

Chapter-2: Taxes on Sales, Trade etc.

2.1 Results of audit

Test check of sales tax records, conducted in audit during the year 2000-2001, revealed under assessments, etc. of tax amounting to Rs.2413.64 lakh in 610 cases, which broadly fall under the following categories:

(In lakh of rupees)			
Sr.No.	Category	Number of cases	Amount
1	Non/short levy of sales tax	358	790.36
2	Incorrect grant of exemption from tax	34	268.84
3	Non/short levy of penalty	53	84.92
4	Non/short levy of purchase tax	10	34.49
5	Other Irregularities	155	1235.03
Total		610	2413.64

During the course of the year 2000-2001, the Excise and Taxation department accepted under-assessments etc. of Rs.15.38 lakh in 75 cases pointed out in earlier years. Of these cases, the department recovered Rs.13.94 lakh in 71 cases.

The results of a review on “Disposal of Appeal and Remand Cases” and a few illustrative cases involving financial effect of Rs.5.52 crore are given in the following paragraphs.

2.2 “Disposal of Appeal and Remand Cases”

2.2.1 Introduction

The Punjab General Sales Tax Act, 1948 (State Act) and the Central Sales Tax Act, 1956 (Central Act) and the Rules framed thereunder govern the levy, assessment and collection of sales tax. An assessee aggrieved with an order passed under the Acts or the Rules can file an appeal to the (departmental) appellate authorities within sixty days from the date of communication of the order, appealed against, or such longer period as the appellate authority may prescribe. Further, second appeal lies with the Punjab Sales Tax Tribunal constituted under the State Act. After the Tribunal’s decision, on an application made by the dealer or the Commissioner, reference on any question of law arising out of such order can be made by the Tribunal to High Court. Under the State/Central Acts, no appeal shall be entertained by an appellate authority unless it is accompanied by proof of payment of tax. However, a departmental appellate authority may entertain an appeal without payment of tax or part payment of tax if he is satisfied that the dealer is unable to pay the tax assessed.

An appellate authority, on an appeal against assessment made under the Acts, may pass such orders as it deems to be just and proper. The appellate authority may allow relief sought or remand the case back to the assessing authority for re-assessment if, in its view, either certain facts were not considered by the assessing authority or the dealer was not given reasonable opportunity to present his case.

2.2.2 Scope of Audit

There are four* appellate authorities (one each in the four sales tax divisions). The sales tax division at Faridkot was created in April 1996 but the appellate authority, Ferozpur is holding additional charge since its creation and no separate records of appeal or remand cases have been kept in respect of Faridkot division.

Test check of records confined to the appeals/remands in sales tax cases in the offices of Deputy Excise and Taxation Commissioners (Appeals) Ferozpur and Faridkot, Jalandhar and Patiala and Sales Tax District Offices (A.E.T.C.) Amritsar-I, Bathinda, Jalandhar-I, Ludhiana-I and Patiala for the years 1995-96 to 1999-2000 was conducted between April and September 2000 with a view to ascertaining the position regarding the pendency of appeal/remand cases at various levels and its impact on revenue collection.

2.2.3 Organisational set up

The Deputy Excise and Taxation Commissioners (Appeals), Ferozpur and Faridkot, Jalandhar and Patiala exercise the powers of appellate authorities

* **Ferozpur and Faridkot with Headquarters at Bathinda, Jalandhar & Patiala.**

within their divisional jurisdiction, if the original order is passed by the assessing authority. If the original order is passed by the Deputy Excise and Taxation Commissioner, the appeal shall lie to the Commissioner and if the original order is passed by the Commissioner, the appeal shall lie to the State Sales Tax Tribunal. The second appeal, against these orders lies before the State Sales Tax Tribunal constituted under the Act by the State Government.

2.2.4 Highlights

938 appeal cases involving tax revenue of Rs.69.90 crore were pending hearing with various appellate authorities in the State as on 31 March 2000.

{Paragraph 2.2.5(a)}

182 applications involving tax revenue of Rs.11.91 crore were pending disposal with appellate authorities as on 31 March 2000 with no reasons to explain for non-finalisation.

{Paragraph 2.2.5(c)}

146 cases exceeding Rs.1 lakh involving tax revenue of Rs.40.90 crore were disposed of late although these cases required to be accorded priority in disposal.

(Paragraph 2.2.6)

106 cases involving tax revenue of Rs. 40.93 crore were pending re-assessment. 76 cases were more than one year old and 13 cases more than five years old as on 31 March 2000.

{Paragraph 2.2.7(a)}

61 cases involving tax revenue of Rs.6.27 crore were not re-assessed by the appellate authorities within the stipulated period of three months. 6 cases were more than five years old.

{Paragraph 2.2.7(b)}

Re-assessments in 81 cases involving tax demand of Rs.5.84 crore were delayed due to late communication of orders of the appellate authorities to the assessing authorities with delay from 3 to 33 months.

