

## CHAPTER II

### EXECUTIVE SUMMARY

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**Significant increase in tax collection**

In 2010-11, the collection of Value Added Tax increased by 36.78 *per cent* over the previous year which was attributed by the Department to better tax compliance by the Department, increase in the price of the petrol and diesel, growth rate of development, compensation received from Central Government for loss due to reduction of rate of tax and Central Sales Tax and repayment of deferred Sales Tax.

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**Short fall in Internal Audit**

During the year 2010-11, seven Dy. Commissioner (Audit) audited 1,492 cases against yearly target of 12,600 cases. The internal audit wing needs to put in more concerted efforts to achieve the target fixed so that better tax compliance is ensured.

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**Meagre recovery by the Department of observations pointed out by us in earlier years**

During the period 2005-06 to 2009-10, we had pointed out non/short levy, non/short realisation, under assessment/loss of revenue, incorrect exemption concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc. with revenue implication of ₹ 5522.99 crore in 70 paragraphs. Of these, the Department/Government had accepted audit observations in 59 paragraphs involving ₹ 109.95 crore and had recovered ₹ 8.36 crore. This indicates that recovery of accepted cases was very low (7.6 *per cent* of the accepted money value)

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**Results of audit conducted by us in 2010-11**

In 2010-11, we test checked the records of various Commercial Tax Offices and noticed under assessment and other irregularities of ₹ 441.86 crore in 752 cases.

The Department accepted objections of ₹ 15.22 crore in 114 cases, of which 10 cases involving ₹ 3.09 lakh were pointed out and accepted in 2010-11 and the rest in earlier periods. During 2010-11, the Department recovered ₹ 1.25 crore in 59 cases.

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**What we have highlighted in this Chapter**

Performance Audit on “**Cross verification of Declaration forms in Inter-State trade or commerce**” revealed the following:

- Though Declaration forms under the CST Act were being issued online since July 2008 to the dealers, the position of the unutilised Declaration forms was not known, since this was not called back by the Department.
  - The TINXSYS website was not utilised for verification of forms till June 2011 and despite Departmental instructions, for its usage thereafter, we found instances where the Assessing officers were not utilising it effectively.
  - Internal control measures, for cross verification of Inter State Trade Transactions, in form of special cell was absent.
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- Correctness of purchase transactions, involving revenue implication of ₹ 12.93 crore could not be ensured in absence of a system to check the utilisation of forms issued.
  - Evasion of tax to the tune of ₹ 2.44 crore was noticed due to fraudulent utilisation of 'C' Forms/under-disclosure of Inter-State sales due to absence of cross verification system.
  - Non/short levy of Central Sales Tax of ₹ 1.19 crore was noticed due to allowance of Branch Transfer on fake 'F' forms/over-declaration of branch transfer by the selling dealer in absence of system of cross verification of transactions.
  - There was non/short levy of tax of ₹ two crore on inter-state purchase effected on fake 'C' form/under-disclosed Inter-State purchase.
  - We detected misutilisation of 'F' forms which resulted in non/short levy of tax of ₹ 8.45 crore in absence of cross verification system.

**Other observations were as follows:**

- Irregular deduction of labour charges from VAT sales turnover resulted in under assessment of ₹ 66.79 lakh in case of seven dealers.
- In 13 offices, the assessing officers allowed excess set-off, either on purchase of prohibited goods or without ascertaining the fulfillment of prescribed conditions. This resulted in excess grant of set off of ₹ 61.40 lakh including interest and penalty.
- In five offices, the assessing officers did not initiate any action to recover tax of ₹ 2.33 crore including interest of ₹ 1.19 crore from 16 dealers under the deferment incentive schemes in violation of rules and provisions of the schemes.
- In 22 offices, the assessing officers while finalising the assessments though leviable did not levy penalty or levied short. This resulted in non/short levy of penalty of ₹ 3.91 crore.
- In five offices, the assessing officers applied incorrect rate of tax in the CST assessments which resulted in under assessment of ₹ 90.70 lakh including interest and penalty.
- Concession of ₹ 2.98 crore was allowed to 49 dealers without obtaining declaration/certificates as required under Central Sales Tax Act, 1956.

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**Recommendations**

**Government may consider taking the following steps:**

- the functioning of the system of *online* issuance of declaration forms may be reviewed periodically to ascertain and maintain its efficacy. Ensure compliance of instructions issued in respect of utilisation of 'TINXSYS' website by the assessing officers.

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- issuing instructions for obtaining periodical details of utilisation of declaration forms by prescribing returns to ensure the correct accounting of purchase transactions.
  - prescribing a mechanism to cross-check a fixed percentage of declaration forms furnished by the selling dealers from the Commercial Tax Department of the State issuing such forms to the purchasing dealers.
  - Government/Department may consider installing a system for exchange of information with other states on a regular basis to avoid the sales escaping assessment. Undertake enforcement measures to ensure that the inter-State transactions are properly accounted for by the selling/purchasing dealers.
  - Assessing officer (AO) should ensure that all the required declaration forms in support of inter-state trade/export are provided by the dealers as per the provisions of Act/Rules.
  - While allowing set-off/ITC, the assessing officer should apply the provisions of Act/Rules strictly.
  - While finalising taxable turnover, the assessing officer should also take into account the figures available in other records of the assessee, and
  - While finalisation of the assessment, the assessing officer should levy the prescribed interest and penalty, wherever applicable.
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## CHAPTER II

### SALES TAX/VALUE ADDED TAX

#### **2.1 Tax administration**

The tax administration of the Commercial Tax Department of the State is governed by the Gujarat Value Added Tax (GVAT) Act, 2003 and the Central Sales Tax (CST) Act, 1956. The GVAT Act was made effective in the State from 1<sup>st</sup> April 2006 and on its implementation, the Gujarat Sales Tax Act, 1969, the Bombay Sales of Motor Spirit Taxation Act, 1958 and the Purchase Tax on Sugarcane Act, 1989 were repealed. However assessments, appeals, recovery etc., pertaining to the period prior to the implementation of GVAT continued to be governed under the provisions of these repealed Acts. The Commercial Tax Department (Department) is headed by the Commissioner of Commercial Tax (Commissioner), who is assisted by a Special Commissioner and an Additional Commissioner. The Department is geographically organised into seven administrative divisions, each headed by an Additional/Joint Commissioner (Addl./JC). A division has 'circles', each headed by a Deputy Commissioner (DC); there are 25 circles in the State. A circle has assessment units each headed by Assistant Commissioner/Commercial Tax Officer (AC/CTO); there are 104 units in the State. In addition, there are 11 permanent, two seasonal/temporary check posts headed by AC/CTO. Besides, there are staff positions in the Department's head office for administration, audit, legal, appeal, enforcement, e-governance, internal inspection *etc.*, headed by Addl./JC or DC.

#### **2.2 Analysis of budget preparation**

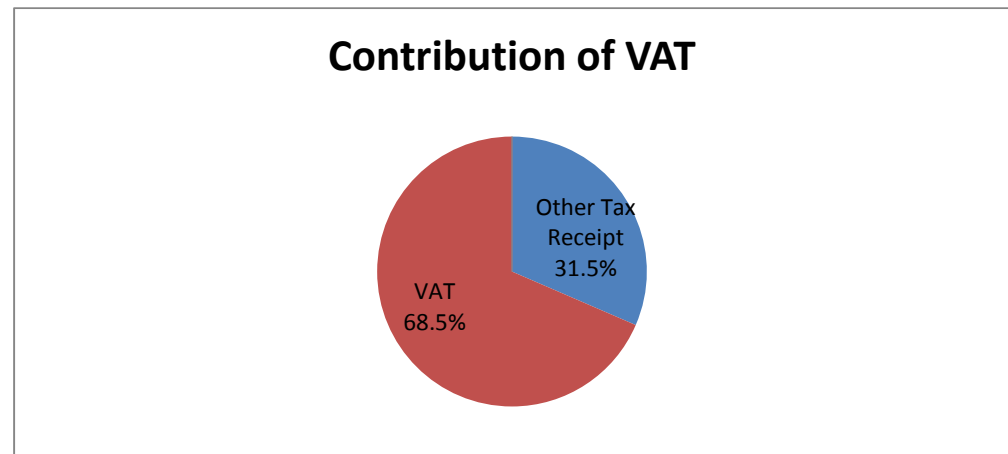
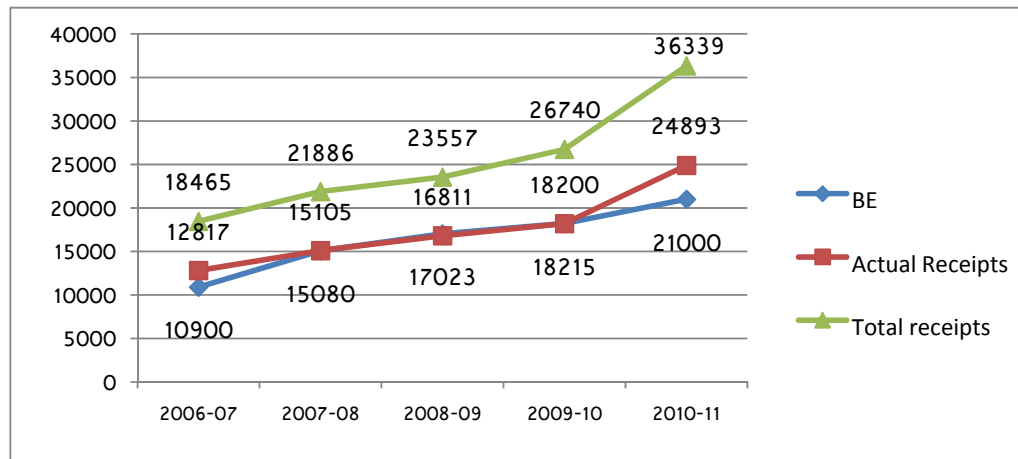
The Budget Estimates are furnished by the Commissioner in the prescribed format to the Finance Department. While preparing the budget estimates, the Commercial Tax Department considers normal growth of the State economy, rise in price of goods (particularly petroleum products) and increase in demand and production of consumer goods. There is no variation between Budget Estimates and Revised Estimates. Actual receipts is 18.54 *per cent* more than the Budget Estimates for the year 2010-11; reasons for the variation as stated by the Department were better tax compliance by the Department, increase in the price of petrol and diesel, increased growth rate of development, compensation received from central government for loss due to reduction of rate of tax under central sales tax, and repayment of deferred sales tax.

#### **2.3 Trend of receipts**

Actual receipts from Sales Tax/VAT during the last five years 2006-07 to 2010-11 alongwith the total tax receipts during the same period is exhibited in the following table and graph:

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual Sales Tax/VAT receipts vis-a-vis total tax receipts
2006-07	10,900.00	12,817.46	(+) 1,917.46	(+) 17.59	18,464.63	69.42
2007-08	15,080.00	15,104.54	(+) 24.54	(+) 0.16	21,885.57	69.02
2008-09	17,023.00	16,810.65	(-) 212.35	(-) 1.25	23,557.03	71.36
2009-10	18,215.00	18,199.79	(-) 15.21	(-) 0.08	26,740.23	68.06
2010-11	21,000.00	24,893.46	(+) 3893.46	(+) 18.54	36,338.63	68.50



The contribution of VAT in total tax receipts increased from 68.06 per cent in 2009-10 to 68.50 per cent in 2010-11.

The above pie chart indicates the dominance of contribution of Value Added Tax (VAT) over the other tax receipts in Gujarat.

## 2.4 Analysis of arrears of revenue

(₹ in crore)

Year	Opening balance of arrears	Demand raised	Amount collected during the year	Closing balance of arrears
2006-07	8,080.31	1,812.94	1,540.72	8,352.53
2007-08	8,352.53	2,326.70	2,739.73	7,939.50
2008-09	7,939.50	2,019.07	1,104.67	8,853.90
2009-10	8,853.90	6,428.33	4,084.70	11,197.53
2010-11	11,197.53	5,238.54	1,929.99	14,506.08

The arrears of revenue as on 31 March 2011 amounted to ₹ 14,506.08 crore, of which ₹ 4,047.82 crore were outstanding for more than five years. Of the total outstanding amount, recovery certificates for ₹ 1,161.42 crore were issued. Recovery of ₹ 5,155.47 crore has been stayed by the High Court of Gujarat and other judicial authorities. Recoveries of ₹ 548.03 crore and ₹ 217.06 crore are held up due to insolvency of dealers and non-finalisation of rectification and review applications of the dealers respectively. ₹ 212.31 crore is unlikely to be recovered and hence proposed to be written off and ₹ 2,382.35 crore is under various stages of recovery.

**We recommend the Government to make determined efforts to recover the huge Sales Tax/VAT arrears.**

## 2.5 Assessee profile

The number of dealers required to file returns was 3,90,929 at the end of March 2011. Out of them, 6,929 dealers paid tax more than ₹ 20 lakh and the rest 3,84,000 dealers paid less than ₹ 20 lakh during the year. 3,90,929 dealers were required to file returns during the year but 49,401 dealers defaulted in filing of returns and in all cases necessary action was taken.

