

CHAPTER - II: TAXES ON SALES, TRADE/VAT ETC.

2.1 Results of audit

Test check of the records of sales tax assessments and other records, conducted during the year 2008-09 revealed non/short levy of tax due to acceptance of defective statutory forms, underassessment of tax, evasion of tax due to suppression of sales/purchases and other irregularities amounting to Rs. 36.36 crore in 167 cases, which fall under the following categories:

(Rupees in crore)

Sr. No.	Particulars	Number of cases	Amount
1.	Transition from sales tax to Value Added Tax (a review)	1	19.71
2.	Non/short levy of tax due to acceptance of defective statutory forms	53	10.30
3.	Underassessment of tax	44	3.20
4.	Evasion of tax due to suppression of sales/purchases	27	1.26
5.	Other irregularities	42	1.89
Total		167	36.36

During 2008-09, the department accepted under assessments of Rs. 23 lakh involved in 18 cases which had been pointed out in audit in earlier years.

A few illustrative audit observations involving Rs. 11.81 crore and a review on **Transition from sales tax to Value Added Tax** involving **Rs. 19.71 crore** are mentioned in the succeeding paragraphs.

2.2 Review of “Transition from Sales tax to Value added tax”

Highlights

- Non-payment of VAT on rental charges on account of electric meters and service lines collected from consumers by Himachal Pradesh State Electricity Board resulted in non-realisation of revenue of Rs. 14.05 crore including interest.

(Paragraph 2.2.8.3)

- In absence of mechanism for cross verification of tax paid by 134 selling dealers, the Assessing Authorities could not ensure the genuineness of ITC of Rs. 15.33 crore claimed by the dealers.

(Paragraph 2.2.11.1)

- Excess allowance of input tax credit to 69 dealers on the entire branch transfer/local purchases of Rs. 314.35 crore, instead of on proportionate basis, by the Assessing Authorities resulted in loss of revenue of Rs. 2.23 crore.

(Paragraph 2.2.11.2)

- Deficient provisions for cross verification of local purchases exceeding rupees one lakh made from a single VAT dealer in a year, resulted in non-verification of genuineness of ITC of Rs. 6.06 crore, allowed to the dealers.

(Paragraph 2.2.13.1)

- Deficient provisions for deduction of tax at source on hire charges involved in execution of works contract, resulted in non-recovery of revenue of Rs. 56.58 lakh.

(Paragraph 2.2.14.1)

- Non-payment of VAT on the sale of SIM cards and irregular allowance of deduction of material from gross turnover in the case of 34 dealers resulted in non-recovery of revenue of Rs. 4.52 crore.

(Paragraph 2.2.19.1 and 2.2.19.2)

2.2.1 Introduction

The Government of India (GOI) in the meeting of Empowered Committee (EC) held on 23 January 2002 unanimously decided to implement Value Added Tax (VAT). The introduction of VAT has been considered to be a major step in the sphere of indirect tax system in India. The advantages of VAT system are that it is simple, transparent and eliminates cascading effect of existing sales tax system by setting off the tax paid earlier at every stage of sales.

The Government of Himachal Pradesh repealed Himachal Pradesh General Sales Tax (HPGST) Act, 1968 and enacted the Himachal Pradesh Value Added Tax (HPVAT) Act, 2005 (Act No. 12 of 2005) for implementation with effect from 1 April 2005. A dealer registered under the repealed Act and who

continued to be so registered on or immediately before 1 April 2005 and liable to pay tax, was deemed to be registered under the HPVAT Act.

The main differences between (HPGST) Act, 1968 and VAT are that VAT is multipoint tax system while sales tax was a single point tax system. VAT system relies more on the dealers to pay the tax willfully alongwith returns. They are deemed to have been self assessed on the basis of the returns filed by them if they are complete in all material particular, whereas in the Sales Tax Act, cent *per cent* cases are assessed and supporting documents are required to be submitted with the returns. VAT system reduces the control of the executives on the dealers while many other taxes are there in sales tax.

Under the HPVAT Act, a registered dealer (other than the dealer who imports the goods from outside the State and the dealer dealing in medicines) shall have the option to pay presumptive lump sum tax in equal installments, by way of composition whereas no such benefit existed under the repealed Act.

2.2.2 Organisational set up

Value Added Tax law and rules framed thereunder are administered at Government level by the State Principal Secretary (Excise and Taxation). The Excise and Taxation Commissioner (ETC) is the head of the Excise and Taxation Department (HOD) who is assisted by one Additional ETC, one Joint ETC, eight Deputy ETC, 13 Assistant Excise and Taxation Commissioners (AETCs) and 69 Excise and Taxation Officers (ETOs). They are assisted by Excise and Taxation Inspectors (ETIs) and other allied staff for administering the relevant tax laws and rules.

2.2.3 Audit objectives

The review was aimed at checking the status of implementation of VAT system as it has been in place for four years now. The review was conducted with a view to ascertain whether:

- planning for implementation and the transition from repealed HPGST Act to HPVAT Act and rules made thereunder were effected in a timely and efficient manner;
- organisational structure was adequate and effective;
- provisions of the HPVAT Act and the Rules made thereunder were adequate and were enforced properly to safeguard the revenue of the State;
- internal control mechanism existed in the Department and was adequate and effective to prevent leakage of revenue;
- computerisation of the checkgates and linking these with the Commissionerate and Assessing Authorities was completed; and
- VAT fraud task force exists to prevent early detection of dubious dealers.

2.2.4 Scope and methodology of audit

The review of the efficacy of the system of transition from sales tax to VAT for the period 2005-06 to 2007-08 was conducted between April and July 2009 in six districts¹ out of the 12 districts of the State. The selection of districts was made on the basis of stratified random sampling and revenue involved. Selection of assessment files was on the basis of the turnover of the dealers as under:

- Hundred *per cent* assessed cases where gross turnover was Rs. one crore and above;
- Fifty *per cent* assessed cases where gross turnover was above Rs. 50 lakh and below Rs. one crore; and
- Twenty five *per cent* assessed cases where gross turnover was above Rs. 10 lakh and below Rs. 50 lakh.

2.2.5 Acknowledgement

The Indian Audit and Accounts Department acknowledges the cooperation of the State Excise and Taxation Department in providing necessary information and records for audit. An entry conference was held in May 2009 with the department and the scope and methodology for conducting the review were discussed. The draft review was forwarded to the department and to the Government in August 2009 and was discussed in the exit conference held in October 2009. The Principal Secretary (Excise and Taxation) represented the Government while the ETC represented the department. Replies of the Government (October 2009) received during the exit conference and at other times have been appropriately incorporated in the relevant paragraphs.

