

Chapter-2: Taxes on Sales, Trade etc

2.1. Results of Audit

Test-check of sales tax records, conducted in audit during the year 2001-2002, revealed under-assessments, etc. of tax amounting to Rs.67.17 crore in 581 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	358	8.77
2	Incorrect grant of exemption from tax	47	13.70
3	Non/short levy of penalty	9	0.05
4	Non/short levy of purchase tax	38	7.42
5	Other Irregularities	128	2.14
6	Review on Exemptions/ Concessions and Deferment in sales tax	1	35.09
	Total	581	67.17

During the year 2001-2002, the Excise and Taxation department accepted under-assessment of Rs.4.42 crore in 277 cases of which 258 cases of Rs.3.88 crore pertained to the previous years. Of these cases, the department recovered Rs.0.30 crore in 91 cases.

The results of a review on “Exemptions/Concessions and Deferment in sales tax” with monetary value of Rs.35.09 crore and a few illustrative cases involving financial effect of Rs.2.35 crore are given in the following paragraphs.

2.2. “Exemptions/Concessions and Deferment in Sales Tax”

2.2.1. Introduction

To promote industrial development and to attract fresh investment in industries in the State, the Government formulated sales tax incentive schemes for electronics and other industrial units from time to time. The industrial policy was, however, liberalised for new industrial units setup in the State on or after 1st October 1992 under the scheme ‘Package Scheme of Incentives 1992’. The State Government further formulated Industrial Policy, 1996, which, inter-alia, provides for the grant of various incentives for new industrial units that came into production or undertook expansion on or after 1st April 1996. The salient features of these schemes are as under:

Sr. No	Scheme	Quantum of sales tax concessions	Period	Special conditions for availing of the benefits
1	(a) Under Industrial Policy 1992 i) Units in ‘A’ category areas ii) Units in ‘B’ category areas	 300 percent of fixed capital investment 150 percent of fixed capital investment	 10 years from the date of commencement of commercial production 7 years from the date of commencement of commercial production	 (i) Unit came into production on or after 1 October 1992 (ii) Eligibility Certificate from Industry Department and Exemption certificate from Excise and Taxation Department is essential (iii) The unit must exist in specified growth area (iv) Benefit not extended to units mentioned in negative list appended to the scheme.
	(b) Under Industrial Policy, 1996 i) Units in ‘A’ category areas ii) Units in ‘B’ category areas	 300 percent of fixed capital investment 150 percent of fixed capital investment	 10 years from the date of commencement of commercial production 7 years from the date of commencement of commercial production	 (i) Unit came into production or undertaken expansion/modernisation on or after 1 April 1996 (ii) Unit that has taken effective steps before 1 April 1996 shall have the option to be covered under either package of incentive 1992 or 1996. The option in such cases is to be exercised by 30 September 1996. (iii) Eligibility certificate from Industry Department and Exemption certificate from Excise and Taxation Department is essential

				<p>(iv) Unit must exist in specified category of growth area</p> <p>(v) Benefit not extended to units mentioned in the negative lists appended to the scheme. Export oriented units set up for items mentioned in negative lists shall, however, be entitled to the incentives.</p> <p>(vi) Agro based Industry, as mentioned in Annexure-iv appended to the scheme, is also eligible for incentives</p>
2	Scheme for Electronic units			
	<p>Tax concessions/ deferment/exemptions for electronic units in Punjab under Industrial Policy 1996</p> <p>(i) Units coming up in the State after 24 June 1991.</p> <p>(ii) Units coming into production after 11 December 1986 but before 24 June 1991.</p> <p>(iii) Electronic units going for expansion/ modernisation/ diversification by increasing the investment by more than 25 percent and thus increasing the installed capacity/ production by more than 25 percent</p>	<p>---</p> <p>---</p> <p>---</p>	<p>i) Full exemption for 10 years from the date of production. Sales tax/ purchase tax would be charged at the rate of 3.5 percent for next 3 years after the period of tax exemption</p> <p>ii) Sale/purchase tax at the rate of one percent for 10 years from the date of production and 3.5 percent for next 3 years.</p> <p>(iii) Full exemption from sale/purchase tax for 10 years from the date of production and at the rate of 3.5 percent for next 3 years on the incremental production</p>	<p>Eligibility certificate from Industry Department and exemption certificate from Excise and Taxation Department is essential.</p>

However, no sales tax based incentive would be available after 30 April 2000 to any new or existing industrial unit undertaking expansion except (i) Information Technology units (ii) Units which have taken effective steps viz registration with department of Industries and Commerce, purchase of land for project, submitted the loan application with the Financial Institution or units which have been granted Industrial licence by 30 April 2000 and (iii) Industrial units which have already been granted

exemption/deferment of tax under various Industrial Policies till the expiry of the concession period.

2.2.2. Organisational set-up

The incentive schemes are implemented by the Excise and Taxation Commissioner based on the certificates of eligibility issued by the Department of Industries.

Subject to overall control and superintendence of the Excise and Taxation Commissioner (ETC), the sales tax exemption schemes formulated under the Deferment and Exemption Rules 1991, are implemented through the Additional Excise and Taxation Commissioner, Deputy Excise and Taxation Commissioners (DETC). Twenty-one Assistant Excise and Taxation Commissioners (AETC) one for each district, Excise and Taxation Officers (ETO) and other allied staff assist in the implementation of the schemes.

2.2.3. Scope of Audit

The review examined the efficiency in the implementation of various sales tax incentive schemes (formulated under industrial policies of the State Government) by the Industries and Excise and Taxation Departments and also assessed the effectiveness of these departments in safeguarding the revenue interest of the State. For this purpose the records for the years 1996-97 to 2000-01 of 7* Sales Tax Districts (out of 21) and 6** district industries centres (out of 17) were test-checked during July 2001 to March 2002. The deficiencies in the application of law and violation of rules and other procedural lapses detected in audit have also been highlighted in the review.

2.2.4. Highlights

3559 cases of assessments upto the year 1999-2000 had not been finalised as of 31 March 2001.

(Paragraph 2.2.7)

Eligibility certificates aggregating Rs.18.76 crore were issued to 32 industrial units incorrectly by the industries department.

(Paragraph 2.2.8)

Tax exemption of Rs.15.21 crore including penalty was not recovered from 112 units which discontinued their business before the expiry of exemption period.

(Paragraph 2.2.9(i))

6 units were allowed deduction of Rs.3.83 crore from the turnover on goods sold to other registered dealers even though goods manufactured by them were taxable at first stage of sale. This resulted in under assessment of tax of Rs.0.34 crore.

(Paragraph 2.2.9(iii))

* Amritsar I and II, Ferozepur, Jalandhar I and II, Ludhiana I and Patiala.
** Amritsar, Batala, Ferozepur, Jalandhar, Ludhiana and Patiala.

