

**Report of the  
Comptroller and Auditor General of India  
on  
Revenue Sector**

**for the year ended 31 March 2012**

**Government of Punjab  
*Report No. 2 of the year 2013***

## TABLE OF CONTENTS

Description	Reference to	
	Paragraphs	Page/ Remarks
Preface		vii
Executive Summary		ix to xi
<b>Chapter-1 General</b>		
Trend of revenue receipts	1.1	1
Variation between the budget estimates and actuals	1.2	4
Cost of collection of major revenue receipts	1.3	5
Analysis of arrears of revenue in terms of total outstanding and outstanding for more than five years	1.4	5
Arrears in assessment	1.5	6
Evasion of tax	1.6	7
Refunds	1.7	7
Response of the Government departments towards audit	1.8	8
Failure of senior officials to enforce accountability and protect interest of the Government	1.8.1	9
Departmental Audit Committee Meetings	1.8.2	10
Non-production of records to Audit for scrutiny	1.8.3	10
Response of the Departments to the draft audit paragraphs	1.8.4	10
Follow up on the Audit Reports – summarized position	1.8.5	11
Compliance with the earlier Audit Reports	1.8.6	11
Analysis of the mechanism for dealing with the issues raised by audit	1.9	12
Position of Inspection Report	1.9.1	12
Assurances given by the Department/Government on the issues highlighted in the Audit Reports	1.9.2	13
(a) Recovery of accepted cases	1.9.2.1	13
(b) Action taken on the recommendations accepted by the departments/Government	1.9.2.2	13

Description	Reference to	
	Paragraphs	Page/ Remarks
Audit Planning	1.10	13
Results of audit	1.11	14
Position of local audit conducted during the year	1.11.1	14
About this Report	1.11.2	14
<b>Chapter-2</b>		
<b>Taxes/VAT on Sales, Trade</b>		
Tax administration	2.1	15
Analysis of budget	2.2	15
Trend of receipts	2.3	15
Analysis of the arrears of revenue	2.4	16
Cost of VAT per assessee	2.5	16
Arrears in assessments	2.6	16
Tax Audit	2.6.1	17
Cost of collection	2.7	17
Evasion of tax	2.8	18
Refunds	2.9	18
Analysis of collection	2.10	18
Impact of audit reports	2.11	19
Revenue impact	2.11.1	19
Working of internal audit wing	2.12	19
Results of audit	2.13	19
<b>Performance Audit on Taxation of Works Contracts under PVAT Act</b>	2.14	21
Other audit observations	2.15	38
Non-observance of the provisions of Acts/Rules	2.16	38

Description	Reference to	
	Paragraphs	Page/ Remarks
Short apportionment/non reversal of input tax credit	2.16.1	38
Inadmissible/excess claim of refund	2.16.2	42
Excess/inadmissible claim of input tax credit	2.16.3	43
Claim of inadmissible exemption/non levy of tax	2.16.4	44
Short levy of notional tax	2.16.5	44
Short/non levy of notional tax	2.16.6	45
Short levy of output tax	2.16.7	45
Under assessment of output tax	2.16.8	46
Short levy of output tax	2.16.9	46
Incorrect computation of output tax	2.16.10	46
<b>Chapter-3 State Excise</b>		
Tax administration	3.1	49
Analysis of budget	3.2	49
Trend of receipts	3.3	49
Analysis of arrears of revenue	3.4	50
Cost of collection	3.5	50
Evasion of tax	3.6	51
Refunds	3.7	51
Impact of audit reports	3.8	51
Revenue impact	3.8.1	51
Working of internal audit wing	3.9	52



Description	Reference to	
	Paragraphs	Page/ Remarks
Results of audit	3.10	52
Audit observations	3.11	53
Non observance of provisions of the Acts/Rules	3.12	53
Short deposit of renewal fee of Distillery License (D-2)	3.12.1	53
<b>Chapter-4 Stamp Duty</b>		
Tax administration	4.1	55
Analysis of budget	4.2	55
Trend of receipts	4.3	55
Analysis of the arrears of revenue	4.4	56
Cost of collection	4.5	56
Impact of audit reports	4.6	56
Revenue impact	4.6.1	56
Working of internal audit wing	4.7	57
Results of audit	4.8	57
Audit observations	4.9	58
Non observance of provisions of the Acts/Rules	4.10	58
<b>Thematic audit on “Receipts and accounting of Revenue on account of Embossment/ Impressment of instruments</b>	4.10.1	58
Misappropriation of Government Receipts	4.10.2	62
Short levy of stamp duty and registration fee	4.10.3	63

Description	Reference to	
	Paragraphs	Page/ Remarks
Short levy of stamp duty	4.10.3.1	63
Short levy of stamp duty and registration fee	4.10.3.2	64
Irregular remission of stamp duty and registration fee	4.10.4	64
Inadmissible remission of stamp duty and short levy of registration fee	4.10.4.1	65
Non levy of additional stamp duty	4.10.5	66
Short levy of stamp duty due to application of pre-revised rates of duty	4.10.6	67
Non levy of stamp duty on plant and machinery	4.10.7	67
<b>Chapter-5</b> <b>Taxes on Vehicles, Goods and Passengers</b>		
Tax administration	5.1	69
Analysis of budget	5.2	69
Trend of receipts	5.3	69
Analysis of the arrears of revenue	5.4	70
Cost of collection	5.5	70
Evasion of tax	5.6	71
Impact of audit reports	5.7	71
Revenue impact	5.7.1	71
Working of internal audit wing	5.8	71
Results of audit	5.9	72
Compliance audit observations on implementation of MV Act and Rules	5.10	73

Description	Reference to	
	Paragraphs	Page/ Remarks
Non observance of provisions of the Acts/Rules	5.11	73
Non/short realisation of motor vehicle tax	5.11.1	73
Annexure "A"	-	77

## **PREFACE**

1. This Report is prepared for submission to the Governor of the State of Punjab under Article 151 of the Constitution of India.
2. The audit of revenue receipts of the State Government is conducted under Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. This Report presents the results of audit of receipts comprising taxes on sales, trade/value added tax, taxes on vehicles, state excise, stamp duty and registration fees and non tax receipts of the State.
3. The cases mentioned in the Report are among those which came to notice in the course of test audit of accounts during the year 2011-12 as well as those which had come to notice in earlier years but could not be dealt with in previous Reports; matters relating to the period subsequent to 2011-12 have also been included, wherever necessary.
4. The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.

## EXECUTIVE SUMMARY

This Report contains one performance audit and 19 paragraphs relating to non/short levy of taxes, duties etc., involving ₹ 574.95 crore.

### 1. General

Chapter I is based on the audit of Finance Accounts and State Budget for the year ended March 2012. This chapter provides an analytical review of total revenue receipts of the State Government for the year 2011-12.

The total receipts of the State Government for the year 2011-12 were ₹ 26,234.41 crore. Revenue raised by the Government during the year was ₹ 20,239.46 crore, comprising tax revenue of ₹ 18,841.01 crore and non-tax revenue of ₹ 1,398.45 crore. The State Government received ₹ 3,554.31 crore as State's share of divisible Union taxes and ₹ 2,440.64 crore as grants-in-aid from the Government of India.

#### (Paragraph 1.1.1)

During test check of records of the taxes on sales, trade etc., taxes on vehicles, state excise, stamp duty and registration fees, land revenue, conducted during year 2011-12, revealed under assessments, short/non-levy, loss of revenue amounting to ₹ 855.13 crore in 4,824 cases. During the year the departments accepted audit observations of ₹ 328.80 crore in 2,444 cases and collected ₹ 7.94 crore in 463 cases pertaining to the audit findings during the year and previous years.

#### (Paragraph 1.11.1)

### 2. Taxes/VAT on sales, Trade

Performance audit on “**Taxation of works contracts under PVAT Act**” and other paragraphs revealed the following:

Failure to identify/detect the unregistered contractors by conducting a survey resulted into non-realisation of revenue of ₹ 413.68 crore.

#### (Paragraph 2.14.12)

Short deduction of tax deducted at source resulted in loss of revenue of ₹ 9.10 crore.

#### (Paragraph 2.14.13)

Loss of revenue of ₹ 17.02 crore due to short payment of VAT by contractors/real estate developers on the material consumed/sales of flats etc.

#### (Paragraph 2.14.14)

Short levy/payment of tax of ₹ 4.36 crore due to declaration of lesser rate of tax by work contractors.

#### {Paragraph 2.14.15 (a)}

Short payment of tax of ₹ 29 crore due to under determination of taxable turn over.

#### (Paragraph 2.14.16)

Failure to deduct/deposit tax deducted at source within prescribed time frame attracted penalty of ₹ 13.83 crore.

**{Paragraph 2.14.18 (a)}**

Depicting consumption of material of ₹ 103.52 crore as work in progress to the tune of ₹ 133.34 crore by real estate developers/work contractors resulted in non-payment of tax of ₹ 13.35 crore.

**(Paragraph 2.14.19)**

Short computation of taxable turnover applying lower rate of tax and mistakes in computation of tax etc. resulted in loss of revenue of ₹ 84.70 lakh.

**(Paragraph 2.14.21)**

Irregular allowance of input tax credit of ₹ 24.64 lakh on payment of entry tax.

**(Paragraph 2.14.28)**

Irregular refund of ₹ 5.19 lakh due to non adjustment of outstanding demand.

**(Paragraph 2.14.29)**

Irregular allowance of input tax credit of ₹ 2.49 crore due to short reversal of input tax credit.

**{Paragraph 2.16.1 (viii) (a)}**

Incorrect computation of gross purchases resulted in excess claim of input tax credit of ₹ 17.53 lakh.

**{Paragraph 2.16.3 (i) (a)}**

Non levy of tax of ₹ 2.32 crore on electric units which were not exempted under PVAT Act.

**(Paragraph 2.16.4)**

Short computation of quantum of exemption of ₹ 2.98 lakh due to calculation of notional tax at incorrect rate.

**(Paragraph 2.16.10)**

### **3. State Excise**

Short deposit of renewal fee of Distillery licences amounting to ₹ 8.09 lakh due to non-levy of enhanced rates of licence fee.

**(Paragraph 3.12.1)**

### **4. Stamp Duty**

Thematic audit on “**receipt and accounting of revenue on account of embossment/impressment of instruments**” revealed the following:

Misappropriation of Government revenue of ₹ 2.43 crore on account of lack of cross verification of challans with treasury records.

**{Paragraph 4.10.1(i)(a)}**

Short levy of embossment fee of ₹ 10.72 lakh due to delay in implementation of enhanced rate.

**{Paragraph 4.10.1 (ii)}**

Misappropriation of Government dues of ₹ 1.17 lakh on account of deficit stamp duty.

**{Paragraph 4.10.2 (a)}**

Short levy of stamp duty of ₹ 2.49 crore due to misclassification of properties.

**(Paragraph 4.10.3 )**

Irregular remission of stamp duty and registration fee of ₹ 1.03 crore due to violation of the instructions issued by District Collectors.

**(Paragraph 4.10.4 )**

Non levy of additional stamp duty of ₹ 24.45 lakh in violation of the clarification issued by the Government.

**{Paragraph 4.10.5 (i)}**

Non levy of stamp duty of ₹ 12.28 lakh due to non consideration of the value of plant and machinery.

**(Paragraph 4.10.7 )**

## **5. Taxes on Vehicles, Goods and Passengers**

Non/short realization of motor vehicle tax of ₹ 1.65 crore in the Transport Department in respect of stage carriage big buses.

**(Paragraph 5.11.1 )**

# Chapter-1

## General

### 1.1 Trend of revenue receipts

**1.1.1** The tax and non-tax revenue raised by the Government of Punjab, the State's share of net proceeds of divisible Union taxes and duties assigned to States and grants-in-aid received from the Government of India during the last five years ending 2011-12 are mentioned below:

(₹ in crore)						
Sl. No.	Particulars	2007-08	2008-09	2009-10	2010-11	2011-12
1.	<b>Revenue raised by the State Government</b>					
	• Tax revenue	9,899.17	11,150.19	12,039.48	16,828.18	18,841.01
	• Non-tax revenue <sup>1</sup>	5,253.97 (1,787.80)	5,783.91 (2,264.36)	5,652.70 (1,659.29)	5,330.17 (1,531.88)	1,398.45 (45.06)
	<b>Total</b>	<b>15,153.14</b> <b>(11,686.97)</b>	<b>16,934.10</b> <b>(13,414.55)</b>	<b>17,692.18</b> <b>(13,698.77)</b>	<b>22,158.35</b> <b>(18,360.06)</b>	<b>20,239.46</b> <b>(18,886.07)</b>
2.	<b>Receipts from the Government of India</b>					
	• Share of net proceeds of divisible Union taxes and duties	1,974.99	2,084.01	2,144.10	3,050.87	3,554.31
	• Grants-in-aid	2,109.49	1,694.68	2,320.30	2,399.25	2,440.64
	<b>Total</b>	<b>4,084.48</b>	<b>3,778.69</b>	<b>4,464.40</b>	<b>5,450.12</b>	<b>5,994.95</b>
3.	<b>Total receipts of the State Government (1 and 2)</b>	<b>19,237.62</b>	<b>20,712.79</b>	<b>22,156.58</b>	<b>27,608.47</b>	<b>26,234.41<sup>2</sup></b>
		<b>(15,771.45)</b>	<b>(17,193.24)</b>	<b>(18,163.17)</b>	<b>(23,810.18)</b>	<b>(24,881.02)</b>
4.	<b>Percentage of 1 to 3</b>	<b>79</b>	<b>82</b>	<b>80</b>	<b>80</b>	<b>77</b>

The above table indicates that during the year 2011-12, the revenue raised by the State Government (₹ 20,239.46 crore) was 77 *per cent* of the total revenue receipts (₹ 26,234.41 crore). The increase in tax revenues in 2011-12 was 12 *per cent* over the previous year, whereas decrease in non-tax revenues was by 74 *per cent*. The balance 23 *per cent* of the receipts was received from the Government of India.

<sup>1</sup> The figures shown in brackets in the chapter are net of expenditure on prize winning tickets of lotteries conducted by the Government.

<sup>2</sup> For details please see statement number 11-Detailed accounts of revenue by minor heads in the Finance Accounts of the Government of Punjab for the year 2011-12. Figures under the head 0021- Taxes on income other than corporation tax-share of net proceeds assigned to States booked in the Finance Accounts under A – Tax revenue have been excluded from revenue raised by the State and included in the State's share of divisible Union taxes in this statement.



1.1.2 The following table presents the details of tax revenue raised during the period from 2007-08 to 2011-12:

(₹ in crore)

Sl. No.	Head of revenue	2007-08	2008-09	2009-10	2010-11	2011-12	Percentage of increase (+)/ decrease (-) in 2011-12 over 2010-11
1.	VAT <sup>3</sup> / Sales tax	5,014.50	6,166.46	7,264.31	9,642.42	10,754.70	(+) 11.53
	Central sales tax	327.99	269.17	313.18	374.49	416.97	(+) 11.34
2.	State excise	1,861.52	1,809.95	2,100.92	2,373.07	2,754.60	(+) 16.08
3.	Stamp duty and registration fees	1,567.84	1,730.29	1,550.94	2,318.46	3,079.13	(+) 32.81
4.	Taxes and duties on electricity	603.80	631.33	230.13	1,422.90	928.28	(-) 34.76
5.	Taxes on vehicles	499.45	524.09	554.74	653.91	850.06	(+) 30.00
6.	Other taxes and duties on commodities and services	6.76	3.46	9.95	23.69	32.62	(+) 37.70
7.	Land revenue	17.31	15.44	15.31	19.24	24.65	(+) 28.12
<b>Total</b>		<b>9,899.17</b>	<b>11,150.19</b>	<b>12,039.48</b>	<b>16,828.18</b>	<b>18,841.01</b>	<b>(+) 11.96</b>

The following were the reasons for variations reported by the concerned departments:

**VAT/Sale Tax:** The increase of 11.53 *per cent* during the year 2011-12 over the year 2010-11 is attributed to the various policies implemented by the Department and efficiency of the Department.

**State Excise:** The increase of 16.08 *per cent* during the year 2011-12 over the year 2010-11 is attributed to the various policies implemented by the Excise Department.

**Stamp duty and Registration Fees:** The increase of 32.81 *per cent* during the year 2011-12 over the year 2010-11 was attributed to global recession leading to lower sale/purchase of properties in 2010-11.

**Taxes on vehicles:** The increase of 30 *per cent* during the year 2011-12 over the year 2010-11 was attributed to revised rates of MVT on personalized vehicles, better fiscal management and tax collection by the department.

The other departments did not intimate the reasons for variation.

<sup>3</sup> Value Added Tax (VAT) with effect from 1 April 2005.

**1.1.3** The following table presents the details of the major non-tax revenue raised by the State during the period from 2007-08 to 2011-12:

(₹ in crore)

Sl. No.	Head of revenue	2007-08	2008-09	2009-10	2010-11	2011-12	Percent- age of increase (+)/ decrease (-) in 2011-12 over 2010-11
1.	Interest receipts	348.78	181.98	164.69	169.37	170.16	(+) 0.47
2.	Dairy development	0.09	0.09	0.08	0.10	0.27	(+) 170
3.	Other non-tax receipts	441.62	760.97	486.88	559.19	627.12	(+) 12.15
4.	Forestry and wild life	14.70	15.52	26.47	12.52	5.22	(-) 58.31
5.	Non-ferrous mining and metallurgical industries	16.03	37.07	37.99	61.98	35.58	(-) 42.59
6.	Miscellaneous general services (including State lotteries)	4,189.72	4,567.80	4,780.12	4,277.23	323.72	(-) 92.43
7.	Major and medium irrigation	20.02	11.85	34.62	29.60	25.19	(-) 14.90
8.	Medical and public health	48.12	47.63	45.13	71.88	68.43	(-) 4.80
9.	Co-operation	4.60	4.55	3.73	3.50	3.53	(+) 0.86
10.	Public works	16.83	17.52	22.60	21.30	15.83	(-) 25.68
11.	Police	44.71	58.58	51.88	61.89	51.91	(-) 16.13
12.	Other administrative services	108.75	80.35	-1.49	61.61	71.49	(+) 16.04
<b>Total</b>		<b>5,253.97</b> <b>(1,787.80)</b>	<b>5,783.91</b> <b>(2,264.36)</b>	<b>5,652.70</b> <b>(1,659.29)</b>	<b>5,330.17</b> <b>(1,531.88)</b>	<b>1,398.45</b> <b>(45.06)</b>	<b>(-) 73.76</b>

The following were the reasons for variations reported by the concerned departments:

**Miscellaneous General Services (including State lotteries):** The decrease of 92.43 *per cent* in 2011-12 over the year 2010-11 is due to discontinuation of the weekly lottery schemes by the department during 2011-12.

**Non-ferrous mining and metallurgical industries:** The decrease of 42.59 *per cent* during the year 2011-12 was due to non-auctioning of big mines measuring 10830 acres due to non receipt of environment clearance.

**Police:** The decrease of 16.13 *per cent* during the year 2011-12 over the year 2010-11 was due to non-recovery of outstanding claims of the previous years.

The other departments did not intimate the reasons for variations.

## 1.2 Variation between the budget estimates and actuals

The variation between the budget estimates and actuals of revenue receipts for the year 2011-12 in respect of the main heads of tax and non-tax revenue are mentioned below:-

(₹ in crore)					
Sl. No.	Revenue head	Budget estimates	Actual	Variation excess (+)/ short fall (-)	Percentage of variation
<b>A Tax Revenue</b>					
1.	Sales Tax	11,800.00	11,171.67	(-) 628.33	(-) 5.32
2.	State Excise	3,250.00	2,754.60	(-) 495.40	(-) 15.24
3.	Stamp & Registration Fee	2,900.00	3,079.13	(+)179.13	(+) 6.18
4.	Taxes on vehicles	800.00	850.06	(+) 50.06	(+) 6.26
5.	Taxes and Duties on Electricity	1,400.00	928.28	(-) 471.72	(-) 33.69
6.	Other Taxes and Duties on Commodities and Services	238.70	32.62	(-) 206.08	(-) 86.33
7.	Land Revenue	19.00	24.65	(+) 5.65	(+) 29.74
<b>B Non-Tax Revenue</b>					
1.	Interest Receipts	176.62	170.16	(-) 6.46	(-) 3.66
2.	Road Transport	133.00	183.35	(+) 50.35	(+) 37.86
3.	Major & Medium Irrigation	299.42	25.19	(-) 274.23	(-) 91.59
4.	Police	78.00	51.91	(-) 26.09	(-) 33.45
5.	Public Works	23.00	15.83	(-) 7.17	(-) 31.17
6.	Crop Husbandry	35.00	31.59	(-) 3.41	(-) 9.74
7.	Forestry and Wild Life	32.00	5.22	(-) 26.78	(-) 83.69
8.	Misc. General Services	1,657.10	323.72	(-)1,333.38	(-) 80.46

The following were the reasons for variations reported by the concerned departments:-

**Stamp duty and Registration Fees:** The increase of 6.18 *per cent* during the year 2011-12 was due to levy of higher collector rates of properties.

**Taxes and Duties on Electricity:-** The decrease of 33.69 *per cent* for the year 2011-12 was due to non-deposit of electricity duty by Powercom/ Electricity Department in the Punjab Government Account.

**Police:-** The decrease of 33.45 *per cent* between estimates and actual receipts for the year 2011-12 was due to non -payment of deployment charges by other States/Departments.

**Crop Husbandry:-** The decrease of 9.74 *per cent* for the year 2011-12 was due to less renewal of licenses for sale of Fertilizer and Plant Protection equipment, pesticides and weedicides.

The other departments did not intimate the reasons for variation.

