

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

### 2.1 Tax administration

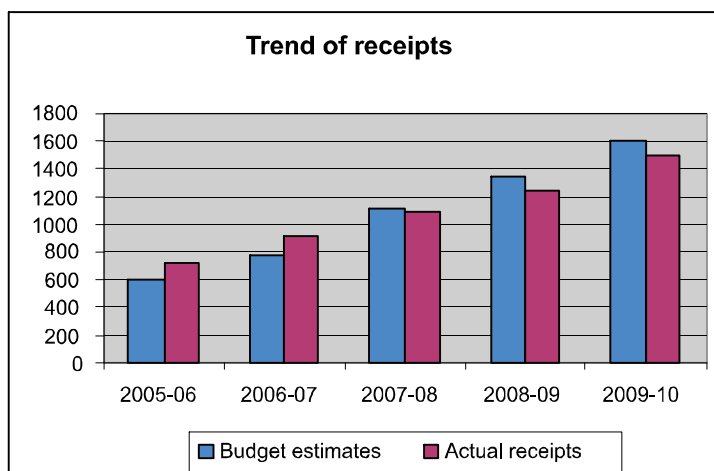
Sales Tax/Value Added Tax law and rules framed there under are administered at the Government level by the Principal Secretary (Excise and Taxation). The Excise and Taxation Commissioner (ETC) is the head of the Excise and Taxation Department who is assisted by one Additional ETC, one Joint ETC, eight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

### 2.2 Trend of receipts

Actual receipts from the Sales tax/VAT during the last five years 2005-06 to 2009-10 along with the total tax and non-tax receipts during the same period is exhibited in the following table and graph.

(Rupees in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax and non-tax receipts of the State	Percentage of actual Sales tax/VAT receipts vis-à-vis total tax and non-tax receipts
2005-06	600.00	726.98	(+) 126.98	(+) 21	2,186.69	33
2006-07	780.00	914.45	(+) 134.45	(+) 17	2,993.23	31
2007-08	1,115.00	1,092.16	(-) 22.84	(-) 2	3,780.61	29
2008-09	1,336.81	1,246.31	(-) 90.50	(-) 7	3,998.73	31
2009-10	1,604.17	1,487.40	(-) 116.77	(-) 7	4,358.18	34



It would be seen from the above that the variation between the budget estimates and actual which was 21 per cent during 2005-06 and as high as 17 per cent

during 2006-07, has come down to the level of two to seven *per cent* during the period 2007-08 to 2009-10. We recommend that the department continue this practice of preparing the budget estimates on realistic basis.

### 2.3 Arrears in assessment

The number of cases pending assessment at the beginning of the year 2009-10, becoming due during the year, disposed during the year and pending at the end of each year during 2005-06 to 2009-10 as furnished by the Excise and Taxation Department in respect of the taxes on sales, trade/VAT etc; are as mentioned below:

Year	Opening balance	Cases which become due for assessment during the year	Total assessments due	Cases disposed during the year	Cases remaining at the end of the year	Percentage of disposal (col. 5 to 4)
2005-06	1,11,702	65,968	1,77,670	76,491	1,01,179	43
2006-07	1,01,179	32,832	1,34,011	61,251	72,760	46
2007-08	72,760	36,675	1,09,435	45,361	64,074	41
2008-09	64,074	38,760	1,02,834	32,592	70,242	30
VAT:	38,319	49,452	87,771	24,581	63,190	
2009-10	70,242	26,736	96,978	39,710	57,268	71
VAT:	63,190	76,911	1,40,101	1,28,310	11,791	

We noticed that the percentage of disposal which ranged between 30 and 46 *per cent* during the period 2005-06 to 2008-09 has increased to the level of 71 *per cent* in 2009-10.