Audit findings

2.2.6 Pre-VAT and post-VAT collection

The comparative position of pre-VAT sales tax collection (2002-03 to 2004-05) and post-VAT (2005-06 to 2007-08) tax collection including VAT and growth rate in each of the years is furnished below:

(Rupees in crore)

Pre VAT			Post VAT		
Year	Actual collection	Percentage of growth	Year	Actual collection	Percentage of growth
2002-03	383.34	8	2005-06	726.98	34
2003-04	436.75	14	2006-07	914.45	26
2004-05	542.37	24	2007-08	1,092.16	19

The average growth during 2002-03 to 2004-05 was 15 *per cent* while the average growth rate during 2005-06 to 2007-08 was 26 *per cent*. Thus, the average growth rate in the post VAT period registered an increase of 11 *per cent*. This is due to the fact that more number of dealers were brought into the

¹ Kangra, Mandi, Shimla, Sirmour, Solan and Una

tax net. However, there was a decreasing trend in the percentage of growth rate during 2005-06 to 2007-08.

The Government stated that revenue collection had registered a considerable increase after the introduction of HPVAT Act. However, the percentage of growth rate showed a decreasing trend during 2005-06 to 2007-08, as it was not expected to remain as constant.

2.2.7 Preparedness and transitional process

The model VAT Bill prepared by the EC was circulated for the consideration of authorities in the State. This formed the basis for preparation of the HPVAT Act. The bill was finalised after detailed deliberations held in regular meetings with the officers of the concerned departments. The concept of VAT was studied analytically by the Institute of Public Finance and Policy at Delhi, where regular training was imparted to the departmental officers.

2.2.7.1 Analysis of staff requirement and reorganisation of the Taxation Department

Manpower is a key factor for smooth and efficient working of a department. With the introduction of new system, the duties of the staff have changed, the number of dealers has increased and assessments have also increased.

In this context, audit noticed total of that vacancy in different cadres increased from 148 to 159. Audit also noticed that till 2007-08, the department was handling both HPGST and HPVAT assessments. Shortage of manpower had, therefore, affected the transition from sales tax to VAT system as well as the smooth functioning of tax administration as can be seen from the observation of non-implementation of VAT made in the subsequent paragraphs.

2.2.7.2 Completion of sales tax/central sales tax assessments under repealed Act

Besides, shortage of manpower, the department was also overburdened with assessment of quite a number of cases, under the repealed Act. The year wise number of cases pending assessment at the beginning of the year, assessment due during the year, assessment disposed during the year and pending at the end of each year during 2005-06 to 2008-09 were as under:

Year	Opening balance	Cases due for assessment during 2008-09	Total assessments due	Cases disposed of during 2008-09	Cases outstanding at the end of the year
2005-06	1,11,702	65,968	1,77,670	76,491	1,01,179
2006-07	1,01,179	32,832	1,34,011	61,251	72,760
2007-08	72,760	36,675	1,09,435	45,361	64,074
2008-09	64,074	36,821	1,00,895	30,911	69,984

The cases remaining outstanding at the end of 31 March 2009 were inclusive of GST and CST. Assessments of 69,984 cases were still pending finalisation at the end of March 2009 under HPGST and CST Act. As per ETC instructions of July 2007, all AETCs were directed that unless cases for the year 2003-04 were finalised, no Assessing Authority (AA) would finalise assessments for the year

2004-05. The time limit for cases outstanding up to 2003-04 was extended for the last time up to 31 March 2009 for disposal. It was further stated that all cases up to 2004-05 under HPGST Act may be disposed of on priority basis by 31 March 2009 positively. Though the 1,11,702 cases were outstanding on March 2005, the department did not take effective steps for speedy disposal of the cases to allow smooth transition to VAT.

The Government while accepting the facts, stated that the pendency of assessments was due to shortage of staff at field level. However, AA's had been directed to finalise the GST pendency by 31.12.2009.

2.2.7.3 Collection of arrears of taxes due under repealed Act

The total amount of dues in respect of HPGST, CST and VAT amounting to Rs. 113.28 crore remained unrealised as on 31 March 2008. Reasons for non-recovery of the arrear was attributed to most of the defaulting firms closing down their business and were non-existent. Non-submission of statutory forms also contributed to huge amount of arrears. Besides, shortage of staff in field offices had adversely affected the recovery process.

2.2.7.4 Non-allotment of Tax Identification Number to the dealers

Eleven digits Tax Identification Number (TIN) under VAT regime is required to be issued to all the dealers on registration. The first two digits will stand for abbreviated name of the State. The second two digits stand for identification number of charge. The next four digits are the real identification number for the manufacturer/ dealer. The one digit is for the tax law, the remaining two are for the correctional code.

During review it was noticed that even after four years of implementation of VAT Act, the department had not allotted TIN to the dealers.

On this being pointed out, the ETC stated (July 2009) that TIN could not be issued due to non-computerisation of the department and that the process of computerisation has now been started. Thus, the objective of issuing unique TIN for better tax administration has not been achieved so far.

The Government assured that this would be done during this financial year.

2.2.8 Registration and database of the dealers

There were 34,602 registered dealers before commencement of VAT in the State which increased to 48,691 (41 *per cent*) at the end of the year 2007-08.

The deficiencies noticed in registration & maintenance of database of dealers is discussed in succeeding paragraphs.

2.2.8.1 Creation of database of dealers

No database in respect of dealers has been created as the computerisation was yet to be started in the State. The department stated (July 2009) that process of computerisation is on and shortly the software/hardware would be available according to need.

The Government while admitting the facts stated that this work had been started.

2.2.8.2 Detection of unregistered dealers

Survey is an important tool in the hands of the department for identifying unregistered dealers liable to pay tax under HPVAT Act/rules. Departmental instructions of April 1978, provide for carrying out, every year, a comprehensive survey in first two months of the financial year. Test check of the records of six AETCs revealed that survey for the years 2005-06 to 2007-08 was not conducted by the Inspectorate staff at all in respect of five AETCs² and information regarding conducting of survey in Sirmour district was still awaited. Incharge of the districts also failed to ensure conducting of survey.

The importance of survey assumes greater significance under the HPVAT Act as tax is leviable at various stages and a number of new dealers will now come into tax net. To prevent escapement of tax on value addition at each point of sale, it is necessary to register such dealers under the Act. Non-conducting of survey could result in tax evasion by dealers who were liable to be registered. Instance of non-registration and non-payment of tax is cited below.

The Government stated that detailed guidelines were being issued on system of survey.

2.2.8.3 Non-registration of Himachal Pradesh State Electricity Board

The Himachal Pradesh State Electricity Board (Board) supplies electric meters and service lines to the consumers for supplying electric energy for which it collects rental charges. Supplying of electric meters and service lines is transfer of right to use the goods within the meaning of sale under section 2(v)(iv) of the HPVAT Act. Board is, therefore, a dealer under section 2(g) of Act *ibid*. For non-payment of tax interest at the prescribed rate was also leviable.