2.2.5. Industrial units benefited from the incentive schemes

The number of industrial units which were allowed exemptions/concessions/deferment during the period 1996-97 to 2000-01 were as under:

Year	Industrial units	Electronic Units	Total
1996-97	414	36	450
1997-98	583	25	608
1998-99	630	16	646
1999-2000	838	41	879
2000-2001	648	16	664
Total	3113	134	3247

2.2.6 Revenue foregone on account of exemptions/concessions under the schemes

The table below indicates the total tax collected and revenue foregone due to exemptions availed of and revenue deferred during the years 1996-97 to 2000-2001.

Year	Total collection of sales tax	Revenue foregone due to tax exemption availed by the units	Revenue Deferred	Percentage of tax exemption availed-to total sales tax revenue
1	2	3	4	5
	(in crore of rupees)			(Column 3 to Column 2)
1996-97	1264.50	206.25	0.44	16
1997-98	1401.14	175.94	3.05	13
1998-99	1489.65	259.28	11.72	17
1999-2000	1977.28	226.60	0.60	11
2000-2001	2644.41	260.08	0.55	10
Total	8776.98	1128.15	16.36	13

2.2.7. Arrears in assessments

Under the Deferment and Exemption Rules 1991, the assessment of an eligible unit in respect of which deferment or exemption certificate has been granted shall be made in accordance with the provisions of the Act and rules made

thereunder by 31 December in respect of the assessment year immediately preceding thereto.

Data collected from the districts test-checked and information collected from other districts revealed that 3559 cases of assessments pertaining to the assessment years upto 1999-2000 had not been finalised as on 31 March 2001.

Year-wise detail of these cases was as under:

Year	No. of cases pending for assessment
Upto 1995-96	378
1996-97	241
1997-98	367
1998-99	925
1999-2000	1648
Total	3559

On being pointed out (October 2001), the department stated (between October 2001 and July 2002) that the assessments could not be finalised due to rush of work and delay caused by the assesseees. The reply was not tenable as the assessments were required to be completed by 31 December every year under the provisions of the Act/Rules.

2.2.8. System and procedure for granting sales tax exemptions /deferment

The Department of Industries and Commerce, Government of Punjab formulates the schemes of incentives for industries and issues notifications in this regard setting forth eligibility conditions for the prospective industries. Based on these notifications, the Excise and Taxation department of the State issues notifications under the provisions of Punjab General Sales Tax Act, 1948 for such exemptions and concessions. To avail of the benefit of sales tax concessions/exemptions, an 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 eligibility certificate, the Assistant Excise and Taxation Commissioner of the concerned district issues exemption/deferment certificate.

(i) Irregular issue of Eligibility Certificates

Fixed capital investment (FCI) means investment made on land, building, plant and machinery including cost of generating set and other specified fixed assets but does not include cost of raw material. The quantum of sales tax exemption/deferment under the Industrial policies was admissible at the rate of 300 and 150 percent of the FCI in respect of units falling in growth area under category A and B respectively. The department clarified (June 1993) that in case the unit is implemented in stages, the actual expenditure on FCI is to be restricted upto projections made in the project report submitted with the first claim.

It was, however, observed that in 12 cases of 5 DICs eligibility certificates amounting to Rs.5.96 crore were issued in excess of the prescribed limit as tabulated below:-

Sr. No.	Office which granted eligibility certificate	No. of cases	Excess FCI allowed	Excess exemption allowed	Remarks
			(In lakh of rupees)		
	Under Industrial Policy 1992				
1	DIC, Ludhiana Category 'B'	1	192.73	289.09	Revised eligibility certificate was issued for Rs.1718.27 lakh instead of Rs.1429.18 lakh admissible against projections of FCI of 952.79 lakh made in the project report submitted with first claim.
2	DIC, Batala (Gurdaspur) Category 'A'	1	5.72	17.15	Excess exemption of Rs.17.15 lakh was allowed as FCI was not restricted to the projected cost (Rs.8.00 lakh) of building and machinery.
3(i)	DIC, Batala (Gurdaspur) Category 'A'	1	4.60	13.80	After obtaining eligibility certificates, these units rented out a part of their land and building. In the event, eligibility certificates were required to be revised limiting FCI to proportionate cost of land/ building retained by these units. .
(ii)	DIC, Jalandhar Category 'B'	1	1.04	1.56	
	Under Industrial Policy 1996				
4	DIC, Amritsar Category 'B'	1	--	10.80	Due to incorrect calculation, eligibility certificate was issued in excess by Rs.10.80 lakh. On being pointed out (December 2001), the GM, DIC rectified the mistake and issued revised eligibility certificate (December 2001).
5	DIC, Ferozpur Category 'A'	4	11.00	33.00	Land development charges of Rs.11.00 lakh was allowed in excess of the prescribed limit of 10 per cent of the cost of land resulting in excess issue of eligibility certificate by Rs.33.00 lakh.

Sr. No.	Office which granted eligibility certificate	No. of cases	Excess FCI allowed	Excess exemption allowed	Remarks
			(In lakh of rupees)		
6.	DIC, Batala (Gurdaspur) Category 'A'	1	17.46	52.38	Cost of zinc being used as raw material for galvanization of ERW pipes was incorrectly included in FCI treating the expenditure as pre-operational expenditure.
7.	DIC, Ludhiana Category 'B'	1	6.33	9.49	Expenditure on building in excess of the project cost and inclusion of contingent charges in FCI resulted in excess issue of eligibility certificate by Rs.9.49 lakh. On being pointed out (August 2001), the GM, DIC Ludhiana stated that cost of boundary wall, main gate etc, though pertaining to building expenditure, had been shown as land development charges. The reply was not tenable as cost of earth filling/land leveling etc. is only treated as land development charges.
8.	DIC, Jalandhar Category 'B'	1	---	168.29	A unit manufacturing biscuits was entitled to sales tax exemption at the rate of 150 per cent of the FCI, being unit falling under category 'B' area, whereas the exemption was allowed at the rate of 300 per cent of the FCI.
	Total	12		595.56	

(ii) Industrial units manufacturing goods falling in negative lists appended to the Industrial Policy are not eligible for grant of sales tax exemptions. However, units having export oriented (EOU) status and exporting at least 25 per cent of their products with minimum value addition of 33 per cent against direct receipt of foreign exchange or through merchant exporters including Punjab Small Industries and Export Corporation or any other trading house registered as such with the Department of Industries, Punjab are eligible for sales tax incentives for 10 years subject to a maximum of 300 per cent of FCI. This exemption is not eligible to EOU units registered after 30 April 2000.

