 crore are given in the following paragraphs:-

2.2 Review on Exemptions allowed in sales tax assessments-cross verification of transactions

Highlights

Incorrect allowance of exemption on account of sale of goods taxable at first stage of sale, resulted in non levy of tax Rs.2.62 crore.

(Paragraph 2.2.8)

Taxable sales were allowed as tax free which resulted in non levy of tax of Rs.1.59 crore.

(Paragraph 2.2.9)

Incorrect allowance of deduction from gross turnover without production of prescribed declarations in form C, resulted in short levy of tax of Rs.5.90 crore.

(Paragraph 2.2.11)

Departmental instructions for cross verification of transactions of sale of goods made to dealers in the State or other States were not complied with in 4,424 cases involving 2,733 transactions of Rs.65.06 crore.

(Paragraph 2.2.12)

2.2.1 Recommendations

Government may consider the following suggestions for effective realisation of revenue:-

- ensure allowance of concessional rate of tax only on production of statutory declarations,
- ensure the correctness of exemptions/concessions allowed in assessment,
- ensure cross verification of transactions within/outside State and with central excise/income tax departments before finalisation of assessment.

2.2.2 Introduction

Under the Punjab General Sales Tax Act, 1948 (PGST Act), and Central Sales Tax Act, 1956 (CST Act), some transactions are exempt from payment of sales tax subject to the dealers furnishing prescribed declarations/certificates and supporting documents. The assessing authorities are required to confirm the genuineness of these declarations through cross verification of records of other dealers /states before finalising the assessments.

2.2.3 Organisational set up

The Financial Commissioner Taxation and Principal Secretary to Government is overall incharge of the department. Subject to overall control and superintendence of the Excise and Taxation Commissioner (ETC), the administration of the PGST Act and CST Act, is carried out with the help of Additional Excise and Taxation Commissioner (Addl ETC), Joint Excise and Taxation Commissioners at headquarters (JETCs), Deputy Excise and Taxation Commissioners (DETCs) at divisional level and Assistant Excise and Taxation Commissioners (AETCs), Excise and Taxation Officers (ETOs) and other allied staff at district level.

2.2.4 Scope of audit

Mention was made in paragraph 2.2 of the Report of the Comptroller and Auditor General of India (Revenue Receipts) for the year ended 31 March 2000, highlighting the shortcomings during the years from 1995-96 to 1998-99 in the procedure followed in exemptions allowed in sales tax assessments-cross verification of transactions. With a view to further evaluate the effectiveness of the department, a further review of relevant records of dealers in seven* out of 21 sales tax district offices for the period 2000-01 to 2004-05 was conducted during April to December 2005 to ascertain whether aforesaid lacunae had been removed and to assess the efficacy of existing system of cross verification of transactions. The audit findings also include irregularities noticed in audit during the period covered under review.

2.2.5 Audit objectives

Test check of records of assessing authorities was conducted with a view to ascertain as to whether:-

- claims of exemption were allowed correctly on the basis of relevant declarations/documents and certificates as per PGST/CST Acts,
- tax on purchase/sale of goods supported/not supported with declarations was levied correctly.
- cross verification of transactions of purchase and sales made within/outside the State was being done as required under departmental instructions.

2.2.6 Trend of revenue

The trend of revenue realised during the years 2000-01 to 2004-05 was as under:-

* Amritsar-I, Jalandhar-I and II, Ludhiana-I and III, Patiala and Ropar.

(In crore of rupees)

Year	Budget estimates	Actuals	Variations excess (+) or shortfall (-)	Percentage of variation
2000-01	3,000.00	2,644.41	(-) 355.59	(-) 12
2001-02	3,400.00	2,684.33	(-) 715.67	(-) 21
2002-03	3,250.00	3,072.44	(-) 177.56	(-) 5
2003-04	3,575.00	3,307.94	(-) 267.06	(-) 7
2004-05	4,025.00	3,816.38	(-) 208.62	(-) 5

The reasons for increase in budget estimates and actuals during 2004-05 as compared to 2003-04 though called for (May 2006) have not been received (August 2006).

