

CHAPTER II: TAXES/VAT ON SALES, TRADE

2.1.1 Tax administration

The Haryana Value Added Tax Act, 2003 and rules framed thereunder are administered at the Government level by the Additional Chief Secretary (Excise and Taxation). The Excise and Taxation Commissioner (ETC) is the head of the Excise and Taxation Department and he is assisted by Additional ETCs, Joint ETCs (JETCs), Deputy ETCs (DETCs) and Excise and Taxation Officers (ETOs). They are assisted by Excise and Taxation Inspectors and other allied staff for administering the relevant tax laws and rules.

2.1.2 Results of audit

In 2015-16, test check of the records of 40 units (revenue units: 32 and expenditure units: 8) relating to assessments of VAT/Sales tax revealed under-assessment of tax and other irregularities involving ₹ 2,716.43 crore in 1,222 cases which fall under the following categories as brought out in Table 2.1.

Table-2.1: Results of audit

Revenue			
Sr. No.	Categories	Number of cases	Amount (₹ in crore)
1.	System for collection of arrears of revenue in the State	1	591.63
2.	Under-assessment of Tax	647	766.94
3.	Acceptance of defective statutory 'Forms'	93	277.93
4.	Evasion of tax due to suppression of sales/purchase	40	16.52
5.	Irregular/Incorrect/Excess allowance of ITC	203	51.30
6.	Other irregularities	207	931.26
	Total (I)	1,191	2,635.58
Expenditure			
1	Non receipts of utilisation certificate	1	80.25
2	Other irregularities	30	0.60
	Total (II)	31	80.85
	Grand Total (I+II)	1,222	2,716.43

During the year, the department accepted under-assessment and other deficiencies of ₹ 224.74 crore in 89 cases out of which ₹ 217.94 crore involved in 37 cases were pointed out during the year and the rest in earlier years. The department recovered ₹ 25.04 lakh in 32 cases in the year 2015-16 out of which recovery in 11 cases involving ₹ 8.19 lakh was made during the year and the rest in earlier years.

Significant cases involving ₹ 604.67 crore are discussed in the following paragraphs.

2.2 System for collection of arrears of revenue in the State

2.2.1 Introduction

Departments of the Government are primarily responsible for recovery of dues pertaining to them in accordance with provisions of different Acts¹. Any amount due under these Acts and the rules made there-under as well as various instructions issued from time to time which remain unpaid after the last date specified for payment shall be the first charge on the property of the defaulter. These dues are recoverable from the defaulter as arrears of land revenue under the Punjab Land Revenue Act, 1887 (PLR Act)/Revenue Recovery Act, 1890 (RR Act) as applicable to the State of Haryana. The Revenue Authority issues Revenue Recovery Certificate (RRC) and may initiate legal steps such as attachment of property/assets and detention of the dealer, if necessary, for recovery of dues. Collection of revenue arrear in police department under the head “0055-Police” shall be regulated under the provisions of Punjab Financial Rules.

The records of the offices of four departments² (seven heads of account) in seven³ out of 21 districts in the State for the years 2012-13 to 2014-15 were

¹ Section 26 of the Haryana Value Added Tax (HVAT) Act, 2003, Section 17 of Punjab Entertainment Duty Act, 1955, Section 12 of the Punjab Passengers and Goods Taxation (PGT) Act, 1952, Section 25 of the Mines and Mineral (Development and Regulations) Act, 1957 Section 60 of the Punjab Excise Act, 1914 and Section 9 of the Punjab Electricity (Duty) (PED) Act, 1958

² Chief Electrical Inspector, Mines and Geology Department, Police, Excise and Taxation Department (Sales tax, State Excise, Entertainment and Passenger & Good tax)

³ Ambala, Bhiwani, Faridabad, Gurgaon, Karnal, Rohtak and Sonapat.

test checked between January and May 2016 to assess the effectiveness of the system of collection of arrears of revenue.

2.2.2 Trends/analysis of arrears

Slow pace of recovery

The position of arrears at the beginning of the year, additions during the year, recoveries effected/other adjustments, arrears more than three years old and arrears at the end of the year for the period from 2012-13 to 2014-15 were as depicted in Table 2.2.2 below.

Table 2.2.2: Position of recovery of arrears under various heads of account

(₹ in crore)