## 2.6 Cost of VAT per assessee

Number of live dealers during the year 2010-11 and during the preceding three years with expenditure incurred on collection of revenue and cost of tax per assessee are given below:

(₹ in lakh)

Year	No. of dealers	Expenditure on collection of revenue	Cost of VAT per assessee
2007-08	3,66,676	9843.00	0.03
2008-09	3,73,426	9951.00	0.03
2009-10	3,77,093	12907.00	0.03
2010-11	3,99,455	14937.00	0.04

Thus, the cost of tax per assessee during the four years ranged between ₹ 0.03 lakh to ₹ 0.04 lakh.

## 2.7 Arrears in assessment

The number of assessments pending at the beginning of the year 2010-11, assessments due during the year, assessments done during the year and pending at the end of the year alongwith the figures for the preceding four years as furnished by the Commercial Tax Department<sup>3</sup> are given below:

(No. of cases)						
Year	Opening balance as on 1 April	Additions during the year	Total (2+3)	Assessments done during the year	Closing balance at the end of the year (4-5)	Percentage of column 6 to 4
1	2	3	4	5	6	7
2006-07	6,82,709	4,24,113	11,06,822	3,78,420	7,28,402	66
2007-08	7,28,402	3,84,961	11,13,363	4,00,588	7,12,775	64
2008-09	3,46,922 <sup>4</sup>	1,08,174	4,55,096	1,27,315	3,27,781	72
2009-10	3,27,781	1,22,180	4,49,961	1,80,159	2,69,802	60
2010-11	2,69,802	90,666	3,60,468	1,75,050	1,85,418	51

Thus, the percentage of closing balance at the end of each year during 2006-07 to 2010-11 to total cases which became due for assessment ranged between 51 and 72 per cent. The decrease in cases due for assessment was due to the introduction of the Gujarat Value Added Tax Act, 2003 with effect from 1 April 2006 in place of the Gujarat Sales Tax Act, 1969.

The Commissioner of Commercial Tax, for the purpose of selection of cases for audit assessments, grouped all the live dealers in various categories on the basis of VAT paid with returns by the dealers during the year, ITC claimed in the returns, claim of refund in the returns, nature of business like works contracts, dealers who opted to pay lump sum tax, dealers having high turnover, return/challan defaulters, dealers whose TINs were cancelled during the year, enforcement cases/search/seizure cases, incentive certificate holders, dealers holding certificates issued by Khadi and Village Industries Commissioner, dealers who had high claim of ITC on opening stock (only for 2006-07), Exporters claiming provisional refunds and randomly selected self assessments. Tasks (assessments) of the selected dealers were generated in the name of selected assessing officers.

Status of assessment under GVAT Act, as reported by the Department is mentioned in the following table:

<sup>3</sup> In respect of sales tax/VAT, professional tax, purchase tax on sugarcane, lease tax, luxury tax and tax on works contracts.

<sup>4</sup> Differs from the closing balance of 7,12,775 reported by the Department for 2007-08.



(No. of cases)

Year	Opening balance as on 1 April	Additions during the year	Total (2+3)	Assessments done during the year	Closing balance at the end of the year (4-5)	Percentage of column 6 to 4
1	2	3	4	5	6	7
2008-09	0	69135	69135	14187	54948	79.48
2009-10	54948	99289	154237	38707	115530	74.90
2010-11	115530	60365	175895	79978	95917	54.53

Section 34 of GVAT Act authorises the Commissioner to audit the self assessment made under Section 33. The above figures represent only the cases selected by the Department for audit assessment under Section 34 of GVAT Act. The remaining cases are considered as self-assessed. The details regarding extent of scrutiny of these self-assessed cases were not made available to audit.

The Government need to take steps for speedy disposal of audit assessment. The outstanding assessment cases under erstwhile Sales Tax Act may be finalised on priority basis to avoid revenue loss due to time barring provisions.

## 2.8 Cost of collection

The gross collection in respect of major revenue receipts, expenditure incurred on collection and the percentage of such expenditure to gross collection during the periods from 2007-08 to 2010-11 alongwith the relevant All India average percentage of expenditure on collection to gross collection for the preceding years is shown below:

(₹ in crore)

Heads of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage of cost of collection of the preceding years
VAT/sales tax	2007-08	15,104.54	98.43	0.65	0.82
	2008-09	16,810.65	99.51	0.59	0.83
	2009-10	18,199.79	129.07	0.71	0.88
	2010-11	24,893.45	149.37	0.60	0.96

The cost of collection in respect of VAT/ sales tax was lower than the all India average.

## 2.9 Analysis of collection

The break-up of the total collection at the pre-assessment stage and after regular assessment of sales tax/VAT, cess on motor spirit, professional tax and entry tax for the year 2010-11 and the corresponding figures for the preceding two years as furnished by the Department is mentioned below:

(₹ in crore)

Heads of revenue	Year	Amount collected at pre-assessment stage	Amount collected after regular assessment (additional demand)	Amount refunded	Net collection	Percentage of column 4 to 3
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Sales tax/VAT	2008-09	15,793.59	186.40	1,338.19	14,641.80	1.18
	2009-10	18,529.72	278.11	1,384.13	17,423.70	1.50
	2010-11	23,751.68	1,253.81	1,879.67	23,125.82	5.28
Cess on Motor Spirit	2008-09	523.68	2.67	-	526.35	0.51
	2009-10	496.40	0.05	-	496.45	0.01
	2010-11	642.14	-	-	642.14	00

Note: - The figures as furnished by the Department are at variance with the Finance Accounts figures and need reconciliation.

Thus, the percentage of collection of revenue after assessment (additional demand) with reference to pre-assessment stage ranged between 0 and 5.28 per cent under sales tax/VAT/cess on motor spirit during the years 2008-09 to 2010-11.

## 2.10 Impact of Audit Reports-Revenue impact

During the last five years, we, through our audit reports, had pointed out non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc., with revenue implication of ₹ 5,522.99 crore in 70 paragraphs. Of these, the Department/Government had accepted audit observations in 59 paragraphs involving ₹ 109.95 crore and had recovered ₹ 8.36 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Paragraph accepted		Amount recovered	
	No	Amount	No	Amount	No	Amount
2005-06	14	311.89	13	25.71	7	1.70
2006-07	12	27.86	11	10.98	4	1.51
2007-08	12	134.90	10	21.81	8	1.55
2008-09	17	5,013.96	12	24.62	8	2.85
2009-10	15	34.38	13	26.83	7	0.75
<b>Total</b>	<b>70</b>	<b>5,522.99</b>	<b>59</b>	<b>109.95</b>	<b>34</b>	<b>8.36</b>

The above table indicates that recovery even in accepted cases was very low (7.6 per cent of the accepted money value).

The Government may take suitable steps for speedy recovery.

## 2.11 Working of internal audit wing

Internal Audit Wing of Commercial Tax Department, headed by Joint Commissioner (JC Audit), conducts audit of all offices dealing with the assessment and collection of Sales Tax/Value Added Tax. JC (Audit) is assisted by Dy. Commissioners (Audit). There are seven Dy. Commissioners (Audit), one each in every Division and has a monthly target of 150 cases. The concerned Dy. Commissioner (Audit) submits monthly statement to JC (Audit) giving particulars such as offices audited, number of dealers covered and objection raised. The JC (Audit) offers his comments on such statements. During the year 2010-11, seven Dy. Commissioners (Audit) audited 1,492 cases as against yearly target of 12,600 cases. Out of 1,492 cases audited, revision orders involving an amount of ₹ 71.12 lakh were passed in 18 cases.

The internal audit wing needs to put in more concerted efforts to achieve the target fixed so that better tax compliance is ensured.

## 2.12 Results of audit

We test checked the records of 96 units relating to Commercial Tax Offices during 2010-11 and noticed underassessment of tax and other irregularities involving ₹ 441.86 crore in 752 cases which fall under the following categories:

Sl. No.	Categories	No. of cases	Amount (₹ in crore)
1	<b>A Performance Audit on cross verification of declaration forms in inter-State trade or commerce</b>	1	27.01
2	Incorrect rate of tax and mistake in computation	17	3.68
3	Irregular grant of set-off	19	1.33
4	Irregular concessions/exemptions	8	10.96
5	Non/short levy of tax, interest and penalty	239	294.90
6	Other irregularities	29	5.21
7	VAT Audit	439	98.77
	<b>Total</b>	<b>752</b>	<b>441.86</b>

During the course of the year, the Department accepted underassessment and other irregularities of ₹ 15.22 crore in 114 cases, of which 10 cases involving revenue implication of ₹ 3.09 lakh were pointed out in audit during the year 2010-11 and the rest in earlier years. An amount of ₹ 1.25 crore was realised in 59 cases during the year 2010-11.

A Performance Audit on “**Cross verification of declaration forms in inter-State trade or Commerce**” involving ₹ 27.01 crore and few illustrative audit observations involving ₹ 49.37 crore are mentioned in the succeeding paragraphs.

## **2.13 A Performance Audit on “Cross Verification of Declaration Forms in Inter-State Trade or Commerce”**

### **Highlights**

- Though Declaration forms under the CST Act were being issued online since July 2008 to the dealers, the position of the unutilised Declaration forms was not known, since these were not called back by the Department.

**(Paragraph 2.13.6)**

- The TINXSYS website was not utilised for verification of forms till June 2011 and despite Departmental instructions, for its usage thereafter, we found instances where the Assessing officers were not utilising it effectively.

**(Paragraph 2.13.7)**

- Internal control measures, for cross verification of Inter State Trade Transactions, in the form of special cell was absent.

**(Paragraph 2.13.8)**

- Correctness of purchase transactions, involving revenue implication of ₹ 12.93 crore could not be ensured in absence of a system to check the utilisation of forms issued.

**(Paragraph 2.13.9)**

- Evasion of tax to the tune of ₹ 2.44 crore was noticed due to fraudulent utilisation of ‘C’ Forms/under-disclosure of Inter-State sales due to absence of cross verification system.

**(Paragraph 2.13.10)**

- Non/short levy of Central Sales Tax of ₹ 1.19 crore was noticed due to allowance of Branch Transfer on fake ‘F’ forms/over-declaration of branch transfer by the selling dealer in absence of system of cross verification of transactions.

**(Paragraph 2.13.11)**

- There was non/short levy of tax of ₹ two crore on inter-state purchase effected on fake ‘C’ form/under-disclosed Inter-State purchase.

**(Paragraph 2.13.15)**

- We detected misutilisation of ‘F’ forms which resulted in non/short levy of tax of ₹ 8.45 crore in absence of cross verification system.

**(Paragraph 2.13.18)**

### **2.13.1 Introduction**

Under the Central Sales Tax Act, 1956, registered dealers are eligible for certain concessions and exemptions of tax on inter State transactions on submission of prescribed declarations in Forms 'C' and 'F'. The State Governments grant these concessions/exemptions to the dealers for furtherance of trade and commerce, on production of these forms.

The inter-State trade forms are being issued in Gujarat *online* from 1<sup>st</sup> July 2008 to the dealers directly through a cell created for the purpose under the divisional head i.e. Joint Commissioner. The information is being uploaded on the TINXSYS from the Department server to TINXSYS server from 1<sup>st</sup> July 2008. In respect of forms issued from October 2005 to June 2008, the information was uploaded manually.

So far as 'printing & custody' and 'issue & accounting' of declaration forms before the introduction of system of issuance of *online* forms are concerned, no lacunae was noticed in the internal control exercised by the Department for the purpose.

### **2.13.2 Organisational set up**

The Commercial Tax Department of Gujarat functions under the control and supervision of Additional Chief Secretary, Finance Department, Government of Gujarat. The Commissioner of Commercial Tax is the head of the Department and is assisted by Special Commissioner of Commercial Tax (SCT) and Additional Commissioner of Commercial Tax (ACT) (Administration and Enforcement). The State is divided into seven divisions, each headed by a Joint Commissioner (JC) of Commercial Tax. Divisions are subdivided into circles (Ranges), each headed by a Deputy Commissioner (DC) of Commercial Tax. The circles are further divided into units which are supervised by the Assistant Commissioner (AC) of Commercial Tax. The ACs are assisted by Commercial Tax Officers (CTOs) and Commercial Tax Inspectors (CTIs). Validity and correctness of various exemptions and concessions claimed by the dealers are checked by the concerned DCCT/ACCT or CTO during finalisation of assessments.

### **2.13.3 Audit Objectives**

The review was aimed to check and ascertain whether:

- there exists a foolproof system for custody and issue of the declaration forms,
- exemptions/concessions of tax granted by the assessing authorities were supported by the original declaration forms,
- there exists a system for ascertaining genuineness of the forms for preventing evasion of tax,

- there is a system of uploading the particulars in the TINXSYS website and the data available there is utilised for verifying the correctness of the forms,
- appropriate steps are taken on receipt and detection of fake, invalid and defective (without proper or insufficient details) forms and
- there exists an effective and adequate internal control mechanism.

#### **2.13.4 Scope and methodology of audit**

During the review, audit verified records of all the commercial tax units audited between November 2010 and January 2011, covering all assessments finalised during the period from 2007-08 to 2009-10, where exemptions/concessions were granted under the CST Act. In the first phase of review, data comprising of 25,133 'C' forms and 3,625 'F' forms were collected from 23 offices of the Commercial Tax Department during local audit. The genuineness of the forms and transactions against which exemptions/concessions were granted were cross verified by our Accountant General offices across the country. In the second phase of the review, this office received a database comprising of 4,517 'C' forms and 988 'F' forms pertaining to the State of Gujarat. To verify the genuineness of the forms, 80 units of the Commercial Tax Department of the State were visited between April and June 2011.