2.2.7 Internal control

Internal controls are intended to provide reasonable assurance of proper enforcement of laws, rules and departmental instructions. These also help in prevention and detection of frauds and irregularities. Internal controls also help in creation of reliable financial and management information system for prompt and efficient services and for adequate safeguards against evasion of taxes. It is, therefore, the responsibility of department to ensure that a proper internal control structure is instituted, reviewed and updated to keep it effective.

Audit review of performance of the department brought to light a number of irregularities wherein the provisions of PGST Act, CST Act, rules and instructions thereunder had not been applied correctly. This was indicative of inadequacy in the departmental internal control mechanism.

- **Internal audit**

An internal audit organisation (IAO) was set up in October 1981 as an independent organisation under the State Finance Department and was entrusted interalia, with the internal audit of receipts to safeguard against any loss or leakage of revenue arising under the various revenue heads including sales tax. By a notification of November 1991, however, the focus of internal audit was shifted from revenue to expenditure audit. It was envisaged in the notification that audit of sales tax would not be taken up as routine activity and could be conducted on a selective basis.

A review of records maintained by IAO, however, revealed that the department did not conduct internal audit of sales tax after issue of the notification, *ibid*.

Scrutiny of records further disclosed that 818 audit notes containing 4,204 paragraphs involving Rs.41.28 crore, pertaining to the period prior to 1991, were outstanding as on 31 March 2006. The IAO attributed in June 2006 the pendency to non submission of replies by the Sales Tax Department.

2.2.8 Incorrect allowance of exemption on sale of goods at first stage

2.2.8.1 Under the PGST Act and Rules made thereunder, tax is leviable at the first stage on sale of auto parts, paints, packing material, waste of yarn wool and acrylic fibre, cotton waste, edible oils, tractor parts, rags, ball bearings, mehndi, bardana, furniture, batteries, adhesive/tape, rubber goods, pvc pipes and sanitary goods in the State.

Test check of records of 15 AETCs* revealed that while finalising between April 2001 and March 2005 the assessments of 74 dealers for the years 1993-94 to 2004-05, the assessing authorities allowed deduction from sale turnover of Rs.19.48 crore on account of sale of auto parts, paints, packing material, waste of yarn wool, acrylic fibre, cotton waste, edible oils, tractor parts, rags, ball bearings, mehndi, bardana, furniture, batteries, adhesive/tape, rubber goods, pvc pipes and sanitary goods made to registered dealers in the state in contravention of provisions of Act. Since these goods were taxable at the first stage of sale, the deduction allowed against declarations was not correct. This resulted in non levy of tax of Rs 1.23 crore.

2.2.8.2 As per Government notification issued in July 1990, goods manufactured by units availing the benefit of exemption from payment of sales tax under PGST (Deferment and Exemption) Rules 1991 (PGST (D&E) Rules) are taxable at the first stage of sale when such unit sells the goods from the premises of the manufacturing unit and unit is not entitled to claim exemption from the turnover on account of sale to other registered dealers.

Test check of records of eight** AETCs revealed that assessing authorities while finalising assessments of nine dealers availing the benefit of sales tax exemption for the period from 1998-99 to 2002-03 between April 2002 and April 2004 allowed exemption of Rs.5.11 crore from gross turnover on account of sale of goods to other registered dealers in the State. Due to this the exemption limits of units were not effected. As these dealers were manufacturers and enjoying the benefit of exemption from payment of tax and had sold goods for the first time in the State, the inadmissible exemption allowed resulted in under assessment of tax of Rs. 44 lakh.

2.2.8.3 No provision exists in the PGST Act/Rule to allow exemption to the manufacturing units for use of goods in the manufacture of final products if such goods are purchased from units already availing exemption under PGST

* Amritsar I and II, Faridkot, Ferozpur, Gurdaspur, Jalandhar I and II, Kapurthala, Ludhiana I, II and III, Nawanshahr, Patiala, Ropar and Sangrur.

** Amritsar II, Fatehgarh Sahib, Gurdaspur, Hoshiarpur, Jalandhar I and II, Ludhiana II and Sangrur.

(D&E) Rules. It has also been judicially* held by the State Sales Tax Tribunal that exemption of tax on account of purchase of goods made from the units enjoying benefit of exemption from payment of tax was not admissible to the units using such goods for manufacture of their products.