{Paragraph 2.2.7(c)}

2.2.5 Appeals pending with appellate authorities

The position of receipt and disposal of appeal cases as furnished by the department was as under:

(a) *Arrears pending disposal with first appellate authorities (D.E.T.Cs)*

(In crore of rupees)

Year	Appeals pending at the beginning of the year		Appeals added during the year		Total		Appeals disposed of during the year		Appeals Pending at the close of the year		Percentage of pending cases as compared to total cases (Column 6 to 4)
	Number of cases	Amount	Number of cases	Amount	Number of cases	Amount	Number of cases	Amount	Number of cases	Amount	
(1)	(2)		(3)		(4)		(5)		(6)		(7)
1995-96	987	65.85	1253	72.44	2240	138.29	1223	75.77	1017	62.52	45
1996-97	1017	62.52	1273	51.23	2290	113.75	1217	67.99	1073	45.76	47
1997-98	1073	45.76	1815	122.31	2888	168.07	1964	118.86	924	49.21	32
1998-99	924	49.21	1677	103.36	2601	152.57	1630	90.47	971	62.10	37
1999-2000	971	62.10	1137	68.94	2108	131.04	1170	61.14	938	69.90	44

It would be seen from the above that percentage of appeals pending disposal ranged between 32 and 47 during the period 1995-96 to 1999-2000. There has been a continuous upward trend in arrears locked in appeals since 1997-98.

(b) *Arrears pending disposal with second appellate authority (Punjab Sales Tax Tribunal)*

The year-wise position of appeal cases pending with the second appellate authority as at 31 March of each year from 1995-96 to 1999-2000 as made available by the Tribunal was as under:

Year	Cases pending at the beginning of the year	Cases added during the year	Total no. of cases	Cases disposed of during the year	Cases pending at the close of the year	Percentage of arrears (column 6 to 4)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1995-96	649	689	1338	454	884	66
1996-97	884	400	1284	672	612	48
1997-98	612	803	1415	628	787	56
1998-99	787	983	1770	968	802	45
1999-2000	802	636	1438	1044	394	27

Amount of tax involved in appeal cases was not found recorded in the Tribunal's record. Percentage of arrears of appeal cases in Tribunals ranged between 27 and 66.

(c) *Non-disposal of applications for entertainment of appeals*

A perusal of the monthly returns ending March 2000 revealed that 78[♦] applications involving tax revenue of Rs.11.91 crore were pending as on 31 March 2000 for entertainment with the three appellate authorities. Further

♦ Ferozepur and Faridkot 17(Rs.7.52 crore) Jalandhar 61 (Rs.4.39 crore).

scrutiny revealed that out of 17 applications pending with Ferozepur and Faridkot appellate authority, 9 applications (Rs.4.32 crore) were pending since January 1998 and 4 applications (Rs.2.48 crore) pending since March 1998. Besides, 104 applications were also pending decision for entertainment with Patiala appellate authority. No reasons for non-finalisation of applications were given by the department.

2.2.6 Inordinate delay in disposal of priority appeal cases

No time limit has been fixed for the disposal of appeal cases by the appellate authorities under the State Act. However, as per the departmental instructions issued in August 1988, old cases of appeals particularly involving heavy demands* were required to be accorded priority in their disposal by the Deputy Excise and Taxation Commissioners (Appeals) to safeguard the revenue.

A scrutiny of 490 cases of heavy demands revealed that the appellate authority had taken 4 to 70 months to dispose of 146 cases** (each exceeding Rs. 1 lakh with total tax effect Rs. 40.90 crore), while 57 cases*** having tax effect of Rs.30.10 crore (each exceeding Rs.1 lakh) were pending disposal by the appellate authorities as on 31 March 2000 with delay ranging from 5 to 137 months.

Age wise analysis is given as under:-

(In crore of rupees)

Age (with reference to year of institution)	Number of appeal cases disposed of	Amount	No. of cases pending as on March 2000	Amount
Above 5 years	2	0.94	6	0.20
Above 3 years but less than 5 years	6	0.73	10	3.76
Above 1 year but less than 3 years	74	15.78	39	25.77
Less than 1 year	64	23.45	2	0.37
Total	146	40.90	57	30.10

2.2.7 Remand Cases

In the State Act, no time limit has been laid down for completing re-assessment of remanded cases. However, the department issued instructions in January 1979 that assessing authorities should complete re-assessment of remanded cases within 3 months of the receipt of appellate orders. The Public Accounts Committee in its 59th report (paragraph 2.4 of Audit Report 1977-78), presented in Punjab Vidhan Sabha on 31 March 1983 had also desired to fix time limit for the disposal of remand cases.

* Rs.0.20 lakh and above.

** Ferozepur and Faridkot 40, Jalandhar 85 and Patiala 21

*** Ferozepur and Faridkot 8, Jalandhar 41 and Patiala 8

(a) Pendency of Remand Cases

It was noticed in audit that re-assessment of 106 cases* involving tax revenue of Rs.40.93 crore (above Rs.one lakh), remanded by three appellate authorities during the period 1989-90 to 1999-2000 were pending for re-assessment with concerned assessing authorities at the end of March 2000 as detailed below:-

(In crore of rupees)

Age (excluding three months)	Name of the appellate authorities							
	Patiala		Jalandhar		Ferozepur & Faridkot		Total	
	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
Above 5 years	6	0.52	5	0.03	2	-	13	0.55
Above 3 years but less than 5 years	1	0.03	3	0.02	-	-	4	0.05
Above 1 year but less than 3 years	15	38.45	48	1.42	9	0.20	72	40.06
Less than 1 year	5	0.12	11	0.15	1	-	17	0.27
Total	27	39.12	67	1.62	12	0.20	106	40.93

Inaction of the assessing authority to complete re-assessments within three months of remand resulted in blockade of revenue of Rs.40.93 crore.