**The Government needs to continue and monitor this practice to bring down the percentage of pending assessments in the interest of revenue.**

### 2.4 Cost of collection

The gross collection in respect of taxes on sales, trade/VAT etc. revenue receipts, expenditure incurred on collection and percentage of such expenditure to gross collection during the years 2005-06 to 2009-10 along with the relevant all India average percentage of expenditure on collection to gross collection of the preceding year were as follows:

(Rupees in crore)

Head of revenue	Year	Collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage of expenditure on collection for the preceding year
Taxes on sales, trade/VAT etc.	2005-06	726.98	9.38	1.29	0.95
	2006-07	914.45	10.33	1.13	0.91
	2007-08	1,092.16	11.35	1.04	0.82
	2008-09	1,246.31	12.88	1.03	0.83
	2009-10	1,487.40	15.06	1.01	0.88

The above table indicates that the percentage of expenditure on collection was more than the all India average percentage for all the years during 2005-06 to 2008-09.

**The Government needs to take appropriate measures to bring down the cost of collection.**

## 2.5 Impact of audit

During the last five years (including the current year's report), we have pointed out 1,064 cases of non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealments/suppression of turnover, application of incorrect rate of tax, incorrect computation etc., with revenue implication of ₹ 227.56 crore. Of these, the Department/Government had accepted audit observation in 186 cases involving ₹ 7.04 crore and had since recovered ₹ 2.53 crore. The details are shown in the following table:

(Rupees in crore)

Year	No. of units audited	Amount objected		Amount accepted		Amount recovered
		No. of cases	Amount	No. of cases	Amount	Amount
2005-06	16	212	46.23	74	1.73	1.10
2006-07	13	194	6.80	56	2.94	0.73
2007-08	10	239	82.45	17	1.26	0.52
2008-09	12	167	36.36	18	0.23	0.01
2009-10	12	252	55.72	21	0.88	0.17
<b>Total</b>	<b>63</b>	<b>1,064</b>	<b>227.56</b>	<b>186</b>	<b>7.04</b>	<b>2.53</b>

The department had so far recovered ₹ 2.53 crore which included recovery of accepted cases pertaining to the period prior to 2005-06 also. This is indicative of the fact that the department had not been able to enforce prompt recovery even in accepted cases.

## 2.6 Results of audit

Test check of the records of 12 units relating to VAT/sales tax assessments and other records revealed underassessment of tax and other irregularities involving ₹ 55.72 crore in 252 cases, which fall under the following categories:

(Rupees in crore)

Sr. No.	Categories	Number of cases	Amount
1.	Non/short levy of tax due to acceptance of defective statutory forms	68	21.58
2.	Irregular/incorrect/excess allowance of ITC	105	3.41
3.	Underassessment of tax	32	2.38
4.	Evasion of tax due to suppression of sales/purchases	07	0.21
5.	Other irregularities	40	28.14
	<b>Total</b>	<b>252</b>	<b>55.72</b>

During the course of the year, the department accepted underassessment and other deficiencies of ₹ 88 lakh in 21 cases which were pointed out in audit during the earlier years. An amount of ₹ 16.60 lakh was realised in 39 cases during the year 2009-10.

A few illustrative cases involving ₹ 34.06 crore are mentioned in the following paragraphs.

## 2.7 Audit observations

*Scrutiny of the 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/interest/acceptance of defective statutory forms/wrong deduction of material cost/excess/incorrect allowance of input tax credit/incorrect application of rate of tax/irregular concession/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. Every year we point out such omissions on the part of the Assessing Authorities (AAs) in audit, but not only do the irregularities persist but also remain undetected till an audit is conducted. There is need for the Government to improve the internal control system including strengthening of the internal audit.

## 2.8 Evasion of tax due to acceptance of defective statutory forms

The AAs while finalising the assessments, accepted defective/incomplete declaration forms, allowed concession/exemption without production of the prescribed forms which resulted in short/non-levy of tax of ₹ 27.54 crore.