During test check of assessment records of three** AETCs, it was noticed that the assessing authorities, while finalising the assessments for the years 1998-99 and 2002-03 between March 2004 and March 2005 of six dealers engaged in the business of manufacturing of goods were allowed exemption of Rs. 20.40 crore on account of goods purchased from exempted units which resulted in short levy of tax of Rs.77 lakh.

2.2.8.4 PGST Act provides that in the case of a dealer who brings goods in the State from any place outside the state, the sale of such goods shall be the first stage of sale when such dealer sells the said goods for the first time within the State.

Test check of records of eight*** AETCs revealed that while finalising the taxable turnover between October 2002 and March 2004 of five dealers for the years 1997-98, 2000-01 and 2002-03, assessing authorities allowed deduction of Rs.3.30 crore on account of sale of paper, pesticides, medicines, toilet soap, packing material, cement and timber purchased from outside the State to registered dealers which was irregular. These goods were taxable at the first stage of their sale in the State. Thus, the exemption allowed was incorrect and resulted in non levy of tax of Rs 18.45 lakh.

After this was pointed out, it was stated by the department in October/November 2005 that the assessing authority of Nawanshahr and Kapurthala had created an additional demand of Rs.1.13 lakh while the reply from other assessing authorities are awaited (August 2006).

2.2.9 Incorrect grant of exemption of sale of goods from payment of tax

Under the provisions of PGST Act, certain goods as mentioned in Schedule-B to the Act are exempt from payment of tax and their sale turnover is allowed as deduction from gross turnover.

* Revision Petition no. 6 of 2003-2004 in case of M/s Tarlok Chand Hans Raj Mandi Fentonganj, Jalandhar V/s State of Punjab.

** Ludhiana I and III and Ropar.

*** Amritsar I (Ward I), Jalandhar I (Ward-7A), Kapurthala (Ward-I and 5), Ludhiana II (Ward-18), Mansa (Ward I & II), Nawanshahr, Patiala (AETC) and Ropar (Ward III).

During test check of assessment records of 18* AETCs, it was noticed that while finalising the assessments between April 2002 and March 2005 for the years 1995-96 to 2002-03 in respect of 46 dealers, the assessing authorities exempted turnover of Rs.18.45 crore from the gross turnover on account of sale of cotton waste, pesticides, rice bran, fertiliser, confectionery goods packed in boxes, bread crumbs, synthetic waste, tractor trollies, industrial gas, cocks and valves, sim cards, paper, bardana and fast food from payment of tax by treating the sale as tax free though these goods were taxable at the time of sale and were not included in schedule 'B'. Incorrect grant of exemption resulted in non levy of tax of Rs 1.59 crore.

After this was pointed out, the department intimated in October 2005 that the assessing authorities of Ludhiana and Fatehgarh Sahib had created an additional demand of Rs.1.46 lakh while the replies of assessing authorities of Jalandhar I and Moga could not be verified as no document in support of their contention was furnished to audit. Further progress was awaited (August 2006).

The matter was brought to the notice of department and referred to Government between August 2005 and April 2006; their replies are awaited (August 2006).

2.2.10 Inadmissible grant of exemption

2.2.10.1 Under the PGST Act and Rules made thereunder, a registered dealer can claim deduction on account of sales of goods made by him to another registered dealer if the purchasing dealer furnishes a declaration in the prescribed form (STXXII)** (upto 31 March 1995) and certifies that the goods are meant for resale in the State or for sale in the course of inter state trade or commerce or sale in the course of export of goods out of the territory of India or of goods specified in the certificate of registration intended for use in the manufacture of goods, the sale of which is taxable in the State. The dealer furnishing incorrect or false declaration is liable to pay minimum penalty of 50 per cent of the tax to be assessed under the Act.

Test check of records of AETCs, Amritsar II and Jalandhar II in July 2005 revealed that two dealers claimed and were allowed deduction between April 2001 and July 2002 of Rs.1.52 crore during the years 1994-95 and 1997-98 on account of sale of goods to various dealers against declarations (form STXXII) without cross verification of transactions. Cross verification by audit of these declarations vis-à-vis the records of other AETCs revealed that these forms were furnished by purchasing dealers whose registration certificates had already been cancelled (in May 1993). Incorrect grant of exemption resulted in short levy of tax of Rs 4.01 lakh besides minimum penalty of Rs 2.01 lakh.