(b) Delay in re-assessment of remand cases

An analysis of 61 cases** involving tax revenue of Rs.6.27 crore remanded between January 1993 and May 1999, were re-assessed after long delay as detailed below:-

(Amount in crore of rupees)

Period of delay	Number of remand cases	Revenue involved
Above 5 years	6	0.02
Above 3 years but less than 5 years	6	0.19
Above 1 year but less than 3 years	39	3.86
less than 1 year	10	2.20
Total	61	6.27

* Amritsar-I: 23, Bathinda: 12, Jalandhar-I: 42, Ludhiana-I: 16, Patiala: 11 and others: 2

** Amritsar-1:13, Bathinda:1, Jalandhar-1:19, Ludhiana-1:12, Patiala:6 and others:10

2.3 Incorrect allowance of deduction

Under the Punjab General Sales Tax Act, 1948 and Rules made thereunder, a registered dealer can claim deduction on account of sales made by him to another registered dealer if the purchasing dealer furnishes a declaration in the prescribed form (ST XXII) issued by the department 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 selling dealer is allowed deduction from his turnover on account of such sale on the basis of declaration given by the purchasing dealer. The dealer furnishing incorrect or false declaration is liable to pay penalty not exceeding twice the amount of tax assessed but not less than fifty per cent (25 per cent upto August 1993) of the amount of tax.

During the course of audit of records, it was noticed during February and March 2000 that 13 dealers claimed and were allowed (between October 1997 and February 1999) without required cross verification, deduction of Rs.604.96 lakh on account of sales made to various dealers against declaration forms (ST XXII) which were either issued by non-existing dealers or by dealers to whom these forms were not issued by the department.

The incorrect allowance of deduction resulted in short levy of tax of Rs.32.27 lakh besides minimum penalty of Rs.8.58 lakh leviable under the Act as detailed below:-

(In lakh of rupees)					
Sr No.	Name of District (No. of dealers)	Assessment year/ (month/year of assessment)	Nature of objection	Incorrect deduction from Turnover	Tax short levied/penalty leviable
1	Patiala (1)	<u>1991-92</u> (October 1998) and <u>1992-93</u> (November 1998)	Allowance of deduction against bogus declarations (ST XXII) not issued to the purchasing dealers by the department	175.43	<u>15.44</u> 3.86
2	Faridkot (1)	<u>1994-95</u> (April 1998)	Allowance of deduction against bogus declarations (ST XXII) not issued to the purchasing dealers by the department	13.17	<u>1.16</u> 0.58
3	Ludhiana-I (2)	<u>1988-89</u> (March 1998) and <u>1990-91</u> (February 1998)	Allowance of deduction against bogus declarations (ST XXII) not issued to the purchasing dealers by the department	45.51	<u>2.06</u> 0.51
4	Ludhiana-I (1)	1990-91, 1992-93 to <u>1993-94</u> (between February & June 1998)	Allowance of deduction against bogus declarations (ST XXII) not issued to the purchasing dealers by the department	116.04	<u>2.55</u> 0.73

5	Jalandhar-II (1)	1992-93 (May 1998) 1993-94 (June 1998)	Allowance of deduction against bogus declarations (ST XXII) not issued to the purchasing dealers by the department	15.66	<u>1.38</u> 0.34
6.	Ludhiana-I (Insp) (1)	1991-92 to 1994-95 (between October 1997 and February 1999)	Allowance of deduction against bogus declarations (ST XXII) not issued to the purchasing dealers by the department	196.67	<u>7.87</u> 1.98
7	Fatehgarh Sahib Ludhiana-II Ludhiana-III (6)	1987-88, 1991-92 to 1994-95 (between April 1998 and January 1999)	Sales made to bogus/non-existing dealers and allowance of deduction against bogus declarations not issued to the purchasing dealers by the department	42.48	<u>1.81</u> 0.58
	Total			604.96	<u>32.27</u> 8.58

On this being pointed out in audit (between February and March 2000) the assessing authority stated (March 2001) that one case (Rs.15.44 lakh) has already been re-opened. Further progress of the case and final reply in the remaining cases was awaited (July 2001).

The above matter was referred to the department and Government in August and November 2000. No final reply was received from the concerned quarters. The matter was followed up with reminders to Financial Commissioner (Taxation) and Secretary to Government Punjab Excise and Taxation department in March, April and June 2001. However, inspite of such efforts, no reply was received from Government (July 2001).

2.4 Application of incorrect rate of tax

(a) Under the provisions of State Act, tax on the sale of rice bran oil, flounges, acid slurry and electric resistance welded (ERW) pipes is leviable at the rate of 8 *per cent* (being unspecified items) and on the sale of batteries and its parts and carpets at the rate of 12 *per cent*. Additional tax at the rate of 10 *per cent* of the tax assessed is also leviable.