### Six AETCs<sup>4</sup>

We noticed during the test check of the records between August 2009 and March 2010 that the AAs while finalising the assessments between August 2006 and November 2009 of 34 dealers for the period from 2001-02 to 2007-08 allowed incorrect concession/exemption of

The Central Sales Tax (CST) Act, 1956 and the rules framed there under provide for concessional rate of tax in respect of interstate sales and exemption from tax in respect of branch transfers and export sales subject to furnishing of declarations in the prescribed forms viz. "C", "F" and "H" respectively.

₹ 16.82 crore. We found that the transactions were either not supported by the declaration forms or the declaration forms produced in support of the transactions were duplicate, photocopied, incomplete or invalid as detailed in the Annexure-II.

The forms were liable to be rejected at the time of assessment but the concerned AAs did not scrutinise the forms. This resulted in short/non-levy of tax of ₹ 27.54 crore including interest of ₹ 10.72 crore on the turnover of ₹ 160.12 crore.

We reported the matter to the Department and to the Government between December 2009 and March 2010. We have not received their replies (September 2010).

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

The Himachal Pradesh General Sales Tax (HPGST)/ Himachal Pradesh Value Added Tax (HPVAT) Act and rules provide for:

(i) levy of tax and interest at the prescribed rate;

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<sup>4</sup> Kangra: two dealers: ₹ 1.61 crore; Mandi: one dealer: ₹ 5 lakh; Shimla: eight dealers: ₹ 85 lakh; Sirmour: five dealers: ₹ 18.76 crore; Solan: 12 dealers: ₹ 5.34 crore and Una: six dealers: ₹ 93 lakh.

- (ii) exemption/concessional rate of tax in respect of industrial units subject to prescribed conditions;
- (iii) correct determination of turnover.

The AAs while finalising the assessment did not observe some of the above provisions in some cases as mentioned in the paragraphs 2.9.1 to 2.9.7. This resulted in non/short levy/non-realisation of tax/interest of ₹6.52 crore.

### 2.9.1 Incorrect deduction of cost of material

#### Seven AETCs<sup>5</sup> (19 contractors)

The HPGST/HPVAT Act provide that sale includes transfer of property in goods involved in execution of the works contract.

We noticed between August 2009 and March 2010 in the assessments finalised

As per ETC's instructions of December 2008 if the material is partly or wholly supplied by the contractee and value thereof is a set off against the payment of contractors, the value of the material so supplied shall not be deducted from the Gross Turnover (GTO) for the purpose of assessment of tax.

(between December 2005 to December 2009) that the AAs allowed deduction of ₹ 15.34 crore from the GTO on account of material supplied by the departments to them for the execution of the

departmental works. The deduction allowed from the GTO was irregular as supply of the material by the departments to the contractors tantamount to sale. This resulted in underassessment of the tax of ₹ 1.54 crore on which interest of ₹ 1 crore was also leviable (Annexure-III).

We reported the matter to the Department and to the Government between October 2009 and April 2010. We have not received their replies (September 2010).

### 2.9.2 Excess allowance of input tax credit (ITC)

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 made by him in the State, from a registered dealer.

#### Two AETCs<sup>6</sup>

We noticed between November 2009 and February 2010 that during the years

As per rule 23 of HPVAT Rules, the ITC in respect of branch transfers shall not be admissible upto 4 per cent.

2005-06 and 2006-07, four dealers had made purchases valued at ₹ 101.07 crore after

<sup>5</sup> Bilaspur district: one contractor; Chamba district: two contractors; Kangra district: three contractors; Kullu district: three contractors; Mandi district: two contractors; Shimla district: seven contractors and Una district: one contractor.