#### **2.13.5 Acknowledgement**

Indian Audit and Accounts Department acknowledges the co-operation of the Commissioner of Commercial Tax in providing the necessary information and records for audit. An entry conference was held in November 2010 in which the scope and methodology of the review was explained to the Department. The Special Commissioner of Commercial Tax, Additional Commissioner of Commercial Tax and Joint Commissioners of all the divisions attended the meeting. The exit conference has not been held. Audit findings of the review were reported to the Department in August 2011. Replies have been received from certain field units (November 2011).

#### **Audit findings**

#### **System deficiencies**

#### **2.13.6 Computerisation-On-line issuance of forms**

The Inter-State trade forms are being issued in Gujarat *online* from 1<sup>st</sup> July 2008 to the dealers directly through a cell created for the purpose under the divisional head i.e. Joint Commissioner. The information is being uploaded on the TINXSYS from the department server to TINXSYS server from 1st July 2008. In respect of forms issued from October 2005 to 1<sup>st</sup> July 2008, the information was being uploaded manually.

The Department had not issued any guidelines/instructions to call back the unutilised declaration forms remaining with the dealers after introduction of *online* system of issuance of declaration forms. Hence, in the absence of instructions regarding calling back of such unutilised forms, the possibility of misuse thereof cannot be ruled out.

### 2.13.7 TINXSYS

Tax Information Exchange System (TINXSYS) is a centralised exchange of all interstate dealers spread across the various States and Union Territories of India. TINXSYS helps the Commercial Tax Departments of various States and Union Territories to effectively monitor the interstate trade.

TINXSYS can be used by Commercial Tax Department officials for verification of central Statutory Forms issued by other State Commercial Tax Departments and submitted to them by the dealers in support of claim for concessions.

TINXSYS website started functioning in 2006. However, the Department issued instructions to the assessing officers to visit 'TINXSYS' or the official website of the Commercial Tax Department of the concerned State to verify the genuineness of the forms submitted by the dealers of Gujarat to avail concession/exemption from levy of CST in June 2011 only. Such instructions were issued only after happening of instances where the forms submitted by the dealers were found to be doubtful or the registration number of the opposite dealers were cancelled *ab-initio*. Hence, delay in issuance of instructions to utilise the facility of 'TINXSYS' website resulted in substantial loss of revenue to Government exchequer.

Moreover, in spite of specific instructions, it was found in 10 units out of 13 units visited by us that the assessing officers were not utilising the facility of the 'TINXSYS' website. Hence, it can be concluded that the percentage of the officers using 'TINXSYS' was not satisfactory.

**Department should put into place a mechanism by prescribing returns to monitor that all declaration forms are uploaded in the website and also ensure that this website is utilised for application and issue of 'C' forms.**

### 2.13.8 Internal control

It is the responsibility of the Commercial Tax Department to ensure proper accounting of declaration forms and to take adequate safeguards against misutilisation of declaration forms on which tax relief is allowed involving large amount of revenue to the State exchequer. For the above purpose, the Department is expected to setup special cell as an enforcement measure to cross-verify the genuineness of declaration forms and the opposite dealer involved in the transaction with the dealer of Gujarat.

Moreover, the selling/purchasing dealers did not account for the inter-State sale/purchase properly, resulting in suppression of turnover. As such, the department failed to ascertain and ensure the correctness of transactions recorded and genuineness of the forms used in the inter-State trade and to

ensure proper accounting of the inter-State transactions in terms of monetary value. We further noticed that neither such special cell was created by the Department nor assessing officers were instructed to carry-out verification of certain percentage of forms either manually or through 'TINXSYS'. This reflects lack of internal control exercised by the Department.

### **2.13.9 Absence of a system for obtaining the details regarding issue and accounting of declaration forms by the dealers**

To exercise better control regarding correct accounting of transactions of purchase by the dealers who had obtained various declaration forms from the Department, it is necessary to devise a system and issue instructions to assessing officers for periodical verification of the position of utilisation of such forms by the relevant dealers.

On receipt of such utilisation details, correctness thereof can be cross checked for proper accounting thereof. However, no system was put in place by the Department in the form of return for obtaining the details regarding utilisation of declaration forms.

During scrutiny of records, audit noticed in the case of 206 purchasing dealers registered in the State of Gujarat that they had obtained 438 declaration forms (C form: 328; F form: 110) from the Department. However, in absence of any system in place for obtaining the details regarding utilisation periodically, the correctness of purchase transactions valued ₹ 323.33 crore, involving revenue implication of ₹ 12.93 crore at the rate of four *per cent* of the value of goods involved could not be ensured.

**Department may consider issuing instructions for obtaining periodical details of utilisation of declaration forms by prescribing returns to ensure the correct accounting of purchase transactions.**

### **Compliance deficiencies**

### **2.13.10 Evasion of tax due to fraudulent utilisation of "C" Forms under disclosure of inter State sales**

Section 8(1) of the Central Sales Tax Act, 1956 read with Rule 12(1) of the CST Rules, 1957 prescribe that every dealer, who in the course of inter-state trade or commerce, sells goods to a registered dealer, shall be liable to pay tax under this Act, which shall be four *per cent* of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is lower provided the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration in original Form 'C', obtained from the prescribed authority, duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars. In case the dealer fails to furnish the said declaration, he shall be liable to tax (a) in the case of declared goods, at twice the rate applicable to the sale or purchase of such goods inside the respective State, and (b) in case of goods other than declared goods, at the rate of ten *per cent* or at the rate applicable to the sale or purchase of such goods inside the respective State,



whichever is higher. Moreover, as per Section 9 read with Section 34 of the GVAT Act, 2003 and Section 45 of the erstwhile GST Act, 1969; penalty not exceeding 150 *per cent* of the tax evaded may also be imposed.

Deficiencies noticed due to absence of effective system to cross check inter State transactions to have moral check on the registered dealers are mentioned in paragraph 2.13.10.1 to 2.13.10.3.

#### **2.13.10.1 Incorrect grant of concessional rate of tax on forms not issued to purchasing dealers by the Department in which they were registered**

During audit scrutiny, the data regarding inter-state sales in respect of 81 dealers registered with CTD, Gujarat, and assessed between April 2007 and March 2010, who had effected sale transactions valued at ₹ 18.22 crore against 134 'C' forms, was collected and the same was verified with the records pertaining to 'C' forms issued to the purchasing dealers registered with CTD of the eight<sup>5</sup> States. The exercise of cross checking revealed that the said forms were not issued to the purchasing dealers by the concerned circles of respective States in which they were registered. Grant of concessional rate of tax on the basis of declaration forms not issued/obtained from the jurisdictional commercial tax authorities of respective State involving tax of ₹ 1.09 crore needed investigation. The regularities remained unnoticed due to absence of a system to cross check inter State transactions.

After we pointed this out, the Department accepted to initiate reassessment proceedings in case of two dealers involving eight 'C' forms with tax effect of ₹ 3.21 lakh. While in case of two dealers involving three 'C' forms with tax effect of ₹ 1.65 lakh Department expressed its inability to reassess/ revise the assessments due to time bar provisions. Further, in case of five dealers involving six 'C' forms Department stated that the facts would be confirmed from the Commercial Tax Department of the concerned State and call the dealer for further necessary action.

The Department in case of one dealer involving five 'C' forms with tax effect of ₹ 0.42 lakh did not accept the audit observation and stated that the transactions were in conformity with sales record of the dealer. Reply of the Department is not tenable since the forms produced by the seller were not issued to the purchasing dealer by the Commercial Tax Department of the concerned State.

#### **2.13.10.2 Incorrect grant of concessional rate of tax on forms issued to dealers other than those who made purchases**

Similar exercise in respect of 29 selling dealers registered with CTD, Gujarat, and assessed between February 2007 and March 2010, revealed that they had effected sales worth ₹ 13.44 crore against 45 'C' forms which were found

<sup>5</sup> Andhra Pradesh, Bihar, Chhattisgarh, Haryana, Madhya Pradesh, Maharashtra, Tamil Nadu and Uttar Pradesh

issued by the CTD of respective states to the dealers other than purchasing dealers or the purchasing dealer had issued the form to the selling dealer other than the dealer claiming concessional rate of tax/mentioned in respective 'C' forms. With the result, forms were misused by the purchasing dealers. Acceptance of such 'C' Forms, having a tax effect of ₹ 80.61 lakh needs investigation. The irregularities remained unnoticed due to absence of a system to cross check inter State sales.

After we pointed out, the Department agreed in case of four dealers involving five 'C' forms to confirm the facts from the Commercial Tax Department of the concerned State and call the dealer for further necessary action.

The Department in case of three dealers involving three 'C' forms with tax effect of ₹ 10.49 lakh while not accepting the audit observation stated that the transactions were in conformity with sales record of the dealer. Reply of the Department is not tenable since the audit observations are based on cross verification of the records of the Commercial Tax Department having jurisdiction over the purchaser of the concerned State. Hence, the Department may take-up the matter with the concerned Commercial Tax Department for confirmation of the facts.

#### **2.13.10.3 Disclosure of less inter State sales by selling dealers than those by purchasing dealers**

Audit scrutiny in respect of records pertaining to 25 selling dealers registered with CTD, Gujarat and assessed between April 2007 and March 2010, revealed that they had shown value of goods sold as ₹ 4.35 crore against 44 'C' forms. However, the actual value of such transactions as shown by the purchasing dealers was ₹ 9.76 crore. Hence, the selling dealers had under-disclosed the inter-State sales by ₹ 5.41 crore, with the result there was sales escaping assessment. The differential tax to be recovered for short disclosure of sales worked out to ₹ 54.08 lakh.

After we pointed out, the Department agreed in case of two dealers involving four 'C' forms to confirm the facts from the Commercial Tax Department of the concerned State and call the dealer for further necessary action.

The Department in case of one dealer involving two 'C' forms with tax effect of ₹ 0.50 lakh while not accepting the audit observation stated that the transactions were in conformity with sales record of the dealer. Reply of the Department is not tenable since the audit observations are based on cross verification of the records of the Commercial Tax Department having jurisdiction over the purchaser of the concerned State. Hence, the Department may take-up the matter with the concerned Commercial Tax Department for confirmation of the facts.

**Government/Department may consider putting in place an effective system of cross check of interstate transactions to avoid loss of revenue.**

### 2.13.11 Grant of incorrect exemption on incorrect Branch Transfer

Under Section 6A(1) of the Central Sales Tax Act, 1956 read with Rule 12(5) of the CST (Turnover and Registration) Rules, 1957, inter alia, where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal and not by reason of sale, he may furnish to the assessing authority, a declaration in original Form 'F' obtained from the prescribed authority, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars, along with the evidence of dispatch of such goods and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale. In case the dealer fails to furnish the said declaration obtained from the prescribed authority, he shall be liable to pay tax at the rate of ten *per cent* or at the rate applicable to the sale or purchase of such goods inside the respective State, whichever is higher. Moreover, as per Section 9 read with Section 34 of the GVAT Act, 2003 and Section 45 of the erstwhile GST Act, 1969, penalty not exceeding 150 *per cent* of the tax evaded may also be imposed.

Lack of effective system to cross check interstate transactions in the cases of branch transfer claims by the registered dealers caused total non/short levy of central sales tax of ₹ 1.19 crore as mentioned in para 2.13.12, 2.13.13 and 2.13.14.

### 2.13.12 Grant of incorrect exemption on "F" forms not issued by the Department of the States in which they were registered

The data regarding branch transfer, effected by the eight dealers registered with Commercial Tax Department, Gujarat and assessed between March 2008 and January 2010; against 58 'F' forms involving value of goods worth ₹ 5.69 crore was collected and verified with the records pertaining to F forms issued to the agent or principal registered with six<sup>6</sup> Commercial Tax Department of the respective States. Result of the cross check revealed that such forms were not issued to the dealers by the concerned circles of respective States in which they were registered. Since the forms furnished by those dealers were not obtained from the jurisdictional commercial tax authorities of the respective State in which they were registered and the same were fake, the grant of exemption of tax on production of such forms was irregular and tax was required to be levied at the prescribed rates. Thus, grant of exemption from levy of tax on fake 'F' forms resulted in non levy of CST to the tune of ₹ 56.94 lakh.

After we pointed out, the Department in case of one dealer involving one 'F' form with tax effect of ₹ 0.17 lakh expressed its inability to reassess/ revise the

<sup>6</sup> Bihar, Chhattisgarh, Madhya Pradesh, Maharashtra, Uttar Pradesh, Daman & Diu.

assessment due to time bar provisions. While in case of three dealers involving 36 'F' forms the Department agreed to confirm the facts from the Commercial Tax Department of the concerned State and call the dealers for further necessary action.

### **2.13.13 Incorrect grant of exemption from tax on forms issued to dealers other than those who made branch transfers**

During scrutiny of records in case of two dealers of Gujarat assessed in January/February 2010 we found that the dealers had affected branch transfer of goods valued at ₹ 37.76 lakh against seven 'F' forms. Our scrutiny revealed that these forms were issued by the commercial Tax Departments of West Bengal and Madhya Pradesh in favour of the dealer other than those whose name was mentioned in the 'F' forms as produced by the dealer of Gujarat for claiming exemption from levy of CST. The exemption from levy of CST on the strength of such forms was incorrect and escaped from the notice of the Department due to absence of a system of cross verification. The tax was required to be levied at the rate of ten *per cent* or the rate applicable for sale of goods within the State of Gujarat, whichever is higher. Non-levy of tax at the applicable rate worked out to ₹ 3.78 lakh.