Head of Account	Year	Revenue Receipts	Arrears at the beginning of the year	Arrears added during the year	Total	Collection of demand/ arrears and deletion during the year	Arrears at the end of the year	Arrears more than three years' old	Per-centage of collection of arrears to total arrears col. 7 to 6
1.	2	3	4	5	6	7	8	9	10
0039-State Excise	2012-13	3,236.48	129.21	11.09	140.30	3.66	136.64	54.71	2.61
	2013-14	3,697.35	136.64	41.87	178.51	5.07	173.44	80.93	2.84
	2014-15	3,470.45	173.44	39.77	213.21	6.40	206.81	95.91	3.00
0040-Taxes on Sales, Trade etc.	2012-13	15,376.58	3,405.08	1,203.74	4,608.82	709.64	3,899.18	2,371.32	15.40
	2013-14	16,774.33	3,899.18	4,000.29	7,899.47	1,977.37	5,922.10	3,143.78	25.03
	2014-15	18,993.25	5,922.10	3,963.96	9,886.06	2,443.02	7,443.04	2,593.70	24.71
0042 Taxes on Goods and Passengers	2012-13	470.76	92.20	110.66	202.86	109.03	93.83	46.07	53.75
	2013-14	497.45	93.83	122.85	216.68	114.81	101.87	48.05	52.99
	2014-15	527.07	101.87	155.10	256.97	132.94	124.03	46.99	51.73
0043 Taxes and Duties on Electricity	2012-13	191.96	129.39	172.61	302.00	163.32	138.68	129.39	54.08
	2013-14	219.20	138.68	201.33	340.01	190.15	149.86	138.68	55.92
	2014-15	239.74	149.86	217.25	367.11	207.75	159.36	149.86	56.59
0045- Other Taxes and Duties on Commodities and Services	2012-13	56.70	14.13	0.00	14.13	0.00	14.13	13.28	0.00
	2013-14	68.51	14.13	0.00	14.13	6.21	7.92	7.07	43.95
	2014-15	88.58	7.92	3.35	11.27	0.52	10.75	7.40	4.61
0055 -Police	2012-13	63.73	13.72	6.13	19.85	6.94	12.91	8.11	34.96
	2013-14	80.38	12.91	93.62	106.53	0.00	106.53	8.11	0.00
	2014-15	67.82	106.53	1.36	107.89	0.00	107.89	8.19	0.00
0853-Non-Ferrous Mining and Metallurgical Industries	2012-13	75.49	26.14	0.16	26.30	0.89	25.41	17.12	3.38
	2013-14	79.10	25.41	0.19	25.60	0.92	24.68	19.34	3.59
	2014-15	43.46	24.68	0.18	24.86	0.08	24.78	21.40	0.32
Total	2012-13	19,471.70	3,809.87	1,504.39	5,314.26	993.48	4,320.78	2,640.00	
	2013-14	21,416.32	4,320.78	4,460.15	8,780.93	2,294.53	6,486.40	3,445.96	
	2014-15	23,430.37	6,486.40	4,380.97	10,867.37	2,790.71	8,076.66	2,923.45	

Source: Departmental figure

Audit scrutiny of records brought out that the pace of recovery was slow which resulted in mounting of arrears. While the recovery was above 50 per cent under head 0042-Taxes on Goods and Passengers and 0043-Taxes and duty on electricity, the percentage of recovery to total arrears under five heads of account⁴ ranged between 0.32 and 43.95 per cent. The percentage of recovery position was zero under head 0045-Other Taxes and Duties on Commodities and Services for the year 2012-13 and under head 0055-Police for the year 2013-14 and 2014-15. Total arrears increased from ₹ 3,809.87 crore in April 2012 to ₹ 8,076.66 crore (112 per cent) in March 2015 of which ₹ 2,923.45 crore (36.20 per cent) were outstanding for more than three years.

On this being pointed out (January and May 2016), 11 Deputy Excise and Taxation Commissioners (DETCs)/Mining officers (MOs)⁵ intimated (between January and May 2016) attributed the slow recoveries to shortage of staff, incorrect address of defaulters, death of defaulters and very old cases of recovery.

2.2.3 Non declaration of arrears recoverable under Punjab Land Revenue Act

Section 26 of the HVAT Act provides that amounts that remained unpaid after the last date specified for payment shall be the first charge on the property of the defaulter and recoverable as arrears of land revenue under the Punjab Land Revenue (PLR) Act.

Audit scrutiny of records of 20 offices⁶ in Excise and Taxation department revealed that Assessing Authorities (AAs) raised demand of ₹ 223.16 crore⁷ and five MO⁸ of Mines and Geology Department raised demand of ₹ 1.20 crore between 2012 and 2015. Though these assesseees had not deposited the due amount within the specified period, the AAs/MOs failed to declare the arrears recoverable as arrears of land revenue under the PLR Act. Similarly, Chief Electrical Inspector, Haryana also failed to declare arrears of ₹ 158.52 crore as on 31 March 2015 under PLR Act.

⁴ 0039-State Excise, 0040-Taxes on Sales, Trade etc, 0045- Entertainment Tax, 0055-Police and 0853-Mining.

⁵ DETC (Excise), Ambala, Faridabad, Karnal, Sonapat, DETC (PGT), Bhiwani, Gurgaon, Rohtak, Sonapat and Mining officer Ambala, Faridabad and Gurgaon.

⁶ DETC (ST) Ambala, Bhiwani, Faridabad, Gurgaon, Karnal, Rohtak, Sonapat, DETC (PGT) Ambala, Bhiwani, Faridabad, Gurgaon, Karnal, Rohtak, Sonapat, DETC (Excise) Ambala, Bhiwani, Gurgaon, Karnal, Rohtak and Sonapat.

⁷ Sales Tax (₹ 102.72 crore), State Excise (₹ 67.15 crore), Passengers and Goods Tax (₹ 53.29 crore).