<sup>6</sup> Sirmour: three dealers: ₹ 1.99 crore and Solan: one dealer: ₹ 9 lakh.

paying input tax of ₹ 4.04 crore. The dealer had made the branch transfers of ₹ 169.36 crore out of gross turnover of ₹ 324.01 crore. The dealers were not entitled to ITC of ₹ 1.39 crore on the branch transfers as the rate of tax paid goods involved in the branch transfer was four *per cent*. However, the AAs while finalising (between August 2008 and July 2009) the assessments of these dealers allowed the same. This resulted in excess allowance of ITC of ₹ 2.08 crore including interest of ₹ 69 lakh, as mentioned in the annexure-IV.

We reported the matter to the Department and to the Government between February 2010 and March 2010. We have not received their replies (September 2010).

### 2.9.3 Incorrect allowance of input tax credit

#### Six AETCs<sup>7</sup>

We cross checked between August 2009 and March 2010 the returns of 35

As per notification dated May 2007, the amount of input tax credit shall be admissible to a dealer on the purchase value of the goods sold by him during the tax period. However, no provision has been incorporated in the annual returns to establish quantum of sales made from tax paid purchases to regulate adjustment of ITC.

dealers with their trading, profit and loss accounts available in the assessment files of the dealers and noticed that during 2007-08 and 2008-09 the purchase value of the stock in hand was ₹ 56.21 crore. Out of this, the dealers sold

the goods with the purchase value of ₹ 48.27 crore and value of goods in hand were ₹ 7.94 crore. The dealers were entitled to input tax credit of ₹ 3.36 crore on the purchase value of stock sold. However, the AAs while finalising assessments between November 2008 and December 2009 allowed input tax credit of ₹ 3.87 crore on the entire stock including closing stock of the dealers. This resulted in excess allowance of ITC of ₹ 50.44 lakh. The dealers are liable to pay interest of ₹ 13.59 lakh on incorrect benefit of ITC passed on to them.

After we pointed out the cases between August 2009 and March 2010, the Department accepted the audit observation and intimated (September 2010) that the cases of 22 dealers had been reassessed and additional demand of ₹ 8.45 lakh had been created, out of which ₹ 6.93 lakh had been recovered. Further report on recovery and reply of the Government to whom the cases were forwarded between October 2009 and April 2010 has not been received.

**The Government may consider incorporating a provision in the annual returns to establish quantum of sales made from tax paid purchases to regulate adjustment of ITC.**

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<sup>7</sup> Bilaspur: six dealers: ₹ 3.62 lakh; Chamba: six dealers: ₹ 10.71 lakh; Kangra: 12 dealers: ₹ 27.27 lakh; Mandi: five dealers: ₹ 5.40 lakh; Shimla: four dealers: ₹ 9.67 lakh and Una: two dealers: ₹ 7.36 lakh.

## 2.9.4 Application of incorrect rate of tax

Taxes on goods are leviable in accordance with the rates prescribed in the HPGST/HPVAT Act and CST Act.

### 2.9.4.1 Three AETCs<sup>8</sup>

We noticed between September 2009 and February 2010 that five dealers made

Sales made to the Government departments on declarations in form 'D' are taxable at the concessional rate of four *per cent*. In the absence of the requisite form, tax shall be levied at the rates as prescribed in the schedules of the Acts.

intra state sales valued at ₹ 3.10 crore. The dealers claimed concessional rate of tax of four *per cent* on the context that the sales were made to the government departments. We noticed that though the dealers had not

furnished form 'D', the AAs while finalising (between November 2008 and March 2009) the assessments for the years between 2004-05 and 2007-08 allowed the concessional rate of tax as claimed by the dealers. This omission resulted in short realisation of tax of ₹ 35.61 lakh including interest of ₹ 10.74 lakh.