11 units were granted eligibility certificates for availing sales tax exemption of Rs.10.12 crore in contravention of the provisions of rules as per details given below:

Sr. No.	Office which granted eligibility certificate	Goods manufactured	No. of cases	Amount of eligibility certificate (in lakh of rupees)	Remarks
1.	DIC, Ferozpur and Batala	Rice	3	265.08	The condition of 33 per cent value addition or 25 per cent export of the product or both were not fulfilled
2.	DIC, Ludhiana	-do-	4	486.76	The units were registered as EOU after 30 April 2000, the date after which sales tax based incentives were withdrawn. On being pointed out (August 2001) the department stated that these were registered as SSI units before 30 April 2000. The reply was not tenable as SSI units (Rice Shellers) being in negative list were not eligible for sales tax exemption.
3.	DIC, Ludhiana	Crushing/refining of oil seeds, Refining of vegetable oils (included in negative list)	3	184.94	Units in negative list, were incorrectly granted eligibility certificates for tax exemption. When pointed out (August 2001), the department withdrew (September 2001) eligibility certificate for Rs.35.94 lakh in one case and in remaining two cases, it was stated that these were solvent extraction plants. The reply was not tenable as these units were engaged in the expelling/ crushing of oil seeds viz, sunflower/vegetable oil seeds and not eligible for sale tax exemption.being in negative list.
4.	-do-	Hand tools (B category area)	1	75.50	By incorrectly treating a 'B' category unit as an EOU incentive was given at 300 per cent of FCI instead of 150 percent. On being pointed out (August 2001), the department stated (March 2002) that the eligibility certificate had been withdrawn (January 2002). The tax exemption of Rs.7.57 lakh already availed of by the unit was pending recovery (June 2002)
	Total		11	1012.28	

(iii) As per Industrial Policy, 1996 the existing unit which remained in production for 3 years and undertaking expansion by increasing FCI or installed capacity by a minimum of 50 per cent is eligible for sales tax exemption/deferment.

During test-check, it was noticed that 4 units, which undertook expansion, were incorrectly granted eligibility certificates for availing sales tax exemption amounting to Rs.1.28 crore though these units did not fulfill the conditions of expansion.

Sr. No.	Office which granted eligibility certificate	No. of cases	Amount of eligibility certificate (in lakh of rupees)	Remarks
1.	DIC Batala (Gursaspur)	1	53.07	Only units, which undertook expansion after 1 April 1996 are eligible for incentive but expenditure of Rs.17.69 lakh incurred prior to 1 April 1996 was also considered towards FCI for computing tax exemption limit.
2.	DIC, Jalandhar	1	11.62	As per project report, the unit started expansion with effect from 15 November 1999 whereas normal addition of FCI (Rs.7.75 lakh) made prior to this date was also taken into account which resulted in issue of eligibility certificate in excess by Rs.11.62 lakh.
3	DIC, Ludhiana	2	63.17	The units did not qualify for grant of sales tax exemption as the conditions viz increase in installed capacity or FCI by 50 per cent were not fulfilled. The units however, availed tax exemption of Rs.36.87 lakh up to March 2002.
	Total	4	127.86	

(iv) Incentive would be allowed to units which do not have their own land and building if such units have lease/rent deed for land/building occupied by them for at least 10 years.

During test-check, it was noticed that eligibility certificates amounting to Rs.73.38 lakh were issued to 4 units, which did not have lease/rent deeds for ten years at the time of issue of eligibility certificates.

Sr. No.	Name of the unit	No. & date of Eligibility Certificates	Period of exemption	of	Period of lease/rent deed as per agreement	Amount of eligibility certificate (in lakh of rupees)	Remarks
1.	M/s Malhotra Ply Board Pvt. Ltd. Dina Nagar RC 10799913	7222-25 dated 15.12.1999	1.4.1999 to 31.3.2009	to	22.1.1992 to 21.1.2002	16.17	The period of lease agreement was not in line with period of exemption.
2.	M/s Thakur Udyog, Batala RC 10725014	5436-39 dated 30.8.1999	18.8.1999 to 17.8.2009	to	28.4.1990 to 27.4.2003	18.00	
3.	M/s. Rajindra Foundry & Engg. Works, Batala RC 10662312	7601-04 dated 9-12-1999	30-11-1999 to 29-11-2009	to	18-2-1989 to 17-2-2009	23.88	
4.	M/s Everest Tin Industries Pathankot	8190-93 dated 28.12.1999	6.11.1999 to 5.11.2009	to	Monthly rent of Rs.5000	15.33	Period of lease was not specified in the rent deed.
						73.38	

(v) Under the Deferment and Exemption Rules, 1991, a unit in respect of which eligibility certificate has been issued shall, within a period of 30 days, make an application for the grant of exemption certificate to the prescribed authority of the concerned district, failing which application will not be entertained

An industrial unit of Patiala district was granted eligibility certificate for Rs.66.70 lakh, effective from 25 September 1997, by the Industries Department. The unit did not submit the application with the prescribed authority in sales tax department for grant of exemption certificate. On being approached (November 1999) by the unit, the Industries department issued revised eligibility certificate for the same amount and period in January 2000 (effective from 25 September 1997) in violation of the provisions of the Industrial Policy.as the department was not authorised to do so.

On being pointed out (July 2001), the GM, DIC stated that revised eligibility certificate was issued with the approval of the Director of Industries. The reply was not tenable as issue of revised eligibility certificate with delays exceeding six months was not within the competency of the Director of industries. Sanction of the Principal Secretary, Industries and Commerce was not obtained who has the power to relax the rules.

2.2.9. Sales Tax Exemptions

(i) ***Non-recovery of tax and penalty from closed units.***

(a) Under the Deferment and Exemption Rules, 1991 (effective from 1 April 1989) the deferment/exemption certificate granted to a unit is liable to be cancelled, if the unit discontinued its business at any time for a period exceeding six months or closes business during the period of deferment or exemption. Further, after cancellation of eligibility certificate, the entire amount of tax deferred/exempted shall become payable immediately in lump-sum and the provision relating to recovery of tax, interest and imposition of penalty under the Act will be applicable in such cases.

In 16 districts*, 110 units after having availed tax exemption of Rs.13.75 crore between 1989-90 and 2000-2001 closed their business before the expiry of exemption period. Thus, the exemption of Rs.13.75 crore already availed by them became recoverable alongwith minimum penalty of Rs.1.37 crore but the department failed to cancel the eligibility certificates and to recover the amount. Further, in one case of Amritsar-I district, though, the eligibility certificate was cancelled by the Industries Department (October 1997), no recovery of tax exemption amounting to Rs.1.62 lakh availed of by the unit had been made (December 2001).

* Amritsar-II, Bathinda, Fatehgarh Sahib, Ferozepur, Gurdaspur, Hoshiarpur, Jalandhar-I&II, Kapurthala, Ludhiana-I&II, Mansa, Nawan Shahar, Patiala, Ropar and Sangrur.

(b) A unit at Mohali (Ropar District) which was availing tax exemption with effect from August 1997 discontinued production and shifted all its machinery outside the state in April 1999. Industries Department intimated (August 1999) the Excise and Taxation Department not to give any exemption against the eligibility certificate granted to the firm. Instead of withdrawing the exemption certificate, the assessing authority irregularly allowed the tax exemption of Rs.7.15 lakh to the unit while finalising assessment (November 2000) for the year 1997-98.