### 1.3 Cost of collection of major revenue receipts

The gross collection, expenditure on collection and the percentage of such expenditure to gross collection in respect of the major revenue receipts during the year 2007-08 to 2011-12 along with the relevant all India average percentage of expenditure on collection are mentioned below:-

(₹ in crore)

Sr. No	Head of revenue	Year	Collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage of expenditure to collection
1.	Taxes/VAT on sales, trade etc.	2007-08	5,342.49	45.81	0.86	0.82
		2008-09	6,435.63	48.53	0.75	0.83
		2009-10	7,577.49	59.83	0.79	0.88
		2010-11	1,0016.91	107.25	1.07	0.96
		2011-12	11,171.67	99.73	0.89	0.75
2.	Taxes on vehicles	2007-08	499.45	7.66	1.53	2.47
		2008-09	524.09	9.20	1.76	2.58
		2009-10	554.74	9.19	1.66	2.93
		2010-11	653.91	10.92	1.67	3.07
		2011-12	850.06	15.85	1.86	3.71
3.	State Excise	2007-08	1,861.52	13.27	0.71	3.30
		2008-09	1,809.95	14.57	0.80	3.27
		2009-10	2,100.92	17.23	0.82	2.77
		2010-11	2,373.07	20.55	0.86	3.64
		2011-12	2,754.60	30.16	1.09	3.05
4.	Stamp duty and Registration fees	2007-08	1,567.84	18.22	1.16	2.33
		2008-09	1,730.29	23.69	1.37	2.09
		2009-10	1,550.94	12.42	0.80	2.77
		2010-11	2,318.46	25.47	1.10	2.47
		2011-12	3,079.13	27.56	0.90	1.60

The reasons for the variation in State Excise and Taxes on Vehicles, as furnished by the Department were revision of pay scales and payment of arrears to the employees.

### 1.4 Analysis of arrears of revenue in terms of total outstanding and outstanding for more than five years

The arrear of revenue as on 31 March 2012 in respect of some principal heads of revenue amounted to ₹ 1,024.30 crore of which ₹ 256.92 crore was outstanding for more than five years as detailed in the succeeding table:-

(₹ in crore)

Sr. No.	Head of revenue	Amount outstanding as on 31 March 2012	Amount outstanding for more than five years as on 31 March 2012	Remarks
1.	Taxes on Sales trade etc./VAT	905.47	201.70	Demands of ₹ 3.03 crore were covered by recovery certificate; arrear of ₹ 251.33 crore were stayed by the High Court/Judicial Authority; recovery stayed by Government Deptt. Authorities ₹ 320.63 crore; recovery due to rectification/review of application ₹ 0.80 crore; recovery of ₹ 2.41 crore due to insolvency of dealers; demands of ₹ 24.59 crore likely to be written off; demands of ₹ 1.02 crore were being recovered in instalments and balance amount of ₹ 301.66 crore was at different stages of action.
2.	State excise	14.21	11.46	Demands of ₹ 1.98 crore were covered by recovery certificates; recovery of ₹ 1.27 crore was stayed by the High Court/other judicial and departmental authorities; demands amounting to ₹ 4.63 crore were likely to be written off; ₹ 1.31 crore were being recovered in instalments; recovery of ₹ 7.19 lakh was held up due to rectification and the balance of ₹ 4.95 crore was at different stages of action.
3.	Taxes on Vehicles	104.62	43.76	Recovery of ₹ 0.31 crore were stayed by the High Court/Judicial Authority; ₹ 0.13 crore was stayed by the Government department and the balance amount of ₹ 104.18 crore was at different stages of action.
<b>Total</b>		<b>1,024.30</b>	<b>256.92</b>	

The arrears outstanding for more than five years constituted 25.08 *per cent* of the total arrears.

### 1.5 Arrears in assessment

The opening balance of assessment, assessment due, assessment disposed off and closing balance of assessment during the last five years from 2007-08 to 2011-12 as furnished by the Sales tax/VAT Department in respect of sales tax are mentioned in the succeeding table:

Year	Opening balance	Cases which became due for assessment	Total	Cases disposed during the year	Cases pending at the end of the year
2007-08	3,58,383	—	3,58,383	30,460	3,27,923
2008-09	80,650	—	80,650	27,623	53,027
2009-10	53,027	—	53,027	12,968	40,059
2010-11	40,059	9,253	49,312	7,740	41,572
2011-12	41,572	10,049	51,621	11,155	40,466 <sup>4</sup>

<sup>4</sup> PGST assessment case = 30417 and VAT assessment is 10049

The closing balance of 2007-08 includes 2,47,273 cases pertaining to VAT and there was no provision for regular assessment under PVAT Act 2005. Further, the addition of 10,049 cases during the year 2011-12 pertains to VAT as all the assessments relating to PGST that became due upto 2007-08 had already been included in the arrears of assessments. The opening balance of 2008-09 and thereafter depicts the sales tax cases only.

**It is recommended that Government may consider issuing instructions for early disposal of the cases.**

### 1.6 Evasion of tax

The details of cases of evasion of tax detected by the Departments, cases finalised and the demand for additional tax raised at the end of each year during 2007-08 to 2011-12 as reported by the departments are given below:-

(₹ in crore)

Sr. No.	Revenue Head	Year	No. of cases pending beginning the year	Cases detected during the year	Total	No. of cases in which assessments / investigations completed and additional demand including penalty etc. raised		No. of cases pending at the end of year
						No. of cases	Amount of demand	
1.	Sales tax/ VAT	2007-08	3,850	2,506	6,356	3,049	5.83	3,307
		2008-09	3,307	1,725	5,032	2,706	17.84	2,326
		2009-10	2,326	4,538	6,864	3,068	24.94	3,796
		2010-11	3,796	7,970	11,766	8,376	63.86	3,390
		2011-12	3,390	6,154	9,544	7,203	108.83	2,341
2.	Taxes on Vehicles	2007-08	54	128	182	--	--	182
		2008-09	182	79	261	42	0.86	219
		2009-10	219	13	232	6	48.74	226
		2010-11	226	--	226	160	32.10	66
		2011-12	66	--	66	43	6.31	23
3.	State Excise	2007-08	01	--	--	--	--	01
		2008-09	01	--	01	01	0.01	--
		2009-10	--	--	--	--	--	--
		2010-11	--	182	182	159	1.45	23
		2011-12	23	75	98	98	0.10	--

### 1.7 Refunds

The opening balance of refund cases, refund cases received, refunds allowed and the closing balance during the period of five years ending 2011-12 as reported by the Excise & Taxation Department are as follows:-

(₹ in crore)

Revenue Head	Year	Claims outstanding at the beginning of the year		Claims received during the year		Cases rejected		Refund made during the year		Balance outstanding at the end of the year	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
Sales Tax/VAT	2007-08	2,165	224.52	5,727	223.19	38	2.85	4640	320.84	3214	124.02
	2008-09	3,214	124.02	10,621	496.66	46	5.89	8666	373.80	5123	240.99
	2009-10	5,123	240.99	7,765	437.23	314	38.33	7217	375.66	5357	264.23
	2010-11	5,357	264.23	7,129	549.98	1102	131.50	8381	479.43	3003	203.28
	2011-12	3,003	203.28	9,717	820.06	714	94.82	8888	668.99	3118	259.53

### Excise Department

(₹ in crore)

Revenue Head	Year	Claims outstanding at the beginning of the year		Claims received during the year		Refund made during the year		Balance outstanding at the end of the year	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
State Excise	2007-08	78	0.48	21	9.61	15	9.90	84	0.19
	2008-09	84	0.19	61	1.96	31	1.76	114	0.39
	2009-10	114	0.39	14	0.48	18	0.44	110	0.43
	2010-11	110	0.43	28	2.08	23	2.09	115	0.42
	2011-12	115	0.42	25	0.09	12	0.04	128	0.47

### 1.8 Response of the Government Departments towards audit

- Replies to the audit observations are to be submitted by the Government departments to the office of the Accountant General within one month from the date of issue of Inspection Reports.
- If replies to the audit observations contained in the Inspection Reports are satisfactory, the observations are recommended for settlement after verification of the documents.
- The remaining audit observations are to be settled during the Audit Committee meetings, if the reply of the Department is satisfactory.
- If the audit observations are subjudice, the observations remain pending till decision of the courts.
- At the time of next audit, rest of the audit observations are reviewed by the audit party at length and after verification of the records these are recommended for settlement.

### 1.8.1 Failure of senior officials to enforce accountability and protect interest of the Government

The Accountant General (Audit) Punjab (AG) conducts periodical inspection of the Government departments to test check the transactions and verify maintenance of the important accounts and other records as prescribed in the rules and procedures. These inspections are followed by inspection reports (IRs) incorporating irregularities detected during the inspection and not settled on the spot, which are issued to the heads of offices inspected with copies to the next higher authorities for taking prompt corrective action. The heads of the offices/Government are required to promptly comply with the observations contained in the IRs to rectify the defects and omissions and report compliance through initial reply to the AG within one month from the date of issue of the IRs. Serious financial irregularities are reported to the heads of the departments and the Government.

Inspection reports issued upto December 2011 disclosed that 7,640 paragraphs involving ₹ 7,329.25 crore relating to 5,004 IRs remained outstanding at the end of June 2012 as mentioned below:

	June 2010	June 2011	June 2012
Number of outstanding IRs	4,628	6,031	5,004
Number of outstanding audit observations	9,650	11,330	7,640
Amount involved (₹ in crore)	3,792.89	6,822.66	7,329.25

The Department-wise details of the IRs and audit observations outstanding as on 30 June 2012 and the amounts involved are mentioned below:

Sl. No.	Name of the Department	Nature of receipts	Number of outstanding IRs	Number of outstanding audit observations	Money value involved (₹ in crore)
1.	Department of Finance	Taxes/VAT on sales, trade etc.	1796	2896	438.39
		Electricity duty	20	78	5005.96
		Entertainment Tax, etc.	275	223	220.50
2.	Office of the Excise and Taxation Commissioner, Excise	State Excise	205	148	354.12
3.	Revenue and Rehabilitation	Land Revenue	764	465	359.11
4.	Transport	Taxes on motor vehicles	582	1396	523.50
5.	Stamps and Registration	Stamp duty and registration fee	1165	2068	143.80
6.	Director of Lotteries	State Lotteries	35	63	132.04
7.	Forest and Environment	Forest and wild life	162	303	151.83
<b>Total</b>			<b>5,004</b>	<b>7,640</b>	<b>7,329.25</b>



Even the first replies required to be received from the heads of offices within one month from the date of issue of IRs were not received for 163 IRs issued upto December 2011. The large pendency of IRs due to non-receipt of replies was indicative of the fact that the Heads of the offices and Heads of the Departments did not initiate action to rectify the defects, omissions and irregularities pointed out by the Audit in the IRs.

**It is recommended that the Government may take suitable steps to install an effective procedure for prompt and appropriate response to audit observations as well as take action against the officer/officers who did not send replies to the IRs/paragraphs as per the prescribed time schedules and also did not take action to recover the loss/outstanding dues in time bound manner.**

### **1.8.2 Departmental Audit Committee Meetings**

The Government set up audit committees to monitor and expedite progress of the settlement of audit observations contained in the IRs. No audit committee meeting was held during the year 2011-12. All the Departments were requested to hold the audit committee meetings for expeditious settlement of the outstanding audit observations.

**It is recommended that Government should ensure holding of audit committee meetings.**

### **1.8.3 Non-production of records to Audit for scrutiny**

The programme of local audit of Tax revenue/Non-Tax revenue offices is drawn up sufficiently in advance and intimations are issued, usually one month before the commencement of audit, to the departments to enable them to keep the relevant records ready for audit scrutiny.

During 2011-12 as many as 1,026 assessment files, returns, refunds, registers and other relevant records were not made available to audit. The tax effect involved in the records not produced in audit could not be computed. Break up of these cases are given below:

Name of Office	Year in which it was to be audited	Number of cases not audited
Taxes/VAT on sales, trade	2011-12	829
Entertainments Tax, etc.	2011-12	28
Excise	2011-12	22
Land Revenue	2011-12	35
Transport	2011-12	70
Forest & Environment	2011-12	42
<b>Total</b>		<b>1,026</b>

### **1.8.4 Response of the Departments to the draft audit paragraphs**

On the recommendation of the Public Accounts Committee (PAC), the Department of Finance issued directions to all the departments in October 1967 to send their response to the draft audit paragraphs proposed for inclusion in the Report of the Comptroller and Auditor General of India within six weeks. The draft paragraphs are forwarded demi officially to the

Secretaries of the departments concerned drawing their attention to the audit findings and requesting them to send their response within six weeks. The fact of non-receipt of replies from the Government is invariably indicated at the end of each paragraph included in the Audit Report.

One performance audit and 19 paragraphs proposed to be included in the Report of the Comptroller and Auditor General of India (Revenue Sector) for the year ended 31 March 2012 were forwarded to the Secretaries of the respective departments between May 2012 and August 2012 through demi official letters. Replies to 19 paragraphs were not received.

### 1.8.5 Follow up on the Audit Reports - summarised position

With a view to ensure accountability of the executive in respect of issues dealt with in the audit reports, the Department of Finance issued instructions in August 1992 to initiate *suo moto* action on all paragraphs/reviews figuring in the Audit Reports irrespective of whether the cases were taken up for examination by the PAC or not. Out of 249 paragraphs/reviews included in Audit Reports relating to the period 2005-06 to 2010-11, which were laid before the State Legislature, action taken notes (ATNs) in respect of 143 paragraphs/reviews were not received as on June 2012 even after the lapse of the prescribed period of three months. Out of the above 249 paras, 30 paras pertain to the period 2005-06 and the rest to subsequent years as mentioned below:

Year of Report	Date of presentation of Audit Report to the legislature	No. of paragraphs/ reviews included in the Audit Reports	No. of paragraphs/ reviews on which ATNs were due from the departments
2005-06 <sup>5</sup>	29 March 2007	30	07
2006-07 <sup>6</sup>	12 March 2008	32	12
2007-08 <sup>7</sup>	4 March 2009	49	20
2008-09	15 March 2010	50	18
2009-10	11 March 2011	31	29
2010-11	28 March 2012	31 & 26 Stand alone report on State Excise Deptt.	31 and 26 (SAR)
Total		249	143

### 1.8.6 Compliance with the earlier Audit Reports

During the period from 2006-07 and 2010-11, the departments/Government accepted audit observations involving ₹ 143.60 crore, of which an amount of ₹ 12.15 crore had been recovered till 31 March 2012 as mentioned in succeeding table:

<sup>5</sup> Outstanding paragraphs pertaining to Audit Reports for the years 2005-06 and 2007-08 had been transferred (January 2012) by the Public Accounts Committee to the concerned departments with direction to take further action at their own level.

<sup>6</sup> Remarks same as Sr. no. 5.

<sup>7</sup> Remarks same as Sr. no. 5.

(₹ in crore)

Sl. No.	Year of Audit Report	Total money value	Accepted money value	Recovery made
1	2006-07	197.96	2.90	1.92
2	2007-08	352.33	35.46	2.82
3	2008-09	218.15	42.58	0.33
4	2009-10	94.52	32.51	0.07
5	2010-11	181.61	30.15	7.01
<b>Total</b>		<b>1,044.57</b>	<b>143.60</b>	<b>12.15</b>

The Government may issue appropriate instructions to the concerned departments to effect recovery.

### 1.9 Analysis of the mechanism for dealing with the issues raised by audit

In order to analyse the system of addressing the issues highlighted in the IRs/ Audit Report by the Departments/Government, the action taken on the paragraphs and performance audits included in the Audit Report of the last 10 years in respect of Excise and Taxation Department (Sales Tax/VAT) is evaluated and included in this Audit Report.

The succeeding paragraphs 1.9.1 to 1.9.2 discuss the performance of the Director, State Lotteries, Punjab to deal with cases detected in the course of local audit conducted during the last 10 years and also the cases included in the Audit Reports for the years 2002-03 to 2011-12.

- There is no Audit Committee set up by the Director, State Lotteries and hence no audit committee meeting was held by the Department.
- At the level of Accountant General, half yearly reminders were issued to the Government/Department furnishing the list of the outstanding paragraphs in Inspection Reports and Audit Reports asking them to expedite necessary steps for early settlement.

#### 1.9.1 Position of Inspection Reports

The summarised position of inspection reports issued during the last 10 years, paragraphs included in these reports and status of the same as on 30 June 2012 are given in the succeeding table:

(₹ in crore)

Year	Opening balance			Addition during the year			Clearance during the year			Closing during the year		
	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value
2002-03	29	49	98.68	2	6	0.23	3	4	1.82	28	51	97.09
2003-04	28	51	97.09	4	11	0.48	-	-	-	32	62	97.57
2004-05	32	62	97.57	-	-	-	-	-	-	32	62	97.57
2005-06	32	62	97.57	2	5	0.43	-	1	-	34	66	98.00
2006-07	34	66	98.00	1	4	1.63	-	-	-	35	70	99.63
2007-08	35	70	99.63	2	2	38.42	2	2	1.68	35	70	136.37
2008-09	35	70	136.37	1	6	2.69	1	4	22.52	35	72	116.54
2009-10	35	72	116.54	2	5	12.89	-	-	-	37	77	129.43
2010-11	37	77	129.43	1	1	1.93	5	18	7.68	33	60	123.68
2011-12	33	60	123.68	1	6	4.42	-	4	0.47	34	62	127.63

Audit observed that the number of IRs/paras had marginally decreased from 35/70 involving ₹ 136.37 crore in 2007-08 to 34/62 involving ₹ 127.63 crore in 2011-12. The Department may make more concrete efforts to settle the outstanding IRs and paras.

### **1.9.2 Assurances given by the Department/Government on the issues highlighted in the Audit Reports**

#### **1.9.2.1 Recovery of accepted cases**

The position of paragraphs included in the audit report, those accepted by the Department and the amount recovered since 2003-04 are mentioned in the succeeding table:

(₹ in crore)						
Year of Audit Report	Number of paragraphs included	Money value of the paragraphs	Number of paragraphs accepted	Money value of accepted paragraphs	Amount recovered during the year	Cumulative position of recovery of accepted cases
2003-04	-	-	-	-	-	-
2004-05	-	-	-	-	-	-
2005-06	1	4.70	-	-	-	Para settled by the PAC
2006-07	-	-	-	-	-	-
2007-08	-	-	-	-	-	-
2008-09	1	7.36	-	-	-	Para settled by the PAC
2009-10	1	1.94	-	-	-	-do-
2010-11	-	-	-	-	-	-
<b>Total</b>	<b>3</b>	<b>14.00</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

#### **1.9.2.2 Action taken on the recommendations accepted by the departments/Government**

The draft performance audits conducted by the Accountant General are forwarded to the concerned departments/Government for their information with a request to furnish their replies. These performance audits are also discussed in exit conference and the departments/Government's views are incorporated while finalising the performance audit for the Audit Reports of Comptroller and Auditor General of India.

### **1.10 Audit planning**

The unit offices under various departments are categorised into high, medium and low risk units according to revenue earning, past trends of audit observations and other parameters of the concerned department. The annual audit plan is prepared on the basis of risk analysis which inter-alia included critical issues in Government revenues and tax administration i.e. budget speech, white paper on State finances, reports of the finance commission (state and central), recommendations of the taxation reforms committee; statistical

analysis of the revenue earnings during the past five years, features of the tax administration, audit coverage and its impact during the past five years etc.

During the year 2011-12, there were 442 auditable units, of which 277 units (62.67 *per cent*) were planned and audited. The details are shown in the annexure A.

### **1.11 Results of audit**

#### **1.11.1 Position of local audit conducted during the year**

Test check of the records of 277 units of Sales Tax, State Excise, Motor Vehicles Tax, Stamp Duty and Registration Fees, Electricity Duty revealed under assessment/short levy/loss of revenue amounting to ₹ 855.13 crore in 4,824 cases. During the year Departments accepted under assessment and other deficiencies of ₹ 328.80 crore involved in 2,444 cases. The departments collected ₹ 7.94 crore in 463 cases pertaining to earlier years.

#### **1.11.2 About this Report**

This Report contains one performance audit on “**Taxation of works contracts under PVAT Act**” and 19 paragraphs having financial effect of ₹ 574.95 crore. The Departments/Government have accepted audit observations involving ₹ 10.49 crore out of which ₹ 85 lakh had been recovered/adjusted. The replies in remaining cases have not been received (December 2012). These are discussed in the succeeding chapters 2 to 5.

## Chapter-2

### Taxes/VAT on Sales, Trade

#### 2.1 Tax administration

The Financial Commissioner Taxation and Principal Secretary to the Government of Punjab is overall in-charge of the Excise and Taxation Department. Subject to overall control and superintendence of the Excise and Taxation Commissioner (ETC), the administration of the PVAT Act/Central Sales Tax Act (CST Act), is carried out with the help of Additional Excise and Taxation Commissioner (Addl.ETC), Joint Excise and Taxation Commissioners at the headquarters (JETCs), Deputy Excise and Taxation Commissioners (DETCs) at the divisional level and Assistant Excise and Taxation Commissioners (AETCs), Excise and Taxation Officers (ETOs) and other allied staff at the district level. The authorities performing duties within jurisdictions as specified by the Government under the PVAT Act are called as Designated Officers (DOs).

#### 2.2 Analysis of budget

Scrutiny of Budget records of the Department revealed that the actual receipts were ₹ 11,171.67 crore as against the revised Budget Estimates of ₹ 11,800 crore for the year 2011-12.

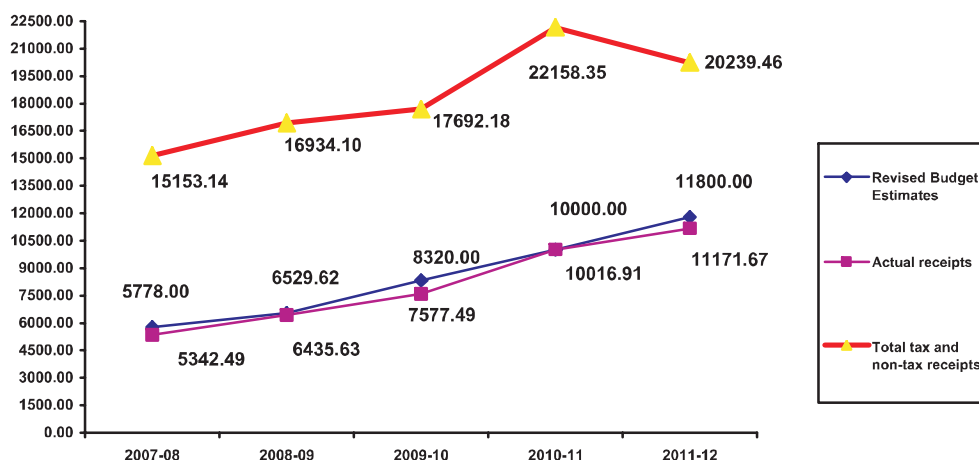
#### 2.3 Trend of receipts

Actual receipts from Taxes/VAT on sales, trade in the State during the last five years 2007-08 to 2011-12 along with the total tax/non-tax receipts during the same period is exhibited in the following table:

(₹ in crore)

Year	Revised budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax and non-tax receipts of the State	Percentage of actual VAT receipts vis-à-vis total tax and non tax receipts
2007-08	5,778.00	5,342.49	(-) 435.51	(-) 7.54	15,153.14	35
2008-09	6,529.62	6,435.63	(-) 93.99	(-) 1.44	16,934.10	38
2009-10	8,320.00	7,577.49	(-) 742.51	(-) 8.92	17,692.18	42
2010-11	10,000.00	10,016.91	(+) 16.91	(+) 0.17	22,158.35	45
2011-12	11,800.00	11,171.67	(-) 628.33	(-) 5.32	20,239.46	55

The trend of actual receipts vis-a-vis budget estimates is given in the succeeding graph.