After we pointed out, the Department agreed in case of one dealer involving four 'F' forms to confirm the facts from the Commercial Tax Department of the concerned State and call the dealer for further necessary action.

### **2.13.14 Disclosure of more branch transfers by consigner than those shown by consignees**

In case of nine dealers (consigners) of Gujarat assessed between July 2007 and February 2010 who had claimed branch transfer of goods valued at ₹ 9.38 crore against 28 'F' forms to the Consignees i.e. agent or the principal, we found that consignees had shown inter-State branch transfer worth ₹ 3.54 crore only in their accounts on the basis of these forms. As such, the consigners may have over-stated the value of such branch transfer by ₹ 5.84 crore. The excess claim towards branch transfer got un noticed in absence of a system of cross verification of the transactions and resulted in non-levy of CST to the tune of ₹ 58.39 lakh.

After we pointed out, the Department agreed in case of one dealer involving seven 'F' forms to call the dealer for further necessary action.

The Department in case of one dealer involving six 'F' forms with tax effect of ₹ 5.57 lakh did not accept the audit observation and stated that the transactions were in conformity with sales records of the dealer. Reply of the Department is not tenable since the audit observations are based on cross verification of the records of the Commercial Tax Department having jurisdiction over the purchaser of the concerned State. Hence, the Department may take-up the matter with the concerned Commercial Tax Department for confirmation of the facts.

**Government/Department may consider putting in place an effective system of cross check of interstate transactions to avoid loss of revenue.**

### **2.13.15 Non/short levy of tax on inter-State purchases effected on C forms/under disclosed inter-State purchases**

As per the provisions contained in the Gujarat Value Added Tax Act, 2003 and erstwhile Gujarat Sales Tax Act, 1969, turnover of purchases means the aggregate of the amounts of purchase price paid or payable by a dealer in respect of any purchase of goods made by him during a given period after deducting the amount of purchase price, if any, refunded to the dealer by the seller in respect of any goods purchased from the seller and returned to him within the prescribed period. Further, as per Section 30(2) of the Act *ibid*, taxable turnover means the turnover of all sales or purchases of a dealer during the prescribed period in any year, which remains after deducting there from the turnover of sales not subject to tax under the Act *ibid*. As per Section 7 of the Act *ibid* there shall be levied a tax on the turnover of sales of goods specified in Schedule II or Schedule III at the rate set out against each of them in the said Schedules. Moreover, as per Section 9 read with Section 34 of the GVAT Act, 2003 and Section 45 of the erstwhile GST Act, 1969, penalty not exceeding 150 *per cent* of the tax evaded may also be imposed.

Lack of effective system of cross check of interstate transactions of purchases by the registered dealers caused total non/short levy of tax of ₹ two crore as mentioned in para 2.13.16 and 2.13.17.

### **2.13.16 Non-issue of 'C' forms to the purchasing dealers by the Commercial Tax Department of the State of Gujarat**

Data collected regarding inter-state purchases against 'C' Forms, affected by the dealers registered with Commercial Tax Department of Gujarat, were verified with the inter-State sales records of the selling dealers registered with Commercial Tax Department of the respective States. Result of cross check revealed that sellers in different States had shown sales of goods valued at ₹ 7.74 crore against 30 'C' forms claimed to be issued by 13 purchasing dealers of Gujarat.

However, we found that these 'C' forms were not issued to those purchasing dealers by the Commercial Tax Department of the State of Gujarat. Hence, the 'C' forms found with the selling dealers of the respective State needed investigation to ensure their correctness. These 'C' forms were said to be issued between August 2004 and January 2009. The resultant effect may be suppression of inter-State purchases and consequential suppression of sales turnover to that extent resulting in non-levy of tax to the tune of ₹ 30.95 lakh.

### **2.13.17 Suppression of inter-State purchases**

Our cross verification of the records revealed that 52 purchasing dealers of Gujarat purchased goods from dealers valued at ₹ 55.45 crore on the basis of 67 'C' forms issued to them by the Department. However, these dealers had shown inter-State purchases of ₹ 13.10 crore only in their books of accounts. Thus, the dealers had shown inter-State purchases lesser by ₹ 42.35 crore. This was verified from the Utilisation Certificates, Issue Register of the department and counter foil of 'C' forms available with the purchasing dealers. As such, the purchasing dealer had suppressed the turnover to that extent. The mistake remained unnoticed by the Department as it had not conducted any cross verification of any of the forms. The suppression of sales by the dealer resulted in short levy of tax to the tune of ₹ 1.69 crore.

After we pointed out, the department agreed in case of seven dealers involving 13 'F' forms to call the dealers for further necessary action. Reply in other cases has not been received.

**Government/Department may consider installing a system of information with other states on a regular basis to avoid the sales escaping assessment.**

### **2.13.18 Mis-utilisation of declaration 'F' forms**

As per contents of Form F prescribed under Rule 12(5) of the CST (Registration and Turnover) Rules, 1957 the transferee has to certify that the goods transferred to him as detailed in the form have been duly accounted for the quantity or weight and value thereof. Further, as per sub-Section 30 of Section 2 of the Gujarat Value Added Tax Act, 2003, taxable turnover means the turnover of all sales or purchases of a dealer during the prescribed period in any year, which remains after deducting there from the turnover of sales not subject to tax under the Act *ibid*. As per Section 7 of the Act *ibid* there shall be levied a tax on the turnover of sales of goods specified in Schedule II or Schedule III at the rate set out against each of them in the said Schedules. Moreover, as per Section 9 read with Section 34 of the GVAT Act, 2003 and Section 45 of the erstwhile GST Act, 1969, penalty not exceeding 150 *per cent* of the tax evaded may also be imposed.

Lack of effective system of cross check of interstate transactions of purchases by the registered dealers caused total non/short levy of tax of ₹ 8.45 crore. We further noticed that no enforcement measures to ensure that the inter-State transactions are properly accounted for by the selling/purchasing dealers were under taken by the Department as mentioned in the paragraph no. 2.13.19 and 2.13.20.

### **2.13.19 Suppression of value of goods received on branch transfer on utilisation of fake forms**

During the course of cross check of data regarding goods received on the basis of branch transfer against 'F' form by the dealers registered with Commercial Tax Department, Gujarat were verified with the branch transfer records of the



agent or principal registered with Commercial tax Department of Andhra Pradesh and Maharashtra.

In the case of four dealers of Gujarat assessed between March 2009 and March 2010, we noticed that 21 'F' Forms stated to have been issued by dealers for goods valued at ₹ 207.58 crore were not issued to them by the Commercial Tax Department of the State of Gujarat i.e. the 'F' forms furnished by the dealers to his agent or principal to receive goods through branch transfer were fake. Since, the said 'F' forms were not issued by the Department; the possibility that the dealers did not disclose and certify the accounting of goods cannot be ruled out. This suppression of value of goods, if proved, will involve tax effect to the tune of ₹ 8.30 crore.

On this being pointed out, the Department while accepting the audit observation replied in case of one dealer involving 17 'F' forms with tax effect of ₹ 8.29 crore that notice had been issued to the head office of the dealer for re-assessments.

### **2.13.20 Under disclosure of inter-State purchases effected through branch transfer**

We found during the cross verification of 'F' Forms that seven dealers of Gujarat received goods through inter-State branch transfer, against 12 'F' forms involving value of ₹ 8.49 crore, from the agent or the principal of such dealer from Haryana, Delhi, J&K and Tamil Nadu. However, these dealers had shown inter-State branch transfer worth ₹ 12.34 crore. Thus, the dealers of Gujarat who received goods on such branch transfer had shown purchases lesser by ₹ 3.85 crore. Thus, under-disclosure of the receipt of goods on branch transfer basis resulted in short levy of tax to the tune of ₹ 15.42 lakh.

After we pointed out, the department agreed in case of three dealers involving seven 'C' forms to call the dealers for further necessary action.

Government/Department may consider installing system of exchange of information with other states on a regular basis to avoid the sales escaping assessment. Undertake enforcement measures to ensure that the inter-State transactions are properly accounted for by the selling/purchasing dealers.

### **2.13.21 Conclusion**

The review on the inter-State transactions revealed a number of system and compliance deficiencies. Department had not put into place any mechanism to monitor that all declaration forms issued by the Department are uploaded in the website and also ensure that this website is utilised for application and issue of 'C' forms. Even the instructions for uploading the forms were issued after a lapse of five years. No special cell was created by the Department for verification of the forms uploaded in the website nor assessing officers were instructed to carry-out verification of certain percentage of forms either manually or through 'TINXSYS'. This reflects lack of internal control exercised by the Department. Periodical details of utilisation of declaration

forms to ensure the correct accounting of purchase transactions were not obtained. Moreover, the selling/purchasing dealers did not account for the inter-State sale/purchase properly, resulting in suppression of turnover. As such, the Department failed to ascertain and ensure the correctness of transactions recorded and genuineness of the forms used in the inter-State trade and to ensure proper accounting of the inter-State transactions in terms of monetary value. We also noticed that no enforcement measures to ensure that the inter-State transactions are properly accounted for by the selling/purchasing dealers were under taken by the Department. No mechanism to cross-check a fixed percentage of declaration forms furnished by the selling dealers from the Commercial Tax Department of the State issuing such forms to the purchasing dealers was existing in the Department. There was no system for exchange of information with other states on a regular basis to avoid the sales escaping assessment. No enforcement measures were under taken to ensure that the inter-State transactions are properly accounted for by the selling/purchasing dealers.

### **2.13.22 Recommendations**

Government may consider taking the following steps:

- the functioning of the system of *online* issuance of declaration forms may be reviewed periodically to ascertain and maintain its efficacy. Ensure compliance of instructions issued in respect of utilisation of ‘TINXSYS’ website by the assessing officers.
- issuing instructions for obtaining periodical details of utilisation of declaration forms by prescribing returns to ensure the correct accounting of purchase transactions.
- prescribing a mechanism to cross-check a fixed percentage of declaration forms furnished by the selling dealers from the Commercial Tax Department of the State issuing such forms to the purchasing dealers.
- Government/Department may consider installing a system for exchange of information with other states on a regular basis to avoid the sales escaping assessment. Undertake enforcement measures to ensure that the inter-State transactions are properly accounted for by the selling/purchasing dealers.



## 2.14 Audit observations

*Our scrutiny of the records of the various Commercial Tax offices revealed several cases of non-compliance with the provisions of the Gujarat Sales Tax Act, 1969, the Gujarat Sales Tax Rules, 1970, the Central Sales Tax Act, 1956, Gujarat Value Added Tax Act, 2003, Gujarat Value Added Tax Rules, 2006 etc., and Government notifications and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on test check carried out by us. Such omissions on the part of the Departmental officers are pointed out by us each year; however, the irregularities not only do persist, but also remain undetected till our audit is conducted. There is need for the Government to improve the internal control system and internal audit.*

Few illustrative cases involving revenue implication of ₹ 49.37 crore are mentioned in the following paragraphs.

## 2.15 Incorrect allowance of deduction from sales turnover (VAT)

Section 2(30) of Gujarat Value Added Tax Act, 2003 and Rule 18 AA of Gujarat Value Added Tax Rules, 2006 provide for deductions for charges towards labour, services etc., from turnover of sales in cases of transfer of property in goods involved in the execution of works contract. A registered dealer who claims such deductions shall maintain correct records of the charges and furnish evidence of the same at the time of assessment. Where the amount of such charges is not ascertainable or the records maintained is not clear, a lump sum deduction shall be admissible at the rates prescribed under the Rule *ibid*. Further, a works contractor who has been granted permission for payment of lump sum tax is required to pay tax on total value of works contract.

During test check of the records of two <sup>7</sup> offices, we noticed in December 2010 in the assessment of seven dealers for the period 2006-07 finalised between September 2009 and July 2010 that the AOs allowed irregular deductions of labour charges in case of two dealers from sales turnover without proper maintenance of records of labour and in case of other five dealers, who were granted permission for payment of lump sum tax, we noticed from assessment order that the AOs allowed deduction for labour charges though not admissible to lump-

sum permission holders. This resulted in under assessment of ₹ 66.79 lakh including interest of ₹ 21.18 lakh and penalty of ₹ 12.47 lakh.

After we pointed out the cases in March 2011, the Department accepted between September and October 2011 audit observations involving an amount

<sup>7</sup> ACCT: 5, 6 Ahmedabad

of ₹ 66.79 lakh in case of all the dealers. Particulars of recovery have not been received (October 2011).

After we reported (July 2011) the matter, the Government confirmed the reply of the Department in five cases; the reply in the remaining cases has not been received (October 2011).

## 2.16 Excess grant of ITC under Section 11 & 12

Under Section 11 of Gujarat VAT Act, 2003, a registered dealer who purchased taxable goods shall be entitled to claim tax credit equal to the amount of tax paid.

Under subsection 3(b) (ii) of Section 11 of GVAT Act, the amount of tax credit in respect of a dealer shall be reduced by the amount of tax calculated at the rate of four *per cent* of taxable turnover of the purchase within the state of taxable goods which are used as raw material in the manufacture or in the packing of goods which are dispatched outside the state in the course of branch transfer or consignment or to his agent outside the state.