During the course of audit of the records of five Assistant Excise and Taxation Commissioners, it was noticed (between January 1999 and December 2000) that while finalising (between October 1996 and November 2000) the assessments for the years 1992-93 to 1995-96, 1997-98 and 1998-99 of six dealers engaged in the business of rice bran oil, flounges, acid slurry, electric resistance welded (ERW) pipes, manufacturing of batteries and its parts and carpets and enjoying the benefit of the exemption from payment of sale tax under the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991, the assessing authority levied the tax at incorrect rate which resulted in under assessment of tax of Rs.27.56 lakh as detailed below:-

(In lakh of rupees)

Sr. No	Name of District (No. of dealers)	Assessment year/ (month/year of assessment)	Name of item	Tax levied/ rate of tax	Tax leviable/ rate of tax	Tax short levied
1	Amritsar-II (ward-10-A) (1)	<u>1997-98</u> (November 1998)	Acid Slurry	<u>8.53</u> 6.6	<u>11.38</u> 8.8	2.85
2	Faridkot-I (ward-3) (1)	<u>1998-99</u> (July 1999)	ERW pipe	<u>2.33</u> 4	<u>5.34</u> 8.8	3.01
3	Jalandhar-II(ward-8) (1)	<u>1994-95</u> (October 1996) <u>1995-96</u> (May 1997)	Batteries & Parts -do-	<u>2.55</u> 8.8 <u>2.54</u> 8.8	<u>3.82</u> 13.2 <u>3.81</u> 13.2	1.27 1.27
4	Ludhiana-I(ward-5) (1)	<u>1994-95</u> (January 1998)	Flounges	<u>6.27</u> 4	<u>13.80</u> 8.8	7.53
5	Patiala (ward-6) (1)	<u>1997-98</u> (February 1999) <u>1998-99</u> (November 1999)	Rice bran oil -do-	<u>1.70</u> 4.4 <u>9.12</u> 4.4	<u>3.40</u> 8.8 <u>18.24</u> 8.8	1.70 9.12
6	Patiala (ward-8) Rajpura (1)	<u>1992-93/1993-94 to 1995-96</u> (between November 1997 and February 1998)	Carpets	<u>1.63</u> 8.8	<u>2.44</u> 13.2	0.81
	Total			34.67	62.23	27.56

The department in the case of Jalandhar-II, Ludhiana-I and Patiala districts stated (between May and July 1999) that the cases have been re-assessed by creating additional demand of Rs.10.89 lakh. The assessing authority in the case of Amritsar-II stated (February 2000) that the matter was being examined.

The above matter was referred to the department and Government (between April 1999 and February 2000). The Government in the case of Jalandhar-II district endorsed the reply of the department. The matter was followed up with reminders to Financial Commissioner (Taxation) and Secretary to Government Punjab Excise and Taxation department in March, April and June 2001. However, inspite of such efforts, no reply was received in the remaining cases from the Government.

(b) As per Punjab General Sales Tax (Deferment and Exemption) Rules, 1991, units which have been granted exemption from payment of tax, their assessment shall be made in accordance with the provisions of the Punjab General Sales Tax Act, 1948 and Rules made thereunder. Further, under the Central Sales Tax Act, 1956, tax on inter-State sale of goods not supported by prescribed declarations (form 'C') in the case of declared goods, shall be calculated at twice the rate applicable to sale of such goods and in respect of other goods, at 10 per cent or at the rate applicable to sale of such goods,

within the State whichever is higher. It has been judicially held* that in lieu of 'C' form; the documentary proof (name and address of purchaser in the bill or cash memo etc.) in support of inter-State sales is obligatory.

During test check of assessment records of four Assistant Excise and Taxation Commissioners, it was noticed (between January 1999 and December 2000) that while finalising (between November 1997 and July 1999) the assessments for the years 1992-93 to 1996-97 and 1998-99 of four dealers engaged in the manufacturing of ERW pipes, P.V.C pipe and craft paper/grey board and carpets and enjoying the benefit of exemption from payment of sales tax under Punjab General Sales Tax (Deferment and Exemption) Rules, 1991, tax on inter-State sale of goods was incorrectly levied as the sales were neither supported by the requisite declaration nor with other documentary proof. Application of incorrect rate of tax resulted in short levy of tax of Rs.33.29 lakh as detailed below:-

(In lakh of rupees)							
Sr. No	Name of District (No. of dealers)	Assessment year/(month/year of assessment)	Name of item	Inter-State sale	Tax levied/ at the rate	Tax leviable / at the rate	Tax short levied
1	Faridkot-I (ward-3) (1)	1998-99 (July 1999)	ERW pipe	301.15	$\frac{6.48}{2}$	$\frac{30.11}{10}$	23.63
2	Jalandhar-II(ward-9) (1)	1996-97 (October 1998)	PVC rigid pipe	50.90	$\frac{0.51}{1}$	$\frac{2.04}{4}$	1.53
3	Ludhiana-III(ward-23) (1)	1998-99 (June 1999)	Craft paper & grey board	68.14	$\frac{0.75}{1}$	$\frac{6.81}{10}$	6.06
4	Patiala (ward-8) Rajpura (1)	1992-93 (November 1997)	Carpets	18.78	$\frac{1.88}{10}$	$\frac{2.48}{13.2}$	0.60
		1993-94 to 95-96 (February 1998)	-do-	45.80	$\frac{4.58}{10}$	$\frac{6.05}{13.2}$	1.47
		Total			14.20	47.49	33.29

On this being pointed out, the department in the case of Jalandhar-II and Patiala district stated (June and November 1999) that the cases have been re-assessed by creating additional demand of Rs.3.60 lakh and adjusted against the exemption admissible to the unit. The department in the case of Ludhiana-III district stated that 'C' form were not required in view of judgement of Punjab and Haryana High Court in case of M/s Maurya Timber. The reply was not tenable in view of the judicial pronouncement of the Supreme Court.

The above matter was referred to Government in October 1999 and February 2001. The matter was followed up with reminders issued to Financial Commissioner (Taxation) and Secretary to Government Punjab Excise and Taxation department in March and June 2001. However, inspite of such efforts, no reply was received from the Government (July 2001).