## 2.4 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2012 was ₹ 905.47 crore out of which ₹ 201.70 crore were outstanding for more than five years. The following table depicts the position of arrears of revenue for the five year period ending 2011-12:

(₹ in crore)

Year	Opening balance of arrears	Addition	Amount collected during the year	Closing balance of arrears
2007-08	1,547.84	486.78	--	2,034.62
2008-09	2,034.62	---	1,174.52	860.10
2009-10	860.10	--	484.12	375.98
2010-11	375.98	290.48	---	666.46
2011-12	666.46	245.90	6.89	905.47

The above table shows that there was sharp increase in arrear of revenue from 2009-10 to 2011-12.

**The Government may take suitable steps to arrest this increasing trend of arrear of revenue.**

## 2.5 Cost of VAT per assessee

(₹ in lakh)

Total no. of assessee as on 31-03-2012	Total expenditure on collection during the year 2011-12	Cost of per assessee
1	2	3
2,17,480	9,973	0.05

## 2.6 Arrears in assessments

The opening balance of assessment, assessment due, assessment disposed off and closing balance of assessment during the last five years from 2007-08 to 2011-12 as furnished by the Sales tax/VAT Department in respect of sales tax are mentioned in the succeeding table below:

Year	Opening balance	Cases which became due for assessment	Total	Cases disposed during the year	Cases pending at the end of the year
2007-08	3,58,383	--	3,58,383	30,460	3,27,923
2008-09	80,650	--	80,650	27,623	53,027
2009-10	53,027	--	53,027	12,968	40,059
2010-11	40,059	9,253	49,312	7,740	41,572
2011-12	41,572	10049	51,621	11,155	40,466 <sup>1</sup>

The closing balance of 2007-08 includes 2,47,273 cases pertaining to VAT and there was no provision for regular assessment under PVAT Act 2005. Further, the addition of 10,049 cases during the year 2011-12 pertains to VAT as all the assessments relating to PGST that became due upto 2007-08 had already been included in the arrears of assessments. The opening balance of 2008-09 and thereafter depicts the sales tax cases only.

**It is recommended that Government may consider issuing instructions for early disposal of the cases.**

### 2.6.1 Tax Audit

The number of cases selected for tax audit, tax audit completed, tax audit completed within the prescribed time, balance and revenue collection as a result of tax audit each year from 2009-10 to 2011-12 are mentioned below:

(₹ in crore)					
Year	No. of cases selected for Tax Audit	Tax audit completed	Tax audit completed within the prescribed time	Balance	Revenue collected
2009-10	210	181	181	29	2.10
2010-11	429	419	419	10	16.45
2011-12	412	301	301	111	3.27
<b>Total</b>	<b>1,051</b>	<b>901</b>	<b>901</b>	<b>150</b>	<b>21.82</b>

### 2.7 Cost of collection

The gross collection, expenditure on collection and the percentage of such expenditure to gross collection in respect of the major revenue receipts during the year 2007-08 to 2011-12 along with the relevant all India average percentage of expenditure on collection are mentioned below:

(₹ in crore)					
Head of revenue	Year	Collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage over the previous year
Taxes/VAT on sales, trade etc.	2007-08	5,342.49	45.81	0.86	0.8
	2008-09	6,435.63	48.53	0.75	0.8
	2009-10	7,577.49	59.83	0.79	0.8
	2010-11	10,016.91	107.25	1.07	0.9
	2011-12	11,171.67	99.73	0.89	0.7

<sup>1</sup> PGST assessment case = 30,417 and VAT assessment = 10,049



## 2.8 Evasion of tax

The details of cases of evasion of tax detected by the Departments, cases finalised and the demand for additional tax raised at the end of each year during 2007-08 to 2011-12 as reported by the departments are given below:-

Revenue Head	Year	No. of cases pending at the beginning of the year	Cases detected during the year	Total no. of cases	No. of cases in which assessments / investigations completed and additional demand including penalty etc. raised		No. of cases pending at the end of year
					No. of cases	Amount (₹ in crore)	
Taxes/VAT on Sales Trade etc.	2007-08	3,850	2,506	6,356	3,049	5.83	3,307
	2008-09	3,307	1,725	5,032	2,706	17.84	2,326
	2009-10	2,326	4,538	6,864	3,068	24.94	3,796
	2010-11	3,796	7,970	11,766	8,376	63.86	3,390
	2011-12	3,390	6,154	9,544	7,203	108.83	2,341

## 2.9 Refunds

The opening balance of refund cases, refund cases received, refunds allowed and the closing balance during the period of five years ending 2011-12 as reported by the Excise & Taxation Department are mentioned below:- (₹ in crore)

Revenue Head	Year	Claim Outstanding at the beginning of the year		Claim received during the year		Cases rejected		Refund made during the year		Balance at the end of the year	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
Taxes / VAT on Sales Trade etc.	2007-08	2,165	224.52	5727	223.19	38	2.85	4640	320.84	3214	124.02
	2008-09	3,214	124.02	10621	496.66	46	5.89	8666	373.80	5123	240.99
	2009-10	5,123	240.99	7765	437.23	314	38.33	7217	375.66	5357	264.23
	2010-11	5,357	264.23	7129	549.98	1102	131.50	8381	479.43	3003	203.28
	2011-12	3,003	203.28	9717	820.06	714	94.82	8888	668.99	3118	259.53

## 2.10 Analysis of collection

The breakup of the total collection into collection before assessment, collection after regular assessment, penalty levied and amount refunded for the five years period ending 2011-12 and as furnished by the Department is as follows:

(₹ in crore)								
Head of revenue	Year	Amount collected at pre-assessment stage	Amount collected after regular assessment	Penalty for delay in payment of taxes and duties	Amount refunded	Net collection as per department	Net collection as per Finance Account	Percentage of column 3 to 8
1	2	3	4	5	6	7	8	9
Taxes/VAT on sales trade etc.	2007-08	6,128.94	49.04	14.15	320.84	5,871.29	5,342.49	114.72
	2008-09	7,397.86	14.67	4.27	373.80	7,043.00	6,435.63	114.95
	2009-10	8,634.88	20.76	4.15	375.66	8,284.13	7,577.49	113.95
	2010-11	7,740.05	144.70	201.10	479.43	7,606.42	10,016.91	77.27
	2011-12	12,034.35	242.72	16.22	662.92	11,630.37	11,171.67	107.72
Total			471.89	239.89	2,212.65	40,435.21	40,544.19	528.61

## 2.11 Impact of audit reports

### 2.11.1 Revenue impact

During the last five years, Audit had pointed out non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/ suppression of turnover, application of incorrect rate of tax, incorrect computation etc., with revenue implication of ₹ 326.27 crore in 1,274 cases. The Department/ Government had accepted ₹ 7.03 crore in 114 cases and recovered ₹ 7.05 crore in 388 cases. The details are shown in the following table:

(₹ in crore)

Year	Number of units audited	Amount objected		Amount accepted		Amount recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2006-07	242	241	14.08	29	0.88	31	0.61
2007-08	88	230	133.50	59	0.34	63	0.67
2008-09	138	295	35.02	18	2.07	29	0.38
2009-10	87	157	55.55	04	1.06	148	3.68
2010-11	42	351	88.12	04	2.68	117	1.71
<b>Total</b>	<b>597</b>	<b>1274</b>	<b>326.27</b>	<b>114</b>	<b>7.03</b>	<b>388</b>	<b>7.05</b>

## 2.12 Working of internal audit wing

Internal audit is intended to examine and evaluate the level of compliance with the rules and procedures so as to provide a reasonable assurance on the adequacy of the internal control. Effective internal audit system both in the manual as well as computerised environments are a pre-requisite for the efficient functioning of any Department. However, no internal audit wing exists in Department.

## 2.13 Results of audit

Test check of the records of 38 units relating to Sales tax/VAT during 2011-12 revealed underassessment of tax and other irregularities involving ₹ 621.41 crore in 256 case under the following broad categories:

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1.	<b>Taxation of works contracts under Punjab Value Added Tax Act</b>	1	555.16
2.	Loss of revenue due to excess refund of VAT	26	13.76
3.	Non/short levy of sales tax/VAT	98	29.83
4.	Incorrect grant of exemption from tax	11	2.03
5.	Excess/irregular claim of ITC	48	3.96
6.	Other irregularities	17	4.61
7.	Non/short levy of penalty	12	2.93
8.	Non/short apportionment of ITC	21	5.40
9.	Short levy of CST	22	3.73
<b>Total</b>		<b>256</b>	<b>621.41</b>

During the year 2011-12, the Department accepted ₹ 8.51 crore involved in 67 cases and recovered ₹ 0.18 crore in three cases pertaining to earlier years.

A few illustrative audit observations involving ₹ 11.22 crore and a performance Audit on '**Taxation of works contracts under Punjab Value Added Tax Act**' with financial impact of ₹ 555.16 crore are discussed in the following paragraphs.

## 2.14 Performance Audit on Taxation of Works Contracts under PVAT, Act

### Highlights

- Failure to identify/detect the unregistered contractors by conducting a survey resulted into non-realisation of revenue of ₹ 413.68 crore.  
(Paragraph 2.14.12)
- Short deduction of tax deducted at source resulted in loss of revenue of ₹ 9.10 crore.  
(Paragraph 2.14.13)
- Real Estate Developers/work contractors had consumed materials/sold flats/towers/EWS/shop etc., worth ₹ 157.18 crore without payment of VAT tax of ₹ 17.05 crore. Only ₹ 0.03 crore was paid resulting in short payment of tax of ₹ 17.02 crore.  
(Paragraph 2.14.14)
- Short levy/payment of tax of ₹ 4.36 crore due to declaration of lesser rate of tax by work contractors.  
(Paragraph 2.14.15(a))
- Under assessment of taxable turnover (TTO) at 489.50 crore instead of correct turnover at ₹ 875.39 crore considering the amount of turnover as per trading account, corresponding turnover with reference to tax deducted at source and consumption of materials in the works contract. This resulted in short levy of tax of ₹ 29 crore.  
(Paragraph 2.14.16)
- Depicting consumption of material of ₹ 103.52 crore as work in progress to the tune of ₹ 133.35 crore by real estate developers/work contractors resulted in non-payment of tax of ₹ 13.35 crore.  
(Paragraph 2.14.19)
- The Designated Officer (DO) in seven cases while finalising assessment determined the taxable turnover incorrectly by short computation of TTO, applying lower rates of tax, ITC on invalid TDS certificates and other mistakes in computation of tax etc., and thereby arrived at TTO of ₹ 79.59 crore as against of ₹ 83.36 crore. This resulted in loss of revenue of ₹ 84.70 lakh.  
(Paragraph 2.14.21)
- Irregular allowance of refund resulted in loss of revenue of ₹ 1.52 crore.  
{Paragraph 2.14.24(a)}

### 2.14.1 Introduction

The assessment, levy and collection of Tax on works contracts is being regulated under the Punjab Value Added Tax Act 2005 (PVAT Act), the Punjab Value Added Rules 2005 (PVAT Rules) made there under and notifications/instructions issued by the Government from time to time.

Sub section (zu) of Section 2 of PVAT Act, provides that “works contract” includes any agreement for carrying out, for cash, deferred payment or other

valuable consideration, building construction, manufacturing, processing, fabrications, erections, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property”. PVAT Act further envisages that, no person other than a casual trader, who is liable to pay tax under this Act, shall carry on business, unless he is registered under this Act.

Section 27(1) of PVAT Act provides that every contractee, responsible for making payment to any person for discharge of any liability on account of valuable consideration exceeding rupees five lakh in a single contract payable for transfer of property in goods (whether as goods or in some other form) in pursuance of a work contract, shall, at the time of making such payment to the contractor either in cash or in any other manner, deduct the tax at source (TDS) at the prescribed rates. It is also provided in the Act that on production of the certificate, credit on account of TDS shall be given to the person from whose bill it has been deducted. Further the provisions of section 27 (4) of the Act requires the person responsible to deduct the tax under sub-section I & II of that section to deposit the amount so deducted into Government Treasury.

#### **2.14.2 Organisational Set-up**

The Financial Commissioner, Taxation and Principal Secretary is the overall incharge of the ETD (Excise and Taxation Department) and the department is headed by an Excise and Taxation Commissioner (ETC), who is assisted by Additional Excise and Taxation Commissioners (Addl. ETCs), Joint Excise and Taxation Commissioners (JETCs) at Headquarters, Deputy Excise and Taxation Commissioners (DETCs) at divisional level and Assistant Excise and Taxation Commissioners (AETCs), Excise and Taxation Officers (ETOs) and other allied staff at district level. The Chief Executive Officer (CEO), ETTSA directly reports to the ETC and is responsible for overseeing the task of computerisation of ETD with the help of system analysts. The authorities performing duties within their jurisdictions as specified by the Government under PVAT Act are called designated officers (DOs).

#### **2.14.3 Audit objective**

The Performance Audit was conducted with the view to ascertaining whether:

- the provisions of the Act and Rules governing scrutiny, assessment, levy and collection of tax on works contracts were adequate;
- exemptions of tax/deductions from turnover claimed by the contractors and allowed by the DO's were admissible/correct;
- the refund has been issued after the verification of the remittance of the TDS and other tax with the treasury record; and
- an effective internal control existed in the Department to ensure that the proper assessment, levy and collection of tax in respect of works contracts so as to prevent leakage of revenue.

#### **2.14.4 Audit Scope and coverage**

The Performance Audit covering the assessments/self assessed returns and refunds for the period 2007-08 to 2010-11 was conducted in seven districts<sup>2</sup> out of 24 Excise districts in the State which were selected on the basis of probability proportional to sizes (PPS) method in respect of the revenue for financial year 2010-11. Besides, other cases based on the regular audit of other districts were also included in the performance audit report.

Out of the seven selected districts, AETC Patiala (except sub-office Nabha and Rajpura) did not provide the records relating to Performance Audit, inspite of Government directions.

#### **2.14.5 Audit criteria**

The following are the sources of audit criteria:

- Punjab VAT Act 2005,
- Punjab VAT Rules 2005
- Guidelines notifications/Departmental decisions taken u/s 85 of PVAT Act.

#### **2.14.6 Audit methodology**

The audit methodology was as follows:

- Scrutiny of assessment records/returns in the selected Excise Districts;
- Scrutiny of refund cases in the selected Excise Districts;
- Survey to detect the unregistered dealers;
- Cross verification of transactions; and
- Analysis of arrear of revenue and assessments relating to work contract transactions.

#### **2.14.7 Acknowledgement**

The Indian Audit and Accounts Department acknowledges the co-operation of Excise and Taxation Department in providing necessary information and records facilitating audit by us. An entry conference was held with the Financial Commissioner, Taxation and Principal Secretary to Government of Punjab, Chandigarh on 27 February 2012. During the conference, the objectives, scope, criteria and methodology of audit were explained. An exit conference was held with the Financial Commissioner, Taxation and Principal Secretary to Government of Punjab on 7 September, 2012, wherein the audit findings were discussed. No written replies were furnished by the Department and it was assured that the replies will be furnished shortly.

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<sup>2</sup> Barnala, Bathinda, Hoshiarpur, Jalandhar-II, Ludhiana-I, Mohali and Patiala.

## **System deficiencies**

### **2.14.8 Survey to detect the unregistered dealers**

Section 21 of PVAT Act, provides that ‘no person other than casual traders, who is liable to pay tax under the Act, shall carry on business unless he is registered under the Act’.

Further, Section 48 of the PVAT Act provides that for identification of the persons, who are liable to pay tax but have remained unregistered, the Commissioner may order conducting survey of such unregistered persons by issue of notices to the persons or class of persons to furnish information and by calling for information from the service providers like banks or financial institutions, divisions, municipal corporations etc., for furnishing details and particulars of services rendered to them.

Audit noticed that no survey was conducted in four districts<sup>3</sup> during the year 2007-08 to 2010-11 and only 11 dealers were registered as a result of surveys in two districts<sup>4</sup>. The failure of the Department to conduct adequate survey facilitated unregistered dealers being brought into the tax net. Some of the cases of unregistered contractors detected through cross verification of records are discussed in paragraph No. 2.14.12.

### **2.14.9 Scrutiny of returns**

The PVAT Act read with Rule 43 of PVAT Rules provides that, ‘the DO shall scrutinise every return filed under Section 26 of the Act. Scrutiny of the returns filed by the dealers is a tool of enforcement strategy of VAT administration. Section 29(1) of the PVAT Act further provides that during scrutiny of the return, if it is found that tax has been paid less than what was actually payable, the DO shall serve a notice upon the person concerned, directing him to rectify the same and to pay the difference alongwith the interest payable under the Act and produce the treasury receipt(s) to the DO, within the time specified in the said notice. However, no intimation under the PVAT Act shall be sent after the expiry of one year from the end of the financial year in which the return was filed’.

Audit noticed that in the case of six AETCs<sup>5</sup>, none of the returns filed by the contractors for the years 2007-08 to 2009-10 were scrutinized at all. The notice of demands for short payment on account of tax, interest and penalty found payable, if any, could not be issued in such cases as the stipulated period of one year for the issuance of notice had already expired.

Audit reported the matter to the Department and the Government (August, 2012), the Department stated (between March and July 2012) that in cases of work contracts, no scrutiny was done whereas the Government accepted the fact and stated (October 2012) that the short fall of the scrutiny was due to the fact that department is working on almost 50 *per cent* strength.

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<sup>3</sup> Ludhiana-I, Hoshiarpur, Mohali and Jalandhar-II.

<sup>4</sup> Barnala and Bathinda.

<sup>5</sup> Barnala, Bathinda, Hoshiarpur, Jalandhar-II, Ludhiana-I and Mohali



#### **2.14.10 Acceptance of annual returns without certification by a Chartered Accountant**

Under Rule 41 of PVAT Rules, 'every taxable person whose gross turnover in a year exceeds ₹ fifty lakh, shall furnish the annual Statement with Part 'B' thereof duly certified by a Chartered Accountant'.

During test check of records (between June 2012 to July 2012) of AETC Mohali for the period 2007-08 to 2010-11, audit noticed that 14 contractors submitted their annual returns without certification by the chartered accountant even though their gross turn over exceeded ₹ fifty lakh and the same had been accepted by the department. In absence of certified accounts, the possibilities of under reporting of turnover could not be ruled out.

The Department admitted the para and stated (October 2012) that dealers have been directed to submit their audited balance sheet and same will be shown as and when received. Final outcome of the cases were awaited.

#### **2.14.11 Implementation of National e-Governance Plan/ E-governance in the Department**

Government of India plans to make all services available to the common man via electronic media under the National e-Governance Plan (NeGP). NeGP further consists of mission mode projects which cover e-governance plans of various sectors. This project comes under the commercial tax mission mode project.

The Government of Punjab has embarked on a reform programme to modernise its tax administration. The key focus is on improving operational efficiency, enabling voluntary compliance and enhancing tax payer's convenience. The Department has already implemented the project on computerisation of VAT Information System (COVIS) which included designing of a statewide I.T. infrastructure with the central server at Patiala. All Excise and Taxation district offices are linked with the Central Server through leased-lines, Very Small Aperture Terminal( V-Sat) and formulation of centralised data base. The Department has engaged Ernst & Young as I.T. auditors for the Department. The Department also has a separate agency known as Excise & Taxation Technical Services Agency (ETTSA) to look after the technical and other modernisation related issues of the Department.

Some of the e-services planned to be provided for simplification of administrative procedures and reduction of processing timelines are as given below:

- e-Registration
- e- filing of returns (quarterly/annual)
- e- clearance of refunds
- e- payment of tax
- Online dealer ledger
- Online issuance of CST statutory forms through Tax Information Exchange System (TINXSYS)
- e-ICC
- e-Pass
- e-TDS



- e-Trip
- e-Form
- Facility to dealer to obtain various online information services like Notifications, Public notice, tender and award.

Audit noticed that out of the above services, the following services were not being provided to the people of the State.

- e- filing of returns (annual)
- e- clearance of refunds
- Online dealer ledger
- Online issuance of CST statutory forms through Tax Information Exchange System (TINXSYS)
- e-TDS

Audit reported the matter to the Department and the Government. The Government has implemented the e-filing of returns (annual) from the financial year 2011-12 and e-clearance of refunds from the financial year 2012-13.

### **Compliance deficiencies**

#### **2.14.12 Execution of works contracts by un-registered contractors**

Section 47 of the PVAT Act provides that ‘with a view to prevent evasion of tax and to ensure proper compliance of the provisions of this Act, the Commissioner or the DO may, from time to time, collect information in respect of sales and purchases effected by a person, class or group of persons and cause any of such sales and purchases to be cross checked.

Sub section 2(A) of Section 8 provides that every person executing work contract, shall pay tax on the value of goods at the time of incorporation of such goods in the works executed at the rates applicable to the goods under this Act, provided that where accounts are not maintained to determine the correct value of goods at the time of incorporation, such person shall pay tax at the rate of 12.5 *per cent* on the total consideration received or receivable, subject to such deductions as may be prescribed. Further, Section 15 (5) of the Act provides that the net tax payable for a tax period by a person who is liable to pay tax, but not registered under this Act, shall be equal to the output tax payable for the said tax period as per the provisions of this Act and no input tax credit shall be admissible to him. It was also provided in Section 52 of the Act that whoever fails to make an application for registration, as required under sub-section (2) of Section 21, shall be liable for penalty equal to the amount of tax, in addition to the tax due, and the interest payable from the date, the person becomes liable for registration as a taxable person or a registered person, as the case may be, till the application for registration is made.