* Amritsar I and II, Bathinda, Faridkot, Fatehgarh Sahib, Hoshiarpur, Jalandhar I and II, Kapurthala, Ludhiana I, II and III, Moga, Muktsar, Nawanshahr, Patiala, Ropar and Sangrur.

** These forms were dispensed with effect from April 1995.

2.2.10.2 Under the PGST Act and Rules made thereunder, a dealer can claim exemption from his gross turnover, sale value of goods which have already suffered tax at the first stage of sale, provided he produces declarations duly filled in and signed by the registered dealers from whom the goods were purchased. Incorrect availment of exemption attracts penalty not less than 50 *per cent* upto August 2003 and 20 *per cent* thereafter, besides payment of due tax.

Test check of assessment records for the years 1990-91 and 2003-04 of AETC, Fatehgarh Sahib and Kapurthala revealed that two dealers were allowed exemption of Rs.1.60 crore between March 2003 and November 2004 against false declarations (form STXXII). Cross verification by audit of sale made by dealer of Fatehgarh Sahib revealed that these forms were not issued to the purchasing dealer. In case of Kapurthala, the forms stated to be verified by the assessing authority in November 2004, had actually been lost in October 2004 and FIR lodged. Incorrect allowance of exemption resulted in short levy of tax of Rs.7.02 lakh besides minimum penalty of Rs 0.24 lakh.

2.2.10.3 During test check of the records of AETC Patiala, it was noticed that while finalising the assessment for the year 2000-01 of a dealer engaged in the business of resale of coal, the assessing authority levied tax on the gross turnover of Rs.1.17 crore. However, cross verification by audit of records pertaining to income tax assessment of the dealer for the financial year 2000-01 revealed that the dealer did not disclose sale of goods valued at Rs.2.55 crore. This resulted in evasion of tax of Rs.10.20 lakh.

2.2.11 Short levy of CST

2.2.11.1 Under the CST Act and Rules made thereunder, tax on inter state sales 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 declarations in case of declared goods shall be calculated at twice the rate applicable in the appropriate State and in respect of other goods at the rate of 10 *per cent* or at the rate applicable to the sale of such goods inside the State whichever is higher. Furnishing of form 'C' is mandatory with effect from 11 May 2002.

Test check of the records of 18* AETCs revealed that while finalising the assessments for the years 1998-99 to 2003-04 in respect of 104 dealers, the assessing authorities incorrectly assessed, between December 2001 and March 2005, inter state sale of goods valued at Rs. 99.41 crore at concessional rate of tax either without production of proof of sale of goods or without furnishing prescribed declarations in form 'C' by dealers. This resulted in short levy of tax of Rs. 5.73 crore.

* Amritsar-I and II, Bathinda, Faridkot, Fatehgarh Sahib, Hoshiarpur, Jalandhar-I and II, Kapurthala, Ludhiana-I, II and III, Moga, Muktsar, Nawanshahr, Patiala, Ropar and Sangrur.

After this was pointed out, the assessing authority of Sangrur stated that corrective action was being taken and no reply was furnished by other assessing authorities.

2.2.11.2 Under the CST Act, every dealer who sells any goods to Government department shall be liable to pay tax at rate of four *per cent* subject to the production of certificate in form 'D'.

Test check of records of three* AETCs between October 2003 and November 2004 revealed that while finalising between July and September 2002, the assessment for the years 1990-91 to 2000-01 of three dealers, the assessing authorities levied tax on sale of Rs. 4 crore at concessional rates of tax against declarations in form D on account of sales made to BSNL**, Police Housing Corporation and Punjab Small Industries and Export Corporation Ltd which are autonomous and not Government departments. Application of incorrect rate of tax resulted in short levy of tax of Rs.17 lakh.

2.2.12 Non compliance of departmental instructions

In order to avoid evasion of tax and safeguard Government revenue, ETC's instructions issued in June 1966 and reiterated in November 1983 require that where a single item of sale was Rs 1,000 or more or where the sales to one registered dealer during the year exceeded Rs 5,000, such sales should be cross checked with the books of account of the purchasing dealers and a certificate to that effect be recorded by the assessing authority at the time of assessment. PAC in its 59th Report placed in State Legislative Assembly on 31 March 1983 desired that the requirement of law be fulfilled and at the same time state revenue should not suffer. Transactions of inter state sales and sales of goods on consignment basis under CST Act are also required to be verified from the assessing authorities of the concerned States as per departmental instructions issued in December 1962 and February 1969 respectively. Further, as per departmental instructions issued in June 1962, sales made to Government departments were also to be got verified.

