

Chapter II: Taxes on Sales, Trade etc.

2.1 Results of audit

Test check by audit of sales tax records during the year 2006-07, revealed under assessments, etc. of tax amounting to Rs.14.08 crore in 241 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	199	10.44
2.	Non/short levy of penalty	5	0.03
3.	Incorrect grant of exemption from tax	14	2.18
4.	Non/short levy of purchase tax	5	0.52
5.	Other irregularities	18	0.91
Total		241	14.08

During the year 2006-07, the Excise and Taxation Department accepted audit observations involving Rs.88.38 lakh in 29 cases and recovered Rs. 46.40 lakh in 33 cases pertaining to the audit findings of previous years.

In two cases, entire amount of Rs. 15.02 lakh was recovered after the cases were brought to the notice of Government.

A few illustrative cases highlighting irregularities involving financial effect of Rs. 10.15 crore are given in the following paragraphs:-

2.2 Incorrect allowance of deduction

Under the Punjab General Sales Tax Act, 1948 (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 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. In order to check evasion of tax, the department issued instructions to all assessing authorities in June 1966 which were reiterated in November 1983, that sales aggregating Rs. 5,000 made to one registered dealer during a year or where a single item of sale is of Rs. 1,000 or above, be cross checked with the account books of the purchasing dealer and a certificate to that effect be recorded by the assessing authority at the time of framing the assessment. 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 Assistant Excise and Taxation Commissioner (AETC), Ludhiana I (ward-3) in February 2006 revealed that a dealer claimed and was allowed between January and February 2005 deduction of Rs.4.71 crore during the years 2003-04 and 2004-05 on account of sale of goods to various dealers treating the sale as tax paid. Cross verification by audit of these transactions vis-à-vis the records of AETC Fatehgarh Sahib revealed that no tax was paid by first dealer. Incorrect allowance of deduction resulted in non levy of tax of Rs 18.85 lakh besides minimum penalty of Rs 9.42 lakh.

The matter was brought to the notice of department and referred to Government in September 2006; replies are awaited (August 2007).

2.3 Non levy of tax on sale of duty entitlement pass book licence

It has been judicially* held that import replenishment, exim scrips/duty entitlement pass book (DEPB) 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 AETCs Jalandhar I (ward-9) and Amritsar I (ward-3), it was noticed between November 2005 and January 2006 that while finalising between April and July 2004 the assessments for the years 2001-02 and 2002-03 of three dealers engaged in the business of export of goods,

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

the assessing authorities had not included receipts of Rs. 1.92 crore on account of sale of DEPB in the turnover of the dealers resulting in non levy of tax of Rs. 15.57 lakh.

After this was pointed out, assessing authority Jalandhar I stated in November 2005 that action would be taken as per law, while the assessing authority Amritsar I stated in January 2006 that reply would be furnished after verification of records.

The matter was brought to the notice of department and referred to Government between May and September 2006; replies are awaited (August 2007).

2.4 Short levy of tax on consignment sale

Under the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 (PGST (D&E) Rules), in case of branch transfer or consignment sales outside the State of Punjab, notional sales tax liability shall be computed at the rate of four *per cent* on production of certificate in form 'F' specified in the Central Sales Tax Act, 1956 (CST Act) and at the rate of 10 *per cent* in the event of non production of certificate in form 'F' on the presumption that these transactions are eligible to tax under the aforesaid Act.

During test check of assessment records of AETC (ward-4) Ludhiana-I, it was noticed in June 2006, that while finalising in March 2006 the assessment for the year 2001-02 of a dealer engaged in the business of manufacture and sale of auto parts and enjoying the benefit of exemption from payment of sales tax under PGST (D&E) Rules, the assessing authority levied tax on the cost of raw material of Rs.1.13 crore instead of value of finished products of Rs. 1.99 crore transferred outside the state against F forms. This resulted in short levy of tax of Rs. 3.43 lakh on the cost of final products.

Government to whom the matter was referred in August 2006 intimated in November 2006 that the case has been taken up *suo moto*. Final position of recovery is still awaited (August 2007).