(ii) *Incorrect computation of taxable turnover*

Under the Punjab General Sales Tax Act, 1948, 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. Further, under the Deferment and Exemption Rules, 1991 exemption is admissible to the unit for manufacturing and sale of products mentioned in the eligibility certificate issued by the Industries Department.

(a) Scrutiny of records of four* AETCs revealed (between July 2000 and August 2001) that while finalising (between May 1999 and February 2001) the assessments of eight dealers, availing sales tax exemption, the assessing authorities computed the turnover after reducing the element of sales tax incorrectly though the assesseees did not collect the same being exempted units. This resulted in reduction of taxable turnover and subsequently short levy of sales tax of Rs.22.57 lakh.

(b) Two units of Gurdaspur and Faridkot districts were allowed (between June 1998 and April 2000) exemption incorrectly from payment of sales tax of Rs.26.97 lakh for the years 1992-93 to 1997-98 on the sale of goods not mentioned in their eligibility certificates. Besides penalty of Rs.2.70 lakh was also leviable.

(iii) *Irregular deduction from turnover*

As per notification dated 25 July 1990, tax is livable at first stage of sale on goods other than declared goods, manufactured and sold by dealer who has been allowed the exemption from the liability of paying tax.

While making assessments (between April 1999 and February 2001) for the years 1995-96 to 1998-99 of six units of two districts, the assessing authorities allowed deduction of Rs.3.83 crore from the turnover of the units on account of sale of goods to other registered dealers against prescribed declarations. As the units were manufacturers and enjoying the benefit of exemption and had sold the goods (other than declared goods) to another registered dealer in the state, they were liable to be assessed for such sales. Irregular allowance of deductions resulted in under assessment of tax of Rs.33.68 lakh as detailed below:

* **Bathinda, Ferozepur, Gurdaspur and Sangrur.**

Sr. No.	Ward No.	District	Assessment year/ Date of assessment	Name of goods sold	Rate of tax	Amount of deduction	Tax effect
							(in lakh of rupees)
1.	1-A	Fatehgarh Sahib (Mandi Gobindgarh)	1997-98 & 1998-99/ 22-5-2001	Bobbin cases Sewing Machine parts	8.8	29.09	2.56
2.	2	-do-	22-4-1999	Oxygen Gas	8.8	14.28	1.26
3.	3	-do-	1997-98 & 1998-99/ 24-2-2001	Metal rolls (Machinery parts)	8.8	47.15	4.15
4.	3	----do----	1996-97 & 1997-98/ 15-4-1999 & 16-7-1999	Tikki, washers, hooks	8.8	147.08	12.94
5	--do-	----do----	1995-96 & 1996-97/ 6-1-2000 & 9-3-2000	Rolling Mill rolls (Machinery goods)	8.8	116.02	10.21
6.	7	Jalandhar-I	1995-96/ 21-12-2000	Gases	8.8	29.12	2.56
						382.74	33.68

(iv) Application of incorrect rate of tax

As per provision of Punjab General Sales Tax Act, tax on sale of goods for which no rate of tax has been specified in the Act, shall be levied at the general rate of 8.8 per cent (including additional tax).

Audit noticed that 5 dealers enjoying tax exemption were assessed tax at incorrect rates. This resulted in less debit of Rs.18.75 lakh against the limit of exemptions as tabulated below:

(in lakh of rupees)								
Sr. No.	Ward No.	Name of the district	Name of goods sold	Assessment year./ Date of assessment	Rate of tax		Amount	Tax short levied.
					Levied	Leviable		
1.	7	Amritsar-I	Nails	1998-99/ 19.5.2000	4.4	8.8	29.80	1.31
2.	9	Moga	Drugs	1994-95/ 7.12.2000 & 1999-2000/ 14.2.2001	6.6	8.8	260.64	5.74
3.	6	Patiala	Paper Board/ C Boxes.	1998-99/ 1.3.2001	4.4	8.8	44.88	1.97
4.	6-A	Ropar (Mohali)	Rubber Auto Parts	1996-97 & 1998-99/ 27/28.3.2000	5.5	8.8	30.55	1.01
5.	5	Sangrur (Malerkotla)	Paper board /Paper cones	1996-97 & 1997-98/ 26.3.2001	4.4	8.8	192.44	8.72
								18.75

(v) Incorrect computation of tax

Under the Deferment and Exemption Rules 1991, exemption from liability to pay tax of an exempted unit, shall be calculated at the prevalent rate of tax (including additional tax) payable on the taxable turnover of the concerned unit.

During test-check of records of five* Assistant Excise and Taxation Commissioners, it was noticed (between August 1999 and August 2001) that while finalising (between January 1999 and January 2001) the assessment of eleven units, enjoying the benefit of exemption under the Exemption Rules ibid, the tax amounting to Rs.7.97 lakh was less assessed due to non-levy of additional tax (Rs.2.81 lakh) and calculation mistakes (Rs.5.16 lakh).

2.2.10. Improper maintenance of records

Under the Deferment and Exemption Rules, 1991, the Assistant Excise and Taxation Commissioners (AETCs) are required to issue exemption/deferment certificate to an eligible unit within a period of 30 days from receipt of application authorising it to avail of the exemption or deferment of sales tax. In case the certificate is not issued within 30 days, the concerned authority shall record reasons for the delay. Further, to keep a watch on the exemption/benefits availed of by the units, the AETCs are required to keep a record of exemption/deferment availed by each unit every year.

Out of 662 cases test checked, delays ranging from 2 to 48 months were noticed in issue of exemption certificates in 107 cases.

It was further noticed that in all the seven districts test checked, the exemption/deferment registers were not maintained properly as none of the district had posted/recorded the exemption/deferment availed of by the units concerned during each year.

The matter was reported to Government in April 2002 and followed up with reminder to Financial Commissioner (Taxation) and Secretary to Government, Punjab, Excise and Taxation Department (May 2002). However, inspite of such efforts, no reply was received (October 2002).