Information collected from Board relating to 12 circles, revealed that rental charges of Rs. 84.11 crore were collected by the Board for electric meters and service lines, during the years 2005-06 to 2007-08, for supplying electric energy to the consumers. Neither the Board applied for registration under HPVAT Act and paid VAT on rental charges nor had the department taken any action to levy the same. Non-levy of tax on this account resulted in non-recovery of VAT of Rs. 14.05 crore including interest as mentioned below:

(Rupees in lakh)				
Year	Rental charges collected on meter and service line	VAT at general rate of 12.5 per cent	Interest leviable upto March 2009	Total tax effect
2005-06	2,702.11	337.76	175.64	513.40
2006-07	2,824.13	353.02	120.03	473.05
2007-08	2,884.94	360.61	57.69	418.30
Total	8,411.18	1,051.39	353.36	1,404.75

² Kangra, Mandi, Shimla, Solan and Una

The Government was informed that the rental charges were liable to tax under the Act in light of the Supreme Court decision³ dated 2 March 2006. After this was brought to the notice of the department, it stated (October 2009) that this aspect would be examined in the light of said decision.

2.2.8.4 Determination of opening stock under the VAT Act

Under HPVAT Act and rules, Input Tax Credit (ITC) shall be available to a registered dealer in respect of stock of any taxable goods, purchased by him during the year 2004-05 for which he had to submit statement in the prescribed form to the appropriate AA, within four months of the commencement of the Act alongwith a certificate in form ST- XXV prescribed under repealed Act proving specifically the amount of tax paid.

Test check of the records of four AETCs⁴ revealed that the AAs while finalising (between October 2006 and May 2009) assessments for the year 2005-06, allowed ITC of Rs. 47.44 lakh on the opening stock of Rs. 9.89 crore held by 77 dealers as on 1st April 2005. The AAs did not have any mechanism of verifying the opening stock disclosed by these dealers to establish that the stock held by the dealers actually pertained to the purchases, made during 2004-05 or in earlier years. Commodity wise details of purchases were also not found recorded in ST XXV forms. In absence of necessary details the AAs has no mechanism to verify the correctness of ITC of Rs. 47.44 lakh allowed on the opening stock.

The Government stated that all cases pointed out by audit would be examined.

Deficiencies in the Act and the Rules

The review revealed a number of deficiencies in the provision of the HPVAT Act and rules framed thereunder which persisted during the period covered under the review. Some of the important deficiencies are discussed below:

2.2.9 Returns

2.2.9.1 Non-existence of provision for submission of annual audited accounts

Under HPVAT Rules, every registered dealer shall furnish an annual return on or before 31st October for the preceding year in form VAT XV-A. However, HPVAT Act and rules made thereunder, do not provide for furnishing of annual audited accounts by the dealers whose annual gross turnover (GTO) exceeds Rs. 40 lakh in a year.

Test check of the records revealed that 79 dealers, whose annual GTO during 2005-06 to 2007-08 exceeded Rs. 40 lakh in a year did not furnish annual audited accounts alongwith their annual returns. The GTO in these cases were between Rs. 40.28 lakh and Rs. 15.12 crore respectively involving tax effect of

³ M/s Bharat Sanchar Nigam Ltd. and other Vs Union of India

⁴ Kangra, Mandi, Shimla and Una

Rs. 8.08 crore. The department has no mechanism to verify the correctness of accounts furnished by the dealer.

The Government stated that submission of audited/certified accounts in the cases where annual turnover exceeds Rs. 40 lakh, would be considered.

2.2.9.2 Non-furnishing of annual returns

Rule 40(5) of HPVAT Rules provides that every registered dealer shall furnish an annual return for the preceding year in the prescribed form on or before 31st October next accompanying therewith a copy of final accounts including balance sheet, profit and loss account cum manufacturing/trading account for the year. A statement reconciling the difference between such accounts and turnover reported in the annual return, shall also be furnished.

Test check of the records in three districts, out of six districts test checked, revealed that during 2005-06 to 2007-08 percentage of defaulters increased from 43 per cent to 58 per cent, as mentioned below:

District	2005-06			2006-07			2007-08		
	Total No. of dealers	No. of defaulters	Per cent age	Total No. of dealers	No. of defaulters	Per cent age	Total No. of dealers	No. of defaulters	Per cent age
Sirmour	2,530	1,357	54	2,713	1,339	49	3,023	1,580	52
Solan	4,619	2,133	46	5,435	3,187	59	6,096	4,082	67
Una	3,111	925	30	3,042	1,482	49	3,302	1,564	47
Total	10,260	4,415	43	11,190	6,008	54	12,421	7,226	58

No steps were taken by the department to initiate follow up action.

The Government stated that a penalty of Rs. 5,000 had been fixed for non-filing of annual returns by the prescribed date by amending the HPVAT Act vide notification dated 19.9.2009.

2.2.9.3 Incomplete documentation furnished alongwith the returns by the dealers

Return filed by the dealers is the most important element in the enforcement strategy of VAT administration. Under HPVAT rules, every return furnished by the dealer is incomplete unless accompanied with purchase, sale lists, annual returns statement, declaration certificates and documents mentioned therein. The return is required to be signed by *Karta* or a partner/ whole time employee authorised by *Karta*/partner as the case may be. A return, list, statement which is unsigned is to be treated as no return.

Test check of the annual returns of all the audited six districts, revealed that AAs had accepted incomplete returns in 136 cases having turnover of Rs. 566.19 crore with tax effect of Rs. 16.57 crore, as mentioned below:

(Rupees in crore)

District	No. of cases	GTO	Period of return/ Date of assessment (DOA)	Nature of irregularity	Tax effect
Kangra	55	76.31	<u>2005-06 to 2007-08</u> Between November 2006 to March 2009	Unsigned annual returns, non-submission of list of purchases, sales (LP1, LS1) and commodity wise details (Form XVB) with returns.	5.08
Mandi	23	48.73	<u>2005-06 to 2007-08</u> Between October 2007 and December 2008	-do-	3.55
Shimla	9	27.86	<u>2005-06 to 2007-08</u> Between March 2007 and April 2009	Particulars of purchase, import and receipt of goods, computation of tax paid on purchases made in the State, details of tax deposited and LP1 and LS1 were not furnished.	1.50
Sirmour	12	19.03	<u>2005-06 to 2007-08</u> Between September 2008 and March 2009	-do-	0.95
Solan	11	353.30	<u>2005-06 to 2007-08</u> Between May 2008 and March 2009	-do-	4.07
Una	26	40.96	<u>2005-06 to 2007-08</u> Between April 2006 and May 2009	Unsigned annual returns, non-submission of list of purchases, sales (LP1, LS1) and commodity wise details (Form XVB) with returns.	1.42
Total	136	566.19			16.57

The Government stated that instructions had been issued directing that AAs concerned would be held personally responsible in case they receive incomplete returns/documents.

2.2.10 Tax audit

2.2.10.1 Non-selection of dealers for tax audit

Under HPVAT rules, the returns furnished by a dealer under section 16 of HPVAT Act, shall be duly acknowledged in the prescribed manner. It is required to be seen that all the returns relating to a financial year have been filed and are complete in all material particulars. Rule 66 (x) further provides that from the returns furnished, the Commissioner shall take up the cases for scrutiny at random basis.