2.5 Short computation of turnover

'Turnover' as defined in the PGST Act includes the aggregate of sales and purchases made by any dealer during a given period.

During test check of records of two* AETCs, it was noticed between August and October 2005, that while finalising between December 2004 and March 2005 the assessment for the year 2003-04 of two dealers engaged in the business of iron &

* Fatehgarh Sahib (ward 3 A Mandi Gobindgarh) and Ferozepur (ward 7).

steel and motor cycle, the assessing authorities computed the turnover as Rs.5.19 crore instead of Rs.5.93 crore shown in the trading accounts. This resulted in short computation of turnover and under assessment of tax of Rs.5.66 lakh.

After this was pointed out, assessing authorities stated that reply would be furnished after verification of records.

The matter was brought to the notice of department and referred to Government in September 2006; replies are awaited (August 2007).

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.

During test check of records of AETC Ferozepur, it was noticed in July 2005 that a dealer engaged in the business of manufacture and sale of yarn closed his business in April 2002 after availing partial exemption of Rs. 1.74 crore between April 1997 and March 2003 before the expiry of exemption period/limit (April 2006). However, no action was taken by the department to recover the amount of exemption availed by the unit. Thus, failure of the department to cancel the registration certificate and initiate recovery proceedings against the unit, resulted in non recovery of revenue of Rs.3.36 crore including interest and penalty.

The matter was brought to the notice of department and referred to Government in March 2007; replies are awaited (August 2007).

2.7 Short levy of tax

Under the CST Act, tax on sales made to Government of India or any State Government where the rate of tax is four or more than four *per cent*, shall be levied at the rate of four *per cent* subject to the production of declaration in form 'D'.

During test check of records of AETC (ward-10 Pathankot) Gurdaspur, it was noticed in March 2006 that while finalising in June 2004 the assessment for the year 2002-03 of a dealer, the assessing authority levied tax at rate of four *per cent* instead of 10 *per cent* on inter state sale of goods amounting to Rs.36.69 lakh made to Government departments without production of declaration in form 'D'. Application of concessional rate of tax resulted in short levy of tax of Rs.2.20 lakh.

After this was pointed out in March 2006, the assessing authority stated that the matter will be looked into.

The matter was brought to the notice of department and referred to Government in August 2006; replies are awaited (August 2007).

2.8 Allowance of incorrect deduction under central sales tax

CST Act provides that if a purchasing dealer made a subsequent inter state sales by transfer of documents of title to the goods during their movement from one state to another, no tax shall be leviable subject to production of the prescribed certificate in form E-1 or E-II along with declarations in form C to be issued by the selling and purchasing dealer.

During test check of records of AETC Amritsar-II (ward 10), it was noticed in December 2005 that while finalising the assessment for the years 2002-03 and 2003-04 of three dealers, the assessing authority incorrectly allowed deduction of Rs.1.16 crore from the gross turnover on account of sale of goods in transit without production of prescribed declaration in form C alongwith E-I or E-II. Incorrect allowance of deduction resulted in under assessment of tax amounting to Rs.11.64 lakh on inter state sale.

After this was pointed out in December 2005, department intimated in November 2006 that the cases have been reopened for assessment in respect of three dealers and finalisation of the proceedings are still awaited.

The matter was referred to Government in August 2006; replies are awaited (August 2007).

2.9 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 cannot give effect to the amendment of taxation with retrospective effect.

Contrary thereto, State Government vide notification dated 1 April 2000 enhanced the rate of tax on yarn from two to four *per cent* with effect from 1 April 2000. Subsequently, by another notification dated 11 May 2001, the aforesaid notification was made effective from 12 April 2000 instead of 1 April 2000.

* **Krishan Kumar Kabra and others V/s State of Bihar (STI-1997-SC-113).**

During test check of records of AETCs Amritsar II and Ludhiana III (ward-27), it was noticed between October 2004 and March 2006 that while finalising between May 2003 and December 2004 the assessment for the year 2000-01 of two dealers engaged in the business of yarn, the assessing authorities assessed the sale of yarn made between 1 April and 11 April 2000 valued at Rs. 1.49 crore at the reduced rate under the notification dated 11 May 2001. As the goods were taxable at the rate applicable at the time of sale actually made, allowance of reduction of tax from retrospective date resulted in undue benefit of tax of Rs 4.68 lakh to dealers.