Under section 12 *ibid*, all dealers who are deemed to have been registered under Section 23, shall furnish in such form to such authority as may be prescribed a statement of such taxable goods under this Act held in stock on 31<sup>st</sup> March, 2006 which are purchased during the period commencing on 1<sup>st</sup> April, 2005 and ending 31<sup>st</sup> March, 2006.

During test check of records of four<sup>8</sup> offices, we noticed between May and October 2010 in the assessment of four dealers for the period 2006-07 finalised between June 2009 and June 2010 that the Assessing Officers had allowed excess Input Tax Credit (ITC) of ₹ 4.49 lakh. This resulted in short levy of tax of ₹ 6.43 lakh including interest of ₹ 1.45 lakh and penalty of ₹ 0.50 lakh as detailed in

the table below:

Sl. No.	Name of office	Money Value (₹ in lakh)	No. of dealers	Nature of objection
1	ACCT-7, Vadodara	2.53	1	The A.O. did not reduce ITC for purchase of fuel.
2	ACCT-4, Ahmedabad	0.75	1	The dealer allowed ITC for opening stock at higher rate than admissible.
3	ACCT-8, Surat	1.22	1	The A.O. did not reduce ITC for shortage of LPG.
4	ACCT, Ankleshwar	1.93	1	The A.O. did not reduce ITC on opening stock though the manufactured goods were branch transferred.
<b>Total</b>		<b>6.43</b>	<b>4</b>	

<sup>8</sup> ACCT: 4 Ahmedabad, Ankleshwar, 8 Surat, 7 Vadodara.

After we pointed out the cases between December 2010 and March 2011, the Department accepted the audit observation of ₹ 6.43 lakh in all the cases. Particulars of recovery have not been received (October 2011).

After we reported (July 2011) the matter, the Government confirmed the reply of the Department in one case; the reply in the remaining cases has not been received (October 2011).

### 2.17 Non/short levy of penalty (VAT)

Section 34(12) of Gujarat VAT Act, 2003 states that where tax assessed or reassessed exceeds the amount of tax already paid with returns by the dealer by twenty five *per cent* of the amount of tax so paid, the dealer shall be required to pay penalty not exceeding one and half times the difference between the tax paid with returns and the amount so assessed or reassessed.

Further Section 12 (7) (b) of the Act *ibid* states that if Commissioner is satisfied that a dealer has claimed excess credit than he is entitled, the Commissioner may after giving the dealer an opportunity of being heard direct him to pay a penalty equal to twice the amount of tax credit claimed.

During test check of the records of four<sup>9</sup> offices, we noticed between June and September 2010 in the assessment of five dealers for the period 2006-07 that the difference between tax assessed and tax paid with returns exceeded by 25 *per cent* of the amount of tax paid in case of four dealers and in case of one dealer excess credit was claimed. However, the AOs while finalising the assessments between August 2009 and March 2010 did not levy penalty or levied short in terms of

aforesaid provisions. This resulted in non-levy of penalty of ₹ 20.27 lakh as shown in the table below:

(₹ in lakh)					
Sl. No.	Name of the office	Tax short paid	Penalty leviable at the rate of 150 <i>per cent</i>	Penalty levied	Short levy of penalty
1	DCCT, Nadiad	2.54	3.81	0	3.81
2	DCCT, Nadiad	1.72	2.58	0	2.58
3	ACCT-2, Anand	1.46	2.19	0	2.19
4	ACCT-10, Ahmedabad	3.13	6.27	0	6.27
5	DCCT- 3 Ahmedabad	2.71	5.42	0	5.42
	<b>Total</b>	<b>11.56</b>	<b>20.27</b>	<b>0</b>	<b>20.27</b>

<sup>9</sup> ACCT :- 10 Ahmedabad, 2 Anand  
DCCT:-, 3 Ahmedabad, Nadiad

After we pointed out between January and March 2011, the Department accepted the audit observations in all the cases involving an amount of ₹ 17.93 lakh. Particulars of recovery have not been received (October 2011).

After we reported (July 2011) the matter, the Government confirmed the reply of the Department in one case; the reply in the remaining cases has not been received (October 2011).

### **2.18 Non/short levy of Turnover tax**

Section 10A of the GST Act provides for levy of turnover tax at prescribed rate on the turnover of sales of goods other than declared goods after allowing permissible deduction under the Act, where the turnover of sales of a dealer liable to pay tax, first exceeds ₹ 50 lakh. From April 1993, sales made against various declarations and sales exempted from tax under Section 49 were excluded from the permissible deductions making such sales also liable to turnover tax. Turnover tax was exempted on edible oil under entry 37 of section 49 (2) of the Act during 09.11.1994 to 31.03.1997.

During test check of the records of two<sup>10</sup> offices, we noticed between October 2009 and August 2010 in the assessment of four dealers for the period from 1993-94 to 1996-97 finalised between July and October 2008, that in one case the AO did not

levy turnover tax on sales against declarations (Form 24). In case of four assessments of three dealers AOs also did not levy turnover tax on sales of edible oil prior to 09.11.1994. This resulted in short realisation of turnover tax of ₹ 37.10 lakh including interest of ₹ 11.29 lakh and penalty of ₹ 10.14 lakh.

We reported the facts to the Department between May 2010 and March 2011. The Department accepted audit observations in all cases between June and October 2011 involving an amount of ₹ 31.96 lakh. The particulars of recovery have not been received (October 2011).

After we reported (June 2011) the matter, the Government confirmed the reply of the Department in all case.

### **2.19 Short levy of tax due to application of incorrect rate (GST)**

The GST Act provides to levy tax at the rates as provided in the schedules to the Act, however, where the goods are not covered under any specific entry of the schedule, rate of tax given in residuary entry is applicable.

During test check of records of four<sup>11</sup> offices, we noticed between September 2009 and March 2010 in the assessment of four dealers for the period

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<sup>10</sup> ACCT : 23 Ahmedabad and Gondal

<sup>11</sup> ACCT : 15, 21, Enforcement (Flying Squad) Ahmedabad,  
DCCT : 4 Ahmedabad

from 2004-05 to 2005-06 finalised between May 2007 and September 2009 that the Assessing Officers incorrectly assessed tax on sales turnover of ₹ 6.82 crore of the commodities as mentioned below:

Sl No	No. of Dealers	Commodity	Applicable rate of tax (%)	Rate applied (%)	Remarks
1	1	Tractor battery	8	4	As per Public Circular dated 24.09.1996, the commodity falls under entry 128 (3) of schedule IIA and attracts tax @ 8 %.
2	1	Aluminum foil (printed)	6	4	The commodity falls under entry 150 of schedule II A and attracts tax @ 6%.
3	1	Fire proof door	12	8	The commodity falls under entry 195 of schedule II A and attracts tax @ 12%.
4	1	Chemical and dyes	6	4	The AO applied rate of tax @ 4% throughout the assessment year though the applicable rate of tax in the first quarter of the year was 6% instead of 4%.

Total short levy of tax was of ₹ 27.38 lakh including interest of ₹ 2.76 lakh and penalty of ₹ 2.48 lakh.

After we pointed out between July and September 2010, the Department accepted (between August 2010 and October 2011) all the above audit observations. Particulars of recovery have not been received (October 2011).

After we reported (July 2011) the matter, the Government confirmed the reply of the Department in one case; the reply in the remaining cases has not been received (October 2011).

## 2.20 Incorrect grant of set-off under rule 42

Rule 42 of GST Rules, 1970 provides that a dealer who has paid tax on the purchase of goods (other than prohibited goods<sup>12</sup>) to be used as raw or processing material or consumable stores in the manufacture of taxable goods, is allowed set-off at the rate applicable to the respective goods from the tax payable on the sale of manufactured goods subject to fulfillment of general conditions prescribed in Rule 47 of the Rules.

**2.20.1** During test check of the records of 13<sup>13</sup> offices, we noticed between November 2008 and January 2010 in the assessment of 16 dealers for the assessment period from 2002-03 to 2005-06, finalised

between September 2007 and March 2009 that the AOs allowed excess set-off as mentioned below:

Sl. No.	No. of Dealers	Rule	Violation of rule	Short Levy (₹ in lakh)
1	4	Condition No. 2 of Rule 42 provides for set off on purchase of taxable goods other than prohibited goods.	The AOs allowed set-off on purchase of prohibited goods.	37.96
2	6	Condition No. 4 (iii) of Rule 42 provides for deduction of four <i>per cent</i> of sales price of the goods transferred to branch outside the State from the set-off calculated.	The AOs did not deduct four <i>per cent</i> of sales price of goods transferred to other States for sales.	12.92
3	4	--	The AOs allowed excess set off due to computation error.	8.94
4	2	Condition No. 4 (i) of Rule 42 provides for deduction of two <i>per cent</i> of the purchase price of the goods considered for grant of set off from the set off calculated.	The AOs did not deduct prescribed two <i>per cent</i> from set-off.	1.58
<b>Total</b>	<b>16</b>			<b>61.40</b>

This resulted in excess grant of set-off of tax of ₹ 61.40 lakh including interest of ₹ 11.86 lakh and penalty of ₹ 1.24 lakh.

<sup>12</sup> **Prohibited goods:** Section 2 (21) of the Act specifies certain goods to be prohibited. These goods are called prohibited goods because they could not be purchased by recognised dealer, free of tax against a certificate in Form 19 or that set off of tax paid on their purchases is not admissible under Rule 42, even though they may be required by him for use in manufacture of taxable goods.

<sup>13</sup> ACCT: 3, 6, 8, 11, 15, 20, 21 and 23 Ahmedabad, 2 Nadiad  
DCCT: 1, 2, 4 Ahmedabad, 10 Vadodara

The above facts were brought to the notice of the Department between March 2009 and September 2010. The Department accepted the audit observations in case of 15 dealers involving an amount of ₹ 28.82 lakh and recovered ₹ 8.21 lakh in case of five dealers. The Department did not accept the audit observation in case of two assessments of one dealer stating that the dealer had not purchased un-machined casting, a prohibited good, based on which the audit observation was raised. Reply of the Department is not acceptable for the reason that audit has got copies of purchase invoices of the goods stating that the goods purchased were unmachined casting. Particulars of recovery in remaining cases have not been received (October 2011).

After we reported (June 2011) the matter, the Government confirmed the reply of the Department in seven cases; the reply in the remaining cases has not been received (October 2011).

Condition no. 2 below Rule 42 G of GST Rules, 1970 specifies that the purchased goods on which set-off is being claimed should be used by the assessee in the state of Gujarat in the manufacture of goods described in entry 5 of schedule II-A.

**2.20.2** During test check of the records of three<sup>14</sup> offices, we noticed between July and November 2009 in the assessment of four dealers for the assessment period from 2003-04 to 2004-05, finalised between March 2008 and March 2009 that the dealers manufactured (fully/partly) goods which fell under an entry other than entry 5 of Schedule IIA. Hence, the

condition was not fulfilled and attracted disallowance of set-off proportionately/fully. The AOs allowed set-off, though manufactured goods did not fall under the entry 5 of schedule II A of the Act. This resulted in excess grant of set-off of tax of ₹ 7.73 lakh including interest of ₹ 0.33 lakh.

The above facts were brought to the notice of the Department between December 2009 and July 2010. The Department accepted the audit observations in all the above cases involving tax of ₹ 7.69 lakh and recovered ₹ 6,260 in one case. The particulars of recovery in the remaining cases have not been received (October 2011).

After we reported (June 2011) the matter, the Government confirmed the reply of the Department in one case; the reply in the remaining cases has not been received (October 2011).

<sup>14</sup> ACCT: 1 Ahmedabad and 3 Rajkot  
DCCT: 23 Rajkot



## 2.21 Excess grant of set-off under rule 42-E

Section 15-B of the GST Act, 1969 provides that where a dealer purchases directly or through commission agent any taxable goods other than declared goods and uses them as raw material, processing material or as consumable stores in the manufacture of taxable goods, purchase tax at prescribed rate is leviable on such goods. Purchase tax so levied is admissible as set off under the Rule 42E of the GST Rules, 1970 provided the goods manufactured are sold by the dealer in the State.

During test check of records of four<sup>15</sup> offices, we noticed between October 2009 and March 2010 in the assessment of four dealers for periods from 2004-05 to 2005-06 finalised between June 2008 and February 2009, that the AOs disallowed less set-off in three cases and

incorrectly allowed the set-off in one case inspite of the fact that the dealer transferred the manufactured goods to his branches. This resulted in underassessment of ₹ 24.96 lakh including interest of ₹ 0.44 lakh as detailed in the table below:

Sl. No.	Name of office	Money Value (₹ in lakh)	No. of dealers	Nature of observation
1	DCCT Corporate Cell-2, Ahmedabad	20.41	1	AO. disallowed less set off under Rule 42E for branch transfer.
2	DCCT-6, Ahmedabad	0.74	1	AO. disallowed less set off under Rule 42E for branch transfer.
3	ACCT-1, Vadodara	1.27	1	AO. did not levy Purchase Tax under Section 15B proportionately, though the dealer branch transferred the manufactured goods.
4	DCCT-21, Junagadh	2.54	1	AO. disallowed less set off under Rule 42E for branch transfer.
<b>Total</b>		<b>24.96</b>	<b>4</b>	

The above facts were brought to the notice of the Department between February and September 2010. Department accepted the audit observations involving ₹ 24.51 lakh in case of all dealers and also recovered ₹ 21.15 lakh in two cases. Particulars of recovery in remaining cases have not been received (October 2011).