During test check of 4,424 assessment cases, it was noticed in audit that the certificate from assessing authorities indicating cross verification of transactions, as required vide instructions issued from time to time, was not found recorded even in a single case involving 1,045 transactions (each exceeding gross turnover of Rs. 1 crore) aggregating Rs. 15.83 crore although value of each transaction exceeded the amount fixed in the instructions. Similarly, sales made by the dealers of the state to dealers of other states in the course of inter state trade or commerce against declarations in form 'C' were not got verified by the assessing authorities from their counterparts in other states in 1,688 transactions (each exceeding gross turnover of Rs.1 crore) aggregating Rs.49.23 crore.

* Bathinda, Gurdaspur and Patiala.
** Bharat Sanchar Nigam Ltd.

2.2.13 Conclusion

The management of assessment and collection of sales tax was not satisfactory. The tax is not levied at the correct stage of sale, deductions of turnover were allowed without cross verification of prescribed declaration forms to ascertain whether the dealers who had submitted these forms were in existence or the value of goods shown therein was correct. Concessional rate of tax was charged from ineligible departments.

2.2.14 Acknowledgement

The audit findings as a result of review were reported to department/ Government in April 2006 with a specific request to attend the meeting of Audit Review Committee (ARC) on the topic so that the views of the department/Government were taken into account while finalising the review. The meeting was held on 2 May 2006 and attended by the Financial Commissioner and Principal Secretary, Excise and Taxation Department. The audit findings were discussed. The minutes of meeting were sent to Financial Commissioner and Principal Secretary, Excise and Taxation Department on 11 May 2006; but replies thereof were awaited (August 2006).

2.3 Non levy of tax on sale of import replenishment licence

It has been judicially* held that import replenishment, exim scrips/duty entitlement pass book licences are goods and premium or price received by the holders by transfer thereof to another person is liable to sales tax at the prescribed rate.

During test check of assessment records of seven** AETCs, it was noticed that while finalising between August 2001 and October 2004, assessments for the years 1997-98 to 2002-03 of 14 dealers, the assessing authorities had not included receipts of Rs.5.07 crore on account of sales of import replenishment /exim scrips/duty entitlement pass book licences in the turnover of the dealers resulting in non levy of tax amounting to Rs.42.48 lakh.

After this was pointed out, it was intimated between May 2005 and May 2006 that additional demand of Rs.9.90 lakh has been raised by three*** AETCs. AETC Patiala and Ropar reopened the assessment in December 2005, while replies from other AETCs were awaited (August 2006).

* M/s Vikas Sales Corporation V/s Commissioner of Commercial Taxes 102 STC-106(1996)(SC).

** Jalandhar I (6), Kapurthala(1), Ludhiana I(1), Ludhiana II (2), Ludhiana-III (2), Patiala (1) and Ropar (1).

*** Jalandhar I, Ludhiana II and Ropar.

The matter was referred to department/Government between March and November 2005; their replies are awaited (August 2006).

2.4 Incorrect allowance of refund

PGST Act, does not contain any provision for refund of tax collected in excess by the dealer or retention by them. It has been judicially* held by Hon'ble Supreme Court that only the person who ultimately bore the liability to pay tax is entitled to get refund thereof. Allowing refund to a dealer or middleman who had only passed on the burden to another would amount to unjust enrichment.

During test check of assessment records of the AETC Ludhiana I (Ward-7 Khanna), it was noticed in July 2005 that two dealers engaged in the business of solvent plant (rice bran oil) and edible oil deposited tax alongwith periodical returns during the years 2000-01 to 2003-04. The assessing authority, while finalising the assessments between June 2004 and January 2005, allowed refund of Rs 8.95 lakh. As the dealers had collected the tax from the purchasers with reference to the sales shown in the periodical returns and deposited the same in Government treasury, the refund was wrongly allowed in view of the apex court's decision mentioned above. This resulted in loss of revenue and undue benefit of Rs.8.95 lakh to the dealers.