After this was pointed out, department intimated between October and November 2006 that assessments were made as per instructions contained in the notification. Since delegated legislation can not give effect to the amendment of taxation with retrospective effect in view of the judgment cited above, action on the part of executive (State Government) was not only defective but also resulted in loss of revenue to the exchequer.

The matter was referred to Government in August 2006; reply is awaited (August 2007).

2.10 Non levy of tax at first stage of sale

Under the PGST Act and Rules framed thereunder, tax is leviable at the first stage on the sale of rubber goods (rubber crumbs), wood products, auto parts, combine parts, packing material, paints, food articles, adhesive tapes, yarn, batteries, pesticides and cement. The first stage in the case of a dealer, who brings into the State of Punjab said goods, from any place outside the State, is the stage when such dealer sells said goods for the first time within the State.

During test check of records of nine* AETCs, it was noticed between July 2004 and July 2006 that while finalising the assessment for the years 2000-01 to 2004-05 of 18 dealers between December 2003 and January 2006, the assessing authorities allowed deduction of Rs.8.62 crore from the gross turnover on account of sale of rubber goods (rubber crumbs), wood products, auto parts, combine parts, packing material, paints, food articles, adhesive tapes, yarn, batteries, pesticides and cement made to registered dealers in the State against the prescribed declarations. Since these goods were taxable at first stage of sale, deduction allowed against these declarations was not correct. Incorrect allowance of deduction resulted in non levy of tax of Rs. 79.63 lakh.

* Amritsar I (ward 7), Amritsar II (ward-6), Jalandhar II (ward -8), Ludhiana I (ward-I, 12 and 10- six dealers), Ludhiana II (ward-11A, 13A- and AETC -four dealers), Ludhiana 11 (Inspection), Ludhiana III (ward 27), Moga (ward 9A and 10-two dealers) and Sangrur (ward-2 Dhuri).

After this was pointed out, assessing authority Jalandhar-II intimated in July 2006 that the purchases were made within the State after payment of tax. The reply is not tenable as the details of purchases show that purchases were made from outside the State and liable to be taxed for their sale for the first time within the State whereas the other assessing authorities stated that action would be taken as per law.

The matter was brought to the notice of department and referred to Government between July and September 2006; replies are awaited (August 2007).

2.11 Inadmissible availing of exemption from payment of tax

Under the PGST (D&E) Rules, exemption from payment of sales/purchase tax is admissible to a unit for manufacturing and sale of products mentioned in the eligibility certificate. In case of any addition in the products other than originally mentioned in the eligibility certificate, the benefit of exemption is admissible from the date of such addition in the eligibility certificate.

During test check of records of the AETC (Inspection) Patiala, it was noticed in March 2006 that while finalising between May and June 2004 the assessments for the years from 1995-96 to 2000-01 of a dealer engaged in the manufacture and sale of sugar and enjoying exemption from payment of sales tax under the PGST(D&E) Rules, the assessing authority allowed exemption from payment of sales tax for the sale of molasses and bagasse valued at Rs. 13.26 crore. As molasses and bagasse were not included in the eligibility certificate, exemption from payment of tax under PGST(D&E) Rules was not admissible and the dealer was liable to pay tax of Rs. 1.25 crore in cash on the sales of by product.

After this was pointed out, the assessing authority intimated in March 2006 that action would be taken as per rules.

The matter was brought to the notice of department and referred to Government in August 2006; replies are awaited (August 2007).