⁸ Mining officer Bhiwani, Faridabad, Gurgaon, Karnal and Rohtak.

On this being pointed out, DETC (ST/PGT) Ambala assured (March 2016) to pursue these cases vigorously. DETCs (ST) Karnal, Faridabad (West), DETCs (PGT/Excise)/MOs⁹, intimated (January to March 2016) that efforts would be made to recover the outstanding arrears of ₹ 176.11 crore. Chief Electrical Inspector, Haryana stated (June 2016) that the arrears were to be adjusted as book adjustment and not under PLR Act. Reply of the department was not correct as the arrears were to be recovered as arrears of land revenue as per Section 9 of Punjab Electricity (Duty) (PED) Act. No reply was received from the remaining eight offices for the outstanding amount of ₹ 48.25 crore (October 2016).

2.2.4 Non-disposal of attached property

Section 67 of the PLR Act provides for disposal of attached property of the defaulters.

Audit scrutiny of records of seven offices¹⁰ in three Departments¹¹ revealed that arrears of ₹ 207.26 crore were due for recovery up to March 2015 in 31 cases. After issuing notices, the arrears were declared recoverable as 'arrears of land revenue' between July 1992 and August 2015 and the property of the defaulters in 29 cases was attached between July 1992 and June 2015. In four cases, the dealer went into liquidation after attachment of property while in six cases physical possession of the property was with Punjab National Bank. Permission was being taken from ETC office for auction in four cases while no action was taken by the AAs in the remaining cases. In two cases, property of defaulters was not attached as the said property had already been attached by another financial institution. Thus, delay in auctioning the attached property ranging between one year and 24 years and not taking timely action to attach/auction the attached properties resulted in accumulation of arrears of ₹ 207.26 crore.

On this being pointed out, DETC (Excise) Rohtak stated (June 2016) that permission was being taken to auction the attached property from Excise and Taxation Commissioner, Haryana. MO, Sonapat stated (March 2016) that efforts would be made to auction the attached property. No reply was received from the remaining offices (October 2016).

2.2.5 Deletion of demand against false forms

As per instructions issued by Government of Haryana on 14 March 2006 and 16 July 2013, intra-State or inter-State transactions of more than Rupees one

⁹ DETC (PGT) Bhiwani, Faridabad, Gurgaon, Rohtak, Sonapat, DETC (Excise) Ambala, Gurgaon, Karnal, Rohtak, Sonapat and Mining officer Bhiwani, Faridabad and Gurgaon.

¹⁰ DETC (ST) Bhiwani, Faridabad (West), Karnal, Rohtak, Sonapat, DETC (Excise), Rohtak and Mining officer, Sonapat.

¹¹ Sales Tax, State Excise and Mining.

lakh were to be verified before allowing the benefit of tax/concession to the dealer. Further Sections 5 (3), 6A and 8 (4) of the Central Sales Tax Act, 1956 (CST Act), provide for levy of nil/concessional rate of tax on sales made against declaration forms H, F, E-1 and C respectively. Under Section 38 of HVAT Act, penalty is leviable for submitting wrong accounts/information/documents to evade payment of tax. Benefit of concession against declaration forms is allowable only against original copy of forms.

Audit scrutiny of records of four offices¹² of Sales Tax revealed that the AAs finalised the assessments (rectification) of 10 dealers between November 2013 and March 2015 for the assessment years 2010-11 and 2012-13 and allowed benefit of consignment sale/inter-State sale at concessional rate of tax against forms "F" and "C" respectively worth ₹ 23.93 crore and deleted the arrears of ₹ 1.86 crore. On verification by audit from the Tax Information Exchange System (TINXSYS)/concerned Authorities, the said forms were found to be not genuine. Allowing benefit of consignment sale/concessional rate of tax against such false declarations resulted in erroneous deletion of arrears of ₹ 1.86 crore. In addition, penalty of ₹ 5.57 crore under section 38 of HVAT Act was also leviable.

2.2.6 Irregular deletion/concealment of arrears

The amount of arrears is reduced as and when any recovery is affected. Further, if any demand is reduced due to submission of requisite declaration forms etc., the additional demand due is deleted to that extent.

Audit scrutiny of records of the offices of DETC (ST), Sonapat and Gurgaon (East) revealed that in 125 cases, AAs finalised the assessments between August 2012 and March 2015 for the years 2007-08 and 2013-14 and raised additional demand of ₹ 174.88 crore and subsequently deleted the said demand from the list of arrears without recording any reasons for deletion of arrears. Neither the demand of arrears was shown recovered/transferred to other wards nor the demand reflected in the list of recovery. This resulted in irregular deletion/concealment of arrears of ₹ 174.88 crore.

On this being pointed out, no reply was received (October 2016).

2.2.7 Failure to initiate follow up action

The amount of tax, interest and penalty remaining unpaid by the dealer after due date is to be declared recoverable as arrears of land revenue under PLR Act and recovered in accordance with the provisions of the RR Act, 1890 by issuing RRC. DETCs have the powers of collector under sections 68, 69 and

¹² DETC (ST), Bhiwani, Faridabad (West), Gurgaon (East) and Rohtak.