Cross verification of the data collected from different departments of Central/State Government of seven selected districts<sup>6</sup> revealed that 824 unregistered contractors received payment of ₹ 2363.86 crore. After allowing

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<sup>6</sup> Barnala-7, Bathinda-90, Hoshiarpur-51, Jalandhar-II-122, Ludhiana-I-124, Mohali-330 and Patiala-100.

deductions as per above said codal provision on account of labour and services at the rate of thirty *per cent*, deemed taxable turnover worked out to ₹ 1654.70 crore. No mechanism was devised by the Taxation Department to carry out cross verification of records of contractees/buying departments, and to ascertain the number of works contracts carried out by unregistered dealers. Failure to identify/detect the unregistered contractors by conducting a survey as required under provisions of the PVAT Act resulted into non-realisation of revenue of ₹ 413.68 crore including penalty of ₹ 206.84 crore leviable under section *ibid*.

Audit reported the matter to the Department and the Government (August, 2012). In cases of Mohali district, the Department stated (October 2012) that the TDS has been deducted by the contractee and deposited the same with the Department and nothing to do whether an assessee is registered or not, hence the para is not sustainable. The reply of the Department is not acceptable as in Second Exit Conference the Government stated "TDS amount was not total tax liability. But, the department was of the view that on an average tax liability of a contractor comes to 0 to 6 *per cent*, that may differ from case to case. After taking TDS amount into consideration, the net loss to the exchequer will be calculated". The average tax liability as per Department's reply amounted to ₹ 198.56 crore including penalty of ₹ 99.28 crore. The reply of the Government is not acceptable as Section 21 of PVAT Act, provides that 'no person other than casual traders, who is liable to pay tax under the Act, shall carry on business unless he is registered under the Act' and Section 15(5) of the Act provides that the net tax payable for a tax period by a person who is liable to pay tax, but not registered under this Act, shall be equal to the output tax, payable for the said tax period as per the provisions of this Act and no input tax credit shall be admissible to him.

Final action taken by the Department is awaited (December 2012).

#### **2.14.13 Failure to deduct tax at source**

Under Section 27(1) of the PVAT Act, 'every contractee responsible for making payment to any person for discharge of any liability on account of valuable consideration, exceeding rupees five lakh in a single contract payable for the transfer of property in goods in pursuance of a works contract, shall at the time of making such payment to the contractor either in cash or in any other manner, deduct at source an amount equal to two/four *per cent* of such sum towards the tax payable under this Act on account of such contract'.

Test check of records of two districts<sup>7</sup> (between March 2012 to July 2012) revealed that in 13 cases the contractors had been paid a sum of ₹ 360.19 crore during 2005-06 to 2010-11. Though an amount of ₹ 12.19 crore was deductible on account of TDS, yet ₹ 3.09 crore only was deducted leaving a short recovery of Government revenue of ₹ 9.10 crore.

Audit reported the matter to the Department and the Government. In cases of Mohali district, the Department stated (October 2012) that concerned ETOs had already been directed to recover the short deposit of TDS and in case of

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<sup>7</sup> Mohali-12 and Patiala-1

Patiala district, reply would be filed shortly after examining the contents of para and also its admissibility.

#### **2.14.14 Short payment of tax on construction and sale of flats**

The Excise & Taxation Commissioner passed an order under Section 85 of PVAT Act that a dealer (works contractor) engaged in the business of real estate development was liable to be registered under the Punjab VAT Act as a taxable person and pay tax on the transfer of property in goods involved in such works contract under the Punjab VAT Act 2005.

Audit noticed (between March 2012 to July 2012) during the test check of records of self assessed returns for the period 2006-07 to 2010-11 in two districts<sup>8</sup> that 14 Real Estate Developers/work contractors had consumed materials/ sold flats/ towers/ EWS/shops etc. of ₹ 157.18 crore but did not pay VAT. As against ₹ 17.05 crore recoverable, only ₹ 0.03 crore was recovered resulting in short recovery of ₹17.02 crore.

Audit reported the matter to the Department and the Government. The Government/Department stated in Second Exit Conference that every person executing works contracts shall pay tax on the value of goods at the time of incorporation of such goods in the works executed at the rates applicable to the goods under this Act and that the TDS shall be deducted on the quantum and value of goods purchased at the time of execution of particular work and not on some hypothetical price on subsequent transfer of the finished product. The reply of the Government/Department is not acceptable as the contractor is liable to pay tax on value of goods at the time of incorporation of such goods in the works executed; however, the TDS was to be deducted on the gross receipt instead of value of goods purchased and incorporated in execution of works. Moreover, audit observation was about short payment of tax on construction and sale of flats rather than non deduction of TDS.

Final action of the Department was awaited.

#### **2.14.15 Short levy of tax due to mis-classification of materials**

Section 8{2(2A)} of PVAT Act provides that 'Every person executing works contracts shall pay tax on the value of goods at the time of incorporation of such goods in the works executed at the rates applicable to the goods under this Act'.

(a) During scrutiny of refunds orders, assessed returns and self assessed returns for the period 2006-07 to 2010-11, it was noticed (between March 2012 to July 2012) in ten districts<sup>9</sup> that in 32 cases work contractors had not maintained accounts to ascertain the correct value of goods at the time of incorporation of such goods in the work executed by them. Further, these dealers paid tax at lower rate of four *per cent* instead of applicable rate of 12.5 *per cent*. Thus, payment at lower rate of tax resulted into short levy/payment of tax of ₹ 4.36 crore.

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<sup>8</sup> Jalandhar II-1 and Mohali-13

<sup>9</sup> Amritsar-I-1, Barnala-3, Gurdaspur-3, Hoshiarpur-3, Jalandhar-II-8, Kapurthala-2, Ludhiana-III-1, Mohali-9, Muktasar-1 and Ropar-1.

Audit reported the matter to the Department and the Government (August, 2012). The Government/Department clarified in Second Exit Conference that generally disallowed labour portion is taxed in the same ratio as per material attracting different rate of tax consumed in works contract. It was further clarified in the case of M/s GPL Brahmaputra Consortium Ltd., the labour portion was rejected by DO just to raise additional demand and it has been taxed at the rate of 4 percent and not in the ratio of 4 percent and 12.5 *per cent*. The reply is not acceptable due to the fact that the whole of rejected labour portion was taxed at the rate of four *per cent* instead of apportioning the labour portion in the ratio of material consumption attracting different rates of tax and tax it accordingly.

Final action of the department/Government was awaited.

**(b)** Cross verification of the Information Collection Centre (ICC) data with the annual return furnished by a contractor under AETC Jalandhar-II for the period 2008-09 revealed that the contractor made inter state purchases and consumed cement, paint, glass, lime stone etc. valued at ₹ 5.04 crore. The dealer assessed tax of ₹ 20.15 lakh at the rate of 4 *per cent* instead of ₹ 62.97 lakh at the applicable rate of 12.5 *per cent*. This resulted into short payment of ₹ 128.46 lakh including penalty of ₹ 85.64 lakh under Section 56 of PVAT Act. Interest of ₹ 7.71 lakh was also leviable upto March 2012.

Audit reported the matter to the Department and the Government. The Department accepted and stated that the dealer is a works contractor and has made interstate purchases of ₹ 5.04 crore from out of state of Punjab which is taxable at the rate of 12.5 *per cent*, but has calculated the out put tax liability at a flat rate of four *per cent*. In accordance with the definition of sale price as per section 2 of the Act, the dealer is liable to pay the out put tax liability as per the proportion of consumption of goods with respect to the purchases made. The dealer has under assessed his output tax liability, which resulted in short levy of tax of ₹ 42.82 lakh during 2008-09.

The Department stated that the assessment proceedings are being initiated to determine the actual liability. Final action was awaited.

#### **2.14.16 Under reporting of gross turnover**

Explanation 1 under Section 2 (zg) of PVAT Act provides that in relation to the transfer of property in goods (whether as goods or in some other form) involved in the execution of works contracts, 'sale price' means such amount as is arrived at by deducting from the amount of valuable consideration paid or payable to a person for the execution of such works contract, the amount representing labour and other charges incurred and profit accrued other than in connection with transfer of property in goods for such execution. Where such labour and other charges are not quantifiable, the sale price shall be cost of acquisition of the goods and the margin of profit on them plus the cost of transferring the property in the goods and all other expenses in relation thereto till the property in such goods, whether as such or in any other form, passes to the contractee and where the property passes in the different form, it shall include the cost of conversion.

During test check of refunds, assessed/self assessed returns for the period 2005-06 to 2010-11, audit noticed (between March 2012 to July 2012) in 11 districts<sup>10</sup> that in 57 cases of work contractors, under assessment of taxable turnover (TTO) at ₹489.50 crore was made instead of correct turnover at ₹ 875.39 crore considering the amount of turnover as per trading account, corresponding turnover with reference to tax deducted at source and consumption of materials in the works contract. This resulted in short levy of tax of ₹ 29 crore.

In respect of 25 cases pertaining to Mohali district, the Department denied the audit observations on the plea that while arriving at TTO, tax element included in gross turnover was required to be deducted. The reply of the Department is not acceptable as no dealer claimed tax element included in sale under column 1(g) in self assessment annual return (VAT-20). Moreover, audit observation was about suppression of gross receipt corresponding to TDS, material consumed and difference in receipts as per Trading Account. In one case of Amritsar-I, the Department stated that the objection is not tenable as the sale of soil is not to be considered under the head taxable goods. However in the exit conference, the Government clarified that the soil is an unclassified item attracting tax at the rate of 13.75 *per cent*. In another case the Department created an additional demand of ₹ 44.46 lakh. In case of Ropar district the Department stated that freight which has been wrongly added is not freight but was shifting charges of manpower and old machinery from approach road to work site and at various projects in India. The reply of the department is not acceptable since as per Trading Account, the dealer had shown it as freight charges. In remaining 29 cases assessment proceedings have been initiated.

Final action was awaited.

#### **2.14.17 Input Tax Credit on inadmissible goods**

Under the provision of Sub section 5 of Section 13 of PVAT Act, 'a taxable person shall not qualify for input tax credit in respect of tax paid on purchase of petrol, diesel, aviation turbine fuel, liquified petroleum gas and condensed natural gas, unless the taxable person was in the business of selling such products'.

During scrutiny of refund orders, assessed returns and self assessed returns for the period 2006-07 to 2010-11, audit noticed in four districts<sup>11</sup> that in six cases work contractors for civil work had claimed ITC of ₹ 33.70 lakh on account of tax paid on purchase of ₹ 3.98 crore of diesel/aviation turbine fuel, which resulted into inadmissible claim of ITC of ₹ 33.70 lakh.

The Department admitted the audit observation and in one case recovery of ₹ 11.22 lakh has been made and in remaining cases assessment proceedings have been initiated. Final action was awaited.

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<sup>10</sup> Amritsar-I-2, Amritsar-II-1, Barnala-7, Bathinda-6, Gurdaspur-4, Hoshiarpur-2, Jalandhar-II-5, Kapurthala-1, Mohali-25 Patiala-3 and Ropar-1.

<sup>11</sup> Barnala-3, Gurdaspur-1, Hoshiarpur-1 and Mohali-1



#### **2.14.18 Non-levy of penalty**

(a) Under the provision of Section 27(6) of PVAT Act, 'if any contractee or the contractor, as the case may be, fails to make the deduction or after deducting such amount fails to deposit the amount so deducted, the DO may, after giving an opportunity of being heard, by order in writing, direct that the contractee or the contractor shall pay, by way of penalty, a sum equal to the amount deductible under this Section, but not so deducted, and if deducted, not so deposited into the Treasury'.

Audit noticed (between March 2012 to July 2012) during audit of refund orders, assessed returns and self assessed returns for the period 2007-08 to 2010-11 of three districts<sup>12</sup> that in 18 cases of work contractors TDS amounting to ₹ 13.83 crore were not deducted and paid into Government treasury attracting levy of penalty of ₹ 13.83 crore, besides interest leviable under section 27(7) of the Act. The Department in one case of Jalandhar-II stated that the contractee had deposited TDS late, the penalty proceeding shall be initiated. In cases of Mohali the reply of the Department was not relevant to the para. In case of Patiala the Department gave an interim reply.

Final action of the Department was awaited (December 2012).

(b) Under the provision of Section 53 of PVAT Act, 'if a registered dealer fails to pay the tax by due date, the prescribed authority shall impose a penalty for such delay, which would be at the rate of two per cent per month on the tax so due and payable from the date it had become due to the date of its payment or from the date of the order of the assessment whichever is earlier. The amount of penalty payable under this Section shall be calculated by considering a part of the month as one month'.

Audit noticed (between March 2012 to July 2012) during audit of refund orders, assessed returns and self assessed returns for the period 2007-08 to 2010-11 of three districts<sup>13</sup>, seven work contractors deposited tax after the due date but the D.O. while finalising the assessment failed to impose penalty of ₹ 55 lakh for late deposit of tax.

In case of Mohali the reply of the Department was not relevant to the para. In Hoshiarpur and Patiala, the Department stated that the action is being taken and in case of Barnala the Department stated that as the assessee had suo moto paid the tax with interest, the assessing authority exempted him from payment of penalty with the reasoning that there was no concealment of tax deductions except for mis-calculation of labour assessed. The reply of the Department is not acceptable as this was not a case of concealment but case of late deposit of due tax and therefore the penalty has been levied under section 53 instead of 56 of the PVAT Act.

Final action in these cases was awaited.

(c) Under the provision of Section 56 of PVAT Act, if the Commissioner or the DO is satisfied that the persons in order to avoid payment of tax, has

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<sup>12</sup> Jalandhar-II-1, Mohali-14 and Patiala-3

<sup>13</sup> Barnala-1, Hoshiarpur-3 and Mohali-3

concealed any particulars from any return furnished by him or has deliberately furnished incorrect particulars therein, he shall direct that the person shall pay, by way of penalty, in addition to the tax and interest payable by him, a sum equal to twice the amount of tax, assessed on account of the aforesaid reasons’.

Audit noticed (between March 2012 to July 2012) during test check of refund orders, assessed returns and self assessed returns for the period 2007-08 to 2010-11 in five districts<sup>14</sup> that in 18 cases contractors had concealed transactions of sale or purchase from their account books to evade or avoid payment of tax of ₹ 19.96 crore. Penalty imposable under provisions of the Act ibid worked out to ₹ 40 crore.

In cases of Mohali the reply of the Department was not relevant to the para. In case of other districts, the Department stated that action was being taken.

Final action was awaited.

#### **2.14.19 Evasion of tax by developers**

The Excise & Taxation Commissioner passed an order under Section 85 of PVAT Act that a dealer (works contractor) engaged in the business of real estate development was liable to be registered under the Punjab VAT Act as a taxable person and pay tax on the transfer of property in goods involved in such works contract under the Punjab VAT Act 2005.

Audit noticed (between March 2012 to July 2012) during audit of self assessed returns for the period 2007-08 to 2010-11 of two districts<sup>15</sup> that nine real estate developers/work contractors had consumed material worth ₹ 103.52 crore and shown as work in progress to the tune of ₹ 133.34 crore but they neither paid tax nor accounted for the same in the subsequent years. This resulted into evasion of tax of ₹ 13.35 crore.

In case of Mohali the reply of the Department was not relevant to the para. In case of Jalandhar-II assessment proceedings was being initiated.

Final action was awaited.

#### **2.14.20 Short payment of VAT on works contracts**

Under the provision of Rule 15(4) of PVAT Rules, ‘the value of goods, involved in the execution of works contract, shall be determined by taking into account the value of entire works contract by deducting there from the components of payment, made towards labour, services, hire charges for machinery and tools and cost of consumables, cost of establishment and the profit relatable to supply of labour and services.

Audit noticed (between March 2012 to July 2012) during audit of assessed/self assessed returns from eight AETCs<sup>16</sup> for the period from April 2007 to March 2011 that 30 contractors had incorrectly claimed inadmissible deductions such

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<sup>14</sup> Bathinda-1, Jalandhar-II-5, Mohali-10, Mukatsar-1 and Patiala-1.

<sup>15</sup> Jalandhar-II-1 and Mohali-8.

<sup>16</sup> Barnala-4, Bathinda-1, Gurdaspur-1 Jalandhar-II-4, Kapurthala-1, Ludhiana-I-1, Mohali-10 and Patiala-8.

as tax deducted at source, service tax, labour etc., from the TTO which were not admissible under Rule 15(4) of the Rules. This resulted into short payment of VAT of ₹ 6.48 crore.

In cases of Mohali the reply of the Department was not relevant to the para and in all other districts (except Barnala and Gurdaspur) the Department stated that proceedings were being initiated.

Final action of the Department was awaited.

#### **2.14.21 Undue benefit to contractors**

Explanation 1 under Section 2(zg) of PVAT Act provides that in relation to the transfer of property in goods (whether as goods or in some other form) involved in the execution of works contracts, 'sale price' means such amount as is arrived at by deducting from the amount of valuable consideration paid or payable to a person for the execution of such works contract, the amount representing labour and other charges incurred and profit accrued other than in connection with transfer of property in goods for such execution. Where such labour and other charges are not quantifiable, the sale price shall be cost of acquisition of the goods and the margin of profit on them plus the cost of transferring the property in the goods and all other expenses in relation thereto till the property in such goods, whether as such or in any other form, passes to the contractee and where the property passes in different form, it shall include the cost of conversion.

Audit noticed (between March 2012 to July 2012) during audit of the assessment records maintained under three AETCs<sup>17</sup> for the period from April 2007 to March 2011, that the DO while finalising assessment of 11 cases of contractors determined the taxable turnover at ₹ 79.60 crore instead of ₹ 83.36 crore after allowing various inadmissible deductions resulting in loss of revenue of ₹ 84.70 lakh.

In case of Mohali the reply of the Department was not relevant to the para. In case of Barnala district, the Department denied the objection on the basis that deduction under rule 15(4) was rightly granted; however, the audit observation was that the tax was levied at the rate of four *per cent* instead of 5.5 *per cent* in the last quarter of 2009-10 as the rate of tax was revised from four to five *per cent* with effect from January 2010. No reply was furnished in respect of Amritsar-1 district.

Final action was awaited.

#### **2.14.22 Inadmissible allowance of ITC on capital goods**

Under the provision of Section 13 of PVAT Act, 'a taxable person is entitled to ITC on Capital Goods purchased by him from a taxable person within the State provided that the capital goods so purchased were used for manufacturing of taxable goods'.

Audit noticed (between November 2011 to July 2012) during audit of Refund/assessed/self assessed returns for the period 2008-09 to 2010-11 of

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<sup>17</sup> Amritsar-I-1, Barnala-2 and Mohali-8.



three districts<sup>18</sup>, that six contractors had claimed and were allowed ITC of ₹ 16.78 lakh on account of purchase of capital goods worth ₹ 3.39 crore which was inadmissible as the dealers were engaged in work contract alone. This resulted into inadmissible claim/allowance of ITC of ₹ 16.78 lakh.

The reply furnished by the Department relating to cases of Jalandhar II was that proceedings was being initiated for verification, in respect of one case relating to Gurdaspur district the Department partially accepted and in another case the reply was irrelevant because recovery effected by department related to allowance of inadmissible ITC in respect of diesel (Para 2.14.17). In case of AETC Kapurthala, no reply was furnished. Final action in respect of remaining cases were awaited.

#### **2.14.23 Non deposit of tax**

Under the provision of Rule 51 of PVAT Rules, read with section 53 of the Act 'if any sum is payable by a person under the Act or these Rules, the DO shall serve a notice in Form VAT 56 upon him specifying the date, not less than fifteen days and not more than thirty days from the date of service of the notice, on or before which, payment shall be made and he shall also fix a date on or before which, the person shall furnish the treasury challan in proof of such payment'.

Audit noticed (between April 2012 to July 2012) during audit of self assessment returns for the period 2007-08 to 2008-09 of two districts<sup>19</sup> that in two cases of work contractors, the out put tax liability was ₹ 49.81 lakh and admissible ITC was ₹ 35.10 lakh. The dealers neither paid balance tax of ₹ 14.71 lakh nor the DO issued notice and made efforts for realising balance amount of tax. Total realisable amount worked out to ₹ 36.41 lakh including penalty of ₹ 21.70 lakh.

In case of Mohali the reply of the Department was not relevant to the para and in case of Patiala it was stated that reply would be filed shortly.

Final action was awaited.

#### **2.14.24 Irregular allowance of refund**

As per section 15(5) of PVAT Act, the tax liability of unregistered dealer will be equal to output tax payable and he shall not be entitled to input tax credit. Further, Rule 5 of PVAT Rules provides that the Registration Certificate (RC) shall be valid from the date of receipt of application for registration or from the date of commencement of the liability to pay tax, whichever is later. Further as per section 27(6) a person who fails to make deduction or after deducting such amount fails to deposit the amount will be levied with penalty of a sum equal to the amount deductible under this section, but not deducted and if deducted not deposited into Government Treasury'.

During test check of refund case of a contractor under AETC Mohali audit noticed (November 2011) that:

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<sup>18</sup> Jalandhar-II-1, Gurdaspur-4 and Kapurthala-1.

<sup>19</sup> Patiala-1 and Mohali-1.

(a) A contractor issued with registration certificate dated 5 September 2007 was allowed credit of TDS of ₹ 1.52 crore relating to the period prior to 5 September 2007 when he was an unregistered dealer. This resulted into irregular allowance of refund of ₹ 1.52 crore.

(b) Further, TDS of ₹ 1.89 crore deducted during January to October 2008 by a contractee was deposited in the Government Treasury after the RC was granted to the contractor in November 2008 in order to make him eligible to claim the refund of ITC. This violation also attracts penalty of ₹ 1.89 crore leviable under section 27(6) of the Act *ibid*.

In reply the Department stated that the concerned ETO has been directed to recover the due amount of tax.

Final action was awaited.