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 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 for use in the manufacture of goods, the sale of which is taxable in the State. In order to avoid evasion of tax and safeguard Government revenue, the Excise and Taxation Commissioner issued orders in June 1966 and reiterated in November 1983 that such sales should be cross checked with the account books of the purchasing dealers and a certificate to that effect be recorded by the assessing authority at the time of framing of assessment. The dealer furnishing incorrect or false declaration is liable to pay penalty not exceeding

* **Amritsar-I, Fatehgarh Sahib, Ferozepur, Gurdaspur and Patiala.**

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 test check of records of seven* Assistant Excise and Taxation Commissioners, it was noticed that twelve dealers, were allowed deduction of Rs.8.67 crore on account of sales made against declaration forms without cross verification with the accounts of purchases. As a result various false claims could not be detected and tax of Rs.24.51 lakh was short levied as tabulated below:

(In lakh of rupees)				
Sr. No	Nature of objection (No. of dealers)	Inadmissible amount of deduction	Tax effect	Penalty
1	Deduction allowed against ingenuine declarations (ST XXII) (7 dealers)	100.74	5.49	1.79
2	Deduction allowed on account of sale to non-existent dealers (1 dealer)	5.03	0.44	0.22
3	Excess deduction allowed against short declarations (STXXII) (2 dealers)	720.38	15.85	3.97
4	Excess deduction against short accountal by the purchasers (2 dealers)	40.94	2.73	1.36
	Total	867.09	24.51	7.34

On this being pointed out (between March 2000 and October 2001), the assessing authority, Gurdaspur stated (March 2002) that suo-moto action had been taken in one case while re-assessment in other case was being made. The assessing authority Amritsar-II stated (April 2002) that an amount of Rs.0.73 lakh had been recovered.

The above matter was brought to the notice of the department and referred to the Government (between March 2001 and January 2002). This was followed up with reminders to the Financial Commissioner (Taxation) and Secretary to Government, Punjab (between November 2001 and April 2002). However, no reply was received (October 2002)

2.4. Non levy of tax on sale of import replenishment licence

It has been judicially held** that REP licence/Exim scrips are goods and the premium or price received by the holders by the transfer thereof to another person is liable to sales tax at the prescribed rate.

* Amritsar II (ward-7 & 17A), Gurdaspur (ward-11 Pathankot and ward-4 Batala) Jalandhar-I (ward-5), Kapurthala (ward-1), Ludhiana-II (ward-17A), Ludhiana-III (ward-24) and Fatehgarh Sahib (Ward-2 & 3 Mandi Gobindgarh).
** M/s Vikas Sales Corporation V/s Commissioner of Commercial Taxes (STI-1996-SC-100).

During test-check of the assessment records of five* Assistant Excise and Taxation Commissioners, it was noticed that while finalising (between May 1999 and December 2000) the assessments for the years 1996-97 to 1999-2000 of six dealers, the assessing authorities had not included receipts of Rs.3.06 crore from the sale of import replenishment licence in the gross turnover of the dealers which resulted in non-levy of tax amounting to Rs.26.92 lakh.

On this being pointed out (between August 2000 and June 2001), the assessing authority, Kapurthala stated (August 2001) that the case had been re-assessed and an additional demand of Rs.10.29 lakh had been issued. The assessing authority Jalandhar-II stated (April 2002) that in one case additional demand of Rs.1.66 lakh including penalty of Rs.0.75 lakh was issued. Final replies from the remaining assessing authorities were awaited.

The matter was brought to the notice of the department and referred to the Government (between October 2000 and August 2001). This was followed up with reminders to the Financial Commissioner (Taxation) and Secretary to Government, Punjab (between January and April 2002). In spite of such efforts, no reply was received (October 2002).

2.5. Application of incorrect rate of tax

(a) Under the Act *ibid*, fibre synthetic including waste was taxable at the rate of 4.4 *per cent* (including additional tax) with effect from 9 September 1998. Prior to this fibre waste was exempted from levy of sales tax.

During test-check of records of Assistant Excise and Taxation Commissioner (ward-12) Amritsar-II, it was noticed that while finalising (May 1999) the assessment for the year 1998-99 of a dealer engaged in the business of fibre waste, the assessing authority incorrectly levied tax at the rate of 2.2 *per cent* instead of 4.4 *per cent* on the sale of fibre waste valued at Rs.2.01 crore. Application of incorrect rate of tax resulted in short levy of tax of Rs.4.42 lakh.

The matter was brought to the notice of the department (February 2001) and referred to the Government (January 2002). This was followed up with reminder to the Financial Commissioner (Taxation) and Secretary to Government, Punjab (between January and April 2002). In spite of such efforts, no reply was received (October 2002).

(b) Under the State Act, tax on the sale of all kind of paper is leviable at the rate of 8 *per cent*. However, as per the State Government notification dated 31 March 1995, the tax on inter-State sale of paper is leviable at the rate of one *per cent* subject to the production of declarations in form 'C', and the sale not supported by such declarations at the rate of 10 *per cent*, as per the provisions under Central Act.

* Jalandhar-I (ward-6), Jalandhar-II (ward-9), Kapurthala (ward-5 Phagwara), Ludhiana-I (ward-5) and Ludhiana-III (ward 21 & ward-29-A).

During test check of records of Assistant Excise and Taxation Commissioner, Hoshiarpur (ward-I), it was noticed (April 2001) that while finalising (April 2000) the assessment for the year 1995-96 of a dealer engaged in the manufacture of paper, the assessing authority levied tax at the rate of two *per cent* on the sale of goods worth Rs.17.07 lakh instead of at the correct rate of 10 *per cent*, as the sales were not supported by the prescribed declarations (Form C). Application of incorrect rate of tax resulted in short levy of Central Sales Tax of Rs.1.37 lakh.

On being pointed out (April 2001), the department intimated (December 2001) that the case had been taken for *suo-moto* action.

The above matter was brought to the notice of the Government (October 2001) and this was followed up with reminder to the Financial Commissioner (Taxation) and Secretary to Government, Punjab in January 2002. In spite of such efforts, no reply was received (October 2002).

(c) Under the Central Act *ibid*, every dealer who sells to the Government any goods shall be liable to pay tax which shall be 4 *per cent* of his turnover subject to the production of certificate in form 'D'.

During test check of records of the Assistant Excise and Taxation Commissioner, Ropar (ward-4, Mohali), it was noticed (October 2000) that while finalising (May 1999) the assessment for the year 1997-98 of a dealer, engaged in the business of resale of paper, the assessing authority levied tax at the rate of 1.1 *per cent* on the sale of paper, worth Rs.40.82 lakh, made to State Government instead of at the correct rate of 4 *per cent*. Application of incorrect rate of tax resulted in short levy of tax of Rs.1.18 lakh.

On being pointed out (April 2002), the department stated that the additional demand of Rs.1.25 lakh had been created (June 2001) so far.

The matter was brought to the notice of the Government (March 2001) and this was followed up with reminder to the Financial Commissioner (Taxation) and Secretary to Government, Punjab in January 2002. However, despite such efforts, no reply was received (October 2002).

2.6. Short levy of tax

Under the Punjab General Sales Tax Act, 1948, 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.

In contravention of above provisions, State Government vide notification (11 September read with 29 October 1997) exempted the sale of 'dhoop and agarbaties' and 'pen and ball pens' from levy of sales tax with effect from 1 April 1996. Similarly sale tax on tractor parts was reduced vide notification (9 July 1997) from 8 to 2 *per cent* with effect from 1 April 1996.