70 of the PLR Act, 1887 for recovery of arrears of the department. When the AA is unable to recover the dues from the defaulter due to closure of his business and transfer to other place within or outside the State, the DETC (Collector) is required to send the RRC to the DETC-cum-Collector /revenue authority {(Deputy Commissioner (DC)} of the district concerned within or outside the State respectively for recovery of dues as arrears of land revenue.

Audit scrutiny of records of 21 offices¹³ in four Departments¹⁴ revealed that the AAs/MOs declared arrears of ₹ 72.33 crore (₹ 62.07 crore inter-State arrears and ₹ 10.26 crore inter District arrears) recoverable as arrears of land revenue and issued RRC between December 2007 and March 2016. AAs/MOs were required to vigorously pursue the RC with the concerned Revenue Authorities. However, no follow up action was taken to recover the arrears.

Further in 20 offices of three departments¹⁵, the arrears recoverable as arrears of land revenue of ₹ 94.23 crore¹⁶ were outstanding within the same district. Out of this, ₹ 84.28 crore relates to Excise and Taxation department. No action had been initiated by the DETC for recovery of the dues.

On this being pointed out, DETCs (ST/Excise/PGT) and MOs¹⁷ intimated between January and May 2016 that efforts would be made to recover the Government dues. No reply was received from remaining six offices.

2.2.8 Non levy of interest

Section 23 (1) of HVAT Act provides for levy of interest if any amount, specified in a notice of demand has not been deposited within thirty days after serving of notice.

(i) Audit scrutiny of records of three offices¹⁸ of DETC (ST) revealed that in three cases, an additional demand of ₹ 124.78 crore was created between September 2010 and March 2015 for the years 2007-08 to 2011-12. The AAs issued notice for recovery and declared the arrears recoverable as arrears of land revenue under PLR Act. Meanwhile, the assessee had gone into liquidation. While forwarding the claim to the official liquidator (between September 2014 and May 2016), the AAs failed to include the amount of

¹³ DETC (ST) Ambala, Bhiwani, Faridabad, Gurgaon, Karnal, Rohtak, Sonapat, DETC (Excise) Ambala, Bhiwani, Faridabad, Gurgaon, Karnal, Rohtak, Sonapat, DETC (PGT) Rohtak and Mining officer, Ambala, Bhiwani, Faridabad, Gurgaon, Karnal and Sonapat.

¹⁴ Sales Tax, State Excise, Passengers and Goods Tax and Mining.

¹⁵ DETC(ST), DETC(State Excise) and Mining.

¹⁶ Sales Tax (₹ 58.35 crore), State Excise (₹ 25.93 crore) and Mining (₹ 9.95 crore).

¹⁷ DETC(ST), Faridabad, DETC(PGT), Rohtak, DETC(Excise), Ambala, Faridabad, Gurgaon, Karnal, Rohtak and Mining officers, Bhiwani, Faridabad, Gurgaon and Sonapat.

¹⁸ DETC (ST) Faridabad (West), Gurgaon and Rohtak.

interest of ₹ 23.51 crore and lodged lesser claim of ₹ 0.07 crore. This resulted in short lodging of claim of ₹ 23.58 crore.

On this being pointed out, DETC Faridabad (West) and Rohtak stated (March and July 2016) that demand of interest of ₹ 19.20 crore had been sent to the official liquidator. No reply was received from DETC (ST) Gurgaon (October 2016).

(ii) Audit scrutiny of records of six offices¹⁹ revealed that in 96 cases, the dealers deposited demand of ₹ 14.38 crore with delay ranging between 33 days to 10 years but neither the dealers had deposited the interest nor the AA raised the demand. This resulted into non levy/non-recovery of interest of ₹ 2.86 crore.

On being pointed out, DETC (ST), Rohtak stated (August 2016) that demand of ₹ 3.28 lakh had been created in one case. DETC(ST), Ambala stated (August 2016) that notice of recovery had been issued to the dealer. DETC (ST), Gurgaon stated (August 2016) that proceeding for taking action had been initiated in four cases. No reply was received from DETCs (ST) Faridabad (West), Karnal and Sonapat for the outstanding interest of ₹ 77.30 lakh (October 2016).

2.2.9 Inaccurate figures of Arrears

While arrears can be reduced 'on account of' recovery during any subsequent year, old arrears pertaining to earlier years cannot increase. Audit scrutiny of records from Statement of old arrears of four offices²⁰ for the year 2011-12 to 2014-15 revealed that year-wise details of old arrears for the years 2002-03 to 2013-14 had increased by ₹ 199.48 crore from ₹ 58.30 crore to ₹ 257.78 crore during the year ended March 2015. Thus the figures of arrears were not authentic.

No reply has been received so far (October 2016).

2.2.10 Non maintenance/production of records

As per instructions issued by ETC on 27 December 2005, a separate recovery file should be maintained in each case as soon as a demand has fallen into arrears. The recovery proceedings should be recorded in the recovery file.