#### **2.14.25 Short levy of VAT and excess allowance of ITC**

As per Rule 15 of Punjab VAT Rules, in case of non maintenance of accounts or claiming of deductions which are considered unreasonable under Rule 4, the contractee shall pay tax at the rate of 12.5 per cent on the total consideration received in such cases the contractee is not eligible to claim input tax credit and not eligible to issue VAT invoice. In such cases the deduction on account of labour and service on account of civil work like construction of building, bridges, roads etc. has been kept in thirty percent of total receipt.

Audit noticed (April 2012) in the test check of the assessment record under AETC Patiala for the period 2009-10, that a contractor had not maintained accounts, the DO while determining the TTO had incorrectly allowed ITC of ₹ 19.44 lakh and calculated the tax ₹ 47.79 lakh instead of ₹ 97.55 lakh. This resulted into short levy of tax of ₹ 49.76 lakh and allowance of inadmissible ITC of ₹ 19.44 lakh and total tax effect of ₹ 69.20 lakh.

The Department stated that the particulars have not been given in annexure. As this is an individual paragraph about only one assessee, no annexure was required.

Final action was awaited.

#### **2.14.26 Inadmissible benefit to the dealers**

Under the provision of Section 13(11) of PVAT Act, 'the input tax credit shall be non transferable except where the ownership of the business of a person is entirely transferred'.

Audit noticed (November 2011) during the test check of refund cases of a dealer for the period 2006-07 and 2007-08 under AETC Mohali that while allowing the refund the DO, instead of issuance of refund order, issued refund adjustment order of ₹ 29.03 lakh in favour of another dealer having a separate TIN number for discharging liability on account of additional demand. This resulted into inadmissible adjustment of refund ₹ 29.03 lakh.

The reply of the Department was not relevant to the Para.

Final action was awaited.

#### **2.14.27 Excess allowance of refund**

Section 39(1) of PVAT Act provides that, 'subject to the provisions of this Act and the rules made there under, the Commissioner or the designated officer shall, in such manner and within such period, as may be prescribed, refund to a person, the amount of tax, penalty or interest, if any, paid by such person in excess of the amount due from him and also the excess of input tax credit over output tax payable under this Act.

Audit noticed (June 2012) during audit of refund case of a dealer for the year 2010-11 under AETC Mohali that the out put tax liability was ₹ 2.38 lakh, ITC including TDS was ₹ 2.74 lakh. The dealer had been allowed refund of ₹ 2.12 lakh instead of ₹ 0.36 lakh. This resulted into allowance of excess refund of ₹ 1.76 lakh.

The reply of the Department was not relevant to the Para.

Final action was awaited.

#### **2.14.28 Excess claim of ITC of Entry Tax**

Under the provision of Section 13-A of PVAT Act, 'a taxable person shall be entitled to input tax credit in respect of the tax paid by him under the Punjab Tax on Entry of Goods into Local Area Act, 2000, if such goods are for sale in the State or in the course of inter state trade or commerce or in the course of export or for use in the manufacture, processing or packing of taxable goods for sale within the state or in the course of inter state trade or commerce on in the course of export'.

Audit noticed (March 2012) during audit of self assessed return of a dealer for the year 2010-11 under AETC Jalandhar that the dealer had made inter state purchases of ₹ 2.36 crore. Out of this, cement valuing ₹ 5.65 lakh attracted payment of entry tax of ₹ 0.70 lakh at the rate of 12.5 *per cent*. However, the dealer claimed input tax credit on account of entry tax of ₹ 25.34 lakh. This resulted into excess claim of ITC of ₹ 24.64 lakh.

The Department stated in reply that the proceeding in the case was being initiated. Final action of the Department was awaited.

#### **2.14.29 Allowance of refund without adjusting arrear**

Under the provision of Section 34 of PVAT Act, 'Tax or any other amount due or payable by a person under this Act, shall be a debt, due to the State Government and shall be payable or recovered as per the provisions of this Act'.

Audit noticed (March 2012) that demand of ₹ 5.19 lakh was created in respect of an assessee for the year 2007-08. However, the DO allowed refund for the two subsequent years without adjusting the above said arrears. This resulted into irregular issuance of refund without adjusting outstanding demand.

The Department stated that the para was admitted and efforts for recovery of additional demand were being made.

Final action was awaited.

### **2.14.30 Conclusion**

The Performance Audit revealed a number of systemic and compliance deficiencies in implementation of VAT on supplies/works contracts. Survey has not been undertaken to detect unregistered dealers, widen the tax base and augmenting revenue. In none of the test checked districts, the data of works executed/supplies made was collected from the other departments and cross verified. These system failures led to widespread leakage of revenue which remained undetected. Apart from the above, cases were also noticed involving large sums of unrealised revenue due to non compliance by the DO with the provisions of the Act/Rules.

### **2.14.31 Summary of recommendations**

- The Government may ensure conducting regular surveys, inter departmental cross verification of data/records and provide for other suitable measures for registration of works contractors. Government should make registration of contractors under PVAT Act mandatory before awarding any works contract.
- Ensuring the transparent, timely and hassle free delivery of services to the people of State which will also be in the interest of the revenue;
- Ensuring verification of various declaration forms as well as inter-departmental cross verification of data/information.
- Ensure timely processing of return so as to ensure further action within the time stipulated under the Act.

## **2.15 Other audit observations**

*Audit noticed several cases of non-observance of provisions of Acts/Rules; non/short levy of tax, penalty and interest; incorrect allowance of exemption; and other cases during scrutiny of records of sales tax/VAT as mentioned in the succeeding paragraphs. These cases are illustrative and are based on the test check carried out by Audit. Such omissions on the part of Assessing Authorities (AAs)/Designated Officers (DOs) are pointed out in audit repeatedly, but not only the irregularities persist, they also remain undetected till an audit is conducted. There is need for the Government to improve the internal control system so that such omissions can be detected timely and corrective measures taken without loss of time.*

## **2.16 Non-observance of the provisions of Acts/Rules**

*The Punjab General Sales Tax Act, 1948 (PGST Act), The Punjab Value Added Tax Act 2005 (PVAT Act), The Central Sales Tax Act 1956 (CST Act) and the Rules provide for:-*

- (i) levy of tax at the prescribed rates*
- (ii) exemption from tax*
- (iii) correct determination of the tax/turnover and*
- (iv) grant of Input Tax Credit.*

*The AAs while finalising the assessment did not observe some of the provisions of Acts/Rules in the cases mentioned in paragraphs 2.16.1 to 2.16.11. This resulted in non/short levy and non-realisation of tax, interest and penalty of ₹ 11.22 crore.*

### **2.16.1 Short apportionment/non reversal of input tax credit**

Rule 24(1) of the PVAT Rules provides that where a taxable person has used the goods purchased, partially for taxable sales, but is unable to maintain accounts as provided in the Rule 23, and the sales by him, includes sale of tax free goods and taxable goods or consignment or branch transfers, then it shall be presumed that the goods so purchased, during the tax period have been used in proportion of turnover of sales of tax free goods, taxable goods and consignment or branch transfers of the tax period or return period and accordingly input tax credit shall be claimed in that proportion. Further input tax credit in the case of consignment sale shall be considered only to the extent by which the amount of tax paid in the State exceeds four percent. Further, in terms of the provision contained in section 13-A of the PVAT Act, a taxable person shall not be entitled to input tax credit in respect of the tax paid by him under the Punjab Tax on Entry of Goods into Local Area Act, if such goods are for use in the manufacture, processing or packing of taxable goods sent outside the State other than by way of sale.

**(i)** Audit noticed in the case of a dealer in AETC, Hoshiarpur for the assessment year 2008-09 that the dealer had gross turnover of ₹ 223.32 crore including branch transfer of ₹ 108.99 crore. The dealer had eligible purchases for input tax credit of ₹ 129.54 crore inclusive of inter State Purchases

₹ 118.30 crore subjected to entry tax. Audit observed that without considering inter State purchases of ₹ 118.30 crore and the correspondence entry tax of ₹ 4.73 crore, the assessing officer apportioned ITC of ₹ 22.34 lakh against the apportionable ITC of ₹ 2.53 crore resulting in short apportionment of ITC of ₹ 2.31 crore in respect of sales within the state.

Audit reported the matter to the Department and Government (February 2012). The case had been re-opened and the final outcome of the case and reply of the Government are awaited (December 2012).

(ii) Audit noticed in the case of AETC, Patiala (July 2010) from self assessed annual return for 2007-08, the GTO of ₹ 42.15 crore was exclusive of branch transfer of ₹ 10.54 crore. The dealer was allowed an ITC of ₹ 10.19 lakh on the eligible purchases of ₹ 20.71 crore relating to branch transfer against the apportionable ITC of ₹ 16.57 lakh resulting in short apportionment of ITC of ₹ 6.38 lakh on his sale within the state.

Audit reported the matter to the Department and the Government (November 2011). Department accepted and created an additional demand of ₹ 30.36 lakh. However, the reply of the Government is awaited (December 2012).

(iii) Audit noticed from the records of three AETCs<sup>20</sup> relating to assessment in one case for assessment year 2006-07, and self assessed annual returns for 2007-08 in two cases that out of the GTO of ₹ 144.76 crore, these dealers had sale of self manufactured tax free goods of ₹ 91.88 crore. Similarly these dealers had claimed the ITC of ₹ 97.90 lakh on their eligible purchases of ₹ 4.73 crore claimed and apportioned the ITC of ₹ 1.46 lakh on account of sale of tax free goods instead of apportionable ITC of ₹ 17.49 lakh resulting in non/short reversal of ITC of ₹ 16.03 lakh.

Audit reported the matter to the Department and the Government. AETC, Jalandhar accepted and created (June 2011) an additional demand of ₹ 3.45 lakh against ₹ 3.39 lakh pointed out by audit. The reply of the Department in the remaining two cases and of the Government in all the cases was awaited.

(iv) Audit noticed from the records of three AETCs<sup>21</sup> relating to self assessed annual returns for 2007-08, three dealers had gross turnover of ₹ 264.78 crore inclusive of consignment sale of ₹ 46.04 crore and sale of self manufactured tax free goods of ₹ 97.06 crore. Similarly they have purchases eligible for ITC of ₹ 81.99 crore on which ITC of ₹ 3.76 crore was claimed by them. Thus, sales of self manufactured tax free goods of ₹ 97.06 crore and consignment sales of ₹ 46.04 crore which were liable for apportionment of relatable ITC to the tune of ₹ 1.97 crore were apportioned ITC of ₹ 1.26 crore resulting in short apportionment of ITC of ₹ 70.92 lakh.

Audit reported the matter to the Department and the Government. AETCs Ludhiana-II and Ropar accepted and created additional demands of

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<sup>20</sup> Hoshiarpur, Jalandhar-I and Ludhiana-I.

<sup>21</sup> Ludhiana-I, Ludhiana-II and Ropar.



₹ 13.42 lakh on 28.4.2011 and ₹ 8.52 lakh on 25.7.2011 against ₹ 21.65 lakh and ₹ 11.18 lakh. The demand of ₹ 8.52 lakh was also got deposited into Government treasury but the reply of AETC Ludhiana-I and the Government were awaited.

(v) PVAT Rules 2005 provides that no input tax credit shall be admissible to a person for tax paid on purchases of goods, if such goods are lost or destroyed or damaged beyond repair. Rules further provide that input tax credit availed on the goods, which are lost, destroyed or damaged beyond repair, shall be reversed immediately on the occurrence of such event.

Audit noticed from the records of AETC, Amritsar relating to assessments for the year 2006-07 of two dealers, the assessing authority omitted to reverse the ITC, already claimed by these dealers on the purchases of goods of ₹ 4.05 crore, the stocks of which had expired during the year. This has resulted in non-reversal of ITC of ₹ 16.20 lakh.

Audit reported the matter to the Department and the Government whose replies are awaited.

(vi) Punjab Value Added Tax Act, 2005 provides that input tax credit on furnace oil, transformer oil, mineral turpentine oil, water methanol mixture, Naphtha and lubricants, when used in the production of taxable goods or captive generation of power, shall be allowed only to the extent by which the amount of tax paid in the State exceeds four *per cent*.

Audit noticed in AETC Ludhiana-I relating to self assessed annual return of a dealer for 2007-08 that out of total purchases of furnace oil of ₹ 1.09 crore, the dealer had purchased furnace oil of ₹ 82.25 lakh from the State of Punjab by paying the tax at the rate of four *per cent*. As indicated from the return/trading account, the dealer had used this oil in the production of taxable goods and not sold in re-sale transactions. He claimed ITC on the purchases of furnace oil at full rate instead of at a rate more than four per cent resulting in excess claim of ITC of ₹ 3.29 lakh.

Audit reported the matter to the Department and the Government. Department accepted and created an additional demand of ₹ 3.94 lakh. However, the reply of the Government is awaited.

(vii) Audit noticed (February 2011) from records of AETC Barnala relating to refunds issued to an assessee for ₹ 1.37 crore, the assessee had gross turnover of ₹ 324.11 crore inclusive of branch transfer of ₹ 126.71 crore. The assessee had purchases eligible for ITC of ₹ 227.89 crore inclusive of inter state purchases. While computing apportionment of ITC on account of branch transfer the designated officer erroneously apportioned ITC of ₹ 2.24 crore instead of correct apportionment of ₹ 3.56 crore resulting in inadmissible refund ₹ 1.32 crore due to non consideration of entry tax for apportionment.

Audit reported the matter to the Department and the Government whose replies were awaited.

(viii) (a) Audit noticed from the records of AETC Hohisarpur that an assessee had gross turnover of ₹ 219.71 crore inclusive of branch transfer of ₹ 98.53 crore. The assessee had eligible purchases for ITC of ₹ 146.73 crore inclusive of interstate purchases. While computing apportionment of ITC on

account of branch transfer, the designated officer erroneously apportioned ITC of ₹ 14.53 lakh instead of correct apportionment of ₹ 2.63 crore resulting in short apportionment of ₹ 2.49 crore leading to inadmissible refund of ₹ 1.75 crore and short levy of tax of ₹ 0.74 crore mainly due to non consideration of entry tax for apportionment.

Audit reported the matter to the Department and the Government whose replies were awaited.

**(viii)(b)(i)** PVAT Act, provides that a taxable person shall not qualify for input tax credit in respect of tax paid on the purchases of diesel, unless he is in the business of selling such product. This view point was also confirmed by Punjab and Haryana High Court<sup>22</sup> in an appeal case against the decision of VAT Tribunal Punjab delivered on 23.01.2009.

Audit noticed from the records of AETC Hoshiarpur relating to refunds for assessment year 2009-10, the total eligible purchase of ₹ 96.12 crore inclusive of purchases of diesel of ₹ 4.48 crore, incorrectly claimed the ITC alongwith the ITC claim of total purchases and same was also allowed by the assessing authority. This had resulted in inadmissible ITC of ₹ 39.39 lakh leading to inadmissible refund to this extent.

Audit reported the matter to the Department and the Government whose replies were awaited.

**(viii)(b)(ii)** Audit noticed (November 2011) from the records of AETC Mukatsar relating to 2008-09, the total eligible purchase of ₹ 75.25 crore inclusive of purchases of diesel of ₹ 89.47 lakh, on which the dealer had incorrectly claimed the ITC resulting in inadmissible ITC of ₹ 7.54 lakh.

Audit reported the matter to the Department and the Government whose replies are awaited (December 2012).

**(ix) (a)** In terms of the provisions contained in item No.16 of Schedule 'B' appended to PVAT Act, capital goods i.e. Plant and Machinery and Parts thereof are liable to tax at the rate of four per cent

Audit noticed (December 2010) from the records of AETC Moga relating to refunds for the year 2005-06 to an assessee the designated officer incorrectly allowed the ITC of ₹ 12.80 lakh on the purchase value of capital goods of ₹ 1.36 crore instead of admissible ITC of ₹ 5.45 lakh. Computation of ITC at higher rate over four per cent had resulted in excess allowance of ITC/refund of ₹ 7.35 lakh.

Audit reported the matter to the Department and Government. The Department stated that the ITC was allowed correctly as paid by the assessee on the purchases of capital goods including electrical goods. The reply of the Department was not accepted because ITC on the capital goods is admissible only upto the rate of four per cent on plant and machinery and no ITC was admissible on electrical goods until or unless the dealer is in the business of such goods. However, reply of the Government was awaited.

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<sup>22</sup> Punjab State and others v/s M/s Malwa Cotton and Spinning Mill Ltd. (P&H), (2011)-39 VAT-65 (P&H).



(ix) (b) Audit noticed from the records of AETC Patiala relating to the year 2005-06 and 2006-07 of an assessee, the designated officer incorrectly allowed the ITC of ₹ 11.58 lakh on the purchase value of capital goods of ₹ 1.37 crore instead of admissible ITC of ₹ 5.48 lakh. Computation of ITC at higher rate over four *per cent* had resulted in excess allowance of ITC of ₹ 6.10 lakh.

Audit reported the matter to the Department and Government whose replies were awaited.

#### **2.16.2 Excess/inadmissible claim of refund**

(i) Section 2(zc) of PVAT Act and Rules made there under provides that every taxable person shall keep a true account of goods sold and purchased by him.

Audit noticed (July 2011) from the records relating to refund of AETC Ludhiana-III that while claiming refund of ₹ 4.69 lakh for the quarter ended December 2008, an assessee claimed and was allowed entry tax of ₹ 19.86 lakh on account of tax paid on the purchase of ₹ 4.89 crore made from outside the State of Punjab, but had actually accounted for the purchase of ₹ 3.42 crore only. Though the details of inter state purchases were on record, the DO did not verify them and point out the suppression of the purchases. This resulted in suppression of sales equivalent to the short accounting of ₹ 1.47 crore of imported purchase leading to inadmissible refund of ₹ 4.69 lakh and short levy of tax of ₹ 1.18 lakh.

Audit reported the matter to the Department and the Government. The Department stated that entry tax was charged after including all the expenses like custom duty, freight etc., but the taxable person has shown only purchase value in his return and hence audit observation is not accepted. The reply of the Department was not acceptable as the purchase price means the amount of valuable consideration paid or payable by a person for any purchase made, including any sum of surcharge on account of freight, storage, demurrage, insurance and any other sum charged for anything done by a person in respect of the goods at the time of or before delivery thereof and the reply of the Government was awaited.

(ii) The Punjab Tax on Entry of Goods into local Area Act, 2000 read with new conditions regulating deferment and exemption as contained in the Punjab VAT Act, 2005 provides that a unit availing the benefit of deferment or exemption from the payment of tax, shall be entitled to refund of tax, paid or payable by it on the purchase made from the taxable person within the State.

Audit noticed from the records of AETC, Amritsar-I relating to refunds that while allowing refunds of ₹ 12.71 lakh (April 2010) for the period from October 2007 to December 2008 to a dealer, who was availing the benefit of exemption from the payment of tax under Punjab General Sales Tax Act (Deferment and Exemption Rules) 1991, the designated officer did not observe the new conditions regulating deferment and exemption and incorrectly allowed input tax credit of ₹ 3.54 lakh against entry tax paid by the dealer alongwith input tax credit paid on the purchases made within the State.

This resulted in inadmissible allowance of ITC on account of entry tax and consequent grant of refund to the extent of ₹ 3.54 lakh.

Audit reported the matter to the Department and the Government whose replies were awaited.

### **2.16.3 Excess/inadmissible claim of input tax credit**

The PVAT Act 2005 provides that every taxable person, who is required so to do by the Commissioner or the designated officer by notice served on him, shall keep a true account of the goods sold and purchased by him. The Act further provides that a taxable person shall be entitled for input tax credit in respect of tax paid on the taxable goods including capital goods purchased within the State.

(i) Excess/inadmissible claim of ITC due to excess claim of purchases, short and non-accountal of discount, mistake in the computation of ITC inadmissible claim of ITC on the purchases of diesel and claim of ITC on capital goods at the higher rate were noticed in the following cases.

(i) (a) Audit noticed from the records of four AETCs<sup>23</sup> relating to assessment year 2005-06 to 2006-07 that three dealers had claimed the ITC on the gross purchases of ₹ 82.43 crore as against the gross purchases of ₹ 79.13 crore stated in the trading accounts. Incorrect computation of gross purchases resulted in excess claim of ITC of ₹ 17.53 lakh on the excess purchases of ₹ 3.31 crore.

Audit reported the matter to the Department and Government (between March 2010 and February 2012); which was accepted by AETC Faridkot and Jalandhar-I and created additional demands of ₹ 43.83 lakh and ₹ 6.11 lakh against ₹ 3.51 lakh and ₹ 3.80 lakh. The replies of the Department in remaining two cases and of the Government in all the cases were awaited.

(i) (b) Audit noticed (November 2009) from the records of AETC, Hoshiarpur for the year 2006-07 and certified trading account attached with the return, the dealer had gross purchases of ₹ 2.89 crore in the head of account of the goods liable to tax at the rate of 12.5 *per cent* which was inclusive of discount of ₹ 28.23 lakh. The dealer did not consider the discount for the purpose of output tax and accounted for net purchases of ₹ 2.60 crore for computing the gross sale in the said account and paid the output tax accordingly. On the other hand while computing the ITC in the annual return gross purchase of ₹ 2.89 crore, inclusive of discount was considered for claiming the ITC leading to excess claim of ITC of ₹ 3.53 lakh.

Audit reported the matter to the Department and the Government. The Department accepted and an additional demand of ₹ 13.13 lakh including penalty and interest was created in assessment proceeding. However, the reply of the Government was awaited.

(ii) Rule 43 of the PVAT Act provides that on finding out that a taxable person had made a false input tax credit claim, the Commissioner or the designated officer, as the case may be, shall order for recovery of whole or any part of

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<sup>23</sup> Amritsar-I, Faridkot and Jalandhar-I and Ludhiana-I.

such input tax credit, within a period of one year from the end of financial year in which the return is filed.

Audit noticed from the records of three AETCs<sup>24</sup> that six dealers in their returns filed for 2007-08 and 2008-09 had claimed excess input tax credit on the purchases of ₹ 59.67 crore eligible for ITC, at the different rates of tax specified in different schedules appended to PVAT Act, due to mistake in the calculation of the computation of ITC. These dealers had claimed the ITC of ₹ 3.19 crore instead of correct ITC of ₹ 2.96 crore. It was further noticed that in all of these cases neither audit were conducted nor notice of demands were issued by the Department. Thus, mistake in the calculation of computation of ITC had resulted in excess claim of ITC of ₹ 24.43 lakh.