* **Shri Digvijay Cement Company Ltd. and Others V/s State of Rajasthan and others (STI-2000-SC).**

2.5 Non levy of tax on sale of import replenishment licence

Import replenishment (REP) licence, exim scrips and exim certificates which are granted by Chief Controller of Imports and Exports in recognition of export of certain products can be transferred by way of sale without endorsement by the licencing authority. It has been judicially held* that REP Licences/Exim scrips are goods and the premium or price received by the holders by transfer thereof to another person is liable to sales tax. Being an unspecified item, tax on sale value of REP licence is leviable at the rate of 8.8 per cent (including additional tax).

During the course of audit of the five** Assistant Excise and Taxation Commissioners, it was noticed (between February 1997 and December 2000) that while finalising assessments between May 1995 and July 1999 of five dealers for the years 1987-88 to 1994-95 and 1996-97, the assessing authorities had not included receipts of Rs.103.11 lakh from sales of import replenishment licences in the gross turnover of the dealers which resulted in non-levy of tax of Rs.8.93 lakh.

On this being pointed out (between February 1997 and December 2000), the department stated (November 2000) that in case of Jalandhar-II (ward-12), the cases for the years 1992-93 and 1993-94 had been re-assessed by creating additional demand of Rs.0.31 lakh. Department in case of Amritsar-I district (assessment years 1991-92 and 1992-93) and Jalandhar-II district (assessment years 1987-88 to 1991-92) stated (August and November 2000) that tax was not leviable as sales were made out side the State of Punjab. Reply was not tenable as it was not supported by any documentary evidence. Department in the case of Ludhiana-II district furnished no reply.

The above matter was referred to Government (between April 1997 and February 2001). No final reply was received from the concerned quarters. The matter was followed up with reminders to Financial Commissioner (Taxation) and Secretary to Government Punjab Excise and Taxation department in March, April and June 2001. However, inspite of such efforts, no reply was received from the Government (July 2001).

2.6 Undue benefit allowed to dealers

Under the State Act, 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 there to, State Government vide notification (11 September 1997) exempted the sale of 'dhoop and agarbaties' and 'pen and ball pens' from levy

* M/s Vikas Corporation V/s commissioner of commercial Taxes (STI-1996-SC-100).

** Amritsar-I (ward-9), Amritsar-II (AETC), Jalandhar-II (ward-12), Ludhiana-I (ward-3) and Ludhiana-III (ward-23).

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

of sales tax. The notification was subsequently, made applicable from 1 April 1996 vide another notification (29 October 1997).

Similarly, sales tax on tractor parts, stainless steel utensils and bullion was reduced vide notification (9 July 1997) from 8, 10, 2 per cent to 2, 4, 0.5 per cent respectively and made effective from 1 April 1996.

During test check of records of sixteen Assistant Excise and Taxation Commissioners, it was noticed (between May 1999 and October 2000) that while finalising assessments (between March 1998 and March 2000) for the years 1996-97 and 1997-98 in respect of forty seven dealers engaged in the business of dhoop and agarbaties, pen and ball pens, tractor parts, stainless steel utensils and bullion, the assessing authorities exempted the sale of dhoop and agarbaties, pen and ball pens amounting to Rs.388.56 lakh and assessed the sale of tractor parts, stainless steel utensils and bullion at reduced rates amounting to Rs.381.28 lakh under the notification of October 1997 and July 1997 respectively. As the goods were taxable at the rate applicable at the time of sale actually made, allowance of exemption/reduction from retrospective dates, resulted in undue benefits amounting to Rs.58.04 lakh to the dealers. Some illustrative cases are mentioned as under:

(In lakh of rupees)

Sr. No	Name of district/ Number of dealers	Assessment year/ (month and year of assessment)	Amount of sale	Tax not levied/ short levied
1	Amritsar-I (ward-6) Bhatinda (ward-1) Jalandhar-II (ward-4) Patiala (ward-9 Rajpura) (6 dealers)	<u>1996-97</u> (August 1998) <u>1997-98</u> (August 1998) <u>1997-98</u> (July 1999) <u>1996-97 to 1997-98</u> (November 1998 and March 1999) <u>1997-98</u> (August & October 1998)	123.61	10.94
2	Ferozepur (AETC) Ludhiana-II (ward-15) Ludhiana (Inspection)-II Moga (AETC) Patiala (ward-9 Rajpura) Sangrur (ward-3 Sunam) (ward-2 Dhuri) (9 dealers)	<u>1996-97</u> (May 1998 & January 1999) <u>1996-97</u> (April 1998) <u>1996-97</u> (March 1998) <u>1997-98</u> (July & December 1998) <u>1997-98</u> (November 1998) <u>1996-97 to 1997-98</u> (February & March 1999)	82.83	5.47

3	Amritsar-I (ward-3) Gurdaspur (ward-6 Batala) (6 dealers)	<u>1996-97</u> (April, October & November 1999) <u>1997-98</u> (April, July , August, October & November 1999) <u>1996-97 to 1997-98</u> (September 1999)	109.50	7.23
4	Bhatinda (ward-7) Ferozepur (ward-5 Abohar) Gurdaspur (ward-6 Batala) Jalandhar-I (ward-4A) Mukatsar (ward-14/15 Malout) (10 dealers)	<u>1997-98</u> (June 1999) <u>1996-97</u> (May & October 1999) <u>1996-97</u> (August 1999 & March 2000) <u>1997-98</u> August 1999 <u>1996-97</u> (July, September and November 1999) <u>1997-98</u> (July & November 1999) <u>1997-98</u> (August & December 1999)	100.16	6.78
5	Amritsar-I (ward-8) Amritsar-II (ward-9) Ludhiana-III (ward-25) (4 dealers)	<u>1996-97</u> (January 1999) <u>1996-97</u> (March 1999) <u>1996-97</u> (April & November 1999) <u>1997-98</u> (November 1999 & March 2000)	67.59	6.04
6	Amritsar-II (ward-3) (1) dealer	<u>1996-97</u> (November 1998)	119.84	10.55