Audit had requisitioned 1,552 recovery files involving arrears of ₹ 636.69 crore during audit of seven DETC (ST) offices out of which 1,115 files involving arrears of ₹ 480.77 crore were produced. The remaining 437 recovery files involving arrears of ₹ 155.92 crore were not produced to audit.

¹⁹ DETC (ST) Ambala, Faridabad (West), Gurgaon (East), Karnal, Rohtak and Sonapat.

²⁰ DETC (ST), Bhiwani, Faridabad (West), Rohtak and Sonapat.

Scrutiny of assessment files/list of arrears revealed that separate recovery files were not maintained in 334 cases involving arrears of ₹ 102.72 crore. Further, out of the 334 cases, demand notices (VAT N-4) were not found issued in 149 cases involving arrears of ₹ 61.51 crore. Similarly, recovery files were also not maintained in 10 offices²¹ of State Excise, Passengers and Goods Tax, and Mining Departments. This poor state of maintenance of recovery files/records undermined the ability of the departments to effectively monitor and pursue recovery of arrears of revenue.

On this being pointed out, AA Gurgaon (East) stated (May 2016) that notice VAT N-4, recovery files would be issued/maintained and efforts would be made to recover the old arrears. DETCs (PGT and Excise) and MOs stated (February and May 2016) that no separate recovery files were maintained.

2.2.11 Conclusion

Thus, inadequate pursuance of arrears of revenue resulted in increase of arrears by 112 *per cent* from ₹ 3,809.87 crore in April 2012 to ₹ 8,076.66 crore in March 2015. The Assessing Authorities as well as the Revenue Recovery officers failed to ensure strict adherence to the provisions of the Acts and rules made thereunder and ₹ 382.88 crore arrears were not declared recoverable under PLR Act while arrears of ₹ 207.26 crore could not be recovered due to non disposal of attached property. Demand of ₹ 1.86 crore was reduced against false concessional forms and there was concealment of arrears of ₹ 174.88 crore. Arrears of ₹ 166.56 crore could not be recovered due to non initiation of follow up action. Interest of ₹ 26.37 crore was not levied. Recovery efforts and their effective monitoring were undermined by non-maintenance of proper recovery files.

The above findings were reported to the Government in June 2016; its reply was awaited (October 2016).

2.3 Incorrect allowance of input tax credit

As per section 8 of the Haryana Value Added Tax Act, 2003 (HVAT Act), input tax in respect of any goods purchased by a VAT dealer shall be the amount of tax paid to the State on the sale of such goods to him. ETC Haryana issued instructions in July 2013 mandating verification of input tax credit up to

²¹ DETC (Excise), Faridabad, Karnal, Sonapat, DETC (PGT), Ambala, Gurgaon, Rohtak, Sonapat and Mining officer, Ambala, Bhiwani and Gurgaon.

the stage of actual payment of tax. Further, section 38 of the Act provides for penal action (tax avoided/benefit claimed and three times penalty) for claims on the basis of documents, false information and incorrect accounts.

Audit scrutiny of records (September 2015) of Deputy Excise and Taxation Commissioner (Sales Tax) {DETC (ST)}, Panchkula revealed that a dealer was assessed (March 2015) under scrutiny scheme for the assessment year 2011-12. The dealer had shown purchases worth ₹ 7.34 crore at the rate of 13.125 *per cent* from a dealer of Kurukshetra district and claimed benefit of Input Tax Credit (ITC) of ₹ 96.39 lakh. The Assessing Authority (AA), allowed benefit of ITC of ₹ 96.39 lakh without verification of payment of tax by selling dealer. On verification by audit, the DETC (ST) Kurukshetra informed that the selling dealer had not made sale to Panchkula dealer during 2011-12. This resulted in incorrect grant of ITC of ₹ 96.39 lakh. In addition penalty of ₹ 2.89 crore was also leviable.

On this being pointed out, the DETC (ST) Panchkula replied (February 2016) that the case had been sent to Revisional Authority for taking *suo motu* action.

The matter was reported to the Government in March 2016; its reply was awaited (October 2016).

2.4 Non levy of surcharge

As per section 7 (A) of the HVAT Act, an additional tax, in the nature of surcharge at the rate of five *per cent* on the tax was leviable w.e.f. 02 April 2010. The Government of Haryana had also clarified (10 February 2014) that work contractors who have exercised the option of payment of lump sum in lieu of tax are also liable to discharge the liability of surcharge under section 7 (A) of the Act *ibid*.

Audit scrutiny of records (between November 2014 and June 2015) of six offices²² of DETC (ST) revealed that the AAs, while finalising the assessments of 61 cases (between April 2013 and March 2015) for the years 2010-11 to 2011-12, calculated tax of ₹ 38.16 crore at the rate of four/five *per cent* on the taxable turnover of ₹ 941.64 crore but the additional tax at the rate of five *per cent* of the tax amount of ₹ 38.16 crore was not levied. This resulted in non levy of surcharge of ₹ 1.91 crore.

²² Faridabad (West), Gurgaon (East), Palwal, Rewari, Sirsa and Jagadhri.