During test check of records of eighteen* Assistant Excise and Taxation Commissioners, it was noticed that while finalising assessments (between October 1998 and March 2001) for the years 1996-97 and 1997-98 in respect of seventy five dealers, the assessing authorities exempted the sale of dhoop and agarbaties, pen and ball pens amounting to Rs.7.31 crore and assessed the sale of tractor parts amounting to Rs.9.74 crore (Rs.8.75 crore under the State Act and Rs.0.99 crore under Central Act) at the reduced rate 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 short levy of tax amounting to Rs.1.27 crore (Rs.1.21 crore under the State Act and Rs.0.06 crore under Central Act) as detailed below:

(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	Sangrur (ward-1A) Hoshiarpur (ward-3) (2 dealers)	<u>1996-97</u> (February 2000) <u>1997-98</u> (April 2000)	50.45	4.44
2	Ferozepur (ward-2) Ludhiana-I (ward-1) Amritsar-I (ward-2) Jalandhar-I (ward-5A) Patiala (ward-3) (5 dealers)	<u>1996-97</u> (November 2000) <u>1996-97</u> (October 2000) <u>1996-97</u> (June 2000) <u>1996-97</u> (May 2000) <u>1997-98</u> (May 2000) <u>1997-98</u> (February 2001)	40.13	3.53
3	Amritsar-II (ward-9) Ludhiana-III (ward-26) Ludhiana-II (ward-11) Sangrur (ward-1) Ferozepur (ward-1) Amritsar-II (ward-9) (7 dealers)	<u>1996-97 & 1997-98</u> (April 1999 & July 1999) <u>1996-97 & 1997-98</u> (May 1999 & March 2000) <u>1996-97</u> (February 2000) <u>1996-97 & 1997-98</u> (July 1999) <u>1996-97 & 1997-98</u> (November & December 1999) <u>1997-98 (2 cases)</u> (April & December 1999)	614.63	54.11

* **Amritsar-I, Amritsar-II , Faridkot, Ferozepur, Gurdaspur, Hoshiarpur, Jalandhar-I, Jalandhar-II, AETC (Inspection) Jalandhar-I, Kapurthala, Ludhiana-I, Ludhiana-II, Ludhiana-III, Mansa, Moga, Mukatsar, Patiala and Sangrur.**

4	Ludhiana-III (AETC) Sangrur (ward-4A Malerkotla) Ludhiana-III (AETC) Jalandhar-II (ward-11) (4 dealers)	<u>1996-97</u> (August 1999) <u>1996-97</u> (May 1999) <u>1997-98</u> October 1999 <u>1997-98</u> (February 2000)	26.10	2.30
5	Faridkot (AETC) Patiala (ward-11 Nabha) Sangrur (ward-5A Ahmedgarh) Jalandhar-II (ward-10) Patiala (ward-1) Mukatsar (ward-14,15 Malout) (6 dealers)	<u>1996-97</u> (July 1999) <u>1996-97</u> (November 1999) <u>1996-97</u> (December 1999) <u>1996-97 & 1997-98</u> (November 1999 & March 2000) <u>1996-97 & 1997-98</u> (December 2000 & February 2001) <u>1997-98</u> (January 2001)	58.81	3.88
6	Hoshiarpur (ward-4) Hoshiarpur (ward-2) Hoshiarpur (AETC) Ludhiana-I (ward-11) Patiala (ward-1) Mansa (ward-2) Amritsar-I (ward-7) Ludhiana-II (ward-11-A) Ludhiana-II (ward-20) Ludhiana-I (ward-15) Hoshiarpur (ward-2) Faridkot (ward-2 Kotkapura) Ludhiana-I (ward-8 Khanna) (14 dealers)	<u>1996-97</u> (January 2000) <u>1996-97 & 1997-98</u> August 1999 <u>1996-97 & 1997-98</u> (July 1999 & February 2000) <u>1996-97</u> (January 2000) <u>1996-97</u> (February 2000) <u>1996-97 & 1997-98</u> (February 2000) <u>1996-97 & 1997-98</u> (October 1998 & October 1999) <u>1996-97</u> (November 1999) <u>1996-97</u> (March 2000) <u>1996-97</u> (July 1999) <u>1996-97</u> (November 1999) <u>1997-98</u> (August 1999) <u>1997-98</u> (June 1999) <u>1997-98</u> (September 1999)	136.90	7.81 (State) 1.47 (Central)

7	Jalandhar-I (ward-4)	<u>1996-97 & 1997-98</u> (August 2000)	460.08	30.37
		<u>1996-97 & 1997-98</u> (February 2001)		
		<u>1996-97 & 1997-98</u> (June 2000)		
		<u>1996-97 & 1997-98</u> (August 2000 & February 2001)		
	Jalandhar-I (ward-1)	<u>1996-97 & 1997-98</u> (November 2000)		
	Jalandhar-II (ward-7 Nakodar)	<u>1996-97</u> (June 2001)		
		<u>1996-97 & 1997-98</u> (March 2001 & February 2001)		
	Gurdaspur (ward-1 Batala)	<u>1996-97 & 1997-98</u> (January 1999 & July 1999)		
	Gurdaspur (ward-7)	<u>1996-97 & 1997-98</u> (February 2001)		
	Ludhiana-I (ward-1)	<u>1996-97 & 1997-98</u> (July 2000 & February 2001)		
		<u>1996-97 & 1997-98</u> (June 2000 & March 2001)		
		<u>1996-97</u> (November 2000)		
		<u>1996-97 & 1997-98</u> (July 2000 & March 2001)		
	<u>1997-98</u> (March 2001)			
Moga (ward-9)	<u>1996-97</u> (December 1999)			
Ferozepur (ward-7)	<u>1996-97</u> (April 1999)			
Gurdaspur (AETC)	<u>1996-97 & 1997-98</u> (June 1999)			
Jalandhar-I (AETC)	<u>1997-98</u> (July 1999)			
Jalandhar-I (AETC ward-4) (19 dealers)	<u>1997-98</u> (February 2001)			

8	Ludhiana-I (ward-1)	<u>1996-97 & 1997-98</u> (January 2001 & December 2000)	219.10 (PGST) 99.42 (CST)	14.46 (State) 4.83 (Central)
	Ludhiana-I (ward-3)	<u>1996-97</u> (December 2000)		
	Ludhiana-I (ward-10)	<u>1996-97</u> (September 2000)		
	Ludhiana-I (ward-13)	<u>1996-97</u> (April 2000)		
	Ludhiana-I (ward-15)	<u>1996-97</u> (June 2000)		
	Ludhiana-II (ward-11)	<u>1996-97</u> (January 2001)		
	Amritsar-1 (ward-3)	<u>1996-97 & 1997-98</u> (July 2000 & June 2000)		
	Amritsar-1 (ward-12 Taran Taran)	<u>1996-97</u> (June 2000)		
	Jalandhar (AETC Inspection)	<u>1996-97</u> (January 2001)		
	Jalandhar-I (ward-4)	<u>1996-97</u> (May 1999)		
		<u>1996-97</u> (June 1999)		
		<u>1996-97</u> (September 1999)		
	Kapurthala (ward-2)	<u>1996-97 & 1997-98</u> (January 2001)		
	Ludhiana-I (ward-3)	<u>1997-98</u> (February 2001)		
		<u>1997-98</u> (January 2001)		
	Ludhiana-I (ward-13)	<u>1997-98</u> (February 2001)		
	Gurdaspur (ward-9 Pathankot)	<u>1997-98</u> (November 2000)		
	Jalandhar-I (ward-4) (18 dealers)	<u>1997-98</u> (June 1999)		
Total	75		1606.20 99.42	120.90 6.30