On this being pointed out (between May 1999 and October 2000), assessing authorities Bathinda, Ferozepur, Gurdaspur, Jalandhar-I, Ludhiana-I, Ludhiana-II (Insp.) and Sangrur (Sunam) (12 dealers) stated (between September 1999 and July 2000) that matter was under examination. The assessing authorities in the case of Amritsar-I, Faridkot, Ferozepur, Ludhiana-II, Ludhiana-III, Moga, Mukatsar and Patiala districts (11 dealers) and the department in the case of Amritsar-I, Amritsar-II, Bathinda and Jalandhar-II Districts (10 dealers) stated (between May 1999 and December 2000) that the assessment had been finalised in view of the notification referred to above. The reply is not tenable as the amount should have been recovered from the dealers concerned and credited to Government.

The above matter was referred to the department and Government (between October 1999 and January 2001). The Government in the case of Patiala ward-5 (2 dealers) endorsed (September 2000) the reply of the department. The matter was followed up with reminders to Financial Commissioner (Taxation) and Secretary to Government Punjab Excise and Taxation department in March, April and June 2001. However, inspite of such efforts, no reply in the remaining cases was received (July 2001).

2.7 Non levy of tax at first stage of sale

(a) Under the Punjab General Sales Tax Act, 1948 and Rules (Act & Rules) made thereunder, goods manufactured by units, which have been allowed benefits of deferment or exemption from payment of tax, are taxable at the first stage of sale in the State and are not entitled to claim deductions from their turnover on account of sale to other registered dealers against prescribed declarations (Form ST XXII).

During test check of records of Assistant Excise and Taxation Commissioners, Jalandhar-I, Fatehgarh Sahib and Amritsar-II districts, it was noticed (between January and May 2000) that while finalising (between July 1998 and July 1999) the assessments for the years 1994-95, 1996-97 and 1997-98 of four dealers engaged in the manufacture of rubber rolls, oxygen gas and wire, the assessing authorities allowed deduction of Rs.113.40 lakh from the gross turn over on account of sale of goods to other registered dealers in the State against prescribed declaration. As the dealers were manufacturers, enjoying the benefit of exemption and had sold the goods for the first time in the State, these were liable to be assessed for such sales. Incorrect allowance of deduction resulted in under-assessment of tax of Rs.9.98 lakh.

On this being pointed out (between January and May 2000) the assessing authorities rectified (between February and June 2000) the mistake by creating additional demand of Rs.9.98 lakh and adjusted against the exemption admissible to the units.

The above matter was referred to Government in August 2000. The matter was followed up with reminders to Financial Commissioner (Taxation) and Secretary to Government Punjab Excise and Taxation department in March and June 2001. However, inspite of such efforts, no reply was received (July 2001).

(b) Under the State Act and Rules made thereunder, tax is leviable at the first stage on the sale of sanitary goods, foam and its products.

During test check of records of three* Assistant Excise and Taxation Commissioners, Fatehgarh Sahib, Jalandhar-III and Ludhdiana-I it was noticed (between July 1999 and October 2000) that while finalising (between July 1998 and March 2000) assessments for the years 1993-94 and 1995-96 to 1998-99 of four dealers, the assessing authorities allowed deductions of Rs.47.19 lakh from the gross turnover on account of sale of sanitary goods,

* Fatehgarh Sahib (ward-1A), Jalandhar-II (ward-5) and Ludhiana-I (ward-4 and 13).

foam and its products made to registered dealers in the State against the prescribed declarations (Form ST XXII). Since the goods (sanitary goods, foam and its products) were taxable at the first stage of sale, the deductions allowed were not correct. Incorrect allowance of deductions resulted in non-levy of tax of Rs.6.23 lakh.

On this being pointed out (between July 1999 and October 2000), the assessing authority, Ludhiana-I stated (September 2000) that the dealer sold GI pipes/fittings, CI pipes/fittings and water tanks. Reply was not tenable as the dealer sold sanitary goods as per the list of sales to registered dealers appended with the returns filed by the assessee. The assessing authorities, Jalandhar-II and Fatehgarh Sahib stated (May and October 2000) that the matter was being looked into.

The above matter was referred to the department and Government in January 2001. No final reply was received from the concerned quarters. The matter was followed up with reminders to Financial Commissioner (Taxation) and Secretary to Government Punjab Excise and Taxation department in March and June 2001. However, inspite of such efforts, no reply was received (July 2001).

2.8 Incorrect computation of taxable turnover

(a) Under the State Act, taxable turnover means that part of gross turnover during any period which remains after deducting the amount of sales tax included in the gross turnover.