After this was pointed out in July 2005, it was stated by the department in December 2005 that the case has been reopened in the case of one dealer and final reply would be sent after finalisation of the proceedings (August 2006). The reply in other case is still awaited (August 2006).

The matter was referred to Government between October and November 2005; their replies are awaited (August 2006).

2.5 Short levy of tax

Under the PGST Act, turnover means the sum total of the amount of sales actually made by the dealer during the given period.

During test check of records of AETC Ropar (Ward-3), it was noticed that assessing authority while finalising the assessment in June 2001 for the year 1993-94 of a dealer engaged in the business of hotel industry computed the taxable turnover incorrectly as Rs. 2.44 crore instead of Rs.3.04 crore. This resulted in short levy of tax of Rs.5.25 lakh on taxable turnover of Rs.59.70 lakh.

* **State of Madhya Pradesh v/s Vyankat Lal & others (1987) 64 STC 6 (SC)**

After this was pointed out, the assessing authority intimated in May 2006 that the case was sent to AETC (Inspection) for suo moto action. Further reply is awaited (August 2006).

The matter was brought to the notice of department and referred to Government in November 2005, their reply are awaited (August 2006).

2.6 Non recovery of tax and penalty from closed unit

Under the PGST (D&E) Rules, deferment/ exemption certificate granted to a unit is liable to be cancelled, if the unit discontinues its business at any time for a period exceeding six months or closes its business during the period of deferment/exemption. On cancellation of exemption/eligibility certificate, the entire amount of tax deferred/exempted shall become recoverable immediately in lumpsum and the provisions of levy of interest and imposition of penalty under the Act would also be applicable in such cases.

2.6.1 Test check of assessment records of 12 AETCs, between May 2005 and March 2006, revealed that 72* units after having availed partial tax exemption of Rs.9.79 crore between 2000-01 and 2005-06 closed their business before expiry of exemption period. However, no action was taken by the department to recover the amount of exemption availed by the units. Thus, failure of the department to cancel the registration certificates and initiate recovery proceedings against the dealers /units, resulted in non recovery of revenue of Rs.16.34 crore including interest and penalty.

2.6.2 Test check of records of 15 AETCs revealed between May 2005 and March 2006 that 62** units closed their business between 1994-95 and 2004-05 after availing partial exemption of Rs.16.40 crore before the expiry of exemption period/limit. The department cancelled their registration certificates during 2000-01 to 2005-06 without initiating any action to recover the amount of exemption of tax of Rs. 28.45 crore availed including interest and penalty.

The matter was brought to the notice of department and referred to Government between August 2005 and April 2006; their replies are awaited (August 2006).

* Amritsar-II(7), Ferozepur(5), Gurdaspur (13), Jalandhar-II(3), Kapurthala(5), Ludhiana-II(3), Ludhiana-III(1), Moga (1), Muktsar(13), Nawanshahr (1), Patiala(15) and Sangrur(5).

** Amritsar-I(9), Amritsar-II(1), Faridkot(3), Gurdaspur(10), Jalandhar-I(1), Jalandhar II(1), Kapurthala (2), Ludhiana-I(9), Ludhiana-II (3), Ludhiana-III(1), Mansa (4), Nawanshahr (3), Patiala (12), Ropar (1) and Sangrur(2).

2.7 Undue benefit allowed to dealers

Under the PGST Act, no provision exists for change in the rate of tax with retrospective effect, as such tax is levied on goods at the rate applicable at the time of actual sale unless exempted. It has been judicially held* that delegated legislation could not give effect to the amendment of taxation with retrospective effect.

Contrary thereto, State Government vide notification dated 14 December 2001 reduced the rate of lump sum tax payable by brick kiln owners from Rs.1.50 lakh to Rs 1.25 lakh with retrospective effect from 1 January 2001.

During test check of records of five** AETCs, it was noticed between December 2003 and January 2005 that while finalising the assessments between May 2002 and January 2004, for the years 2000-01 and 2001-02, of 83 dealers engaged in the business of manufacture and sale of bricks, the assessing authorities assessed the tax of Rs 1.14 crore under notification of December 2001. The reduction of tax from retrospective date resulted in undue benefit of tax amounting to Rs.16.04 lakh to the dealers.

The matter was brought to the notice of department and referred to Government between August and October 2005; their replies are awaited (August 2006).