On this being pointed out (between April 2000 and November 2001), assessing authorities, Amritsar-I, Amritsar-II, Faridkot, Gurdaspur, Jalandhar-I, Jalandhar-II, Ludhiana-I, Ludhiana-II, Ludhiana-III, Mukatsar, Patiala and Sangrur (39 dealers) stated (between June 2000 and November 2001) that the assessment had been finalised in view of the notifications referred to above. The reply was not tenable as under the provisions of the Act, ibid the dealers were required to pay the tax as applicable at the time of sale actually made.

The above matter was brought to the notice of the department and referred to the Government (between March 2001 and February 2002). This was followed up with reminders to the Financial Commissioner (Taxation) and Secretary to Government, Punjab (between November 2001 and April 2002). No reply was received (October 2002).

2.7. Non-levy of tax at first stage of sale

(a) Under the Punjab General Sales Tax Act, 1948 and Rules made thereunder, tax is leviable at the first stage on the sale of ceramics, sanitary goods, desert coolers, auto parts, timber, plywood, paper, foam and rubber goods.

During test check of records of six* Assistant Excise and Taxation Commissioners, it was noticed that while finalising (between November 1998 and December 2000) assessments for the years 1995-96 to 1999-2000 of fourteen dealers, the assessing authorities allowed deductions of Rs.95.06 lakh from the gross turnover on account of sale of ceramics, sanitary goods, desert coolers, auto parts, timber, plywood, paper, foam and rubber goods made to registered dealers in the state against the prescribed declarations (form STXXII). Since the goods 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.7.14 lakh.

On being pointed out (between March 2000 and November 2001), the assessing authority, Nawan Shahar intimated (April 2002) that additional demand of Rs.0.29 lakh had been created and recovered (June 2001). The assessing authority, Jalandhar-I intimated (April 2002) that *suo-moto* action in the case of one dealer had been taken. The assessing authority, Gurdaspur (ward-6 Batala) stated that the dealer was a commission agent of timber as such the case was rightly assessed. The reply was not tenable as timber was liable to be taxed at the first stage of sale with effect from 1 April 1999 and assessing authorities allowed the deduction as sale to the registered dealers. Replies from other assessing authorities were awaited.

The matter was brought to the notice of the department and referred to the Government (between December 2000 and December 2001). This was followed up with reminders to the Financial Commissioner (Taxation) and Secretary to Government, Punjab (between January and April 2002). No reply was received (October 2002).

(b) As per State Government notification of October 1998 issued under the Punjab General Sales Tax Act, 1948, 'Oil seeds' were liable to be taxed at the first stage of sale at the rate of 2.2 *per cent* including additional tax.

* Gurdaspur (ward-2 and ward-6 Batala), Jalandhar-I (ward-6 and 7), Ludhiana I (ward-10, 12 and 16), Ludhiana-II (ward-11-A, 15, 17 and 17-A), Nawan Shahar (ward-1) and Patiala (ward-2).

During the course of test check of records of Assistant Excise and Taxation Commissioner, Jalandhar-1 (ward-6), it was noticed (May 2001) that while finalising (December 2000) the assessment for the period from November 1998 to March 2000 of a dealer engaged in the business of food grains, the assessing authority allowed deduction of Rs.1.07 crore on account of sale of groundnut. As the dealer sold the goods for the first time in the State after the issue of notification, it was liable to be assessed for such sale. Incorrect allowance of deduction from turnover resulted in non-levy of tax of Rs.2.35 lakh. The assessing authority has not given a final reply (October 2002).

The matter was referred to the Government (September 2001) and followed up with reminders to the Financial Commissioner (Taxation) and Secretary to Government, Punjab in November 2001. However, inspite of such efforts, no reply was received (October 2002).

(c) Under the State Act and Rules made thereunder, tax on the sale of 'Motor spirit' is leviable at the first stage of sale, at the rate of 11 *per cent* (including additional tax), with effect from 16 February 1999. Motor spirit was previously leviable to tax at the rate of 7 *per cent* under Motor Spirit Act, 1939.

During test check of records of nine Assistant Excise and Taxation Commissioners* it was noticed that while finalising (between June 1999 and March 2001) the assessments of twelve dealers for the year 1998-99 engaged in the business of resale of motor spirit (petrol), the assessing authorities allowed deduction of Rs.81.22 lakh by treating the sale of petrol as exempted under the Act whereas the dealers were required to be assessed at the differential rate of 4 *per cent* on the sale of petrol in stock on the day of increase in rate of tax from 7 to 11 *per cent*. Incorrect allowance of deduction resulted in non-levy of tax of Rs.3.25 lakh.

On this being pointed out in audit (between August 2000 and August 2001), the assessing authority, Ludhiana II stated (December 2001) that the liability to pay tax was of the first seller and not of the dealers. The reply was not tenable as the dealers were liable to be assessed to tax on the closing stock of the petrol on the day of increase in the rate of tax in view of notification *ibid*.

The matter was brought to the notice of the department and referred to the Government (December 2001). This was followed up with reminder to the Financial Commissioner (Taxation) and Secretary to Government, Punjab in February 2002. However, in spite of such efforts, no reply was received (October 2002).

* Amritsar-I (ward-7), Amritsar-II (ward-10), Ferozepur (Abohar:ward-5), Gurdaspur (ward-8), Kapurthala (Phagwara:wards-3 & 5), Ludhiana-II (wards-12 & 13-A), Nawanshahar (ward-1), Ropar (ward-2) and Sangrur (Sunam:ward-3).

2.8. Non-levy of tax on consignment sales of khal

Under the provisions of the Punjab General Sales Tax Act, 1948, if a dealer purchases taxable goods without payment of tax against prescribed declarations and uses them in the manufacture of taxable goods and sends them outside the State in any manner other than by way of sale, he is liable to pay tax on the purchase of such goods at the rate applicable to the sales thereof. Further, on the sale of cotton seeds (declared goods), sales tax is leviable at the rate of two *per cent* (with effect from 1 April, 1995) at the stage of sale by the last dealer in the State. It has been judicially held* that if oil seeds are crushed into oil and khal (oil cake) and khal is subsequent despatch on consignment basis, tax is leviable on proportionate basis on the value of seeds consumed in the process.