During the course of audit of records of five Assistant Excise and Taxation Commissioners*, it was noticed (between May 1997 and November 2000) that while finalising (between September 1996 and November 1999) assessments for the years 1994-95 to 1998-99 of eight dealers engaged in the business of extraction of oil, cotton, liquor ammonia gas, food products, vanaspati ghee, rubber, bura and tins and enjoying the benefit of exemption from the payment of sales tax under the Punjab Sales Tax (Deferment and Exemption) Rules, 1991, the assessing authorities assessed the tax treating the taxable turnover inclusive of sales tax which was not correct as the dealers neither charged nor collected any tax from purchasers, being exempted units. Thus, incorrect computation of taxable turnover resulted into short levy of tax of Rs.46.23 lakh.

On this being pointed out the assessing authority Sangrur (ward-3 Sunam) stated (February 1998) that the additional demand of Rs.2.62 lakh had been created and debited to the exemption admissible to the unit. The reply in the remaining cases was awaited (July 2001).

The above matter was referred to the department and Government between April 1999 and January 2001. No final reply was received from the concerned quarters. The matter was followed up with reminders to Financial

* Ferozepur (ward-4 Abohar), Gurdaspur (ward-10 Pathankot), Moga (ward-9), Patiala (ward-4) and Sangrur (Ward-3-Sunam).

Commissioner (Taxation) and Secretary to Government Punjab Excise and Taxation department in March, April and June 2001. However, inspite of such efforts, no reply was received (July 2001).

(b) Under the Central Act, tax on inter-State sale of “hides and skins” (declared goods), without prescribed declaration (form C) is leviable at 4 per cent.

Similarly, tax on inter-State sale of activated carbon is leviable at concessional rate of 4 per cent provided the sale is supported by prescribed declaration (form C).

During test check of records of Assistant Excise and Taxation Commissioners, Jalandhar-II (Ward-9) and Hoshiarpur districts, it was noticed that while finalising (April 1998 and March 1999) for the assessment years 1996-97 and 1997-98 of two dealers engaged in the business of leather and activated carbon and enjoying the benefit of exemption from the payment of sales tax under the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991, tax on the sale of hides & skins and activated carbon valued at Rs.264.92 lakh was assessed at Rs.1.68 lakh instead of Rs.10.59 lakh. Incorrect computation of tax resulted in short assessment of tax of Rs.8.92 lakh.

On being pointed out the department in case of Jalandhar-II district and the assessing authority in case of Hoshiarpur district stated (November 1999 and July 1999) that the cases have been re-assessed by creating additional demand of Rs.8.92 lakh and adjusted against the tax exemption admissible to the units.

The above matter was referred to Government in October and November 1999. No final reply was received from the concerned quarters. The matter was followed up with reminders to Financial Commissioner (Taxation) and Secretary to Government Punjab Excise and Taxation department in March and June 2001. However, inspite of such efforts, no reply was received (July 2001).

2.9 Incorrect grant of exemption from tax

(a) Under the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991, provide that the deferment and exemption from the liability to pay tax under the Act shall be available with regard to group of industries subject to maximum limit as per table given thereunder. The exemption is, however, not admissible to the units set-up in certain specified areas.

During the course of audit of records of Assistant Excise and Taxation Commissioner, Amritsar-II (ward-17), it was noticed (December 1999) that M/s The Ajnala Co-operative Sugar Mills Ltd. engaged in the business of manufacturing of sugar was allowed exemption from payment of tax under the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991, for the assessment years 1990-91 to 1994-95. The exemption from sales tax was not available as the unit was set up in an inadmissible area. Incorrect grant of exemption resulted in short levy of tax of Rs.222.52 lakh.

The above matter was referred to the department (September 2000). The department stated (November 2000) that the unit fell in 'D' category and it was entitled to exemption upto rupees six crore. Reply was not tenable as the unit was situated in an area where exemption was not admissible.

The matter was reported to Government (September 2000) and followed up with reminders to Financial Commissioner (Taxation) and Secretary to Government Punjab Excise and Taxation department in April and June 2001. However, inspite of such efforts, no reply was received (July 2001).

(b)(i) Under the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991, eligible industrial units which came into production for the first time on or after 1 April 1989/1 October 1992, are eligible for exemption upto a specified amount of tax during the prescribed time limit commencing from the date of production of goods provided the unit is located in specified growth area and is not included in negative list. Further, in case the dealer got his registration certificate cancelled before the expiry of exemption period, the tax so exempted was to be recovered in lump sum immediately.

During test check of assessment records of Assistant Excise and Taxation Commissioner, Ferozepur (Ward-6, Fazilka), it was noticed (September 2000) that while finalising (June and July 1999) assessments for the years 1993-94 to 1996-97 of a dealer engaged in crushing of oil seeds, the exemption on sale of oil and khal amounting to Rs.849.68 lakh was incorrectly allowed though crushing of oil seeds was included in the negative list. Moreover the dealer got his registration certificate cancelled on 30-9-1996 (before 2 August 2001 i.e. up to the period the exemption certificate was issued). Incorrect grant of exemption resulted in short levy of tax of Rs.22.71 lakh.

The above matter was referred to the department and Government (January 2000). The matter was followed up with reminders to Financial Commissioner (Taxation) and Secretary to Government Punjab Excise and Taxation department in April and June 2001. However, inspite of such efforts, no reply was received (July 2001).

(b)(ii) Under the Act, exemption is admissible to the unit for manufacturing and sale of products mentioned in the eligibility certificate issued by the department of industries.

During test check of records of the Assistant Excise and Taxation Commissioner, Amritsar-II, it was noticed (March 2000) that a dealer engaged in the business of manufacturing of vegetable ghee and enjoying the benefit of exemption from the payment of tax under the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991, was allowed exemption from the payment of sales tax for the sale of refined oil valuing Rs.406.80 lakh during the assessment years 1993-94 and 1994-95. As refined oil was not included in the eligibility certificate, exemption from payment of tax allowed for its sale was not correct. This resulted into short levy of tax amounting to Rs.35.80 lakh.