We reported the matter to the Government (July 2011); their reply has not been received (October 2011).

<sup>15</sup> DCCT: Corp. cell 2 and 6 Ahmedabad, 21 Junagadh  
ACCT: 1 Vadodara



## 2.22 Incorrect grant of benefits under sales tax incentive scheme

The Government of Gujarat issued a notification vide entry 140 under Section 49 (2) of the GST Act, 1969 for granting benefit of exemption to the eligible units under the incentive scheme for economic development of Kutch District. The Government of Gujarat also, vide Finance Department resolution of June 2002, decided to allow deferment of sales tax, general sales tax and additional tax within the ceiling limit of the eligibility certificate. The levy and collection of central sales tax in Gujarat is governed by the Central Sales Tax Act, 1956 (CST Act).

**2.22.1** During test check of the records of ACCT Gandhidham in February 2010, we noticed from the assessments of 16 dealers for the assessment year 2004-05 and 2005-06 that the AOs incorrectly allowed adjustment of central sales tax of ₹ 25.15 crore against exemption ceiling limit available. Government

was required to issue notification under Section 8(5) of CST Act for grant of exemption to eligible units for CST exemption. However, there was no notification under the CST Act under which this exemption could be availed. Revenue involved in the above cases was ₹ 25.15 crore.

This was brought to the notice of the Department (September 2010); the Department accepted (October 2011) the audit observation and stated that the action to modify the original resolution had been initiated.

We reported the matter to the Government (July 2011); their reply has not been received (October 2011).

Under the sales tax deferment incentive schemes, the units which opt for deferment incentives are allowed to collect and retain the tax and pay it after a specified period into the Government account. The deferred amount of tax is recoverable in six equal annual installments beginning from the financial year subsequent to the year in which the unit exhausts the limit of incentive granted to it under the scheme or after the expiry of relevant period during which deferment is available, whichever is earlier. In the event of default in payment of tax deferred, interest is leviable at the rate of 24 per cent up to 31.8.2001 and 18 per cent thereafter.

**2.22.2** During test check of the records of five offices<sup>16</sup>, we noticed between September 2008 and September 2010 that in case of 16 dealers involving 21 assessments that they committed violation of rules and provisions which resulted in

short realisation of installments of ₹ 2.33 crore including interest of ₹ 1.19 crore as shown in the table below:

<sup>16</sup> ACCT: Gandhinagar, 1 Junagadh, 5 Rajkot, 7 Vadodara, Vijapur

(₹ in lakh)

Sl. No.	No. of cases	Applicable rules & provisions	Breach of rules and provisions	Short levy of tax	Short levy of interest
1	1	As per Public Circular dated 22.3.96, deferment certificate holder cannot pay tax in cash during the currency of deferment period.	Dealer has paid tax in cash instead of adjustment against available deferment limit	11.30	4.39
2	1	If the dealer availing benefit of deferment scheme make branch transfer, an aggregate amount of tax at the rate of four <i>per cent</i> or the rate applicable whichever is lower is required to be deducted from the deferment limit.	Dealer has made branch transfer but the tax at the rate of four <i>per cent</i> was not deducted from the deferment limit.	12.92	-
3	5	Dealer shall repay availed amount of deferment incentive in six equal annual instalments, beginning from the next financial year in which the incentive period or sanctioned amount exhausted, whichever is earlier. In case of late payment interest is leviable under section 47(4A)(b) of the Sales Tax Act, 1969.	Dealers have not made payment of instalments due. This resulted in short levy of tax and interest thereon	90.50	27.67
4	14	In case of late payment, interest is leviable under section 47(4A)(b) of the Sales Tax Act, 1969.	Dealers have made late payment of instalments resulting into short levy of interest.	-	86.72
<b>Total</b>	<b>21</b>			<b>114.72</b>	<b>118.78</b>

The above facts were brought to the notice of the Department between February 2008 and March 2011. The Department accepted audit observations during December 2009 and October 2011 in 19 assessments of 15 dealers (in case of one dealer out of two assessments it accepted in one assessment) involving ₹ 1.57 crore and recovered ₹ 90.84 lakh from five dealers. The Department did not accept audit observations in two cases stating (i) in one case that dealer had correctly made payment within 60 days, (ii) in the second case the dealer was holding two deferment certificates in which some period was common. Department further stated that the payment was made in time on maturity period of each certificate. Reply is not tenable because of the following reasons: (i) in the first case for the reason that the relaxation of 60 days vide Circular dated 19.5.2010 was available to the beneficiaries only from 1.4.2010, and (ii) in the second case for the reason that the limit of deferment amount in respect of the first certificate was exhausted in the year 1998-99 and therefore repayment should have started from 1.4.1999. The report on recovery in accepted cases has not been received (October 2011).

We reported the matter to the Government (July 2011); their reply has not been received (October 2011).

Under the sales tax incentive scheme, the eligible units are required to remain in production continuously during the eligibility period mentioned in the eligibility certificate. In case of contravention of any of the conditions laid down for the eligible units, the exemption granted shall cease to operate and the entire availed amount would be recovered within 60 days. Further, an eligible unit is not entitled to deduction for sale against any certificate under Section 12 or 13 as the product is tax free under the scheme. Further, additional tax leviable under Gujarat Sales Tax Act at the rate of ten *per cent* of the sales tax and purchase tax was not adjustable upto 2 March 2001, hence it was payable in cash.

**2.22.3** During test check of the records of four offices<sup>17</sup> we noticed between May 2008 and January 2011, in the assessment of four dealers for the period from 2000-01 to 2007-08 and finalised between June 2004 and April 2008 that incorrect exemption of tax under sales tax incentive scheme was allowed as mentioned below:

(₹ in lakh)

Sl. No.	No. of cases	Short levy	Nature of observation
1	1	7.19	Rate of tax for craft paper was 4 <i>per cent</i> and for duplex paper board 8 <i>per cent</i> . The dealer was assessed by accepting returns filed by him, as the books of accounts were lost in flood. Ratio of turnover for application of rate of tax at the rate of 4 and 8 <i>per cent</i> was not adopted based on previous assessments.
2	1	2.74	Additional tax of 10 <i>per cent</i> was not paid in cash but adjusted against the exemption limit. Adjustment was not disallowed till 03.03.2001.
3	1	41.04	In contravention of the condition of exemption benefit, the dealer closed his business after availing benefit of ₹ 41.04 lakh without condonation by competent authority.
4	1	1.91	In contraventions of the conditions of the exemption benefit, the dealer made sales against forms under Section 12, 13 and 49 (2) of the Act.
<b>Total</b>	<b>4</b>	<b>52.88</b>	

This resulted in under assessment of tax of ₹ 52.88 lakh including interest of ₹ 0.98 lakh and penalty of ₹ 0.76 lakh.

After the above facts were brought to the notice of the Department between July 2008 and March 2011, the Department accepted (March 2010 and March 2011) the audit observations involving an amount of ₹ 51.18 lakh in case of all

<sup>17</sup>ACCT:Gandhidham, Kalol  
DCCT: 8 Mehsana, 17 Surat

above dealers and recovered ₹ 7.40 lakh in case of two dealers. Particulars of recovery in remaining cases have not been received (October 2011).

After we reported (July 2011) the matter, the Government confirmed the reply of the Department in three cases; the reply in the remaining case has not been received (October 2011).

### 2.23 Irregular benefit to an assessee in earthquake affected area

Section 41(2) of the GST Act, 1969 provides that assessment of the registered dealer shall be finalised without inviting the dealer to produce the records, if the return filed by the dealer is correct and complete. Commissioner of Sales Tax vide circular dated 13 March 2002 instructed to accept the returns of the registered dealers, situated in the area affected by earthquake of January 2001 under Section 41(2) of the Act. The circular provides that returns shall be submitted within the prescribed time along with payment of tax and pending for assessment for the period upto 31 March 2001. Also, the concessions were available to the dealer subject to production of the certificate from the jurisdictional Collector stating that the dealer's business was affected in the earthquake.

During test check of records of DCCT, Gandhidham in May 2008, we noticed in case of one dealer that the dealer approached the GST Tribunal against assessment order passed under Section 41(5) of the GST Act. The tribunal disposed of the case with instructions to assess the case on merit and remanded the case to the AO. The AO passed the assessment order in March 2007 under Section 41(2) of the Act, on the basis of returns filed by the

dealer for the period from April 2000 to August 2000. The A.O. allowed the benefit of concessions in respect of earthquake affected area to the dealer without production of record by the dealer for scrutiny assessment. The AO thus, accepted the claim of deduction by the dealer in respect of high sea sales of ₹ 47.99 crore and claim of deductions against declarations in Form 19<sup>18</sup> of ₹ 3.04 crore without production and verification of relevant records. Audit, however, noticed that the dealer had neither filed relevant returns in time nor produced the requisite certificate of the Collector. It was also observed from the assessment order that the dealer had produced certificate of Nagarpalika as evidence to the effect that his house was destroyed in the earthquake and therefore eligible for the benefit of the circular. As the dealer did not fulfill the conditions of the circular referred to above about certificate from the Collector of the District, he was not eligible to avail the benefit of the circular dated 13 March 2002 issued by the Commissioner. Tax involved in the transactions worked out to ₹ 4.86 crore including interest of ₹ 1.26 crore and penalty of ₹ 1.36 crore.

<sup>18</sup> **Form 19** is issued by a purchaser to the seller for purchasing taxable goods without payment of tax for use in the manufacture of taxable goods.

In case of Form-19 and High Sea Sales, the Department at least could have obtained copy of the required details from purchasing dealers, which was not done and all these sales were allowed without verification.

The above facts were brought to the notice of the Department in June 2008. The Department in June 2011 while accepting the objection raised a demand of ₹ 5.34 crore. Recovery proceedings were in progress.

We reported the matter to the Government (July 2011); their reply has not been received (October 2011).

## 2.24 Non/short levy of penalty

Section 45(6) of the GST Act, 1969 provides that where the amount of tax assessed or reassessed exceeds the amount of tax paid with the returns by a dealer by more than 25 *per cent*, penalty not exceeding one and a half times of difference shall be levied. Further, the Commissioner vide public circular dated 3 June 1992 has laid down slab rates for levy of penalty. By virtue of section 9(2) of the CST Act, the above provisions apply to assessments under the CST Act as well.

During test check of the records of 22<sup>19</sup> offices, we noticed between March 2009 and September 2010 in the assessment of 31 dealers for the assessment period from 2002-03 to 2005-06 that the difference between tax assessed and tax paid with returns exceeded 25 *per cent* of the amount of tax paid.

However, the AOs

while finalising the assessments between March 2007 and June 2010 did not levy penalty or levied short as per provisions and Commissioner's circular of June 1992. This resulted in non/short levy of penalty of ₹ 3.91 crore.

After this was pointed out between July 2009 and March 2011, the Department accepted audit observations between September 2010 and October 2011 involving an amount of ₹ 3.89 crore in case of 30 dealers and recovered ₹ 1.01 lakh in case of two dealers. In case of one dealer the Department did not accept the audit observation stating that unpaid tax was less than 50 *per cent* of the total tax payable, therefore penalty levied at the rate of 20 *per cent* was correct. Reply is not tenable as the percentage of unpaid tax was to be calculated on the tax paid and not on total tax payable. Particulars of recovery in remaining cases have not been received (October 2011).

After we reported (June 2011) the matter, the Government confirmed the reply of the Department in 15 cases; the reply in the remaining cases has not been received (October 2011).

<sup>19</sup> ACCT : 1, 8, 10, 11, 20, 21 Ahmedabad, Enforcement Ahmedabad, Ankleshwar, 2 Bhavnagar, Gandhidham, 24 Gandhinagr, Navsari, 3 Rajkot, 6 Surat, 2,5,7 Vadodara, 1 Vapi, Vijapur

DCCT: 1,2,4 Ahmedabad

**The Commissioner may instruct all the assessing officers for applying provisions of penalty as per the circular of the Department while finalising assessments.**

### 2.25 Avoidable payment of interest on refunds

Under Section 54 of Gujarat Sales Tax Act, 1969, where refund of any amount becomes due to the dealer by virtue of an order of assessment under Section 41, he shall, subject to the provisions of the section, be entitled to receive in addition to the said amount, simple interest at the rate of nine *per cent* per annum on the said amount from the date immediately following the date of closure of the accounting year to which the said amount relates to the date of order of assessment.

During test check of the records of two<sup>20</sup> offices, it was noticed between April and December 2010 in the assessment of two dealers for the period 2004-05 finalised between June 2008 and March 2009 the Department could have avoided the payment of interest on refund of ₹ 2.50 crore as detailed below:

Sl. No.	No. of dealers	Rule	Violation	Interest paid
1	1	Rule 52A of the GST Rules, 1970 stipulates that where a dealer has furnished a quarterly return according to which, tax payable as per the said return is less than the tax actually paid by him for the said quarter and if the dealer desires that the payment so made in excess of the tax payable as per the said return shall be adjusted towards the tax payable as per return of the subsequent quarter, the dealer may make such adjustment in the return of the subsequent quarter in the same year.	Excess payment of tax of ₹ 7.70 crore in the first quarter of 2004-05 was not allowed to be adjusted in the subsequent months, despite dealer's request.	₹ 2.30 crore
2	1	Section 54 (1) of the GST Act, 1969 provides that no interest shall be payable on the amount of refund where an amount required to be refunded is refunded within 35 days of the order.	The Assessing Officer took 234 days after the date of order to pay the refund for which the Department paid additional interest of ₹ 19.93 lakh.	₹ 19.93 lakh

This resulted in excess/avoidable payment of interest of ₹ 2.50 crore on refund.