### 2.9.4.2 AETC Mandi

We noticed (December 2009) that a dealer made inter-state sales of Mild Steel

The rate of tax on intra state sale of Mild Steel scrap and on inter-state sale supported by 'C' form is four *per cent*. However in case of inter-state sales of mild steel scrap without 'C' forms, tax shall be calculated at the rate of eight *per cent*.

scrap valued at ₹ 33.94 lakh and paid tax at rate of four *per cent*. However, no declaration forms were furnished by dealer and the AA while finalising the assessment of 2004-05 in July 2008, incorrectly treated it as local sale and levied tax at the rate of four *per cent* instead of eight *per cent*. This resulted in short levy of tax of ₹ 2.49 lakh including interest of ₹ 1.13 lakh.

### 2.9.4.3 AETC Sirmour

We noticed (between January and February 2010) that the AAs while finalising

Non-LD grade limestone was taxable at the rate of 30 *per cent* upto 20.6.2005 and thereafter at the rate of four *per cent*.

the assessments of two dealers between September 2008 and November 2008 levied tax on the sale of limestone valued at ₹ 9.99 lakh, made between 1.4.2005 and

20.6.2005, at the rate of four *per cent* instead of 30 *per cent*. The omission resulted in short levy of tax of ₹ 4.38 lakh including interest of ₹ 1.78 lakh.

<sup>8</sup> Bilaspur: one dealer: ₹ 2.47 lakh; Chamba: three dealers: ₹ 31.45 lakh and Mandi: one dealer: ₹ 1.69 lakh.

#### 2.9.4.4 AETC Kangra

We noticed (between September and November 2009) that the AAs while finalising the assessments of two dealers between August and September 2008 levied tax on the sale of rubber crumb/scrap valued at ₹ 2.43 crore made between 2005-06 and 2006-07 at the rate of four *per cent* instead of 12.5 *per cent*. The omission resulted in short levy of tax of ₹ 32.06 lakh including interest of ₹ 11.38 lakh.

Rubber crumb/scrap is taxable at the rate of 12.5 *per cent*.

We reported the matter to the Department and to the Government between October 2009 and March 2010. We have not received their replies (September 2010).

#### **2.9.5 Incorrect exemption of tax**

As per the Excise and Taxation Department notification dated July 1999, new village industrial units means an industrial unit located in Himachal Pradesh which commences commercial production on or after the 1 April 1999.

##### 2.9.5.1 AETC Mandi

We noticed (December 2009) that a dealer running a new village industrial unit located in industrially backward area was granted exemption from the payment of sales tax from 5.6.1999 to 4.6.2007. Our scrutiny of the balance sheet revealed that the capital investment<sup>9</sup> of the unit had exceeded required limit in 2004-05. But the AAs while finalising (September 2008) the assessments did not take cognisance of the facts and allowed exemption from 2004-05 to 2006-07. No internal audit or inspection of the office was conducted. This omission resulted in incorrect exemption of tax of ₹ 10.64 lakh including interest of ₹ 4.14 lakh.

As per the above notification, a new village industrial unit shall be entitled to exemption from payment of sales tax provided that its capital investment does not exceed ₹ 10 lakh.

After we pointed out the case in December 2009, the Department accepted the audit observation and intimated (September 2010) that the case of the dealer had been reassessed (August 2010) and additional demand of ₹ 5.20 lakh had been created. Further report on recovery and reply of the Government to whom the case was forwarded in January 2010 has not been received.

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<sup>9</sup> 2004-05: ₹ 17.04 lakh; 2005-06: ₹ 21.05 lakh and 2006-07: ₹ 19.30 lakh.



### 2.9.5.2 AETC Kangra

We noticed (November 2009) from the assessment order (February 2009) of a small scale industrial unit<sup>10</sup>

As per the notification dated July 1999, a small scale industrial unit shall pay 25 per cent of the full rate of tax provided that the annual turnover of the unit does not exceed ₹ 60 lakh. The benefits were also admissible under the HPVAT Act, 2005.

availing concessional rate of tax from 2003-04, that its turnover during 2007-08 was ₹ 64.32 lakh. Hence the dealer was not entitled to concessional rate of tax. But the AA did not take cognisance of the facts and incorrectly levied tax at the rate of 3.125 per cent

instead of 12.5 per cent. This resulted in short levy of tax of ₹ 7.63 lakh including interest of ₹ 1.60 lakh.