Audit reported the matter to the Department and the Government whose replies were awaited.

#### **2.16.4 Claim of inadmissible exemption/non-levy of tax**

In terms of notification No. S.O. 9/P.A. 8/2005/S-92/2006 dated 23 February 2006 issued under Deferment and exemption Rules 1991, the electronic goods manufacturing units, notified in annexure-A appended to the PVAT Act, shall continue to avail the exemption from the payment of tax or availing concessional rate of tax under the repealed Act or under the Industrial policy of 1996.

Audit noticed from the records of AETC Mohali relating to refunds for assessment years 2005-06, 2006-07 to 2008-09 issued in three cases that the Department did not levy the tax on the sale of electronic goods of ₹ 18.59 crore made both within and outside the State of Punjab, treating the goods as manufactured by the exempted units whereas these units were not found mentioned in the list of exempted units issued under PVAT Act. This has resulted in non-levy of tax of ₹ 2.32 crore.

Audit reported the matter to the Department and the Government which contested and stated that valid entitlement certificate dated 16.9.2005 was issued by the Department to these two dealers, but the same could not be entered in annexure-A due to some clerical mistake. The contention of the Department is not accepted because this scheme of exemption for electronic units was not applicable at the time of its implementation of PVAT Act (April 2005) and later notified in 2006. Certificate issued prior to February 2006 cannot be taken as valid and only those dealers who were notified in annexure-A were entitled for exemptions. The reply of the Department in the remaining one case and that of the Government were awaited.

#### **2.16.5 Short levy of notional tax**

Ministry of Finance, Government of India, by taxation Law (Amendment) Act, 2007 (Act No. 16 of 2007), with effect from 1.4.2007 notified vide notification No. 7/2007-CST-F-No. 34/135/ 2005-ST dated 29.3.2007 had withdrawn the facility of concessional rate of CST on the sales of goods made in the course of inter-state trade or commerce to the Government Department.

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<sup>24</sup> Ludhiana-II, Mukatsar and Sangrur.

The CST Act further provides that the tax payable by any dealer shall be at the rate applicable to the sale or purchase of such goods inside the appropriate State under the Sales Tax Law of the State.

Audit noticed from the records of AETC, Ropar that a dealer for the year 2007-08 was assessed the sale of cement of ₹ 2.45 crore, made in the course of inter state trade or commerce to the Government Department, at concessional rate of CST of three *per cent* and levied CST of ₹ 7.35 lakh instead of ₹ 30.64 lakh leviable at the rate of 12.5 *per cent* and thus, resulted in short levy of notional CST of ₹ 23.29 lakh.

Audit reported the matter to the Department and the Government. Department accepted and created an additional demand of ₹ 85.59 lakh including interest and penalty. However, the reply of the Government was awaited.

#### **2.16.6 Short/non-levy of notional tax**

Condition 3(ii) of New Conditions regulating exemption from the payment of tax under the PVAT Act, 2005 and the Punjab General Sales Tax Act, 1948 (PGST Act) (Deferment and Exemption) Rules, 1991 provides that the quantum of deferment of or exemption from the payment of tax, as the case may be, availed during a return period, by a unit, shall be calculated by adding, the output tax on inter-State Stock transfer calculated at the rate of four *per cent* on the estimated value of goods so transferred, on the production of Form-“F”, as specified in the Central Sales Tax Act, 1956.

Audit noticed from the records of AETC, Mohali relating to assessments, for the year 2005-06 and 2007-08 that in respect of two dealers availing the benefit of exemption from the payment of tax, the assessing authorities assessed inter state stock transfer of ₹ 11.42 crore to notional tax at incorrect rate of tax of three *per cent* instead of four *per cent* in the case of one dealer and, the interstate stock transfer of ₹ 71.29 lakh in the case of other dealer were not assessed to notional tax leading to short/non levy of notional tax of ₹ 11.42 lakh. The period of exemption as well as exemption limit of the dealer in whose case the tax was charged at the rate of three *per cent* had expired/exhausted by October 2010.

Audit reported the matter to the Department and the Government. Department accepted in one case and created an additional demand of ₹ 3.58 lakh which had been adjusted against the balance exemption on 29.2.2012. However, the replies of the Department in respect of other case and of the Government were awaited.

#### **2.16.7 Short levy of output tax**

Section 8 (1) of the PVAT Act, 2005 provides that subject to the provision of this Act, there shall be levied on the taxable turnover of a person other than registered person, VAT at such rate, as specified in schedules. The PVAT Rules, 2005 further provides that a taxable person and a casual trader shall calculate the tax payable on the taxable turnover in accordance with the rates of tax specified in the schedule.

Audit noticed from the records of AETC, Ludhiana-II relating to self assessed annual returns of two dealers for 2007-08, that the dealers had incorrectly

computed the output tax of ₹ 6.07 crore instead of ₹ 6.15 crore on the taxable turnover of ₹ 153.76 crore at the rate of four *per cent* resulting in short levy of output tax of ₹ 7.56 lakh.

Audit reported the matter to the Department and the Government. Department in one case assessed and created an additional demand of ₹ 19.20 lakh against ₹ 3.80 lakh. However, the replies of the Government in two cases and of the Department in the remaining case were awaited.

#### **2.16.8 Under assessment of output tax**

In terms of the provision contained in explanation 5 of Section 2 (zg) of the PVAT Act, sale price shall not include tax paid or payable to a person in respect of such sale. The PVAT Rules further provides that to determine the taxable turnover of sales, a person, shall deduct from his gross turnover of sales, a sum, to be calculated by applying a tax fraction in case, gross turnover includes retail sales

Audit noticed from the records of AETC, Hoshiarpur assessments that in the case of an assessment for the year 2007-08 finalised (February 2010), the assessee had been allowed the deduction of ₹ 2.83 crore against the admissible deduction of ₹ 2.13 crore on account of tax element from his gross turnover resulting in excess deduction of ₹ 70.92 lakh leading to under assessment of output tax of ₹ 2.84 lakh.

Audit reported the matter to the Department and the Government. The Department stated that additional demand of ₹ 50.32 lakh was created in the re-assessment proceeding. This reply was not accepted because the designated officer allowed deduction on account of tax element same as previously pointed out by audit in the re-assessment, inspite of creation of additional demand. However, reply of the Government was awaited.

#### **2.16.9 Short levy of output tax**

Section 2(zg) of PVAT Act, 2005 provides that the amount of duties levied or leviable on goods under the Central Excise Act, 1944, or the Customs Act, 1962, or the Punjab Excise Act 1914, shall be deemed to be part of the sale price of such goods, whether such duties are paid or payable by or on behalf of the seller or the purchaser or any other person.

Audit noticed in the office of AETC, Ludhiana-II that dealer had reported GTO of ₹ 5.83 crore in his return as against ₹ 6.53 crore as mentioned in his Trading Account. The omission resulted in short computation of GTO to the tune of ₹ 0.70 crore and consequent short levy of output tax of ₹ 2.80 lakh.

Audit reported the matter to the Department and the Government whose replies were awaited.

#### **2.16.10 Incorrect computation of output tax**

New conditions regulating exemption from the payment of tax under PGST (D&E) Rules 1991 saved under PVAT Act, 2005 provides that the quantum of exemption from payment of tax, availed during the return period, by a unit

shall be calculated by adding to the notional output tax on account of local sales, interstate sales and consignment sale, the amount of refund allowed to the unit under condition No. 2 of new condition *ibid* during that return period. Further PVAT Act, 2005 provides that branded washing soap being unspecified goods is liable to tax at the rate of 12.5 *per cent*. Further, as the tax is not being charged by the exempted units, they are not entitled to compute the notional output tax by formula.

Audit noticed from the records of AETC Mukatsar that a dealer availing benefit of exemption from payment of tax under PGST had balance of exemption to the tune of ₹ 1.94 lakh as on April 2005. While finalising the assessment, the assessing officer failed to adjust the amount of refund of ₹ 1.49 lakh against the said exemption. Further, output tax was calculated incorrectly on exempted sales of ₹ 49.88 lakh which includes sales of branded washing soap of ₹ 16.87 lakh at ₹ 1.92 lakh instead of ₹ 3.43 lakh. Thus, failure to adjust the amount of refund coupled with wrong calculation of output tax resulted in short levy of tax of ₹ 2.98 lakh.

Audit reported the matter to the Department and the Government whose replies were awaited.



## CHAPTER-3

### State Excise

#### 3.1 Tax administration

The Financial Commissioner Taxation and Principal Secretary to the Government of Punjab is overall incharge of the Excise and Taxation Department. Subject to overall control and superintendence of the Excise and Taxation Commissioner (ETC), Punjab, the administration of the Punjab Excise Act, 1914 relating to the import, export, transport, manufacture, sale and possession of intoxicating liquor and of intoxicating drugs is carried out by Additional Excise and Taxation Commissioner at Patiala and six Deputy Excise and Taxation Commissioners (DETCs) at Amritsar, Faridkot, Ferozepur, Jalandhar, Ludhiana and Patiala who arrange draw of vends in their respective areas and exercise the powers of collectors for recovery of excise revenue. Twenty four Assistant Excise and Taxation Commissioners (AETCs), assisted by Excise and Taxation Officers (ETOs) and other allied staff monitor the work at the district level.

#### 3.2 Analysis of budget

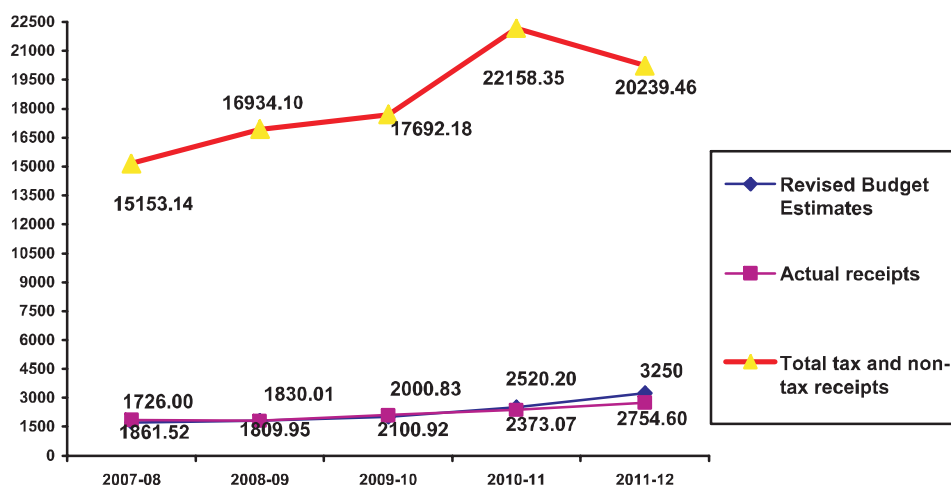
Scrutiny of Budget records of the Department revealed that the actual receipts were ₹ 2754.60 crore as against the revised Budget Estimates of ₹ 3250 crore for the year 2011-12.

#### 3.3 Trend of receipts

Actual receipts from State Excise in the State during the last five years 2007-08 to 2011-12 along with the total tax/non-tax receipts during the same period is exhibited in the following table:

(₹ in crore)						
Year	Revised Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax and non-tax receipts of the State	Percentage of actual receipts vis-à-vis total tax and non-tax receipts
2007-08	1,726.00	1,861.52	(+) 135.52	(+) 7.85	15,153.14	12.28
2008-09	1,830.01	1,809.95	(-) 20.06	(-) 1.10	16,934.10	10.69
2009-10	2,000.83	2,100.92	(+) 100.09	(+) 5.00	17,692.18	11.87
2010-11	2,520.20	2,373.07	(-) 147.13	(-) 5.83	22,158.35	10.71
2011-12	<b>3,250.00</b>	<b>2,754.60</b>	<b>(-) 495.40</b>	<b>(-) 15.24</b>	<b>20,239.46</b>	<b>13.61</b>

The trend of actual receipts vis-a-vis budget estimates during 2007-08 to 2011-12 is depicted in the succeeding graph.



### 3.4 Analysis of arrears of revenue

The following table depicts the position of arrears of revenue during the period 2007-08 to 2011-12.

(₹ in crore)

Year	Opening balance of arrears	Closing balance of arrears
2007-08	11.65	11.69
2008-09	11.69	11.60
2009-10	11.60	11.50
2010-11	11.50	14.87
2011-12	14.23 <sup>1</sup>	14.21

The arrears of revenue as on 31 March 2012 was ₹ 14.21 crore, out of which ₹ 11.46 crore were outstanding for more than five years. Demands of ₹ 1.98 crore were covered by recovery certificates; recovery of ₹ 1.27 crore was stayed by the High Court/other judicial and departmental authorities; demands amounting to ₹ 4.63 crore were likely to be written off; ₹ 1.31 crore were being recovered in installments; recovery of ₹ 7.19 lakh was held up due to rectification and the balance of ₹ 4.95 crore was at different stages of action.

### 3.5 Cost of collection

The gross collection, expenditure on collection and the percentage of such expenditure to gross collection in respect of the major revenue receipts, during the years 2007-08 to 2011-12 along with the relevant all India average percentage of expenditure on collection are mentioned below:

<sup>1</sup> As stated by the Department, the difference between closing balance of 2010-11 and opening balance of 2011-12 is due to inadvertent inclusion of VAT/ET in to the arrear of State Excise. The figures have now been reconciled to opening balance of ₹ 14.23 crore for the year 2011-12.



(₹ in crore)

Year	Collection	Expenditure on Collection	Percentage expenditure of gross collection to	All-India average percentage over the previous year
2007-08	1,861.52	13.27	0.71	3.30
2008-09	1,809.95	14.57	0.80	3.27
2009-10	2,100.92	17.23	0.82	2.77
2010-11	2,373.07	20.55	0.86	3.64
2011-12	2,754.60	30.16	1.09	3.05

The cost of collection increased by 0.23 *per cent* in 2011-12 as compared to 2010-11. The percentage of expenditure to gross collection increased due to revision of pay scales of the employees and payment of arrears.

### 3.6 Evasion of tax

The details of cases of evasion of tax detected by the Departments, cases finalised and the demand for additional tax raised at the end of each year during 2007-08 to 2011-12 as reported by the Departments are given below:

Revenue Head	Year	No. of cases pending at the beginning of the year	Cases detected during the year	Total	No. of cases in which assessment / investigation completed and Addl. Demand including penalty etc. raised		No. of cases pending at the end of year
					Cases	Amount in crores	
State Excise	2007-08	01	--	-	--	--	01
	2008-09	01	--	01	01	0.01	--
	2009-10	--	--	--	--	--	--
	2010-11	0	182	182	159	1.45	23
	2011-12	23	75	98	98	0.10	--

### 3.7 Refunds

The opening balance of refund cases, refund cases received, refunds allowed and the closing balance during the period of five years ending 2011-12 as reported by the Excise & Taxation Department are mentioned below:

(₹ in crore)

Revenue Head	Year	Cases Outstanding at the beginning of the year		Cases received during the year		Refunds made during the year		Balance outstanding at the end of the year	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
State Excise	2007-08	78	0.48	21	9.61	15	9.90	84	0.19
	2008-09	84	0.19	61	1.96	31	1.76	114	0.39
	2009-10	114	0.39	14	0.48	18	0.44	110	0.43
	2010-11	110	0.43	28	2.08	23	2.09	115	0.42
	2011-12	115	0.42	25	0.09	12	0.04	128	0.47

### 3.8 Impact of Audit Reports

#### 3.8.1 Revenue impact

During the last five years, Audit had pointed out loss of excise duty due to sub

normal yield of spirit from molasses/grains and other irregularities with revenue implication of ₹ 112.88 crore in 165 cases. Out of these, the Department/ Government had accepted ₹ 15.27 crore involved in 24 cases and recovered ₹ 4.56 crore in 16 cases. The details are shown in the following table:

(₹ in crore)

Year	Number of units audited	Amount objected		Amount accepted		Amount recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2006-07 <sup>2</sup>	44	29	79.78	18	9.89	05	0.45
2007-08 <sup>3</sup>	35	07	8.53	05	5.11	04	1.69
2008-09	50	22	13.28	01	0.27	01	1.04
2009-10	52	14	2.80	-	-	-	-
2010-11	36	93	8.49	-	-	06	1.38
<b>Total</b>	<b>217</b>	<b>165</b>	<b>112.88</b>	<b>24</b>	<b>15.27</b>	<b>16</b>	<b>4.56</b>

**The Government may consider issuing of instructions for the recovery of the revenue at least in the accepted cases on priority.**

### 3.9 Working of internal audit wing

Internal audit is intended to examine and evaluate the level of compliance with the Rules and procedures so as to provide a reasonable assurance on the adequacy of the internal control. Effective internal audit system both in the manual as well as computerised environments are a pre-requisite for the efficient functioning of any Department. However, no internal audit wing exists in Department.

### 3.10 Results of audit

Test check of the records of 46 units relating to State Excise receipts revealed underassessment of tax and other irregularities involving ₹ 297.45 crore in 105 cases which broadly fall under the following categories:

(₹ in crore)

Sr. No.	Categories	No. of cases	Amount
1.	Non/short deposit of licence fee	29	0.31
2.	Revenue loss due to sub normal yield of spirit from molasses	08	32.13
3.	Other irregularities	68	265.01
	<b>Total</b>	<b>105</b>	<b>297.45</b>

During the year 2011-12, the Department accepted ₹ 0.14 crore involved in two cases and recovered ₹ 4.48 crore in five cases pertaining to the audit finding of previous years.

An illustrative case involving ₹ 0.08 crore is discussed in the succeeding paragraph.

<sup>2</sup> Outstanding paragraphs pertaining to Audit Reports for the years 2006-07 and 2007-08 had been transferred (January 2012) by the Public Accounts Committee to the concerned departments with direction to take further action at their own level.

<sup>3</sup> As sr. no. 1

### 3.11 Audit observations

*Scrutiny of the records of State Excise Department revealed cases of non-observance of the provisions of the Rules/Excise policy resulting in short recovery of license fee (₹ 8.09 lakh) of Distillery License in form D-2 as mentioned in the succeeding paragraph of this chapter. This is an illustrative case based on a test check carried out in audit and this remained undetected till an audit was conducted. The Government needs to improve the internal control system to avoid occurrence of such short recovery in future.*

### 3.12 Non-observance of provisions of the Acts/Rules

*The Punjab Distillery Rules 1932 provide for:-*

- (i) yield of spirit at prescribed norms;*
- (ii) recovery of establishment charge; and*
- (iii) recovery of renewal fee of various licenses.*

*The Department did not observe some of the provisions of the Act in the cases mentioned in the paragraph 3.12.1 which resulted in short realisation of renewal fee of ₹ 8.09 lakh as per the Excise Policy for 2011-12.*

#### 3.12.1 Short Deposit of Renewal fee of Distillery License (D-2)

The Punjab Distillery Rules, 1932 read with Excise Policy for the year 2011-12 provides that an application for the renewal of D-2 license shall be made by the licensee to the Excise Commissioner so as to reach him at least 90 days before the expiry of old license. The renewal fee is also required to be deposited likewise. The renewal fee for D-2 license was enhanced to ₹ 20 lakh in excise policy for the year 2011-12 from ₹ 10 lakh prescribed for the year 2010-11.

Audit observed (March 2012) from the records relating to the renewal of the licenses in the offices of Excise & Taxation Officers, A.B. Sugars Ltd. Randhawa, Dasuya and Khasa Distillery, Distt. Amritsar for the year 2009-10 and 2010-11, that the Licences in D-2 of these distilleries were renewed for the period from 04.08.2010 to 03.08.2011 and from 1<sup>st</sup> July to 31 July 2011 respectively. Since the licenses of these distilleries were renewed for the broken period for the year 2010-11 and 2011-12, the licensees were required to deposit the licence fee of ₹ 28.09 lakh i.e. proportionately with reference to amount of license fees fixed for financial year 2010-11 and 2011-12 against which licence fee of ₹ 20 lakh only was deposited by them. This has resulted in short deposit of renewal fee amounting to ₹ 8.09 lakh.

When this was pointed out in audit (March 2012), the Department accepted the audit objection and recovered the deficient renewal fee of ₹ 6.76 lakh. The balance of ₹ 1.33 lakh is still to be recovered.

Audit reported the matter to the Department and the Government (May 2012); their replies are awaited (December 2012).

## CHAPTER-4

### Stamp Duty

#### 4.1 Tax administration

The State Government exercises control over the Registration of instruments through the Inspector General of Registration, who is assisted by the Deputy Commissioner (Collector), Tehsildars and Naib-Tehsildars acting as Registrars, Sub-Registrars (SRs) and Joint Sub-Registrars (JSRs) respectively. No registration work is however, done in the office of the Registrars. The Registrar exercises Superintendence and Control over the SRs and JSRs of the district. For the purpose of levy and collection of Stamp Duty and registration Fee, the State has been divided into four divisions and 20 districts having 20 Registrars, 78 SRs and 76 JSRs.

#### 4.2 Analysis of budget

Scrutiny of Budget records of the Department revealed that the actual receipts were ₹ 3,079.13 crore as against the revised Budget Estimates of ₹ 2,900 crore for the year 2011-12.