On this being pointed out (March 2000) the assessing authority stated (July 2000) that the exemption from sales tax was granted on the basis of eligibility certificate issued by the Industries department. Reply was not tenable as the refined oil was not mentioned in the eligibility certificate.

The above matter was referred to the department and Government in February 2001. The matter was followed up with reminders to Financial Commissioner (Taxation) and Secretary to Government Punjab Excise and Taxation department in April and June 2001. However, inspite of such efforts, no reply was received (July 2001).

(c) Under the Deferment and Exemption Rules, the assessment of an eligible unit should be completed by 31 December in respect of the assessment year immediately proceeding thereto. Further, the exemption certificate is liable to be cancelled, if the unit has discontinued its business at any time for a period exceeding six months or has closed its business during the period of exemption. The entire amount of tax exempted would become payable immediately in lump sum and the provisions relating to recovery of the tax, interest and imposition of penalty under the Act will also be applicable in such cases.

During the course of audit of records of the Assistant Excise and Taxation Commissioners, Bathinda and Sangrur, it was noticed (February and March 2000) that the two dealers having availed exemption of Rs.6.49 lakh during 1992-93 to 1994-95 closed their business in June and August 1997 before the expiry of exemption period in the year 2000 and 2001. Thus, the exemption of Rs.6.49 lakh already availed of by them became recoverable alongwith minimum penalty of Rs.0.65 lakh but the department failed to initiate any action to recover the same.

On this being pointed out (February and March 2000), the assessing authority Bathinda stated (February 2000) that the action in the matter would be taken, whereas the assessing authority Sangrur did not furnish any reply.

The above matter was referred to the department and Government in September and November 2000. The matter was followed up with reminders to Financial Commissioner (Taxation) and Secretary to Government Punjab Excise and Taxation department in April and June 2001. However, inspite of such efforts, no reply was received (July 2001).

2.10 Non levy of purchase tax

(a) Under the Punjab General Sales Tax Act, 1948, on purchase of all kinds of cotton (indigenous or imported) in its pre-manufactured stage, whether ginned or unginned, baled or pressed or otherwise but not including cotton waste, tax is leviable at the rate of 4 *per cent* at the stage of purchase by the last dealer in the state.

During the course of audit of the office of the Assistant Excise and Taxation Commissioner, Patiala, it was noticed (July 2000) that while finalising (November 1999) the assessment for the year 1998-99 of a dealer engaged in

the manufacturing and sale of cotton yarn and enjoying the benefit of exemption from payment of tax under the (Deferment & Exemption) Rules, 1991, tax on purchases of raw cotton valued at Rs.466.18 lakh used in the manufacture of cotton yarn was not levied although under the Act the dealer was the last purchasing dealer of such raw cotton in the State. The purchase tax not levied amounted to Rs.18.65 lakh.

On this being pointed out (July 2000) the department rectified (January 2001) the mistake by creating additional demand of Rs.18.65 lakh and adjusted against the total exemption admissible to the unit.

The above matter was referred to Government in November 2000. No final reply was received from the concerned quarters. The matter was followed up with reminders to Financial Commissioner (Taxation) and Secretary to Government Punjab Excise and Taxation department in March and June 2001. However, in spite of such efforts, no reply was received (July 2001).

(b) Under the Act, paddy husk is taxable at 4.4 *per cent* (including additional tax) with effect from 10 September 1993.

During the course of audit of the Assistant Excise and Taxation Commissioner, Amritsar-I it was noticed (June 1999) that while finalising (February 1999) the assessment of a dealer engaged in the processing of cloth, a tax free item for the year 1994-95, the assessing authority did not levy tax on the purchase value of raw material (paddy husk) valued at Rs.26.03 lakh used as fuel in the processing of cloth. This resulted in short levy of tax of Rs.1.15 lakh.

The department to whom the matter was referred in December 1999 stated (September 2000), that the case had been re-assessed by creating additional demand of Rs. 1.15 lakh.

The above matter was reported to Government in December 1999. The matter was followed up with reminders to Financial Commissioner (Taxation) and Secretary to Government Punjab Excise and Taxation department in April and June 2001. However, in spite of such efforts, no reply was received (July 2001).

(c) Under the Punjab General Sales Tax Act, 1948, paddy is liable to tax at the first purchase at the rate of four *per cent*. Further, failure to pay tax in accordance with the provisions of the Act, attracts penalty.

During test check of the records of Assistant Excise and Taxation Commissioner, Jalandhar-II, it was noticed (December 1999) that while finalising (December 1998) the assessment for the year 1994-95 of a dealer engaged in the business of selling of paddy, tax on the purchase of paddy valuing Rs.67.34 lakh, out of total purchase worth Rs.160.71 lakh, was not levied. This resulted in under assessment of tax of Rs.3.73 lakh. Besides, minimum penalty of Rs.0.37 lakh was also leviable.

The department to whom the matter was referred in February 2000 stated (November 2000) that the case had been taken up in suo-moto action.

The above matter was reported to Government in February 2000. The matter was followed up with reminders to Financial Commissioner (Taxation) and Secretary to Government Punjab Excise and Taxation department in April and June 2001. However, inspite of such efforts, no reply was received (July 2001).