The cases were pointed out to the Department in March 2011. The Department accepted the audit observation in one case involving ₹ 19.93 lakh. In another case involving ₹ 2.30 crore, while not accepting the audit observation, stated

<sup>20</sup> ACCT: 6 Ahmedabad  
DCCT: Petro-2 Ahmedabad

that the dealer was called for to furnish certain information/documents in respect of first quarter to ascertain the correctness of returns. Since the dealer could not furnish the same, excess payment claimed in the returns was not allowed to be adjusted in the subsequent returns. Reply of the Department is not tenable in the light of the facts that though the dealer did not produce the documents, yet interest was paid to the dealer up to the date of assessment.

We reported the matter to the Government (July 2011); their reply has not been received (October 2011).

### 2.26 Non/short levy of interest

Section 47(4A) of the GST Act, 1969 provides that if a dealer does not pay the amount of tax within the prescribed period and if the amount of tax assessed or reassessed exceeds the amount of tax already paid by more than ten *per cent*, simple interest at the rate of 24 *per cent* per annum for the period upto 31 August 2001 and at the rate of 18 *per cent* per annum thereafter is leviable on the amount of tax remaining unpaid for the period of default. By virtue of Section 9(2) of CST Act, the above provisions apply to assessments under the CST Act as well.

During test check of records of 13<sup>21</sup> offices, we noticed between August 2009 and December 2010 in the assessment of 20 dealers for the period from 1997-98 to 2005-06 finalised between July 2007 and September 2009 that AOs either did not levy interest or levied it short on the amount of unpaid tax. This resulted in non/short levy of interest of

₹ 32.81 lakh.

The above facts were brought to the notice of the Department between January 2010 and March 2011. The Department accepted audit observations between February 2010 and October 2011 involving ₹ 17.97 lakh in case of all dealers and recovered ₹ 2.36 lakh in case of six dealers. Particulars of recovery in the remaining cases have not been received (October 2011).

After we reported (June 2011) the matter, the Government confirmed the reply of the Department in 12 cases; the reply in the remaining cases has not been received (October 2011).

<sup>21</sup> DCCT: 1, 2, 5 Ahmedabad, Enforcement-Gandhinagar  
ACCT: 1, 8, 15 Ahmedabad, 24 Gandhinagar, 5 Rajkot, 6 Surat, 2, 5, 7 Vadodara



## 2.27 Incorrect allowance of deduction from sales turnover

Section 41(3) of GST Act, 1969 provides that the assessing authority after considering all the evidences which may be produced in support of declaration made by the dealers shall assess the amount of tax due from them.

During test check of the records of two <sup>22</sup> offices, we noticed between January and February 2010 in the assessment of two dealers for the period 2005-06 finalised between

February 2007 and August 2008 that the AOs allowed deduction of ₹ 52.91 crore without any evidence in support of declaration made by the dealers, for allowing deduction from levy of tax as mentioned below:

Sl. No.	Sales turnover allowed to be deducted without evidence (₹ in crore)	Commodity	Rate of tax	Tax involved (₹ in lakh)
1	51.74	Coke	4%	206.95
2	1.17	Automobile	8%	8.66

This resulted in underassessment of ₹ 2.23 crore including interest of ₹ 3.64 lakh and penalty of ₹ 3.46 lakh.

The above facts were brought to the notice of the Department between August and September 2010. The Department accepted the audit observations between March and October 2011 involving an amount of ₹ 2.24 crore in case of both the dealers and adjusted ₹ 2.07 crore against the incentive limit of the dealer in one case. The particulars of recovery in remaining one case has not been received (October 2011).

We reported the matter to the Government (July 2011); their reply has not been received (October 2011).

## 2.28 Non/short levy of tax on Works Contract

Section 55 A of the GST Act, 1969 provides that a dealer engaged in works contract may opt to pay in lieu of tax, a lump sum amount by way of composition, at the rate fixed by Government from time to time on the total value of the contract. Further, as per judicial decisions, the property of materials such as chemicals and dyes used in the process of dyeing and printing are passed on to the fabrics of the customers and such passing of property of material is a deemed sale and tax is leviable on such materials.

During test check of records of five offices<sup>23</sup>, we noticed between May 2009 and February 2010 in the assessment of six dealers for the period from 2004-05 to 2005-06 that the AOs in two cases did not levy

<sup>22</sup> ACCT: Gandhidham, 2 Vadodara

<sup>23</sup> ACCT: 6 & 21 Ahmedabad, 4 & 5 Vadodara  
DCCT: 1 Ahmedabad



composition tax at correct rates. In another case, a composition permission holder was allowed deduction from turnover as resale and in another case a dealer was allowed to collect tax though not eligible as per the Act. In case of two dealers, the AOs did not levy tax on works contracts of dyeing and printing though the tax was leviable in view of the judicial decisions. This resulted in total under assessment of tax of ₹ 50.47 lakh including interest of ₹ 8.80 lakh and penalty of ₹ 14.84 lakh.

The above facts were brought to the notice of the Department between September 2009 and October 2010; the Department accepted the audit observations in four cases involving ₹ 25.40 lakh and recovered ₹ 0.56 lakh in one case. In case of two dealers the Department did not accept the audit observations stating that exemption from levy of tax was correctly allowed in view of Commissioner's Circular dated 22.9.1986. Reply is not tenable in view of the judicial pronouncements<sup>24</sup>. The particulars of recovery in the remaining cases have not been received (October 2011).

After we reported (June 2011) the matter, the Government confirmed the reply of the Department in two cases; the reply in the remaining cases has not been received (October 2011).

## 2.29 Incorrect allowance of deduction against forms

The GST Act provides that the sales made on certain declarations are allowed without payment of tax subject to fulfillment of the prescribed conditions. Sales of prohibited goods against declaration in Form 19 are not permissible.

During test check of the records of five<sup>25</sup> offices, we noticed between July 2008 and March 2010 in the assessment of five dealers for the period from 2003-04 to 2005-06 finalised between July 2006 and November 2008 that the AOs allowed either sales of

prohibited goods against Form 19 or sale without production of forms. This resulted in underassessment of ₹ 12.96 lakh including interest of ₹ 3.04 lakh and penalty of ₹ 2.55 lakh.

The above facts were brought to the notice of the Department between November 2008 and March 2011. The Department accepted the audit observations in all cases involving an amount of ₹ 12.70 lakh and recovered ₹ 0.46 lakh in two cases. The particulars of recovery in remaining cases have not been received (October 2011).

<sup>24</sup> M/s Mathushree Textiles Ind. Ltd. (132 STC 539)  
M/s Teaktex Processing Complex Ltd. (136 STC 435)  
M/s Bijoy Processing Ind. (92 STC 503)

<sup>25</sup> ACCT: 1 and 21 Ahmedabad, 24 Gandhinagar, Vyara  
DCCT: Nadiad

After we reported (July 2011) the matter, the Government confirmed the reply of the Department in one case; the reply in the remaining cases has not been received (October 2011).

### **2.30 Incorrect classification of goods**

The GST Act provides for levy of tax at the rates as prescribed in the schedules to the Act, depending upon the classification of the goods. However, where the goods are not covered under any specific entry of the schedule, general rate of tax given in residuary item is applicable.

During test check of records of four offices<sup>26</sup>, we noticed between March 2007 and May 2010 that the AOs allowed four dealers to pay tax at lower rates due to incorrect classification

of goods during the period from 2000-01 to 2005-06 while finalising assessments between July 2004 and July 2008. This resulted in short realisation of tax of ₹ 10.97 lakh including interest of ₹ 2.56 lakh and penalty of ₹ 2.13 lakh.

The above facts were brought to the notice of Department between June 2009 and January 2011. The Department accepted the audit observation in all cases. Particulars of recovery have not been received (October 2011).

After we reported (July 2011) the matter, the Government confirmed the reply of the Department in two cases; the reply in the remaining cases has not been received (October 2011).

### **2.31 Unauthorised utilisation of Form 17-B**

Form 17 B is issued under Section 13(A)(ii)(a) of the Gujarat Sales Tax Act, 1969 by a licensed dealer for purchasing goods specified in Schedule II B to the Act without payment of tax for resale by him within the state of Gujarat otherwise than in the course of inter State trade or commerce or export out of the territory of India.

During test check of the records of ACCT-15, Ahmedabad, we noticed in case of M/s. Shiv Enterprise from the registration certificate file that his registration certificate was cancelled with effect from 1 April 2005 on request as the

dealer had discontinued his business. Scrutiny of forms issue register revealed that a book of form 17B containing 25 forms bearing serial number 11246926 to 11246950 was issued on 10.11.2004 to the dealer by the commercial tax unit. However, at the time of cancellation of the registration of the dealer, account of utilised statutory forms was not taken. The statutory forms remained unutilised were also not taken back.

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<sup>26</sup> ACCT: 4, 10 Ahmedabad, 5 Vadodara, 2 Vapi

Further, during cross-check of the forms, we noticed from the assessment file of one M/s. Vallabh Trading Co. for the period 2005-06 falling under jurisdiction of the ACCT-Patan that the dealer had sold cotton valued ₹ 19.46 crore to M/s. Shiv Enterprise of ACCT-15, Ahmedabad against five forms 17B bearing serial numbers 11246944, 11246946, 11246947, 11246949 & 11246950. It was further noticed that the assessing officer had disallowed his sales against these forms and raised demand on these transactions. It was evident from the result of the cross-check of the forms that M/s. Shiv Enterprise unauthorisedly utilised forms 17 B even after cancellation of his registration. The above cross-check of forms was done for five forms only and utilisation of remaining 20 forms could not be verified by audit.

On the facts being brought to the notice of the Department in September 2010, Department accepted in October 2011 that details of utilisation of forms issued to the dealer was not traceable. Loss of revenue could not be ascertained in absence of details of utilisation.

**The Department should invariably obtain details of forms issued to a dealer at the time of cancellation of his registration number.**

### 2.32 Short levy of tax due to application of incorrect rate (CST)

The GST Act provides to levy tax at the rates as provided in the schedules to the Act, however, where the goods are not covered under any specific entry of schedule, rate of tax given for residuary entry is applicable. Further, under Section 8(1) of CST Act, 1956 every dealer who in the course of inter-State trade or commerce sells to the Government any goods or sells to a registered dealer other than the government goods of the description referred to in sub-section 3 shall be liable to pay tax at the rate of four per cent. Explanation below section 8 of CST Act says that sale of any goods shall not be deemed to be exempt from tax generally payable under the sales tax law of the concerned State if the sale of such goods is exempt only in specified circumstances or conditions.

During test check of records of five<sup>27</sup> offices, we noticed between December 2009 and August 2010 in the assessment of eight dealers for the period from 2003-04 to 2005-06 finalised between July 2007 and February 2009 that the Assessing Officers incorrectly assessed tax on sales turnover of ₹ 37.26 crore of the commodities as mentioned below:

<sup>27</sup> ACCT : 6, 20, 21 Ahmedabad, Godhra, 2 Vadodara

Sl. No.	No. of dealer	Commodity	Applicable rate of tax (%)	Rate applied	Turnover of sales	Short levy	Remarks
1.	6	Insecticides and pesticide	4	2	₹ 34.72 crore	₹ 67.91 lakh	Insecticides and pesticides fall under entry 136 of schedule II A to the GST Act attract tax at the rate of six <i>per cent</i> . The State Government vide its notification dated 1.9.2001 specified tax at the rate of two <i>per cent</i> on sales of insecticides and pesticides for use in the agriculture; else the applicable rate was four <i>per cent</i> . As such, the general rate of tax applicable to the sale of insecticides and pesticides was four <i>per cent</i> Hence, as per proviso of the CST Act, inter State sale supported with C forms attracts tax at the rate of four <i>per cent</i> .
2.	1	Detergent & toilet soap	1.2 & 4 respectively	4 & 1.25	₹ 1.44 crore	₹ 80.92 lakh and ₹ 1.44 crore	As rate of tax and turnover was higher of toilet soap than that of detergent, incorrect application of rate of tax resulted in short levy of CST.
3.	1	Fire proof door	12	10	₹ 28.47 lakh	₹ 46,216	The commodity falls under entry 195 of schedule II A and attracts tax @ 12%, on inter State sales without form C was to be levied @ 12%.

Total short levy of tax was ₹ 90.70 lakh including interest of ₹ 19.73 lakh and penalty of ₹ 0.51 lakh.

After this was pointed out between July 2010 and March 2011, the Department accepted (between October 2010 and October 2011) audit observations involving an amount of ₹ 64.85 lakh in case of seven dealers. In case of one dealer the Department did not accept the audit observations stating that the dealer had permission for manufacture and sale of pesticides for agricultural purposes only. Reply of the Department is not tenable in absence of notification under Section 8(5) of the CST Act. The concessional rate of tax is leviable only on local sales and not on inter State sales. The particulars of recovery have not been received (October 2011).

We reported the matter to the Government (July 2011); their reply has not been received (October 2011).