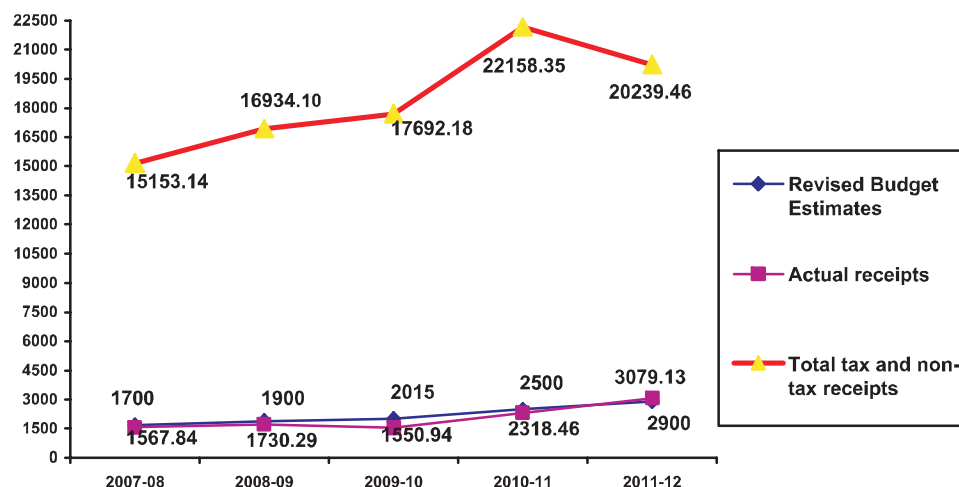
#### 4.3 Trend of receipts

Actual receipts from Stamp duty and Registration fees in the State during the last five years 2007-08 to 2011-12 along with the total tax/non-tax receipts during the same period is exhibited in the following table:

(₹ in crore)

Year	Revised budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax and non-tax receipts of the State	Percentage of actual receipts vis-à-vis total tax and non-tax receipts
2007-08	1,700.00	1,567.84	(-) 132.16	(-) 7.77	15,153.14	10.35
2008-09	1,900.00	1,730.29	(-) 169.71	(-) 8.93	16,934.10	10.22
2009-10	2,015.00	1,550.94	(-) 464.06	(-) 23.03	17,692.18	8.77
2010-11	2,500.00	2,318.46	(-) 181.54	(-) 7.26	22,158.35	10.46
2011-12	2,900.00	3079.13	(+) 179.13	(+) 6.18	20,239.46	15.21

The trend of actual receipts vis-a-vis budget estimates during 2007-08 to 2011-12 is depicted in the succeeding graph.



#### 4.4 Analysis of arrears of revenue

No arrears of revenue are pending in the Department.

#### 4.5 Cost of collection

The gross collection, expenditure on collection and the percentage of such expenditure to gross collection in respect of the major revenue receipts during the year 2007-08 to 2011-12 along with the relevant all India average percentage of expenditure on collection are mentioned below:

(₹ in crore)

Head of Revenue	Year	Gross Collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage over the previous year
Stamp duty and registration fees	2007-08	1567.84	18.22	1.16	2.33
	2008-09	1730.29	23.69	1.37	2.09
	2009-10	1550.94	12.42	0.80	2.77
	2010-11	2318.46	25.47	1.10	2.47
	2011-12	3079.13	27.56	0.90	1.60

The percentage of expenditure to the collection of stamp duty and registration fee in the State was lower than the all India average percentage.

#### 4.6 Impact of Audit Reports

##### 4.6.1 Revenue impact

During the last five years, audit had pointed out non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc., with revenue implication of ₹ 204.59 crore involved in 2838 cases. Out of these, the Department/Government had accepted ₹ 29.77 crore involved in 600 cases and had recovered ₹ 6.32 crore in 849 cases. The details are shown in the succeeding table:

Year	Number of Units audited	Amount objected		Amount accepted		Amount recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2006-07 <sup>1</sup>	99	458	11.05	325	7.41	203	0.92
2007-08 <sup>2</sup>	132	919	49.32	205	0.45	121	0.44
2008-09	116	316	42.32	24	0.31	88	0.37
2009-10	141	562	58.08	23	0.33	272	1.78
2010-11	108	583	43.82	23	21.27	165	2.81
<b>Total</b>	<b>596</b>	<b>2838</b>	<b>204.59</b>	<b>600</b>	<b>29.77</b>	<b>849</b>	<b>6.32</b>

The Government may consider issuing of instructions for the recovery of the revenue at least in the accepted cases on priority.

#### 4.7 Working of internal audit wing

Internal audit is intended to examine and evaluate the level of compliance with the Rules and procedures so as to provide a reasonable assurance on the adequacy of the internal control. Effective internal audit system both in the manual as well as computerised environment are a pre-requisite for the efficient functioning of any Department. However, no internal audit wing exists in Department.

#### 4.8 Results of audit

Test check of the records of 101 units relating to stamp duty and registration fee during 2011-12 revealed irregularities involving ₹ 18.92 crore in 1920 cases, which fall under the following categories:

Sl.No.	Categories	Amount	
		Number of cases	Amount
1.	Non/short levy of stamp duty and registration fee	1,062	7.17
2.	Short levy of stamp duty and registration fee on lease deeds	487	6.52
3.	Misclassification of instruments	107	0.79
4.	Other irregularities	264	4.44
	<b>Total</b>	<b>1,920</b>	<b>18.92</b>

During the year 2011-12, the Department accepted ₹ 7.86 crore involved in 621 cases and recovered ₹ 1.77 crore in 414 cases pertaining to earlier years.

A few illustrative cases involving ₹ 6.83 crore are discussed in the succeeding paragraphs.

<sup>1</sup> Outstanding paragraphs pertaining to Audit Reports for the years 2006-07 and 2007-08 had been transferred (January 2012) by the Public Accounts Committee to the concerned departments with direction to take further action at their own level.

<sup>2</sup> As Sr. no. 1

#### **4.9 Audit observations**

*Audit noticed several cases of non-observance of provisions of Acts/ Rules; resulting in loss of Government money, non/short levy and irregular remission of stamp duty and registration fee due to misclassification of documents, application of incorrect rates of stamp duty and inadmissible benefits as mentioned in the succeeding paragraphs. These cases are illustrative and are based on a test check carried out by us. Such omissions on the part of Sub-Registrars/Joint Sub Registrars (SRs/JSRs) are pointed out in audit repeatedly, however the irregularities persist and they also remain undetected till we conduct audit. There is need for the Government to improve the internal control system so that such omissions can be detected and corrective measures taken.*

#### **4.10 Non-observance of provision of Act/Rules**

*The Indian Stamp Act 1899, The Indian Registration Act 1908 and Rules frame there under provide for:-*

- (i) levy of stamp duty and registration fee at the prescribed rates,*
- (ii) documents entitling for exemption from levy of stamp duty and registration fee and*
- (iii) correct determination of stamp duty and registration fee.*

*The SRs/JSRs while registering the deeds did not observe some of the provisions of Acts/Rules in the cases mentioned in paragraphs 4.10.1 to 4.10.7. This resulted in non/short levy and non-realisation of stamp duty and registration fee of ₹ 6.83 crore.*

#### **4.10.1 Thematic audit on “Receipt and accounting of Revenue on account of Embossment/Impressments of instruments”**

#### **INTRODUCTION**

Section 2(13) of Indian Stamp Act, 1899 defines Impressed Stamp as (a) labels affixed and impressed by the proper officer and (b) Stamp embossed or engraved on stamped paper. Further, Section 18 of Indian Stamp Act, 1899 stipulates that every instrument chargeable with duty executed out of India and may be stamped within three months after it has been first received in India. In the Punjab State, the Financial Commissioner Revenue (FCR) and four<sup>3</sup> Divisional Commissioners (Revenue) are entrusted with the power to emboss/impress the documents which are detailed in appendices II & III of Indian Stamp Rules, 1925, the embossment/impressments of which are subjected to levy of such duty as may be prescribed.

Misappropriation of revenue of ₹ 2.43 crore on account of embossment fee was noticed in the office of Divisional Commissioner (Revenue) Jalandhar by accepting bogus/fake challans representing payment of fees for embossment without cross verifying it with treasury records. In order to detect such misappropriations relating to embossment fee elsewhere, the audit of all the

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<sup>3</sup> Division Commissioners Faridkot, Ferozepur, Jalandhar and Patiala.



Divisional Commissioners (Revenue) for the period March 2007 to March 2012 was taken up on thematic basis and a meagre misappropriation of ₹ 0.04 lakh and ₹ 0.07 lakh in the offices of Divisional Commissioner, Patiala and Faridkot respectively were noticed. The misappropriation of embossment fee was accepted by all the three offices and an amount of ₹ 34.54 lakh, ₹ 0.04 lakh and ₹ 0.07 lakh was stated to be recovered by Divisional Commissioners, Jalandhar, Patiala and Faridkot respectively. The irregularities noticed in this thematic audit are as under:

**(i) Loss of Government revenue due to non compliance of laid down procedure**

Section 2(13) of Indian Stamp Act, 1899 and instructions issued by Government of Punjab on 5 February, 1981 provides that the applications from outstations for embossment of the instruments, stamped with impressed labels should be made to the treasury officer of the district, supported with the challans containing deposit of appropriate fees in the bank. The treasury officer send the instruments to the office of the Commissioner of the Division concerned for affirming and Impressments of necessary label alongwith a certificate that duty had been paid. The instruments, duly stamped will be returned to the applicant through same channel. Further, Punjab Financial Rules provide that the head of office, by 15 of every month, should obtain from the treasury a consolidated receipt of all remittances made during previous month and compare the postings in the cash book to ensure that all collections of Government revenue stands remitted and accounted for.

(a) Audit observed from the office of the Divisional Commissioner (Revenue), Jalandhar and pointed out that Government revenue amounting to ₹ 2.43 crore out of ₹ 4.79 crore representing embossment/impressment fee was misappropriated, as a result of non- reconciliation and absence of cross verification of remittances with the treasury records. It was noticed that in violation of the laid down procedure of receiving the applications through the district treasury officer, the applications for embossment were entertained directly from the applicants and 10,999 nos. challans out of total 14,565 challans covering the above remittances accompanied with the applications for embossment of instruments (between April 2009 and January 2012) were found fake/bogus as entries of the remittance in respect of these challans were not traceable in the records of the treasury. The certificates of reconciliation of deposits by the treasury officer were also found to be fake as the treasury officer denied to have ever recorded these certificates. Thus, violation of the laid down procedure for receiving applications had resulted in loss of Government revenue of ₹ 2.43 crore.

When Audit pointed out the loss the Department accepted the audit objection and initiated action against the defaulting officials, recovering ₹ 4.72 lakh through 33 challans dated 23/24 January, 2012 and ₹ 29.82 lakh in June 2012. The balance amount is stated to be under recovery. The department further stated that it has stopped to emboss the agreements of the companies. The fee regarding embossment of power of attorneys is being realized in the form of Indian Postal Orders (IPOs) w.e.f. 12 July 2012 and the deposit of fee in the



bank is being reconciled on the internet w.e.f. 11 July 2012. Final outcome of the cases were awaited.

Audit reported the matter to the Government; its reply was awaited.

(b) Similarly, Audit found from the records of the office of Divisional Commissioner (Revenue) Faridkot and Patiala relating to embossment of documents etc., that embossment fee of ₹ 0.04 lakh and ₹ 0.07 lakh received in the shape of Indian Postal Orders was also not en-cashed during April 2009 to March 2011 and March 2007 to March 2012, in the office of Divisional Commissioner Patiala and Faridkot respectively and cash was deposited into the treasury, after it was pointed out by audit.

**(ii) Short realisation of embossment/impressments fee due to delay in implementation of enhanced rate**

Punjab Government vide Notification No.12-Leg./2009 dated 3-8-2009 amended the entry No. 10, 39 and 48 of Schedule I-A of Indian Stamp Act, 1899 and enhanced Stamp duty/fee for embossment of the instruments viz. Article of Association of Companies, Memorandum of Association and the Power of Attorneys with immediate effect.

Audit observed that the enhanced duty/fee was not levied with immediate effect from the date of notification resulting into short levy of embossment fee amounting to ₹ 10.72 lakh on account of 501 numbers of documents as detailed below:

Sr. No.	Name of unit	Period of Registration	No. of documents	Amount due ₹	Amount charged ₹	Amount Short realised ₹
1	Divisional Commissioner (Revenue), Jalandhar	04/08/2009 to 31/08/2009	386	11,74,600	1,84,820	9,89,780/-
2	Divisional Commissioner (Revenue), Patiala	04/08/2009 to 21/08/2009	59	55,000	16,300	38,700/-
3	Divisional Commissioner (Revenue), Ferozepur	04/08/2009 to 01/09/2009	18	14,500	5,100	9,400/-
4	Divisional Commissioner (Revenue), Faridkot	04/08/2009 to 26/08/2009	8	7,000	2,000	5,000/-
5	F.C.R (Punjab), Chandigarh	04/08/2009 to 20/08/2009	30	40,000	10,500	29,500
Total			501	12,91,100	2,18,720	10,72,380

On being pointed out by audit, the department stated that notification regarding amendment in the Act was issued and printed by the Department of Legal and Legislative Affairs, Punjab and the same was received on 20 August 2009 and further issued to the concerned offices on 21 August 2009. The reply of the department is not acceptable as the enhanced rates of duty/fee were required to be applied from the date of publication of the notification i.e. 3 August 2009.

**(iii) Inordinate delay in deposit of Embossment fee**

Rule 2.4 of Punjab Financial Rules Vol-1 provides that while signing the cash book, the head of the Department should see that the Department receipts

collected during the days, the utilisation of which towards the expenditure is strictly prohibited under the Punjab Treasury Rules are credited into the treasury on the same day or on the morning of the next day.

Audit found that embossment fees received in the shape of Indian Postal Orders (I.P.Os) of ₹ 49.79 lakh were sent to the post office for encashment late with a delay ranging between one week to thirty two months resulting in loss of interest to Government as detailed below:

Sr. No.	Name of unit	Period of delay	Amount ₹
1	Divisional Commissioner (Revenue), Jalandhar	1-4 months	10,71,675/-
2	Divisional Commissioner (Revenue), Patiala	1-32 months	15,36,500/-
3	Divisional Commissioner (Revenue), Ferozpur	2 weeks-2 months	1,95,150/-
4	Divisional Commissioner (Revenue), Faridkot	1 week-7 months	25,000/-
5	F.C.R. (Punjab), Chandigarh	1 week-3 months	21,51,020/-
<b>Total</b>			<b>49,79,345/-</b>

#### **(iv) Inadequate internal control mechanism leading to non reconciliation of deposits with the treasury**

As per Rule 2.2(v) of P.F.R Vol-I, when the Government money in the custody of the Government Officer are paid into the treasury or the bank, the head of the office making such payments should compare the Treasury Officer's or the Bank's Receipts on the challan or his pass book with the entry in the cash book before attesting it and satisfy himself that the amounts have been actually credited into the Treasury or the Bank. By 15 of every month, he should obtain from the Treasury a consolidated receipt for all remittance made during the previous month, which should be compared with the posting in cash book.

Audit found that the receipts of embossment fee amounting to ₹ 7.86 crore collected through treasury challans and Indian Postal Orders during the period from April, 2007 to March, 2012 were shown as credited into Government account but were not actually reconciled with the treasury records as detailed below:

(₹ in crore)			
Sl. No.	Name of unit	Period	Amount
1.	Divisional Commissioner (Revenue), Jalandhar	04/2009 to 12/2011	4.60
2.	Divisional Commissioner (Revenue), Patiala	04/2007 to 03/2011	0.34
3.	Divisional Commissioner (Revenue), Faridkot	11/2007 to 03/2012	0.03
4.	F.C.R. (Punjab), Chandigarh	04/2010 to 03/2012	2.89
<b>Total</b>			<b>7.86</b>

This has resulted in violation of the codal provision of the PFR.

On being pointed out in audit, FCR (Punjab) stated that the amount will be reconciled with treasury record.

#### **(v) Internal audit**

Internal Audit Organisation (IAO) is a vital component of the internal control mechanism and is generally defined as the controller of all controls to enable an organization to assure itself that the prescribed systems are functioning reasonably well. IAO was set up in 1985 as an independent organization under the State Finance Department.

IAO of the State Government or Audit team of the State Finance Department are required to conduct the audit of revenue departments before the commencement of statutory audit i.e. audit by the auditors of the A.G. (Audit) Punjab.

Scrutiny of records of FCR (Punjab) and three Divisional Commissioners (Revenue) revealed that the internal audit of the revenue collected was not conducted for the period 4/2005 to 3/2012. Had the department conducted the internal audit, the probability of avoiding misappropriation/fraud of ₹ 2.43 crore could have been enhanced.

#### **(vi) Conclusion & recommendations**

Lack of compliance with the laid down procedure coupled with lack of monitoring and exercising due checks at each level by the Departmental authorities resulted in misappropriation/fraud causing loss to the State. Department needs to increase its extent of compliance with the laid down procedure and improve the functioning of internal control system.

#### **Compliance deficiencies**

##### **4.10.2 Misappropriation of Government receipts**

The Punjab Financial Rules provide that all monetary transactions should be entered in the cash book as soon as they occur and attested by head of the office in token of check. The rules further provide that at the close of the day while signing the cash book, the head of the office should see that the Departmental receipts collected during the day are credited into the treasury on the same day or on the next working day. The rules further provides that the head of the office should verify the totaling of the cash book or have this done by some responsible subordinate other than the writer of the cash book.

(a) Audit observed from the records of Sub-Registrar Amritsar-I relating to registration, cash book and receipt books etc. for the year 2010-11 that in eight cases a sum of ₹ 1.25 lakh was recovered by the Sub-Registrar as deficit stamp duty by issuing of receipts from book-B but cash receipts of ₹ 0.07 lakh only was accounted for and entered in cash book. This was done by adopting the modus operandi of tampering with the counterfoil of receipt, which accounted for lower amount of stamp duty in the receipt book and in the cash book than that entered in the deeds and non-accountal of the amount mentioned in the counterfoil of receipt in the cash book. In five cases the cash recovered was neither entered in the cash book nor were the counterfoils of the receipts in these cases available in the respective receipt books. This has resulted in misappropriation of Government receipts of ₹ 1.17 lakh.

(b) Similarly, Audit noticed that a sum of ₹ 0.03 lakh collected during April 2010 to June 2010, representing copying fee in 49 cases, though recovered by issuing of receipts, was not accounted for in the cash book and thus resulted in misappropriation of Government money of ₹ 0.03 lakh.

Audit reported the matter to the Department and the Government whose replies were awaited.

#### **4.10.3 Short levy of stamp duty and Registration fee**

Under the Punjab Stamp Rules, 1983 as amended in 2002, the Collector of a district in consultation with the committee of experts as defined there under, fixes the minimum market value of land/properties, locality wise and category wise in the district, for the purpose of levying stamp duty on the instruments of transfer of any property.

Audit noticed from the office of 20 SRs<sup>4</sup> and four JSRs<sup>5</sup> that 46 instruments were registered during 2009-10 and 2010-11 at a value of ₹ 17.01 crore set forth in these instruments instead of ₹ 52.14 crore, which was the minimum market value of properties as per the price fixed by respective Collectors for the sale of agricultural/residential/commercial properties due to misclassification of properties. This mistake was due to classifying the residential/commercial properties as agriculture/residential properties respectively. It resulted in short levy of stamp duty of ₹ 2.49 crore inclusive of registration fee of ₹ 5.12 lakh.

When audit pointed this out, all the SRs and JSRs except SRs Kapurthala, Patiala and Patti stated that recovery will be made after verification of records. SRs Kapurthala, Patiala and Patti stated that action will be taken after verification of the records. Final outcome of the cases is awaited.

Audit reported the matter to the Department and the Government whose replies were awaited.

##### **4.10.3.1 Short levy of stamp duty**

Under the Punjab stamp (Dealing of Under-valued instruments) Rules, 1983 as amended in 2002, the Collector of a district in consultation with the Committee of Experts fixes the minimum market value of land/properties locality wise and category wise in the district for the purpose of levying stamp duty. Further, Government of Punjab, Department of Revenue and Rehabilitation vide their letter dated 28 January 2011 has clarified that in the case of purchase of land for more than one acre in urban area and 2.5 acre in rural area by a company or a Registered body for Housing Project and other commercial project, a copy of their articles of association and a declaration indicating the purpose of purchase of land is required to be obtained from them. The rates of non agriculture land shall be applied for valuation of the property for the charging of stamp duty and registration fee if the land is being purchased for Housing and other commercial purpose. Additional stamp duty

<sup>4</sup> Amritsar I, II, Bagha Purana, Barnala, Hoshiarpur, Jalandhar-I, Khanna, Kapurthala, Kharar, Ludhiana (West), Mansa, Mohali, Nawan Shahar, Phagwara, Phillaur, Patiala, Patti, Rajpura, Rampura Phul and Samana.

<sup>5</sup> Mandi Gobindgarh, Majri, Kalanaur and Kotkapura.

at the rate of three percent is also leviable on the consideration value of the property if the property falls within the Municipality or Corporation.

Audit noticed from the records relating to registration for 2010-11 in the office of Sub –Registrar, Tarn Taran that an instrument of transfer of property for 36 kanals-19 marlas in rural area was registered (March 2011) in favour of a developer company and stamp duty of ₹ 7.09 lakh was charged on the consideration of ₹ 1.42 crore treating the land as agricultural land and falling outside the limit of the Municipality. It was further noticed that neither the articles of association/declaration of the company was obtained in this case nor the rates for *gair mumkin* (other than agriculture category) land was applied for the valuation of the property whereas the purchaser was a developer as mentioned in the deed and the property was located in the village which came within the limit of municipality. This has resulted in short levy of stamp duty of ₹ 7.09 lakh on the consideration of ₹ 1.77 crore worked out in audit and computed at the rate of eight *per cent*.

Audit reported the matter to the Department and the Government whose replies were awaited.

#### **4.10.3.2 Short levy of stamp duty and registration fee**

Under the Punjab Stamp (Dealing of Under-valued instruments) Rules, 1983 as amended in 2002, the Collector of a district in consultation with the Committee of Experts fixes the minimum market value of land/properties locality wise and category wise in the district for the purpose of levying stamp duty. While fixing the minimum rates of the property the District Collector Amritsar clarified (24.08.2010) that transfer of land property below three Kanal falling in the Municipal Corporation will not be registered as a agriculture land.

Audit noticed from the records of office of the Sub Registrar Amritsar-II relating to registration that in an instrument for the transfer of land of 2K-12M situated within the Municipal Corporation registered (October 2010), stamp duty of ₹ 0.32 lakh was charged on the consideration of ₹ 3.93 lakh set forth in the instrument treating the property as agricultural against the leviable duty of ₹ 3.37 lakh worked out by audit on the consideration of ₹ 42.12 lakh, the minimum market value of the property fixed by the Collector for the residential property. Application of incorrect rate for valuation of the property applicable for agriculture land has resulted in short levy of stamp duty of ₹ 3.32 lakh inclusive of short levy registration fee of ₹ 0.26 lakh.

When audit pointed this, the Sub-Registrar stated that action for recovery will be taken after visiting the site.