We reported the matter to the Department and to the Government in December 2009. We have not received their replies (September 2010).

## **2.9.6 Underassessment due to incorrect deduction**

### AETC Sirmour

We noticed in February 2010 that the AA while finalising (between May 2008 and June 2008) the assessments for the period 2000-01 to 2004-05 of an industrial unit<sup>11</sup>,

HPGST Act, 1968 and rules framed there under provide deduction from turnover of a dealer, the purchase value of goods used in the manufacture of finished goods which have already suffered tax under the Act. However, no such deduction was available for inter-state sales covered under the CST Act, 1956.

incorrectly allowed deduction of purchase value of tax paid goods valued at ₹ 2.31 crore from the inter-state sales valued at ₹ 4.54 crore. Incorrect allowance of deduction resulted not only in violation of the provisions of the CST Act, 1956 but also in underassessment of tax of ₹ 9.38 lakh including interest

of ₹ 5.19 lakh.

After we pointed out the case in February 2010, the Department accepted the audit observation and intimated (September 2010) that the case of the dealer had been reassessed (May 2010) and additional demand of ₹ 4.38 lakh had been created. Further report on recovery and reply of the Government to whom the case was forwarded in March 2010 has not been received.

## **2.9.7 Incorrect determination of turnover**

Under HPGST Act, 1968 and HPVAT Act, 2005, sale includes transfer of the right to use any goods for any purpose for cash, deferred payment or other valuable consideration by way of or as part of any service or in any other manner.

<sup>10</sup> M/s Anand Tyre, Nagrota Bagwan, Kangra.

<sup>11</sup> M/s Bang Minerals and Chemicals, Sataun, Paonta Sahib.

#### Four AETCs<sup>12</sup>

We noticed between November 2009 and March 2010 that four dealers received hire charges of ₹ 27.46 lakh on account of machinery and plant for the period from 2003-04 to 2007-08. But the dealers did not include the amount in their respective turnovers and did not pay any tax on it. The AAs while finalising the assessments of the dealers between December 2007 and June 2009 omitted to detect the mistake. This resulted in short levy of tax of ₹ 4.40 lakh including interest of ₹ 1.71 lakh.

Hire charges received on account of plant and machinery is a part of turnover as per the definition of "sale" and is liable to be taxed at the rates prescribed in the respective Acts.

After we pointed out the cases between November 2009 and March 2010, the Department accepted the audit observation and intimated (September 2010) that the cases of the dealers had been reassessed and additional demand of ₹ 1.87 lakh had been created, out of which ₹ 36,000 had been recovered. Further report on recovery and reply of the Government to whom the cases were forwarded between December 2009 and April 2010 has not been received.

#### AETC Una

We noticed between February and March 2010 that AAs while finalising (between February and March 2009) the assessments of two dealers<sup>13</sup> for the period 2004-05 to 2007-08, did not levy tax on delivery/freight charges valued at ₹ 120.96 lakh received by them. Non-inclusion of the delivery/freight charges in the turnover had resulted in underassessment of tax of ₹ 19.15 lakh including interest of ₹ 8.24 lakh.

Freight and delivery charges form a part of sale price and are taxable at the rate of eight per cent upto 2004-05 and 12.5 per cent thereafter.

We reported the matter to the Department and to the Government in April 2010. We have not received their replies (September 2010).

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<sup>12</sup> Bilaspur: one: ₹ 0.68 lakh, Mandi: one: ₹ 0.96 lakh, Shimla: one: ₹ 0.78 lakh and Una: one: ₹ 1.98 lakh.

<sup>13</sup> M/s Omid Engg. Pvt. Ltd., Deoli, Tehsil Amb and M/s Bangana Gas Services, Bangana, Una.