2.12 Incorrect grant of exemption from tax

To avail the benefit of sales tax concessions/exemptions, a unit has to obtain eligibility certificate (EC) from the General Manager of the District Industries Centre (DIC) specifying the category of unit, goods to be manufactured, investment in fixed capital assets, quantum of benefit and period of exemption/concession. Based on the EC, the AETC of the concerned district issues exemption/deferment certificate. Under the PGST (D&E) Rules, units, which came into production for the first time on or after 1 April 1996 and not

included in the negative list, are eligible for exemption from payment of sales tax. Industrial units of Ferozpur engaged in the business of solvent extraction of oil (expeller) fall in the negative list (sr. no. 3) appended in the D&E Rules.

During test check of assessment records of AETC Ferozpur (Ward-2), it was noticed in February 2006 that while finalising in November 2004 the assessment for the year 2003-04 of a dealer engaged in the business of solvent extraction of oil (expeller) and enjoying benefit of exemption from payment of tax, the assessing authority allowed exemption of Rs 2.84 lakh to the industrial unit. The unit was manufacturing goods not eligible for sales tax exemption, being an item included in negative list of the D&E Rules. Thus, the unit availed incorrect exemption between December 1998 and March 2004 from payment of sales tax of Rs 23.31 lakh.

The matter was brought to the notice of department and referred to Government in September 2006; replies are awaited (August 2007).

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.

During test check of assessment records of nine* AETCs, it was noticed between December 2004 and May 2006 that while finalising between August 2003 and October 2005 the assessment for the years 1995-96, 1996-97, 2000-01 to 2003-04 of 13 dealers engaged in the business of pipe fittings, plastic moulders, rubber goods, adhesive, plastic dana (granules), sugarcane, ADV** tyres & tubes, diesel engine and its parts, sanitary fittings, soft drinks, diamond and stone, fitness products and PVC pipes, the assessing authorities levied tax at incorrect rates which resulted in under assessment of tax of Rs. 1.58 crore as per details 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	Jalandhar II (2)	2002-03 July 2004	Pipe fittings	<u>4</u> 2.2	83.96	<u>3.36</u> 1.85	1.51
		2002-03 December 2004	Plastic moulders	<u>8.8</u> 4.4	30.74	<u>2.71</u> 1.35	1.36
		2003-04 February 2005	Plastic moulders	<u>8.8</u> 4.4	45.41	<u>4.00</u> 2.00	2.00

* Amritsar-I, Faridkot, Jalandhar-I, Jalandhar- II (two dealers), Ludhiana-II, Patiala (four dealers), Inspection Patiala, Ropar (Mohali) and Sangrur.

** Animal driven vehicles.

2	Amritsar I (1)	<u>2002-03</u> March 2005	Rubber goods and adhesive	<u>13.2</u> 4.4	18.06	<u>2.38</u> 0.79	1.59
3	Patiala (4)	<u>2003-04</u> February 2005	Plastic dana	<u>8</u> 4	37.54	<u>3.01</u> 1.50	1.51
		<u>2000-01</u> June 2004	Sugarcane	<u>8</u> 2	794.95	<u>63.60</u> 15.90	47.70
		<u>2002-03</u> April 2004	ADV tyres and tubes	<u>8.8</u> nil	18.41	<u>1.62</u> nil	1.62
		<u>1996-97</u> August 2004	Diesel engine and its parts	<u>8.8</u> 2.2	33.57	<u>2.95</u> 0.74	2.21
4	Ropar (1)	<u>1995-96</u> January 2004	Sanitary fittings	<u>13.2</u> 8.8	23.97	<u>3.16</u> 2.11	1.05
5.	Faridkot (1)	<u>2003-04</u> November 2004	Cold drinks	<u>22</u> 8	8.23	<u>1.81</u> 0.67	1.14
6.	Jalandhar I (1)	<u>2002-03</u> August 2003	Diamond and stone	<u>8.8</u> 1.1	193.22	<u>17.00</u> 2.13	14.87
7.	Inspection Patiala (1)	<u>2000-01</u> May 2004	Sugarcane	<u>8</u> 2	1,151.12	<u>92.09</u> 23.02	75.98 *
8.	Ludhiana II (1)	<u>2001-02</u> March 2005	Fitness products	<u>8</u> 4 <u>8.8</u> 4	56.24 (upto 6.11.01) 57.57 (sale from 7.11.01 to 31.3.02)	<u>9.56</u> 4.80	4.76
9.	Sangrur (1)	<u>2001-02</u> October 2005	PVC pipe	<u>8</u> 4.4	28.32	<u>2.27</u> 1.25	1.02
Total					2,581.31		158.3 2

After this was pointed out, AETC Jalandhar II and Sangrur intimated between October and December 2006 that an additional demand of Rs. 4.68** lakh had been raised and adjusted against exemption admissible to the unit while other AETCs stated that replies would be furnished after verification of records.