On this being pointed out, three DETCs (ST)²³ stated (between August 2015 to July 2016) that an additional demand of ₹ 0.72 crore had been created in 32 cases. DETC Sirsa (July 2016) stated that additional demand of ₹ 1.49 crore had been created in one case but the dealer filed an appeal before the Hon'ble Haryana Tax Tribunal against this order. DETCs Jagadhri and Palwal stated that 10 cases had been sent to Revisional Authority for suo motu action. In one case, AA Faridabad (West) stated in January 2016 that the dealer had done the contract work of Municipal Corporation (MC) Faridabad and surcharge was not deducted by the MC office. The reply was not tenable as the AA was required to levy surcharge at the time of assessment of the case. AA Rewari stated in March 2016 that in all the 17 cases, orders have been rectified and tax levied accordingly. Further progress report of recovery has not been received (October 2016).

The matter was reported to the Government in March 2016; its reply was awaited (October 2016).

2.5 Under assessment of tax due to calculation mistake

Under Section 19 of the HVAT Act, any taxing authority or appellate authority, may, at any time, within a period of two years from the date of supply of copy of the order passed by it in any case, rectify any clerical or arithmetical mistake apparent from the records of the case after giving the person adversely affected a reasonable opportunity of being heard.

Audit scrutiny of records (December 2014 and August 2015) of the offices of DETCs (ST), Faridabad (West), Panchkula and Rohtak revealed that three dealers made sales valued at ₹ 74.97 crore during 2011-12. The AAs, while finalising the assessments between November 2013 and March 2015, levied tax of ₹ 2.74 crore instead of correct amount of ₹ 4.53 crore resulting in under-assessment of tax of ₹ 1.79 crore.

On this being pointed out, AA Faridabad stated in January 2016 that the mistake had been rectified. DETC (ST) Rohtak stated in July 2016 that factory land of the assessee had been attached by issue of warrant u/s 72 of Punjab Land Revenue Act, 1887 to recover the tax of ₹ 2.65 crore. DETC (ST) Panchkula stated in July 2016 that the case had been sent to Revisional

²³ Faridabad (West), Gurgaon (East) and Jagadhri.

Authority for *suo motu* action. Further progress of recovery has not been received (October 2016).

The matter was reported to the Government in March 2016; its reply was awaited (October 2016).

2.6 Short/Non levy of tax due to incorrect classification

Under Section 7 (1) (a) (iv) of the HVAT Act, tax is leviable at rates specified in Schedules 'A' to 'G' of the Act depending upon the classification of goods. Items not classified in the above schedules are taxable at the general rate of tax of 12.5 *per cent* with effect from 1 July 2005. Further, surcharge at the rate of five per cent of the tax was also leviable w.e.f. 02 April 2010. In addition, in case of default of payment of tax, interest was also leviable under Section 14 (6) of the HVAT Act.

2.6.1 The Government clarified on 25 March 2013 that all varieties of textiles on which any value addition work like knitting, embroidery work has been done were liable to VAT as unclassified goods at general rate of tax 12.5 *per cent* and surcharge at rate of five *per cent* on the tax was leviable w.e.f. 2nd April 2010. Audit scrutiny of records (September and November 2015) of offices of DETC (ST), Jhajjar and Gurgaon revealed that two dealers sold embroidered fabrics of ₹ 7.55 crore during 2012-13 and claimed the goods as tax free. The AAs, while finalising the assessments between October and November 2014, allowed the deductions treating it as tax free goods under Schedule 'B' of the HVAT Act. However, embroidered fabrics being not classified in any schedule is taxable at the rate of 12.5 *per cent* plus surcharge. This resulted in non levy of VAT amounting to ₹ 99.15 lakh. In addition, interest of ₹ 39.54 lakh was also leviable.

On this being pointed out, DETC (ST) Gurgaon (East) stated in July 2016 that demand for ₹ 89.05 lakh had been created. DETC (ST) Jhajjar stated in July 2016 that sale of embroidered fabric was tax free falling under entry 52 of Schedule B of HVAT Act after the exempting of Additional Excise Duty (AED) on textile and textile articles vide notification dated July 2004. The reply of DETC (ST) was not tenable as AED on textile was abolished in April 2011 and embroidered fabric mentioned here pertains to year 2012-13 which was taxable as per clarification in March 2013.

2.6.2 Audit scrutiny of records (November 2014) of office of DETC (ST), Jhajjar (Bahadurgarh) revealed that a dealer supplied Mitti (Soil) worth ₹ 96.61 lakh during the year 2011-12 and claimed tax free sales. The AA, while finalising the assessment in November 2013, allowed the same instead of levying tax at the rate of 13.125 *per cent* as applicable in respect of unclassified item being Mitti (Soil). This resulted in non-levy of tax and surcharge amounting to ₹ 12.68 lakh. In addition, interest of ₹ 6.59 lakh was also leviable. On this being pointed out, ETO Jhajjar (Bahadurgarh) stated in July 2016 that the case was under revision (October 2016).