2.8 Short computation of turnover

Under PGST Act, taxable turnover means the aggregate of sales and purchases actually made by any dealer during a given period less any sum allowed as cash discount and trade discount but including any sum charged for anything done by the dealer in respect of goods at the time of or before, delivery thereof. It has been judicially held*** that excise duty though paid by the purchaser forms part of turnover.

2.8.1 During test check of records of AETC, Jalandhar I (Ward-14), it was noticed in September 2005 that while finalising in August 2004 the assessment for the year 2001-02 of a dealer engaged in the business of sports goods etc, the assessing authority assessed gross turnover of Rs.24.51 crore instead of Rs.43.44 crore. This resulted in under assessment of tax of Rs.56.77 lakh.

* **Krishan Kumar Kabra and others V/s State of Bihar (STI-1997-SC-113).**
** **Amritsar-I (Ward-4), Ferozepur (Ward-4), Hoshiarpur (Ward-I and 5), Moga (Ward-9)and Sangrur (Ward-4 and 5).**
*** **Government woods works V/s State of Kerala-1988-69-STC-62-Kerala.**

2.8.2 During test check of records of AETC, Ludhiana III (Ward-22), it was noticed in July 2005 that while finalising the assessment in December 2004 for the years 2000-01 to 2001-02, of a dealer engaged in the business of manufacture of auto parts, the assessing authority did not include excise duty amounting to Rs.41.48 lakh collected by the dealer in his gross turnover. This resulted in short computation of taxable turnover and non levy of tax of Rs.3.32 lakh.

The matter was brought to the notice of department and referred to Government in October 2005; their replies are awaited (August 2006).

2.9 Non levy of tax

Under the PGST Act, tax at the rate of eight *per cent* was leviable on the sale of deoiled rice bran and oil from 25 January 2000 to 18 March 2001 and at the rate of one *per cent* on interstate sale of these goods under CST Act.

During test check of assessment records of the AETC, Ludhiana 1(ward-7 Khanna), it was noticed in July 2005 that while finalising in August 2004, the assessment for the year 2000-01 of a dealer engaged in the business of solvent plant and enjoying the benefit of exemption from payment of sales tax under the PGST (D&E) Rules, the assessing authority exempted the sale of deoiled rice bran/rice bran oil valued at Rs.7.30 crore treating the sale as tax free . This resulted in non levy of tax of Rs.37.44 lakh.

After this was pointed out, it was intimated by department in March 2006 that additional demand of Rs 25.76 lakh has been raised and adjusted against exemption limit of the unit.

The matter was referred to Government in January 2006; reply is awaited (August 2006).

2.10 Non recovery of tax

Under the PGST Act and Rules made thereunder, exemption is admissible to a unit for manufacturing and sale of products mentioned in the eligibility certificate issued by the Department of Industries.

During test check of assessment records of the AETC, Ropar (Ward-3), it was noticed in March 2005 that while finalising in January 2004, the assessment for the year 2002-03 of a dealer engaged in the business of manufacture and sale of rigid PVC pipes and enjoying exemption from payment of sales tax under the PGST (D&E) Rules, the assessing authority levied tax on account of sale of machinery of Rs. 32.90 lakh and adjusted against the amount of exemption available. As machinery was not included in the eligibility certificate, exemption

from payment of tax was not correct. This resulted in non recovery of tax amounting to Rs. 2.90 lakh.

After this was pointed out in March 2005, the assessing authority stated that tax on machinery was levied and there was no loss of revenue. The reply was not tenable as machinery being goods other than those mentioned in the eligibility certificate was liable to be taxed and amount deposited in Government account. Further reply was awaited.

The matter was brought to the notice of department and referred to Government in October 2005; their replies are awaited (August 2006).

2.11 Application of incorrect rate of tax

PGST Act provides that tax, at the rates prescribed in the Act from time to time, is payable on the sale of goods.