Test check of the record of all the audited six districts revealed that Commissioner had not selected any case for scrutiny at random basis.

On this being pointed out, the department stated (July 2009) that cases covered under rule 66 were being compulsory assessed and no case was taken up for scrutiny so far.

The Government stated that though selection of cases for tax audit was discretionary yet this would be ensured in future.

2.2.10.2 Acceptance of cases without scrutiny

Under HPVAT Rules, category of cases where annual GTO is exceeding Rupees one crore, cases of industrial units availing concession of tax and cases where GTO has decreased as compared to previous year, are required to be scrutinised. No time frame for scrutiny of returns was fixed.

Test check of the records of two AETC's⁵, between April 2009 and June 2009, revealed that in 25 cases GTO was exceeding Rupees one crore, in six cases, GTO had decreased as compared to previous year and in one case, the dealer was availing concession in tax. These were, however, not scrutinised and were accepted as deemed to have been assessed. Thus, provisions of rules were not followed by the AAs.

2.2.11 Input Tax credit

2.2.11.1 Absence of mechanism to verify the tax paid before allowing input tax credit

Under the HPVAT Act, a registered dealer is entitled to claim benefit of ITC to the extent of amount of tax paid by him to the local VAT dealers. The Act does not provide for submission of tax invoices alongwith the returns. List of purchases (LP1) furnished with the return does not contain details like bank draft/pay order or treasury challan number and date of deposit of tax in the treasury by the selling dealer.

Test check of assessment records of all the six audited AETCs, revealed that 134 dealers purchased goods valued at Rs. 236.77 crore from the local registered dealers during 2005-06 to 2007-08 and claimed the benefit of ITC. The AAs while finalising the assessments, between December 2006 and May 2009, allowed benefit of ITC of Rs. 15.33 crore on the basis of LP-1. Non-existence of any mechanism for verification of particulars of tax deposited by the selling dealer, the AAs could not ensure the genuineness of ITC claimed by the dealers.

The Government while admitting the facts stated that instructions for verifying the ITCs would be reiterated.

2.2.11.2 Excess allowance of input tax credit

(a) Under HPVAT Act, the ITC is allowed to the extent of the amount of input tax paid by the purchasing dealer on the purchase of taxable goods by him in the State, from a registered dealer holding a valid certificate of registration. If the goods so purchased are used partially for the purpose specified in the Act,

⁵ Kangra: 14 cases and Una: 18 cases

the ITC shall be allowed proportionate to the extent these are used. On goods sent outside the State otherwise than by way of sale as branch transfer or consignment sale in the course of inter state trade or commerce, the ITC shall be allowed only to the extent by which amount of input tax paid in the State exceeds four *per cent* on the purchase of goods.

Test check of the records of four AETC's revealed that during the years 2005-06 to 2007-08, 24 dealers had made branch transfer of goods valued at Rs. 214.95 crore. The AAs, while finalising (between April 2007 to April 2009) assessments of these dealers, incorrectly allowed ITC of Rs. 8.39 crore as claimed by them on the entire taxable purchases locally made instead of allowing it at proportionate basis. This resulted in excess allowance of ITC of Rs. 1.69 crore⁶.

(b) Section 11(1) of HPVAT Act, as amended in May 2007, provides that the benefit of ITC to a purchasing dealer shall be allowed to the extent of input tax paid by him on the turnover of purchases as have been sold during the tax period.

Test check of the records of five AETCs revealed that in the case of 45 dealers, the AAs while finalising (between December 2008 and April 2009) the assessments for the year 2007-08, erroneously allowed ITC on entire local purchases of Rs. 99.40 crore instead of allowing it on proportionate basis on the purchases actually sold by them during tax period. This resulted in excess allowance of ITC of Rs. 53.84 lakh⁷.

The Government assured to examine all the cases pointed out by the audit.

2.2.12 Provisions for grant of exemption to certain class of dealers

2.2.12.1 Incorrect allowance of concession

Notification of August 2005 issued by the Excise and Taxation Department provided that any dealer who was enjoying the benefit of any incentive on the sale of manufactured goods under repealed Act and would have continued to avail of that benefit under VAT, was required to apply to the AETC/ETO incharge of the district, for issuance of entitlement certificate.

Test check of the records of four AETCs revealed that the AAs while finalising (between October 2006 and February 2009) assessments for the years 2005-06 to 2007-08, erroneously allowed concession/incentive to 13 dealers who were not issued entitlement certificate till July 2009. Incorrect allowance of concession resulted in under assessment of tax of Rs. 84.91 lakh as mentioned below:

⁶ Kangra: 5 dealers: Rs. 66.32 crore; Shimla: 1 dealer: Rs. 0.11 crore; Sirmour: 3 dealers: Rs. 59.37 crore and Solan: 15 dealers: Rs. 43.19 crore

⁷ Mandi: 6 dealers: Rs. 1.86 lakh; Shimla: 13 dealers: Rs. 27.19 lakh; Sirmour: 6 dealers: Rs. 5.53 lakh; Solan: 15 dealers: Rs. 9.70 lakh and Una: 5 dealers: Rs. 9.56 lakh

(Rupees in lakh)

District/ No. of dealers	Year/DOA	GTO	VAT turnover	Rate of tax levied/ leviable	Tax effect
Kangra/1	2005-06/ May 2007	1,306.86	282.58	0/4	11.30
3	2005-06 to 2007-08 / Between October 2006 and October 2007	190.93	153.07	1/4	4.59
2	2006-07/ November 2007	28.58	21.85	3.125/12.5	2.04
Mandi/1	2005-06 to 2007-08/ Between November 2008 and February 2009	81.37	79.86	3.125/12.5	7.49
Shimla/2	2005-06 to 2006-07/ Between July 2007 and May 2008	69.44	62.92	2/12.5	6.60
2	2005-06 to 2006-07/ Between May 2007, January 2008	168.14	168.14	1/12.5	19.33
Una/1	2005-06 to 2007-08/ September 2008	207.46	206.79	1 & 2/12.5	22.93
1	2005-06 to 2006-07/ November 2008	121.31	113.36	3.125/12.5	10.63
Total/13		2,174.09	1,088.57	-	84.91

The Government stated that the cases would be examined.

2.2.13 Provisions for cross verification

2.2.13.1 Deficiency in provisions for cross verification of local purchases

Under HPVAT Act, if a dealer has maintained false or incorrect accounts with a view to suppressing his sales, purchases or has concealed any particulars of his sales or purchases or has furnished account, return or information which is false or incorrect, the AA may direct him to pay by way of penalty in addition to the tax to which he is assessed, an amount not less than 25 per cent, which shall not, however, exceed one and half times of the amount of tax so assessed. However, there exists no provisions in the Act/rules for cross verification of purchases exceeding a particular limit from a single VAT dealer in a year for detection of evasion of VAT by claiming fraudulent ITC.