During the course of audit of records of Assistant Excise and Taxation Commissioner (ward-4, Abohar) Ferozepur, it was noticed (October 2001) that while finalising (between April 2000 and March 2001) the assessments for the years 1995-96 to 1997-98, of four dealers engaged in the business of crushing oil seeds into oil and khal and sale thereof, tax was not levied by the assessing authority on the value of oil seeds consumed in the manufacture of khal sent for sale on consignment outside the State. The dealers had purchased oil seeds valued at Rs.14.72 crore and extracted khal valued at Rs.11.53 crore in addition to oil valued at Rs.10.57 crore. Out of this, khal valued at Rs.10.36 crore was sent for sale on consignment basis outside the State. According to judicial pronouncement cited above, the dealers were liable to be assessed to tax of Rs.15.15 lakh on the proportionate value of oil seeds, amounting to Rs.6.89 crore consumed in the process of manufacture of khal.

The above matter was brought to the notice of the department and referred to the Government (January 2002). The matter was followed up with reminder to the Financial Commissioner (Taxation) and Secretary to Government, Punjab in April 2002, but despite such efforts, no reply was received (October 2002).

2.9. Non-levy of purchase tax

Under the Central Sales Tax Act, 1956, the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India is exempt from tax. However, it has been judicially held** that the purchase of paddy used for manufacture of rice to be exported out of India, is liable to purchase tax at the hands of Rice Miller *notwithstanding* that rice procured out of it is exported out of India.

* (i) M/s Pankaj Oil Industry v/s State of Haryana (STI-1989-17 Punjab and Haryana Tribunals).

(ii) M/s Dabra Industries, Muktsar (Faridkot) v/s State of Punjab (STI-1995- Punjab and Haryana Tribunals).

** M/s Veeru Mal Monga & sons, Sirsa V/s State of Haryana & others (STI-2000 Pb&HR High Court-52).

During test-check of records of Assistant Excise and Taxation commissioner, Gurdaspur it was noticed (December 2001) that while finalising (March 2001) the assessments of three dealers for the years 1996-97 and 1997-98, the assessing authority allowed deduction of Rs.2.28 crore from the gross turnover on account of export of rice out of India. Since the paddy out of which rice was manufactured and exported was liable to purchase tax in view of the above-cited judicial pronouncement, the deduction allowed was not correct. This resulted in non-levy of purchase tax of Rs.9.11 lakh. The assessing authority has not furnished final reply (October 2002).

The above matter was brought to the notice of the department and referred to the Government (February 2002). This was followed up with reminder to the Financial Commissioner (Taxation) and Secretary to Government, Punjab in April 2002. However, despite such efforts, no reply was received (October 2002).

2.10. Non-levy of interest and penalty

Under the State Act and Rules made thereunder, If the dealer fails to pay the tax due before filing the returns, he is liable to pay in addition to the amount of tax, simple interest at the rate of 1 *per cent* for first one month and at the rate of two *per cent* thereafter on such amount till the default continues. Besides penalty at prescribed rate is also leviable.

During the course of test check of the assessment records of Assistant Excise and Taxation Commissioner (Ward 6 Batala), Gurdaspur, it was noticed that while finalising (March 2001) the assessment for the year 1996-97 of a rice sheller, the assessing authority did not levy penalty (Rs.0.19 lakh) and interest (Rs.1.95 lakh) on the additional demand of Rs.1.89 lakh created at the time of assessment. This resulted in non-levy of penalty and interest amounting to Rs.2.14 lakh.

On this being pointed out (July 2001) the assessing authority stated (February 2002) that an additional demand of Rs.2.14 lakh had been created (December 2001). Out of which Rs.1.89 lakh had been recovered.

The matter was brought to the notice of the department and referred to the Government (October 2001). This was followed up with reminder to the Financial Commissioner (Taxation) and Secretary to Government, Punjab in February 2002. However, despite such efforts, no reply was received (October 2002).

2.11. Short levy of Central sales tax

Under the Central Sales Tax Act 1956, on inter-State sales of declared goods not supported by prescribed declaration (form 'C'), tax is levied at twice the rate applicable to the sale or purchase of such goods in the appropriate State. On iron and steel (declared goods), tax is leviable at 4 *per cent* in the State. Therefore, on inter-State sale of iron and steel, without prescribed declaration, tax is leviable at 8 *per cent*.

During the course of audit of Assistant Excise and Taxation Commissioner, Jalandhar-I it was noticed that a dealer was assessed (March 2001) for the year 1994-95 at the rate of 4 *per cent* treating the sale to three institutions, as Government department instead of 8 *per cent* as the sales were not supported by the prescribed declarations. Moreover, these institutions were not Government departments. This resulted in short levy of Central sales tax of Rs.1.66 lakh.

On being pointed out (July 2001), the assessing authority stated that the case had been re-assessed and an additional demand of Rs.2.02 lakh had been created (December 2001).

The above matter was brought to the notice of the department and referred to the Government (November 2001). This was followed up with reminder to the Financial Commissioner (Taxation) and Secretary to Government, Punjab in February 2002. However, despite such efforts, no reply was received (October 2002).

2.12. Incorrect allowance of refund

Under the State Act, the excess tax collected by dealers should not be refunded or retained by them. It has judicially^{**} been held that a promise or agreement to refund tax which is due under the Act and realised in accordance with the law would be a fraud on the Constitution and a breach of faith of people.

During test check of records of the Assistant Excise and Taxation Commissioner, Amritsar-I, it was noticed that a dealer engaged in the business of sale of attaché cases deposited sales tax collected from the customers alongwith periodical returns voluntarily for the first three quarters of the year 1996-97. While filing return for the fourth quarter the dealer found that tax on the goods sold was leviable at the rate of 8.8 *per cent* instead of 13.2 *per cent* and adjusted the tax excess deposited for the first three quarters. While finalising (July 1999) the assessment for the year 1996-97, the assessing authority allowed refund of Rs.1.63 lakh, which was not admissible as per the aforesaid judicial pronouncement. This resulted in undue benefit of Rs.1.63 lakh to the dealer.

On this being pointed out, the assessing authority stated (November 2000) that the dealer had calculated the tax correctly and deducted the same from the tax payable in the fourth quarter. The reply of the assessing authority was not tenable in view of the aforesaid judicial pronouncement.

The above matter was brought to the notice of the department and referred to the Government (January 2002). The matter was followed up with reminder to the Financial Commissioner (Taxation) and Secretary to Government, Punjab in March 2002. However, in spite of such efforts, no reply was received (October 2002).

* U.P State Bridge Corporation. Ltd. Jammu (Rs.15.03 lakh), Jammu development authority Jammu (Rs.15.80 lakh), Jammu and Kashmir Housing Board Jammu (Rs.10.62 lakh).

** Amrit Vanaspati Co Ltd. & Other V/s State of Punjab and another STI-1992-52 (SC)