During test check of assessment records of 15* AETCs, it was noticed between September 2002 and September 2005 that while finalising between August 2001 and March 2005, the assessments of 30 dealers for the assessment years 1998-99 to 2003-04 engaged in the business of PVC pipes, conduit pipes, yarn, plastic poly bags, industrial gases, marbel, ice, rubber chappals, butter & cream, paper tubes, tractor parts, carpets, cotton yarn, plywood, polythene bags, MS** round, sauces & syrups, bottles & jars, PVC moulding, rubber goods, ice cream and cycle parts, the assessing authorities levied tax at incorrect rates which resulted in under assessment of tax of Rs. 55.05 lakh. A few illustrative cases are given 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)	Taxable turnover	Tax leviable Tax levied	Tax short levied
1	Amritsar II (Two)	2000-01 June 2003	Yarn	$\frac{4}{2}$	179.66	$\frac{7.19}{3.59}$	3.60
		2000-01 January 2004	Plastic polybags	$\frac{8}{4}$	76.09	$\frac{6.09}{3.05}$	3.04
2	Jalandhar II (Two)	2000-01 June 2003	Rubber chappals	$\frac{4}{2}$	204.61	$\frac{8.18}{4.09}$	4.09
3	Ludhiana I (Three)	1999-2000 April 2003	MS round	$\frac{4}{2}$	244.70	$\frac{9.79}{4.90}$	4.89
4	Ludhiana III (Four)	1999-2000 August 2003	Cotton yarn (CST)	$\frac{4}{2.2}$	430.68	$\frac{17.23}{8.76}$	8.47

* Amritsar I and II, Bathinda, Fatehgarh Sahib, Ferozepur, Gurdaspur, Jalandhar II and II (Inspection), Kapurthala, Ludhiana I, II and III, Patiala, Ropar and Sangrur.

** Mild Steel.

After this was pointed out, it was intimated by the department between June 2005 and February 2006 that additional demand of Rs. 14.11 lakh have been raised by six* AETCs while the replies from other AETCs are still awaited (August 2006).

The matter was referred to Government between March and November 2005; their replies are awaited (August 2006).

2.12 Non payment of sales tax

Punjab State Electricity Board (board) supplies meters to consumers for supplying electric energy for which it collects rental charges which constitute sales and the board is a dealer under section 2(d) of the PGST Act. Supplying of electric meters is transfer of right to use the goods within the meaning of sale under section 2(h)(iv) of the Act *ibid*. It has judicially been held** that Telecommunication Department collecting rental charges on account of telephone sets from telephone subscribers, is a dealer and rental charges are its sales.

Scrutiny of the annual statement of accounts of the board and information collected from Chief Electrical Inspector (CEI) in October 2005 revealed that rental charges on electric meters amounting to Rs.222.19 crore were collected between April 2003 and March 2005 by the board for supply of electric energy to consumers. As per provisions of the PGST Act, this was sale and board was liable to pay sales tax. Neither did the dealer pay sales tax on rental charges nor did the ETC/ CEI make any efforts to levy/collect the same from the board. This resulted in evasion of sales tax of Rs.19.55 crore by the board.

The matter was brought to the notice of department and referred to Government in January 2006; their replies were awaited (August 2006).

2.13 Incorrect grant of exemption from payment of tax under Deemed Assessment Scheme

Under PGST Act, if Government is satisfied that it is necessary and expedient to do so in public interest, it may direct, that assessment in respect of any class of a dealer for any prescribed period, shall be deemed to have been made as per returns already furnished, on payment of such amount and subject to such conditions as may be prescribed. The concession under deemed assessment scheme as envisaged in the PGST Act and Rules made thereunder is not admissible to the assessee under the CST*** Act.

* Amritsar I, Bathinda, Ludhiana I, Patiala, Ropar and Sangrur.

** State of Uttar Pradesh v/s Union of India {2004(170)ELT 385(SC)} delivered on 4 February 2003.

*** M/s Sachin Knitting Works, Ludhiana V/s State of Punjab, STI 2003 Punjab and Haryana Tribunals 310.

Test check of records of AETC Ludhiana 1 revealed that while finalising in July 2003 the assessment of a dealer for the year 1998-99 under Deemed Assessment Scheme, the assessing authority assessed sale of Rs.28.86 lakh and levied concessional rate on inter state sale of Rs.17.92 lakh and exempted export sale of Rs.10.94 lakh without production of declarations in form 'C' and 'H' respectively. This resulted in short levy of tax of Rs.2.53 lakh.

The matter was brought to the notice of department and referred to Government in April 2006; their replies are awaited (August 2006).