Test check of assessment records of all the six audited AETCs, revealed that purchases aggregating Rs. 64.17 crore exceeding rupees one lakh and above were made by 67 dealers from a single VAT dealer during 2005-06 to 2007-08. The AAs, while finalising the assessments, between December 2006 to May 2009, allowed ITC of Rs. 6.06 crore on these purchases. However, cross verification of purchases made within the State was not done by the AAs. Non-existence of any mechanism for cross verification of purchases, the chances of evasion of VAT can not be ruled out.

The Government stated that the cases would be examined.

2.2.14 Provisions governing tax deducted at source

2.2.14.1 Deficiency in provision for deduction of tax at source on hire charges

Provisions of section 2(V)(iv) of HPVAT Act, provide that transfer of right to use any goods for any purpose for cash, deferred payment or other valuable consideration shall deem to be a sale of goods by the person making the transfer. No provisions exist in the VAT Act/ rules for deducting tax at source in respect of transfer of right to use goods for any purpose as applicable in the case of transfer of property in goods (whether as goods or in other form) involved in execution of works contract.

Test check of the records of four AETCs revealed that 22 dealers had paid Rs. 3.13 crore during 2005-06 to 2007-08 towards hire charges of plant and machinery etc. which was a transfer of right to use the goods. The AAs while finalising the assessments of the dealers for these years, allowed deduction of hire charges to that extent, without verifying the fact that tax on hire charges was paid by the dealers. Non-existence of provisions in the Act/rules resulted in non-recovery of tax at source of Rs. 56.58 lakh, as detailed below:

(Rupees in lakh)

District/No. of dealers	Year/DOA	Hire charges paid	Rate of tax (per cent)	VAT/Interest	Total tax effect
Mandi/1	2005-06/ September 2008	40.74	12.5	5.09/2.83	7.92
Shimla/5	2005-06 and 2006-07/ Between July 2007 and January 2009	22.17	12.5	2.77/1.31	4.08
Sirmour/1	2006-07 and 2007-08/ February 2009	5.07	12.5	0.63/0.21	0.84
Solan/15	2005-06 to 2007-08 /Between April 2007 and May 2008	245.34	12.5	30.67/13.07	43.74
Total/22		313.32	12.5	39.16/17.42	56.58

The Government stated that the cases pointed out by audit would be examined.

2.2.15 Acceptance and disposal of appeal cases

Under the HPVAT Act, no appeal shall be entertained unless it is filed within sixty days from the date of communication of the order appealed against or such longer period as the Appellate Authority may allow, for reasons to be recorded in writing. However, no time limit for disposal of appeal cases has been framed.

The Government admitted that no time frame had been fixed being quasi judicial matter. However, administrative instructions for speedy disposal of appeal cases were being issued from time to time.

2.2.16 Deterrent measures

2.2.16.1 Absence of provisions of specific penalty for subsequent default

Provisions under different sections of HPVAT Act provide for levy of penalty for maintaining false or incorrect account done with a view to suppressing of

sales, purchases etc. However, the Act does not prescribe levy of penalty for the subsequent willful default.

On this being pointed out, the ETC stated (July 2009) that no such instruction had been issued by the department.

The Government stated that this aspect would be considered.

2.2.17 Internal controls

2.2.17.1 Non-reconciliation with treasury

Rule 39 of HPVAT Rules provides that a daily collection register in Form VAT-XIV showing particulars of every challan received in proof of payment of tax or penalty or any other amount due under the Act, is required to be maintained. In the first week of each month Treasury Officer (TO) shall send to the district Excise and Taxation office, a statement of the amounts credited in the treasury during the preceding month. The AETC or the ETO incharge of each district shall, in the first week of each month, prepare a statement showing collection of various amounts paid under the Act or rules and shall forward it to the TO of his district for verification. If any discrepancy is discovered at the time of verification, the officer incharge of the district shall reconcile the same.

Test check of the records of all the six audited AETCs revealed that neither the daily collection register was maintained nor the departmental receipts worth Rs. 993.55 crore⁸ under the head "0040-VAT" for the year 2007-08 were reconciled with the treasury by the department. The Audit could not also authenticate the total receipts and their accountal to the proper head of account.

The Government stated that instructions in this regard had been issued to all the AAs.

2.2.18 Internal audit

2.2.18.1 Non-conducting of prescribed internal audit

The Excise and Taxation Department introduced internal audit system for checking the records related to sales tax. For this purpose, the Commissioner issued instructions in February 1987, which provided annual audit of all units within 20 days from completing of financial year and furnishing of first annotated replies by concerned units within two months from issuance of audit findings.

Information collected from the Internal Audit Wing (IAW) of the department revealed that during the year 2006-07, 11 units were required to be audited. Out of these, only five units were audited. In 2007-08 and 2008-09, 22 units which were required to be audited were not audited at all. Shortage of staff was the reason advanced by the IAW for short/non-conducting of audit. There were 91 Inspection Reports (IRs) and 657 paras outstanding at the beginning of 2005-06 which rose to 94 IRs and 731 paras at the end of 2008-09.

⁸ Kangra: Rs. 216.68 crore; Mandi: Rs. 42.51 crore; Shimla: Rs. 115.53 crore; Sirmour: Rs. 68.45 crore; Solan: Rs. 509.19 crore and Una: Rs. 41.19 crore

The Government admitted that due to shortage of staff, the internal audit could not be conducted. However, this would be taken care of in future.

2.2.19 Other irregularities

2.2.19.1 Non-payment of VAT

VAT provides for levy of tax on SIM cards.

Test check of the records of Central Excise of Shimla range revealed that a dealer had paid sales tax/ VAT up to March 2006 on the sale of SIM cards. Thereafter, it stopped paying VAT on SIM cards on the plea that it was rendering telephone service to the subscribers. In spite of the provision for levy of the tax the same was neither levied nor demanded by the department. The omission resulted in non-payment of VAT of Rs. 10.54 lakh for the period 2006-07 to 2007-08 on the turnover of Rs. 2.63 crore.

The Government while admitting the facts stated that notice had been issued to the dealer for re-assessment.

2.2.19.2 Underassessment due to wrong deduction of material

Under HPVAT Act, sale includes any transfer of property in goods (whether as goods or in some other form) for cash or deferred payment or any other valuable consideration involved in execution of works contract. As per departmental instruction of December 2008, AAs were not to allow deduction of material from the GTO.