2.6.3 The Government had clarified on 23 June 2014 that paneer is an unclassified item and was liable to VAT as unclassified goods at general rate of tax 12.5 *per cent* and surcharge at rate of five *per cent* on the tax leviable w.e.f 2nd April 2010. Audit scrutiny of records (August and October 2015) of the offices of DETC (ST), Jind and Panchkula revealed that two dealers sold paneer valued at ₹ 6.79 crore during the years 2010-11 to 2012-13 and paid the tax at rate of five *per cent* plus surcharge. The AAs, while finalising the assessments between March 2014 and March 2015 also levied tax at the rate of 5 *per cent* plus surcharge instead of correct rate of 12.5 *per cent* plus surcharge as per clarification of the Government. This resulted in short levy of tax amounting to ₹ 53.44 lakh. In addition, interest of ₹ 35.56 lakh was also leviable.

On this being pointed out, the DETCs (ST), Jind stated in March 2016 that the case had been sent to Revisional Authority for taking *suo motu* action. ETO (Panchkula) stated in July 2016 that an additional demand of ₹ 44.50 lakh had been created and effort would be made to recover the amount.

2.6.4 The Government had clarified on 18 July 2013 that taxable event is the transfer of right to use goods and the rate applicable to transfer of right to use goods is the rate applicable on sale of such goods. Audit scrutiny of records (September 2015) of the office of DETC (ST), Panchkula revealed that a dealer had leased motor vehicles valued of ₹ 1.87 crore during the years 2011-12 to 2012-13 and paid tax at rate of five *per cent* plus surcharge. The AA, while finalising the assessments between September 2013 and August 2014, levied tax at the rate of five *per cent* plus surcharge instead of correct rate of 12.5 *per cent* plus surcharge. This resulted in short levy of tax amounting to ₹ 14.70 lakh. In addition, interest of ₹ 6.89 lakh was also leviable. On this being pointed out, the AA Panchkula stated in July 2016 that the cases had been sent to DETC (inspection), Ambala for *suo motu* action.

2.6.5. Audit scrutiny of records (May 2014) of the office of DETC (ST), Sonapat revealed that a dealer sold industrial filters/machinery parts valued at ₹ 8.72 crore during the years 2011-12 and calculated tax at rate of four/five *per cent* plus surcharge. The AAs, while finalising the assessment in November 2013 also levied tax at the rate of four/five *per cent* plus surcharge instead of correct rate of 12.5 *per cent* plus surcharge as applicable in respect of unclassified item. This resulted in short levy of tax of ₹ 68.86 lakh. On this being pointed out, the DETCs (ST), Sonapat stated in January 2016 that the case had been sent to the Revisional Authority for taking *suo motu* action.

The above matters were reported to the Government in April/May 2016; its reply was awaited (October 2016).

2.7 Under assessment of tax due to wrong deduction of sale to Special Economic Zone units

The Government clarified on 12 February 2013 that sale to developer/co-developer of a Special Economic Zone (SEZ) is not exempt from levy of tax but only the individual dealer is exempt on setting up a unit in the SEZ area.

Audit scrutiny of records (September 2015) of the office of DETC (ST), Panchkula, revealed that a dealer sold ready mix concrete to a developer worth ₹ 2.76 crore during the year 2011-12. The AA, while finalising the assessment of the dealer in March 2015, allowed deduction of ₹ 2.76 crore in view of SEZ sale. The deduction of sale to SEZ unit was incorrectly allowed to the dealer who sold material to a developer. This resulted in under-assessment of tax of ₹ 36.26 lakh. In addition, interest of ₹ 30.46 lakh was also leviable.

On this being pointed out, the Excise and Taxation Officer, Panchkula stated (July 2016) that the case was sent to the Revisional Authority (RA) who had created an additional demand of ₹ 38.03 lakh (April 2016). However, the dealer had filed an appeal (May 2016) before the Hon'ble Haryana Tax Tribunal against the orders, which was pending (October 2016).

The matter was reported to the Government in March 2016; its reply was awaited (October 2016).

2.8 Evasion of tax due to suppression of sales

Under Section 38 of the HVAT Act, if a dealer has maintained false or incorrect accounts or documents with a view to suppressing his sales, purchases, imports into State or stock of goods, or has concealed any particulars or has furnished to or produced before any authority, any account, return, document or information which is false or incorrect in any material particular, such authority may direct him to pay by way of penalty, in addition to the tax to which he is assessed or is liable to be assessed, a sum thrice the amount of tax which would have been avoided had such account, return, document or information as the case may be, been accepted as true and correct.

Audit scrutiny of records (October 2014) of DETC (East), Gurgaon revealed that a dealer purchased bajri, bricks and sand worth ₹ 1.12 crore from a dealer registered in DETC (West) and claimed input tax credit on the same during 2009-10. But the selling dealer under DETC (West) had filed nil returns for that period and had not included these goods in his sales. Thus, the dealer of DETC Gurgaon (West) had suppressed sales worth ₹ 1.12 crore and was liable to pay tax of ₹ 14.05 lakh at the rate of 12.5 *per cent*. In addition, mandatory penalty of ₹ 42.15 lakh was also leviable on suppression of sales.