### 2.33 Non-levy of CST

As per Section 7 of the Gujarat Value Added Tax Act, 2003 tax is leviable at the rates prescribed in the schedules to the Act depending upon the classification of the goods. Under Section 8 of the CST Act, 1956 as amended from 11<sup>th</sup> May 2002 effective from 1.6.2002 on Inter State Sales (other than declared goods) not supported by declaration in Form-C, tax is leviable at the rate of 10 *per cent* or at the rate applicable to sales of such goods inside the state whichever is higher.

During test check of records of the office of ACCT-8, Surat, we noticed in October 2010 in the assessment of a dealer for the year 2006-07 finalised in June 2009 that the AO allowed sales of “narrow fabrics” as tax free. The notification dated 29.4.2006 specified narrow fabric, elastic fabric and rubber thread as industrial inputs and tax was leviable

at four *per cent*. Further, the words “narrow fabrics” and “elastic fabrics” were deleted from the list vide notification dated 29 May 2006. Thus the product “narrow fabrics” was taxable at four *per cent* during the period between 29.4.2006 and 29.5.2006 if sold in the State and at 10 *per cent* if sold during the course of inter-State sales without Form-C. Narrow fabrics valued ₹ 31.43 lakh was required to be assessed to tax at 10 *per cent* (without Form C). Failure to do so resulted in non-levy of tax of ₹ 8.26 lakh including interest ₹ 1.12 lakh and penalty of ₹ 4.29 lakh.

We pointed out to the Department in March 2011. Department accepted the audit observation (October 2011).

We reported the matter to the Government (July 2011); their reply has not been received (October 2011).

### 2.34 Non-levy of tax on High Sea Sale

Section 5(2) of the CST Act provides that a sale or purchase of goods shall be deemed to take place in the course of import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the custom frontiers of India. Further, Section 41(3) of GST Act provides that the assessing authority after considering all the evidences which may be produced in support of declaration made by the dealer shall assess the amount of tax due from the dealer.

During test check of the records of ACCT-Gandhidham, we noticed in December 2008 in the assessment of one dealer for the year 2005-06 finalised in March 2008 that the AO allowed deduction of high sea sales<sup>28</sup> of ₹ 1.70 crore but did not keep the prescribed documents *viz.* copy of

<sup>28</sup> Sales of goods before crossing the custom frontiers of India, by endorsing the import documents in favour of the purchaser by importer.

agreement between the importer and purchaser, bill of entry endorsed in favour of the purchaser, sales bill, proof of payment of customs duty etc. on record in support of the deduction. Before allowing the deduction of high sea sales, the AO should have kept the prescribed documents on record as evidence in support of the deduction allowed. In the absence of relevant documents, correctness of deduction allowed from turnover could not be verified. The tax involved in these transactions worked out to ₹ 32.39 lakh including interest of ₹ 5.11 lakh and penalty of ₹ 10.23 lakh.

The above facts were brought to the notice of the Department in June 2009. The Department accepted the audit observations (March 2011) and raised demand of ₹ 38.04 lakh and recovered ₹ 4.85 lakh (October 2011). The particulars of recovery of remaining amount is awaited (October 2011).

After we reported (July 2011) the matter, the Government confirmed the reply of the Department.

### 2.35 Non/short levy of CST due to non production of forms or acceptance of incorrect/incomplete forms

Section 8 of the Central Sales Tax (CST) Act, 1956 provides for levy of tax at the rate of four *per cent* on inter-state sale of goods made against declaration in Form 'C'. Where the sale is not supported by declaration in Form 'C', tax is leviable at the rate of 10 *per cent* or at the rate applicable on such goods inside the State, whichever is higher. In respect of declared goods where the sale is not supported by Form 'C', tax is leviable at twice the rate applicable.

**2.35.1** During test check of the records of eight offices<sup>29</sup>, it was noticed between January 2010 and November 2010 in the assessment of 26 dealers for the period from 1999-2000 to 2005-06 finalised between March 2006 and September 2009 that AOs incorrectly levied concessional rates of tax instead of appropriate rate

of tax as detailed below:

Sl. No.	No. of dealers	Total Short levy (₹ in lakh)	Nature of objection
1	22	124.65	Concessional rate of tax was levied without production of form 'C'.
2	4	0.84	A.O. allowed concessional rate of tax on unscrupulously enhanced value of forms.
<b>Total</b>	<b>26</b>	<b>125.49</b>	

This resulted in short levy of tax of ₹ 1.25 crore including interest of ₹ 27.97 lakh and penalty of ₹ 34.12 lakh.

<sup>29</sup> ACCT: 2, 10 Ahmedabad, 5 Rajkot, 1 Surat, 5 Vadodara  
DCCT: 1, Petro 1 Ahmedabad, 12 Vadodara

After these cases were pointed out between August 2010 and March 2011, the Department accepted the audit observations involving ₹ 71.17 lakh in case of 18 dealers and recovered ₹ 2.43 lakh in case of three dealers. In case of 13 assessments of eight dealers involving audit observations of ₹ 54.32 lakh the Department stated that the assessments were done keeping in view Commissioner's circular dated 28.02.2006 under simple assessment scheme wherein submission of forms were not required. Reply of the Department is not acceptable for the reason that after amendment of section 8 of CST Act, 1956 from 1 June 2002, the State Government cannot allow concessional rate/exemption on inter State sale of goods not supported by declaration in Form C. Particulars of recovery in the remaining cases have not been received (October 2011).

After we reported (July 2011) the matter, the Government confirmed the reply of the Department in 14 cases; the reply in the remaining cases has not been received (October 2011).

Section 8 of the Central Sales Tax (CST) Act, 1956 provides for levy of tax at the rate of four *per cent* on inter-state sale of goods made against declaration in Form 'C'. Where the sale is not supported by declaration in Form 'C', tax is leviable at the rate of 10 *per cent* or at the rate applicable on such goods inside the State, whichever is higher. In respect of declared goods where the sale is not supported by Form 'C', tax is leviable at twice the rate applicable. As per the decision of Honourable Supreme Court in the case of M/s. India Agency Vs. Addl. Commissioner of Sales Tax, Bangalore (139-STC-329) it is mandatory to submit original copy of declaration of Form 'C' to avail benefit of concession.

**2.35.2** During test check of the records of six offices<sup>30</sup>, we noticed between August 2009 and July 2010 in the assessment of 10 dealers for the period from 2004-05 to 2005-06 finalised between March 2008 and January 2009 that sales of various goods were not supported by

the original copy of Form 'C'. However, AOs incorrectly levied concessional rates of tax instead of at appropriate rates. This resulted in short levy of tax of ₹ 71.71 lakh including interest of ₹ 15.01 lakh and penalty of ₹ 17.52 lakh.

After the cases were pointed out between February 2010 and March 2011, the Department accepted the audit observations involving ₹ 71.53 lakh in case of all dealers and recovered ₹ 1.68 lakh in case of two dealers. The particulars of recovery in remaining cases have not been received (October 2011).

After we reported (July 2011) the matter, the Government confirmed the reply of the Department in six cases; the reply in the remaining cases has not been received (October 2011).

<sup>30</sup> ACCT: 1 Ahmedabad, 1, 2 and 5 Rajkot.  
DCCT: 23 Rajkot and 11 Vadodara



The CST Act and Rules made thereunder provide that where any dealer transfers goods from one state to another not by reason of sale, he shall furnish a declaration in form 'F', duly filled and signed by the principal officer of the other place of business, along with the evidence of dispatch of such goods. If the dealer fails to furnish such declaration, the movement of such goods shall be deemed to have been occasioned as a result of sale. By virtue of Section 9 (2A) of CST Act, provisions of interest and penalty as per general sales tax law applicable in the State becomes applicable.

**2.35.3** During test check of the records of two<sup>31</sup> offices, we noticed between January and February 2010 in the assessment of two dealers for the period 2005-06 finalised between May 2007 and June 2008 that in one case the AO allowed claim of transfer of goods to other place of business without any declaration or evidence for dispatch of such transfer. In another case, the AO allowed unauthorised corrections and enhancement in the value of the 'F' forms. This resulted in incorrect deduction of turnover involving tax of

₹ 39.88 lakh including interest of ₹ 0.62 lakh and penalty of ₹ 0.94 lakh as detailed in the table below:

Sl. No.	No. of Dealer	Short Levy (₹ in lakh)	Nature of observation
1	1	36.75	Values of 'F' forms were enhanced by applying white ink.
2	1	3.13	Deduction allowed without production of form 'F'.
<b>Total</b>	<b>2</b>	<b>39.88</b>	

The above facts were brought to the notice of Department between August and September 2010. The Department accepted the audit observations in both the cases. The particular of recovery have not been received (October 2011).

We reported the matter to the Government (June 2011); their reply has not been received (October 2011).

<sup>31</sup> DCCT: 2 Ahmedabad ,11 Vadodara



Rule 12(10) of the Central Sales Tax (Registration and Turnover) Rules, 1957, provides that the dealer has to furnish to the prescribed authority, a certificate in form H, duly filled in with all details *viz.* agreement number and date relating to such export, particulars of goods along with evidence of export of such goods in support of his claim for export. By virtue of Section 9 (2A) of CST Act, provisions of interest and penalty as per general Sales Tax law applicable in the state becomes applicable.

**2.35.4** During test check of the records of five <sup>32</sup> offices, we noticed between October 2009 and March 2010 in the assessment of 11 dealers for the period from 2004-05 to 2005-06 finalised between July 2007 and March 2009 that the AOs allowed export sales valued at ₹ 3.20 crore either without production of form H/bill of lading or

against incomplete certificates in form 'H'. This resulted in underassessment of ₹ 60.46 lakh including interest of ₹ 12.33 lakh and penalty of ₹ 16.38 lakh.

The above facts were brought to the notice of the Department between December 2009 and December 2010. The Department accepted the audit observations involving an amount of ₹ 60.46 lakh in case of all the dealers. The particulars of recovery have not been received (October 2011).

After we reported (June 2011) the matter, the Government confirmed the reply of the Department in two cases; the reply in the remaining cases has not been received (October 2011).

### **Observations related to Dadra and Nagar Haveli**

#### **2.36 Evasion of tax on fraudulent utilisation of Forms**

The turnover of purchases means the aggregate of the amounts of purchase price paid or payable by a dealer in respect of any purchase of goods made by him during a given period after deducting the amount of purchase price, if any, refunded to the dealer by the seller in respect of any goods purchased from the seller and returned to him within the prescribed period. Further, taxable turnover means the turnover of all sales or purchases of a dealer during the prescribed period in any year, which remains after deducting therefrom the turnover of sales not subject to tax. There shall be levied a tax on the turnover of sales of goods at the prescribed rates. Moreover, penalty at prescribed rates may be levied on tax so evaded.

**Lack of effective system of cross check of interstate transactions of purchases by the registered dealers caused total non-levy of tax of ₹ 41 lakh.**

<sup>32</sup> ACCT: 21 Ahmedabad, 3 Jamnagar, Kalol, 5 Rajkot  
DCCT: 23 Rajkot

### **2.36.1 Evasion of tax due to utilisation of fake forms**

During exercise of cross check, data regarding inter-state purchases effected by the dealers registered with Commercial Tax Department, Dadra and Nagar Haveli, against 'C' forms was collected and same were verified with the inter-State sales records of the selling dealers registered with Commercial Tax Department of the respective States. We noticed in case of M/s Super Flooring, that 'C' form bearing number DNH/C/0230304 involving value of ₹ 0.69 crore was cancelled by the dealer as per his declaration to the Department. However, the said form was utilised by the selling dealer of Gujarat for claiming concessional rate of CST. This shows that the declaration filed by the dealer was not correct and the dealer had actually issued the said form to the selling dealer for receiving inter-State purchases. This had resulted in suppression of inter-State purchases and consequential suppression of sales turnover to that extent. Tax was required to be levied at the prescribed rates on the sales turnover so suppressed. Thus, suppression of sales turnover by the dealer resulted in non levy of tax to the tune of ₹ 3 lakh.

### **2.36.2 Evasion of tax due to fraudulent use of forms**

In case of 13 purchasing dealers of Dadra and Nagar Haveli, 20 'C' forms involving sale value of ₹ 5.59 crore, it was noticed that the purchasing dealer had issued the 'C' form to a selling dealer other than the selling dealer claiming concessional rate of CST. Hence, the dealers were not liable to disclose their inter-State purchases effected against the said forms used illegally and the purchases against illegal 'C' form escaped from accounting/assessment. This resulted in suppression of inter-State purchases and consequential suppression of sales turnover to that extent. Tax was required to be levied at the specified rates on the sales turnover so suppressed. Thus, suppression of sales turnover by the dealers resulted in non-levy of tax to the tune of ₹ 22 lakh.

### **2.36.3 Evasion of tax due to under disclosure of inter-State purchases**

In case of 21 dealers of Dadra and Nagar Haveli effecting purchases against 32 'C' forms involving value of ₹ 5.45 crore, the purchasing dealers had shown inter-State purchases of ₹ 1.39 crore only. Hence, the dealers had shown inter-State purchases lesser by ₹ 4.06 crore than that disclosed by the selling dealer of the respective State. As such, the purchasing dealer had under-disclosed the value of inter-State purchases; consequently, sales turnover of the dealer was also suppressed. Hence, the dealer was required to pay tax at the prescribed rates for sales turnover so suppressed. Thus, suppression of sales by the dealer resulted in short levy of tax to the tune of ₹ 16.25 lakh.

**Government/Department may consider installing a system of exchange of information with other states on a regular basis to avoid the sales escaping assessment.**