Test check of the records revealed that the Government departments had supplied material valued at Rs. 15.10 crore to 33 dealers, engaged in execution of works contract. The AAs while assessing the assessments of these dealers, allowed deduction of material to that extent. The action was contrary to the instructions of December 2008, which resulted in underassessment of tax of Rs. 1.89 crore as mentioned below:

(Rupees in lakh)				
District	No. of dealers	Year/DOA	Value of material supplied/ deduction allowed	Tax leviable at 12.5 per cent
Kangra	13	<u>2005-06 to 2007-08</u> Between December 2006 and March 2009	286.00	35.75
Kinnaur	2	<u>2005-06 to 2007-08</u> January 2009	39.00	4.88
Mandi	2	2005-06/ Between June 2008 and September 2008	341.30	42.66
Shimla	9	<u>2005-06 to 2007-08</u> Between March 2007 and June 2009	744.89	93.11
Solan	1	<u>2005-06 to 2006-07</u> March 2009	8.91	1.11
Una	6	<u>2005-06 to 2007-08</u> February 2008 and March 2009	90.30	11.29
Total	33		1,510.40	188.80

The Government stated that cases would be referred to the concerned AAs for re-assessment.

2.2.20 Conclusion

The transition from sales tax to VAT regime had suffered due to transition process, shortage of man power, non-allotment of TIN, inadequate conducting of survey, non-computerisation of department and engagement of existing manpower in finalisation of cases under the repealed Act. Besides, non-existence of instructions/provisions in the Act/rules also contributed to the non-implementing of various provisions of the Act effectively. Audit noticed that no case was selected by the commissioner at random basis and instructions/provisions for selection of cases for scrutiny were also not followed.

2.2.21 Recommendations

The State Government may consider:

- prescribing a provision in the Act/rules for furnishing of audited annual accounts by the dealers having annual gross turnover of more than specific amount in a year;
- insisting on the dealers providing of essential details like particulars of goods sold, amount of tax deposited, number date and of treasury challan/bank draft/cheque etc. in the list of purchases as well as furnishing of tax invoices along with the returns;
- introducing a system of cross verification of all local purchases exceeding rupees one lakh from a single VAT dealer in a year and periodical reporting thereof by assessing authorities to superior authorities about the result of cross verification;
- prescribing a provision in the Act/rules for deducting tax at source in the case of valuable consideration payable on transfer of right to use goods for any purpose; and
- prescribing a provision in the Act/rules for levy of penalty on the defaulter for committing subsequent and willful offence.

2.3 Other Audit observations

Scrutiny of assessment records of sales tax/value added tax (VAT) revealed several cases of non-observance of provisions of Acts/Rules, non/short levy of tax/penalty/interest/acceptance of defective statutory forms/suppression of sales/irregular concession/incorrect application of rate of tax/etc. as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of Assessing Authorities (AAs) are pointed out in audit each year, but not only the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system including strengthening of internal audit.

2.4 Evasion of tax due to acceptance of defective statutory forms

The AA while finalising the assessments, accepted defective/incomplete declaration forms allowed concession/exemption without production of prescribed forms which resulted in short/non-levy of tax of Rs. 10.03 crore.

The Central Sales Tax (CST) Act, 1956 and the rules framed there under, provide for concessional rate of tax in respect of interstate sales of declared goods and exemption from tax in respect of branch transfers and export sales. These concessions/exemptions are subject to furnishing of declarations in the prescribed forms viz. "C", "F" and "H" respectively. Failure to furnish the declarations or declaration forms found defective or incomplete will make the transaction liable to tax under CST Act 1956.

Test check of the records of seven Assistant Excise and Taxation Commissioners (AETCs) between September 2008 and March 2009 revealed that acceptance of defective/photocopy/incomplete declaration forms resulted in non/short levy of tax of Rs. 10.03 crore including interest of Rs. 4.19 crore leviable on the tax due, as mentioned below:

(Rupees in crore)

Sr. No.	Name of AETC No. of industrial units	Assessment year/month	Nature of irregularities	Total turnover short levy
1.	Shimla and Solan 2	2005-06 to 2006-07 July 2007 to March 2008	Declaration in form 'F' and 'H' not containing essential details like description of goods dispatched, quantity or weight, goods receipts, railway receipts, name of airlines, ships, date on which delivery was taken by the transferee required to be rejected were accepted for allowing exemption by the AAs.	<u>1.71</u> 0.30
2.	Bilaspur, Kangra, Mandi, Shimla, Solan and Una 14	2001-02 to 2006-07 July 2004 to April 2008	Declarations in original were required to be furnished for claiming tax concessions and exemptions of tax. However, the AAs allowed tax concessions, exemptions on duplicate/ photocopy of 'C' and 'F' forms.	<u>37.33</u> 5.78

3.	Mandi, Sirmour and Solan 5	2003-04 to <u>2005-06</u> March 2007 to March 2008	Exemption from tax on 'F' forms covering transactions for transfer of goods effected during a period of more than one calendar month though not admissible under the Act was incorrectly allowed.	<u>20.08</u> 3.36
4.	Kangra and Una 4	2003-04 to <u>2006-07</u> August 2007 to January 2008	Though the submission of declarations was mandatory. Tax concession/exemption were allowed without production of "C" & "F" forms.	<u>1.00</u> 0.09
5.	Solan and Una 3	2001-02 to <u>2005-06</u> July 2006 to August 2007	The dealers can make branch transfers to the branches mentioned in their registration certificate. However, though the goods were transferred to places not specified in the registration certificate the exemption from tax was incorrectly allowed.	<u>2.69</u> 0.50
Total				<u>62.81</u> 10.03

The matter was reported to the department and the Government between October 2008 and April 2009; their reply has not been received (September 2009).

2.5 Non-observance of provisions of the Acts/Rules

The HPGST Act/HPVAT and rules provide for:

- (i) levy of tax and interest at the prescribed rate;
- (ii) exemption/concessional rate of tax in respect of industrial units subject to prescribed conditions;
- (iii) set-off of tax on purchase made as raw material in the manufacture of finished goods;
- (iv) correct determination of turnover.

The AA while finalising the assessment did not observe some of the above provisions in some cases as mentioned in the paragraphs 2.5.1 to 2.5.7. This resulted in non/short levy/non-realisation of tax/interest/penalty of Rs. 90.61 lakh.

2.5.1 Short levy of tax

Khairwood covered under the definition of a timber as per section 2(II) of HPGST Act, is taxed at 12 per cent upto 19 April 2002 and eight per cent thereafter. Further, timber is not covered as raw material in the sales tax concession of one per cent given for use of raw material as per amended notification of February 1992.

Test check of the records of four AETCs (Bilaspur, Kangra, Sirmour and Solan) between August 2008 and January 2009 revealed that five dealers had sold *khairwood* valued at Rs. 88.90 lakh as raw material to a firm during the years 1999-2000 to 2001-02. Audit scrutiny revealed that the AAs while finalising the assessments of the dealers for these years, levied concessional rate of tax of

one *per cent* instead of 12 *per cent* on the sale of *khairwood*. Incorrect allowance of concessional rate of tax resulted in short levy of tax of Rs. 22.93 lakh including interest of Rs. 13.15 lakh.

The matter was reported to the department and the Government between December 2008 and February 2009; their reply has not been received (September 2009).