On this being pointed out, AA Gurgaon (West) stated in July 2016 that the case was re-assessed and an additional demand of ₹ 57.62 lakh was created and the dealer had filed an appeal before the Joint Excise and Taxation Commissioner (Appeal) Faridabad against the re-assessment.

The matter was reported to the Government in May 2016; its reply was awaited (October 2016).

2.9 Non levy of interest

Section 14 (6) of the HVAT Act, stipulates that if any dealer fails to make payment of tax, he shall be liable to pay, in addition to the tax payable by him, simple interest at one *per cent* per month if the payment is made within

ninety days, and at two *per cent* per month if the default continues beyond ninety days for the whole period, from the last date specified for the payment of tax till the date he makes the payment.

Audit scrutiny of records of the offices of DETC (ST), Panchkula and Kurukshetra (May and September 2015) revealed that AAs finalised the assessments for the year 2011-12 in March, 2015 in two cases and created an additional demand of ₹ 53.91 lakh but did not levy interest on non-payment of tax with return. This resulted in non-levy of interest of ₹ 45.28 lakh (₹ 33.85 lakh + ₹ 11.43 lakh) computed upto 31 March 2015.

On this being pointed out, DETC (ST) Panchkula stated (July 2016) that interest of ₹ 47.54 lakh²⁴ has been levied but the dealer had filed an appeal before the JETC (A) Ambala against this order. DETC (ST) Kurukshetra stated in July 2016 that the interest of ₹ 13.07 lakh has been levied. Further progress report of recovery has not been received (October 2016).

The matter was reported to the Government in April 2016; its reply was awaited (October 2016).

2.10 Incorrect benefit of input tax credit on goods not sold

As per Section 8 of HVAT Act 2003, input tax credit (ITC) on purchase of goods is admissible against tax liability on sale of goods as such or the goods manufactured therefrom in the State or interstate trade and commerce. The Government had also clarified (22 April 2013) that ITC is available only if the Duty Credits Scrips (Scrips) are purchased for re-sale as such and no ITC would be admissible if these were used for adjustment of custom duty.

Audit scrutiny of records (December 2014 and December 2015) of DETC (ST), Jhajjar revealed that a dealer purchased Duty Entitlement Pass Book (DEPB)/Import License worth ₹ 3.91 crore after payment of VAT of ₹ 20.55 lakh during 2010-11 to 2012-13. The dealer used the same for adjustment of custom duty payable by him. As the goods (Scrips) were not sold by the dealer, no ITC was admissible. However, while finalising assessments in these cases between May 2013 and November 2014, AA

²⁴ AA Panchkula levied interest of ₹ 47.54 lakh on due tax of ₹ 49.01 lakh (01-04-2012 to 31-12-2015). But did not deduct excess carry forward of ₹ 8.70 lakh from the tax due before calculating the interest.

allowed the ITC claims to the dealer resulting in incorrect grant of ITC of ₹ 20.55 lakh.

On this being pointed out, the DETC (ST) Jhajjar stated (July 2016) that the cases had been sent to the Revisional Authority for taking *suo motu* action in January 2016. Further progress report of recovery has not been received (October 2016).

The matter was reported to the Government in March 2016; its reply was awaited (October 2016).

2.11 Under assessment of tax due to non levy of purchase tax

As per Section 3 (3) of HVAT Act, 2003, if a dealer purchases or receives any taxable goods in the State from any source in the circumstances that no tax is levied or paid and he either exports them out of the State or uses/disposes them in the circumstances in which no tax is payable under this Act or the Central Act on them or the goods manufactured therefrom, then, he shall, subject to the provisions of sub-section (4), be liable to pay tax on the purchase or receipt thereof. Provided further that where the goods purchased or received are used or disposed of partly in the circumstances mentioned in the foregoing provisions of this sub-section and partly otherwise, the tax leviable on such goods shall be computed on pro-rata. Surcharge at the rate of five *per cent* on the tax leviable under section 7 (A) of HVAT Act w.e.f 2nd April 2010 is also leviable. Further, interest was also leviable under Section 14 (6) of the HVAT Act.

Audit scrutiny of records (September 2014) of DETC (ST), Panipat revealed that a dealer purchased taxable goods 'Pet Scrap' worth ₹ 7.31 crore from unregistered dealers within the State without payment of tax during the years 2009-10 and 2010-11 and transferred the same out of Haryana against 'F' forms. As dealer sold/disposed of these taxable goods without payment of tax and no tax was payable by him under HVAT Act or CST Act, the dealer was liable to pay purchase tax. However, the AA, while finalising assessments between February 2013 and March 2014 for the years 2009-10 and 2010-11 did not levy purchase tax. This resulted in under-assessment of tax due to non-levy of purchase tax of ₹ 12.13 lakh on (pro-rata basis). In addition, interest of ₹ 9.91 lakh was also leviable.

On this being pointed out, AA Panipat stated in May 2016 that additional tax demand of ₹ 12.13 lakh and interest of ₹ 9.91 lakh had been created. Further progress report of recovery was awaited (October 2016).

The matter was reported to the Government in June 2016; its reply was awaited (October 2016).