The matter was brought to the notice of department and referred to Government between July and September 2006; replies are awaited (August 2007).

2.14 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 lower rate as applicable to the sale or purchase of such goods in the

* This includes penalty of Rs. 6.91 lakh.

** Jalandhar II Rs. 3.36 lakh and Sangrur Rs. 1.32 lakh.

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 rate of 10 *per cent* or at the rate applicable to the sale of such goods inside the State whichever is higher. Production of C forms is mandatory with effect from 11 May 2002.

During test check of assessment records of 11* AETCs, it was noticed between January and October 2006 that while finalising between May 2004 and March 2006, assessment for the years 2002-03 to 2004-05 of 23** dealers, interstate sale of goods valued at Rs 35.67 crore were incorrectly assessed at concessional rate of tax without production of prescribed declarations in 'C' form which resulted in short levy of tax of Rs. 1.76 crore. A few illustrative cases are given 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.	Fatehgarh Sahib (1)	2004-05 March 2006	Iron and steel	308.62	$\frac{8}{2}$	$\frac{24.69}{6.17}$	18.52
2.	Patiala (1)	2002-03 August 2005	Cotton yarn	1,825.52 (sale from 1.7.02 to 31.3.03)	$\frac{8}{4}$	$\frac{146.04}{73.02}$	73.02
3.	Jalandhar II (1)	2003-04 May 2005	Leather goods	509.71	$\frac{10}{4}$	$\frac{50.97}{20.39}$	30.58
4.	Ludhiana I (1)	2002-03 August 2005 2003-04 September 2005	Tractor parts -do-	68.17 (sale from 11.5.02 to 31.3.03) 75.64	$\frac{10}{4}$ $\frac{10}{4}$	$\frac{6.82}{2.73}$ $\frac{7.56}{3.03}$	4.09 4.53
5.	Moga (1)	2003-04 November 2004	Wood saw	63.17	$\frac{10}{2}$	$\frac{6.32}{1.26}$	5.06

After this was pointed out, AETC Jalandhar II and Patiala intimated between October and December 2006 that the cases have been reassessed and additional demand of Rs. 1.04 crore raised and adjusted against the exemption limit. Replies from other AETC's were awaited (August 2007).

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

** 16 dealers were enjoying the benefit of exemption from payment of sales tax under the PGST (D&E) Rules.

The matter was brought to the notice of department and referred to Government between August and November 2006; replies are awaited (August 2007).

2.15 Non levy of purchase tax on consignment sale

Under the PGST Act, if a dealer purchases taxable goods from any source without payment of tax and sends them outside the State otherwise than by way of sale, he is liable to pay tax on the purchase of such goods.

During test check of assessment records of the AETC Ropar (ward-2), it was noticed in December 2003 that while finalising the assessment of a dealer for the years 1990-91 to 1992-93 between September 2002 and January 2003, a deduction of Rs. 11.29 crore was allowed on account of consignment of goods outside the State of Punjab against 'F' forms. As the dealer had purchased the goods without payment of tax on the strength of registration certificate and transferred the goods outside the State on consignment sale, he was liable to pay tax on the consignment sale under the provisions of the Act *ibid*. Incorrect allowance of deduction resulted in non levy of purchase tax of Rs. 45.17 lakh.

After this was pointed out in December 2003, the department intimated in July 2006 that the cases were reassessed and additional demand of Rs. 45.17 lakh had been raised. However, latest position of the recovery is still awaited (August 2007).

The matter was referred to Government in September 2006; replies are awaited (August 2007).