2.5.2 Incorrect application of rate of tax

Taxes on goods are leviable in accordance with the rates prescribed in schedules attached to the HPGST Act and HPVAT Act. If a dealer fails to pay the tax due by the prescribed date, he becomes liable to pay interest at the prescribed rates.

Test check of the records of three AETCs between September 2008 and January 2009 revealed that incorrect application of rate of tax by the AAs resulted in short realisation of tax of Rs. 16.74 lakh including interest as mentioned below:

(Rupees in lakh)

Sr. No.	Name of the district Goods	Period involved/DOA	Nature of irregularities	Amount
				Tax Interest
1.	Bilaspur Installation of hand pumps, Rolling shutters, grills, gates etc.	2005-06 September 2008	A dealer was finalised under HPVAT Act and sale of Rs. 1.69 crore to Government departments was taxed at the rate of two <i>per cent</i> instead of four <i>per cent</i> by the AA.	3.38 1.55
		2005-06 December 2007	Rolling shutters, grills, gates etc. are taxable at the rate of 12.5 <i>per cent</i> . But AA applied incorrect rate of tax of four <i>per cent</i> on the turnover of Rs. 20.79 lakh of a dealer.	1.77 0.81
2.	Shimla Steel fabrication (gate, grills, shutter etc.)	2002-03 to 2004-05 Between October 2005 and February 2006	The dealer started its commercial production with effect from 19.2.2003 and was eligible for concessional rate of 25 <i>per cent</i> of the eight <i>per cent</i> . AA while finalising the assessments incorrectly levied tax at the rate of one <i>per cent</i> instead of two <i>per cent</i> (i.e. 25 <i>per cent</i> of eight <i>per cent</i>) on the turnover of Rs. 60.76 lakh of a dealer.	0.61 0.41
3.	Una Scrap	2003-04 October 2007	As per schedule 10 of the balance sheet, the dealer had made inter state sales of scrap valuing Rs. 1.48 crore. AA while finalising the assessment of a dealer levied tax at the rate of one <i>per cent</i> instead of four <i>per cent</i> on this sales by treating it as sales of cylinders against 'C' forms.	4.44 3.77
Total				16.74

After this was pointed out between October 2008 and February 2009, the department stated in June 2009 that in the case of each dealer of Bilaspur and Una districts, an additional demand of Rs. 2.39 lakh and Rs. 8.06 lakh had been created respectively. In respect of case of Shimla district, Rs. 29,000 had been

recovered out of additional demand of Rs. 1.13 lakh created against him. Further report on recovery has not been received (September 2009).

The matter was reported to the Government between October 2008 and February 2009; their reply has not been received (September 2009).

2.5.3 Incorrect allowance of concessional rate of tax

As per notification of August 2005 issued under Himachal Pradesh Value Added Tax (HPVAT) Act, 2005, any dealer who was enjoying the benefit of any incentive of sales tax under the HPGST Act and would have continued to be eligible for such incentive on the date of commencement of this Act, is to be allowed the benefit of such exemption for the unexpired period of such incentive. Under section 16 of HPVAT Act, a dealer is required to furnish a return to the AA indicating thereon the taxable turnover and the amount of tax payable by him. Further, in accordance with the rule 64 of HPVAT Rules, 2005, the AA shall acknowledge the return and where such returns are complete in material particulars, he shall be deemed to have been assessed for that year.

Test check of the records of AETC Hamirpur in July 2008 revealed that a dealer had furnished a return of taxable turnover of Rs. 62.83 lakh and paid tax of Rs. 1.99 lakh at concessional rate of 3.16 *per cent* for the year 2006-07. The AA in October 2007 acknowledged the return and allowed concessional rate of tax even though his annual turnover exceeded the prescribed limit of Rs. 60 lakh. The dealer was liable to pay a tax of Rs. 7.85 lakh at the rate of 12.5 *per cent*. This resulted in short levy of tax of Rs. 7.15 lakh including interest of Rs. 1.29 lakh.

After this was pointed out in audit, the Additional Excise and Taxation Commissioner, Shimla stated in January 2009 that the case of the dealer had been reassessed and the AETC had been asked to furnish the reassessment order/treasury challans. Further reply and report on recovery has not been received (September 2009).

The matter was reported to the Government in July 2008; their reply has not been received (September 2009).

2.5.4 Irregular concession

As per the notification of July 1999, sales tax at the rate of 25 *per cent* of the rates notified under section 6 of the HPGST Act, was to be levied in respect of goods manufactured by the dealers running new village industries and new tiny industries, subject to the condition that annual turnover of the unit did not exceed Rs. 60 lakh in respect of a unit located in an industrially backward area and Rs. 45 lakh in respect of industrially developing areas. Further, if a dealer fails to pay the tax due by the prescribed date, he becomes liable to pay interest at the prescribed rates.

Test check of the records of two AETCs between December 2008 and January 2009 revealed that irregular grant of concession resulted in short levy of sales tax of Rs. 11.08 lakh including interest as mentioned below:

(Rupees in lakh)

Sr. No.	Name of the district Unit	Assessment year DOA	Nature of irregularity	Tax effect
1.	<u>Sirmour</u> M/s Black Gold Rubber Ltd., Paonta Sahib	2002-03 and <u>2003-04</u> November 2008	The unit was located in industrially developing area. The annual turnover of the dealer exceeded the prescribed limit of Rs. 45 lakh during the years 2002-03 (Rs. 56.88 lakh) and 2003-04 (Rs. 68.11 lakh) as such the unit was not entitled to any concessional rate of tax. However, AA while finalising the assessments incorrectly levied concessional rate of tax of two <i>per cent</i> (25 <i>per cent</i> of eight) upto Rs. 45 lakh and eight <i>per cent</i> thereafter.	5.19
2.	<u>Una</u> M/s Mahesh Tea House, Industrial Area, Tahliwal	<u>2004-05</u> January 2008	The unit was located in industrially backward area. The annual turnover of the dealer exceeded the prescribed limit of Rs. 60 lakh during 2004-05 (Rs. 1.45 crore) as such the unit was not entitled to any concessional rate of tax. However, AA while finalising the assessment incorrectly levied concessional rate of tax of two <i>per cent</i> (25 <i>per cent</i> of eight) upto Rs. 60 lakh and eight <i>per cent</i> thereafter.	5.89
Total				11.08

The matter was reported to the department and the Government in February 2009; their reply has not been received (September 2009).

2.5.5 Non-withdrawal of concession

As per the notification of December 1994 and January 1997, issued under the HPGST Act, small scale industrial units located in 'A' and 'B' category of industrial block are entitled for concessional rate of tax at one *per cent* for a period of nine years from the date of commencement of commercial production and for a period of six years in 'C' category of industrial block. Further under section 14(1A) of the Act, any dealer whose taxable turnover has been assessed under the self assessment scheme, is found to have evaded the tax, the AA shall after affording a reasonable opportunity of being heard, direct him to pay by way of penalty, in addition to the amount of tax assessed, a sum which shall not be less than one hundred *per cent* but which shall not exceed one and a half times of the amount of tax found to have been evaded and assessed. If a dealer fails to pay the tax due by the prescribed date, he becomes liable to pay interest at the prescribed rates.