Audit reported the matter to the Department and the Government whose replies were awaited.

#### **4.10.4 Irregular remission of stamp duty and registration fee**

Government remitted (February 1981) stamp duty and registration fee chargeable on instruments of conveyance by sale or gift in favour of the charitable institutions for charitable purposes. In order to avoid the mis-utilisation of this exemption by the charitable institutions, the Government

issued instructions vide 16/27/08/ST/2/ 8070-90 dated 26.5.10 that it is to be confirmed by the District Collector whether the transfer of immovable property in favour of the charitable institution is exempted from the levy of stamp duty/registration fee or not. Further, under Section 3C, Social Security Fund in the form of additional stamp duty at the rate of three *per cent* is chargeable in respect of every instrument of immovable properties falling within the municipal limit.

Audit found from the office of four SRs<sup>6</sup> and JSR Dinanagar that the records relating to registration that five instruments of transfer of immovable property with consideration of ₹ 16.57 crore set forth in the deeds in four cases and as per collector rate in the case of SR Mansa. These instruments were registered during 2010-11 in favour of charitable institutions without charging stamp duty/registration fee, except charging of additional stamp duty in one case and registration fee in two cases, treating the transfer as for charitable purposes. The prior approval of the District Collector required to be obtained in such cases were not obtained in these cases which was irregular. This had resulted in violation of the instructions circulated to all the District Collectors and leading to irregular remission of stamp duty and registration fee of ₹ 1.03 crore.

When Audit pointed this out (between May 2011 and March 2012), the SRs Jagraon and Fatehgarh Sahib stated that cases will be sent to the Collector under section 47-A. The rest of the SRs/JSR stated that recovery will be made after verification of the records. Final outcome of the cases was awaited.

Audit reported the matter to the Department and the Government whose replies are awaited.

#### **4.10.4.1 Inadmissible remission of stamp duty and short levy of Registration fee**

The Punjab Government by notification issued on 3 November 2006 remitted the stamp duty chargeable in the case of transactions of transfer by an owner of agricultural and residential property situated in rural areas, when the transactions are executed in favour of class I heirs as defined in the schedule under section 8 of the Hindu Succession Act. This concession shall also be available when the transfer of the above mentioned category of properties are registered in favour of class II heirs of the executor and the executor is unmarried or issueless; provided that he has no Class I heirs. Further Punjab Government vide notification dated 21 July 2009, revised the rate of registration fee to one *per cent* of the value of the deeds subject to a minimum of ₹ 50 and maximum of ₹ 30,000 with effect from 21 July 2009 in respect of all compulsorily registerable documents other than leases of immovable property.

Audit noticed from the records relating to registration in the office of SR, Jaitu and Fatehgarh Sahib for the year 2009-10 and 2010-11 that three instruments for transfer of agricultural land in rural areas involving consideration of ₹ 1.66 crore were executed and registered without charging stamp duty,

<sup>6</sup> Fatehgarh Sahib, Jagraon, Mansa and Phagwara.



treating it as executed in favour of Class-I heirs. However, audit noticed that properties had been transferred to Class II heirs (Grandsons) in two cases when Class I heirs (Sons) of the executor were alive. Similarly, in the third case the property was transferred in favour of the Class-II heir (nephew) when the wife of the executor was alive. These omissions had resulted in inadmissible remission of stamp duty of ₹ 8.30 lakh and short levy of registration fee of ₹ 0.20 lakh.

When Audit pointed this out SR Jaitu stated that action will be taken after verification of records and SR, Fatehgarh Sahib stated that efforts will be made to recover the amount. Final outcome of the cases were awaited.

Audit reported the matter to the Department and the Government whose replies were awaited.

#### **4.10.5 Non-levy of additional stamp duty**

The Stamp Act provides that stamp duty is leviable at the prescribed rate on every instrument unless it is otherwise remitted by the State Government. Under the Industrial Policy on Mega Projects, the State Government on the recommendations of the Empowered Committee on Mega Projects grants exemption from levy of duty. Further, additional stamp duty is chargeable in respect of every instrument of immoveable properties falling within the municipal limit. The Government had also clarified vide notification no. 13/2/2009-ST-II/2009 dated 6.5.2005 that additional stamp duty is not exempted in the cases where the levy of stamp duty is exempted by Government from time to time.

(i) Audit noticed in SR, Ludhiana (Central) that an instrument for the transfer of 14,429.25 sq. yard land in village Dhandari Kalan, falling within outer limit of Municipal Corporation, Ludhiana, with total consideration of ₹ 8.15 crore set forth in the instrument was registered during 2010-11 without charging the stamp duty as the purchaser being a mega project. It was further noticed that additional stamp duty at the rate of three *per cent* in all cases was not levied resulting in loss of ₹ 24.45 lakh.

When Audit pointed this out the SR stated that action will be taken after verification of record. The outcome of the final action in this case is awaited.

Audit reported the matter to the Department and the Government whose replies are awaited.

As per notification issued in November 2006, the Punjab Government remitted the stamp duty chargeable in the case of transactions of transfer of agricultural and residential property situated in rural areas, when the transactions are executed in favour of Class I heirs as defined under section 8 of the Hindu Succession Act. Further, as per Punjab Government notification no. 13/9/2004-11/5116 dated 13.6.2005, an additional stamp duty at the rate of three *per cent* is chargeable in the area falling within five kilometers from the outer limit of Municipal Corporation and Class-I municipality.

(ii) Audit noticed in the office of SR, Ferozepur that two transfer deeds for transfer of agriculture properties involving consideration of ₹ 2.52 crore were registered and executed by owners in favour of his Class I heirs without charging of stamp duty and additional stamp duty. As the properties were



situated within five kilometer from the outer limit of the municipality they were not exempted from the levy of additional stamp duty. This has resulted in non-levy of additional stamp duty of ₹ 7.57 lakh.

When Audit pointed this out, SR stated that recovery will be made after verification of records. Final outcome of the cases were awaited.

Audit reported the matter to the Department and the Government whose replies were awaited.

#### **4.10.6 Short levy of stamp duty due to application of pre-revised rates of duty**

As per the Indian Stamp Act, 1899 (Schedule 1-A), a mortgage deed in respect of a specified property for securing loan, when possession is neither given nor agreed to be given, is chargeable to stamp duty at the rate of two *per cent* of the amount secured. The rate of stamp duty was revised from two *per cent* to four *per cent* vide notification, issued (August 2009) by the Punjab Government.

Audit noticed three SRs<sup>7</sup> office that four mortgage deeds without possession were registered and executed by individuals in order to secure loans of ₹ 6.49 crore from the Commercial/ Banking institutions were charged with stamp duty of ₹ 13 lakh at the pre-revised rate of two *per cent* against the leviable duty of ₹ 25.96 lakh at the revised rate of four *per cent*. Application of incorrect rate of duty resulted in short levy of stamp duty of ₹ 12.96 lakh.

When Audit pointed this out, the SRs stated that action will be taken after verification of records. The final outcome of action taken is awaited.

Audit reported the matter to the Department and the Government whose replies were awaited.

#### **4.10.7 Non levy of Stamp Duty on Plant and Machinery**

The Indian Stamp Act provides that “Conveyance” includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos<sup>8</sup> and which is not otherwise specifically provided for by Schedule I or by Schedule I-A or by Schedule I-B, as the case may be. It has been judicially<sup>9</sup> held that sale of business including land, building and machinery which was installed permanently on land for running the business, machinery would be treated as immovable property for ascertaining value of property for stamp duty.

Audit noticed in the office of the Sub-Registrar, Ludhiana (East) that two instruments for the sale of property in public auction were registered (December 2010) for the consideration of Land and Building of ₹ 6.77 crore excluding the value of Plant and Machinery. Stamp duty was paid on the value of land and building only and no stamp duty was levied on the consideration of plant and machinery of ₹ 1.54 crore resulting in non levy of stamp duty of ₹ 12.28 lakh.

<sup>7</sup> Nakodar, Samana and Samrala.

<sup>8</sup> From one living person to another.

<sup>9</sup> Duncans Industries Ltd. V. State of U.P., 2000 (4) RCR (Civil) 147 (SC).

When Audit pointed this out, SR stated that recovery will be made. Final outcome of the case was awaited.

Audit reported the matter to the Department and the Government whose replies were awaited.

## CHAPTER –5

### Taxes on Vehicles, Goods and Passengers

#### 5.1 Tax administration

The overall charge of the Transport Department vests with the State Transport Commissioner (STC), Punjab, and Chandigarh. There are 20 districts, each headed by a District Transport Officer (DTO) who monitors due observance of the Punjab Motor Vehicles Taxation Act, 1924 and the Rules made thereunder and maintains the records of receipt of motor vehicles taxes and various fee. Besides, there are four Regional Transport Authorities (RTAs) for regulating the transport vehicles in the State in conformity with the Act and collection of motor vehicles taxes in respect of buses of other States.

#### 5.2 Analysis of Budget

Scrutiny of Budget records of the Department revealed that the actual receipts were ₹ 850.06 crore as against the revised Budget Estimates of ₹ 710.00 crore for the year 2011-12.

#### 5.3 Trend of receipts

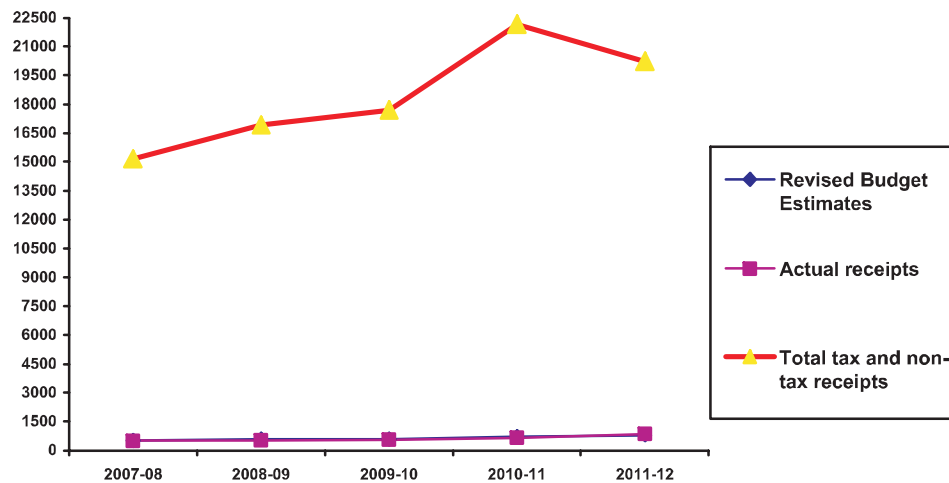
Actual receipts from Taxes on Vehicles during the period 2007-08 to 2011-12 alongwith the total tax/non-tax receipts during the same period are exhibited in the following table.

(₹ in crore)

Year	Revised Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax and non-tax receipts of the State	Percentage of actual receipts vis-à-vis total tax and non-tax receipts
2007-08	524.00	499.45	(-) 24.55	(-) 4.69	15,153.14	3.30
2008-09	576.00	524.09	(-) 51.91	(-) 9.01	16,934.10	3.09
2009-10	585.00	554.74	(-) 30.26	(-) 5.17	17,692.18	3.14
2010-11	700.00	653.91	(-) 46.09	(-) 6.58	22,158.35	2.95
<b>2011-12</b>	<b>800.00</b>	<b>850.06</b>	<b>(+) 50.06</b>	<b>(+) 6.26</b>	<b>20,239.46</b>	<b>4.20</b>

Actual receipts increased from ₹ 499.45 crore to ₹ 850.06 crore and the percentage of the revenue receipts from taxes on motor vehicles to the total receipts collected by the State had also increased marginally.

The trend of actual receipts vis-a-vis budget estimates during 2007-08 to 2011-12 is depicted in the following graph.



#### 5.4 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2012 were ₹ 104.62 crore, out of which ₹ 43.76 crore were outstanding for more than five years. The following table depicts the position of arrears of revenue during the period 2007-08 to 2011-12.

(₹ in crore)

Year	Opening balance of arrears	Closing balance of arrears
2007-08	67.72	111.58
2008-09	111.58	109.20
2009-10	109.20	107.86
2010-11	107.86	106.73
2011-12	106.73	104.62

#### 5.5 Cost of collection

The gross collection, expenditure on collection and the percentage of such expenditure to gross collection in respect of the major revenue receipts, during the year 2007-08 to 2011-12 along with the relevant all India average percentage of expenditure on collection are mentioned below:

(₹ in crore)

Head of Revenue	Year	Collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage over the previous year
Taxes on Vehicles	2007-08	499.45	7.66	1.53	2.47
	2008-09	524.09	9.20	1.76	2.58
	2009-10	554.74	9.19	1.66	2.93
	2010-11	653.91	10.92	1.67	3.07
	2011-12	850.06	15.85	1.86	3.71

The cost of collection of motor vehicles taxes/fee had increased since 2007-08 but was lower than the All India average percentage of expenditure on collection. The percentage of expenditure to gross collection increased due to revision of pay scales of the employees and payment of arrears.

### 5.6 Evasion of Tax

The details of cases of evasion of tax detected by the Department, cases finalised and the demand for additional tax raised at the end of each year during 2007-08 to 2011-12 as reported by the Departments is given below:-

Sr. No.	Revenue Head	Year	No. of cases pending at the beginning of the year	Cases detected during the year	Total	No. of cases in which assessment / investigation completed and Addl. Demand including penalty etc. raised		No. of cases pending at the end of year
						Cases	Amount ₹ in crore	
1.	Taxes on vehicles	2007-08	54	128	182	--	--	182
		2008-09	182	79	261	42	0.86	219
		2009-10	219	13	232	6	48.74	226
		2010-11	226	--	226	160	32.10	66
		2011-12	66	--	66	43	6.31	23

### 5.7 Impact of Audit Reports

#### 5.7.1 Revenue impact

During the last five years, Audit had pointed out non/short levy etc. involving revenue implication of ₹ 93.79 crore in 9510 cases. Out of these, the Department/Government had accepted ₹ 13.90 crore involved in 4801 cases and recovered ₹ 7.66 crore in 395 cases. The details are shown in the following table:

(₹ in crore)

Year	Number of units audited	Amount objected		Amount accepted		Amount recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2006-07	49	585	54.75	368	0.73	88	1.33
2007-08	51	762	5.05	645	4.18	82	0.78
2008-09	84	1276	12.40	514	2.25	107	1.71
2009-10	61	901	9.56	652	0.54	52	2.73
2010-11	72	5986	12.03	2622	6.20	66	1.11
<b>Total</b>	<b>317</b>	<b>9510</b>	<b>93.79</b>	<b>4801</b>	<b>13.90</b>	<b>395</b>	<b>7.66</b>

In the context of large scale pendency of audit objections, Government may ensure holding of Audit Committee Meetings regularly for expeditious settlement of the pending paragraphs. As regards insufficient recovery against accepted cases, Department may review the cases to ensure recoveries.

### 5.8 Working of internal audit wing

Internal audit is intended to examine and evaluate the level of compliance with the rules and procedures so as to provide a reasonable assurance on the adequacy of the internal control. Effective internal audit system both in the

manual as well as computerised environments are a pre-requisite for the efficient functioning of any Department. However, no internal audit wing exists in the Department.

#### **5.9 Results of audit**

Test check of the records of 26 units relating to taxes on vehicles during 2011-12 revealed irregularities involving ₹ 6.56 crore in 1894 cases, which fall under the following categories:

(₹ in crore)			
Sl. No.	Categories	No. of cases	Amount
1.	Non-short recovery of MVT	1177	5.64
2.	Other irregularities	717	0.92
<b>Total</b>		<b>1894</b>	<b>6.56</b>

During the year 2011-12, the Department accepted ₹ 4.82 crore involved in 1459 cases and recovered ₹ 1.50 crore in 40 cases pertaining to earlier years.

An illustrative case involving ₹ 1.65 crore is discussed in the succeeding paragraph.

### **5.10 Compliance audit observations on implementation of MV Act and Rules**

*During the audit of Motor Vehicles Department, Audit noticed several cases of non-observance of the provisions of the Acts/Rules resulting in non/ short levy of tax, penalty and interest as mentioned in the succeeding paragraphs in this chapter. These are illustrative based on a test check carried out by audit. Audit points out such omissions repeatedly, but not only the irregularities persist, they also remain undetected till we conduct audit. The Government needs to improve the internal control system to avoid occurrence of such cases in future.*

### **5.11 Non-observance of the provisions of Acts/Rules**

*The Punjab Motor Vehicles Taxation Act, 1924 (PMVT Act) provides for:-*

- (i) payment of motor vehicles tax by the owner of vehicles at the prescribed rates and*
- (ii) levy of interest and penalty by the Department.*

*Non-adherence to some of the provisions of the Acts/Rules by the registering authorities at the time of registration of vehicles are mentioned in the paragraph 5.11.1.*

#### **5.11.1 Non/short realisation of motor vehicle tax**

Under Section 3 of the Punjab Motor Vehicle Taxation Act, 1924, as amended in November 2007, tax shall be levied on every motor vehicle on year to year basis which shall be payable from such date, in such manner and at such rate determined by the Government from time to time. The Government specified Motor Vehicle Tax (MVT) in respect of stage carriage big buses registered in the State of Punjab at the rate of ₹ 2.25 per kilometer (Km) per vehicle per day for the permitted Kms payable at the end of every month. Under Section 4 (1), the owner of the transport vehicle is required to make declaration in the prescribed form stating the prescribed particulars of payment of MVT. The Government under section 13(3) allowed exemption of 50 days during the year, for all stage carriage buses registered in the Punjab State only. Further, under Section 8 (4) failure to pay the tax, penalty not exceeding ₹ 5,000/- but not less than ₹ 1,000 is leviable provided that before imposing such penalty a reasonable opportunity of being heard shall be given to the person concerned. Under Section 11(1) simple interest at the rate of 1.5 per cent per month from the due date till the default continues is also leviable.



Audit noticed in 12 DTOs<sup>1</sup> from the records relating to MVT Registers and lists of permitted kilometers that in respect of 27 transport companies, motor vehicle tax (MVT) of only ₹ 1.23 crore collected against the amount of ₹ 2.70 crore worked out on the basis of permitted kilometers operated by the transport companies during the period between April 2010 and March 2011.

It was noticed that to avoid the payment of Government revenue, the transporters had not paid/short paid the due MVT. The Department had neither opened the accounts in respect of ten transport companies under the control of six DTOs<sup>2</sup> nor took any action to recover the due MVT/differential MVT by impounding the vehicles of the defaulter transporters and to levy interest and impose penalty as required under the PMVT Act. Thus, there was non/short realisation of MVT of ₹ 1.65 crore including non-levy of interest of ₹ 0.15 crore and penalty of ₹ 0.03 crore.

On being pointed out by audit, the DTO, Amritsar accepted the objection and recovered ₹ 1.25 lakh against due MVT of ₹ 2.50 lakh. The DTO Barnala also accepted the audit objection and stated that out of due MVT of ₹ 3.37 lakh in respect of one company, ₹ 2.34 lakh for the period 8/2010 to 11/2010 was non leviable. The DTO, Sangrur also accepted the objection and recovered ₹ 46.32 lakh against recoverable tax of ₹ 57.66 lakh in one case and committed to recover the balance tax. In the remaining two cases the DTO, Sangrur stated that route permit was not operative in one case and MVT was deposited by the other with DTO, Barnala which was outrightly denied by DTO Barnala. On cross verification of record from DTO Barnala, it was stated that no MVT was deposited in respect of the said transport company at Barnala. Now DTO Sangrur stated that the said transport company has been transferred to Ludhiana. Reply of the Department is not accepted because route permit issued by competent authority was neither cancelled by RTA nor surrendered by the transport company and MVT of only one transport company was deposited at DTO, Barnala. The DTOs, Faridkot and Patiala also accepted the audit objection and issued the demand notice for the recovery of due MVT. The DTO, Mansa stated that the route permit No. 869 alongwith bus in the case of one transport company was already transferred to Barnala. The reply was not accepted as the objection relates to permit No. 403 and 15/8 of the same transporter and was based on the list of permitted kilometer issued by RTA Bathinda. The objection in another case was accepted by this DTO as notice of demand was issued to the transporter. The DTO, Bathinda stated that an amount of ₹ 624353/- has been recovered from one transport company and in rest of the cases, account will be opened after verification of records and recovery will be made. DTO, Gurdaspur also accepted the objection and issued notice to the transporter for recovery of

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<sup>1</sup> Amritsar, Barnala, Bathinda, Faridkot, Ferozpur, Gurdaspur, Jalandhar, Mansa, Moga, Mukatsar, Patiala and Sangrur.

<sup>2</sup> Bathinda, Jalandhar, Mansa, Mukatsar, Patiala and Sangrur.

₹ 5.83 lakh, out of which a sum of ₹ 1.46 lakh had been recovered and the balance was stated to be recovered through instalments. Rest of the DTOs<sup>3</sup> stated that amount will be recovered by issuing demand notice. Final outcome of the cases were awaited.

Audit reported the matter to the Department and the Government whose replies were awaited.



**Chandigarh :**  
**The**

**(AMANDEEP CHATHA)**  
**Accountant General (Audit), Punjab**

**Countersigned**



**New Delhi :**  
**The**

**(VINOD RAI)**  
**Comptroller and Auditor General of India**

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<sup>3</sup> Firozepur, Jalandhar, Moga and Mukatsar.

**ANNEXURE-A**

**Audit Plan for the year 2011-12 (Para 1.10)**

<b>Sr. No.</b>	<b>Category/Nature of receipt</b>	<b>Total Number of auditable units</b>	<b>No. of Units planned and audited during the year</b>
1.	AETC VAT Audit and Refund (including contingency)	24	20
2.	Information Collection Centres	35	15
3.	A.E.T.C. Mobile Wing	6	3
<b>Other Receipts</b>			
1.	State Excise	67	46
2.	Stamp Duty and Registration Fee	159	101
3.	Motor Vehicles Tax	27	26
4.	Entertainment Duty and Luxury Tax	24	24
5.	Electricity Duty	1	1
6.	Land Revenue	98	40
7.	Lotteries	1	1
<b>Total Units</b>		<b>442</b>	<b>277</b>

**ANNEXURE-A**

**Audit Plan for the year 2011-12 (Para 1.10)**

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