Test check of the records of three AETCs between August 2008 and February 2009 revealed irregular allowance of concession of sales tax of Rs. 10.39 lakh including interest and penalty, as mentioned below:

(Rupees in lakh)

Sr. No.	Name of district Goods	Assessment year DOA	Nature of Irregularity	Short levy tax including interest & penalty
1.	Kangra/ Rolling shutters and gate grills	2004-05 August 2005	The assessment of the dealer was finalised/deemed to have been finalised under self assessment scheme. The dealer was entitled to concessional rate of tax of two <i>per cent</i> from 28.4.1995 to 27.4.2004. Thereafter, the dealer was liable to pay tax of eight <i>per cent</i> . But the dealer's claim was incorrectly allowed concessional rate of tax upto March 2005 on his taxable turnover of Rs. 9.56 lakh.	1.51
2.	Mandi/ Haldi powder/spices	2003-04 to 2005-06 December 2006 and February 2008	The dealer was entitled to concessional rate of tax of one <i>per cent</i> from 19.6.1994 to 18.6.2003. Thereafter, the dealer was liable to pay tax of four <i>per cent</i> . But the dealer's claim was incorrectly allowed concessional rate of tax upto March 2006 on his taxable turnover of Rs. 1.27 crore.	6.37
3.	Solan/ Atta, maida and suji etc.	2004-05 August 2007	The dealer was entitled to concessional rate of tax of one <i>per cent</i> from 9.2.1997 to 8.2.2003. Thereafter, the dealer was liable to pay tax of 3.5 <i>per cent</i> . But the dealer's claim was incorrectly allowed concessional rate of tax upto March 2005 on his taxable turnover of Rs. 61.90 lakh.	2.51
Total				10.39

The matter was reported to the department and the Government in December 2008 and March 2009; their reply has not been received (September 2009).

2.5.6 Underassessment due to irregular set off

Under section 42 C of the HPGST Act, a dealer is entitled to set off of tax on the sale of final product equal to the amount of tax already paid on the purchase of raw materials used by him in the manufacture of finished goods. There is no provision under the CST Act to allow set off of tax, as is applicable under the HPGST Act.

Test check of the records of two AETCs⁹ between November 2008 and January 2009 revealed that the AAs while finalising between October 2007 and March 2008, assessments of three dealers for the years 2002-03 to 2004-05 incorrectly allowed adjustment of set off of tax of Rs. 7.42 lakh on the inter state sales under the CST Act. This resulted in underassessment of tax of Rs. 13.12 lakh including interest of Rs. 5.70 lakh.

The matter was reported to the department and the Government between December 2008 and February 2009; their reply has not been received (September 2009).

⁹ Solan: One: Rs. 7.91 lakh and Una: Two: Rs. 5.21 lakh

2.5.7 Incorrect determination of turnover

The HPGST Act governs the sales tax leviable within the State. Under rule 31 (xii) of HPGST Rules, a registered dealer for arriving at his taxable turnover, may deduct purchase value of goods used by him in the manufacture of finished goods which have already suffered tax under the Act *ibid*. The inter state sales are governed by the CST Act where there is no provision to allow benefit of deduction as is applicable under the HPGST Act/Rules.

Test check of the records of AETC Sirmour in January 2009 revealed that AA while finalising assessments for the period 1998-99 to 2003-04 of three industrial units, incorrectly allowed deduction of purchase value of tax paid goods of Rs. 88.69 lakh from the inter state sales worth Rs. 5.93 crore. Incorrect allowance of deduction resulted in underassessment of tax of Rs. 9.20 lakh including interest.

The matter was reported to the department and the Government in February 2009; their reply has not been received (September 2009).

2.6 Evasion of tax due to suppression of sales

Lack of co-ordination between the AA within the department resulted in evasion of tax of Rs. 87.40 lakh.

The Himachal Pradesh General Sales Tax (HPGST) Act does not provide for cross verification of information regarding sales and purchases with other sales tax or Government departments. However, as per departmental instructions of April 1978, the assessing authority at the time of finalising the assessment is required to check the accounts of the dealer to satisfy himself that all purchases and sales made by him have been properly accounted for. Besides, under section 12 (7) of the Act *ibid*, if a dealer has maintained false or incorrect accounts with a view to suppress his sales, purchases or has concealed any particulars of his sales or purchases, he is liable to pay by way of penalty (in addition to the tax to which he is assessed), an amount not less than 25 *per cent* but not more than one and a half times the amount of his tax liability. If a dealer fails to pay the tax due by the prescribed date, he becomes liable to pay interest at the rate of one *per cent* on the tax due for a period of one month and at the rate of one and a half *per cent* per month thereafter, till the default continues.

Test check of the records of AETC Sirmour at Nahan in October 2007 revealed that a firm¹⁰ had purchased *khairwood* valued as Rs. 3.67 crore from 16 dealers of Bilaspur, Kangra, Solan and Una districts during the year 2000-01 and 2001-02. Cross verification by audit between October 2008 and January 2009 of the said information with the records of 16 dealers in four AETCs revealed that nine dealers¹¹ had not disclosed sales of Rs. 2.09 crore in their returns whereas seven dealers¹² had disclosed only Rs. 76.19 lakh instead of Rs. 1.58 crore in their returns. Thus taxable turnover of Rs. 2.91 crore escaped

¹⁰ M/s Sagar Katha Udyog, Kala Amb

¹¹ Bilaspur: three: Rs. 24.42 lakh; Solan: one: Rs. 53.64 lakh and Una: five: Rs. 1.31 crore

¹² Bilaspur: five: Rs. 62.60 lakh; Kangra: one: Rs. 6.06 lakh and Una: one: Rs. 7.53 lakh

assessment. The assessing authorities (AAs) while finalising (between October 2003 and June 2008) the assessments of the dealers for the years 2000-01 and 2001-02 did not cross verify the information available with other AETCs and thus had failed to detect the suppression. This resulted in evasion of tax of Rs. 87.40¹³ lakh including interest of Rs. 43.83 lakh and minimum penalty of Rs. 8.71 lakh.

After the cases were pointed out in audit, the AETC Bilaspur intimated in March 2009 that three dealers had been reassessed (between January and March 2009) and additional demand of Rs. 13.06 lakh had been created whereas in remaining cases, notices had been issued to the concerned parties. Report of recovery and reply from remaining AETCs has not been received (September 2009).

The matter was reported to the department and the Government between December 2008 and February 2009; their reply has not been received (September 2009).

¹³ Bilaspur: eight: Rs. 24.09 lakh; Kangra: one: Rs. 2.86 lakh; Solan: one: Rs. 16.43 lakh and Una: six: Rs. 44.02 lakh