

CHAPTER-2 Taxes/VAT on Sales, Trade etc.

2.1 Tax administration

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

2.2 Results of audit

Test check of the records of 43 units relating to Sales tax/VAT during 2012-13 showed underassessment of tax and other irregularities involving ₹ 285.74 crore in 394 cases under the following categories as mentioned in table 2.1:

Table 2.1

| (₹ in crore) | | | |
|--------------|---|--------------|---------------|
| Sl.No. | Categories | No. of cases | Amount |
| 1. | Loss of revenue due to excess refund of VAT | 39 | 14.58 |
| 2. | Non/short levy of sales tax/VAT | 158 | 196.30 |
| 3. | Incorrect grant of exemption from tax | 25 | 09.85 |
| 4. | Non/short levy of penalty | 05 | 34.43 |
| 5. | Other irregularities | 167 | 30.58 |
| Total | | 394 | 285.74 |

During the year 2012-13, the Department accepted audit observations involving ₹ 142.82 crore in 215 cases and recovered ₹ 0.72 crore in 15 cases pertaining to the audit findings of previous years.

A few illustrative audit observations involving ₹ 21.98 crore are discussed in the succeeding paragraphs.

2.3 Audit of incentive scheme implemented under Deferment and Exemption (D&E) Rules 1991.

The Department of Industries (DOI), Government of Punjab formulates the schemes of incentives for industries and issues notifications in this regard setting forth eligibility conditions for prospective industries. Based on the schemes, notifications, Excise and Taxation department issued notifications under various provisions of PGST 1948 (now VAT Act 2005) for such exemption and concessions. To avail the benefit of exemptions/deferment, the unit has to obtain eligibility certificate (EC) from General Manager of District Industries Centre (DIC) specifying the category of unit, kind of goods to be manufactured, investment in fixed capital assets, quantum of benefit and period of availment.

2.3.1 Inadmissible allowance of ITC/Refund

Condition No. 2(1) of new conditions for concessions under the PVAT Act, 2005 and the PGST (Deferment and Exemption) Rules 1991 provides that a unit availing the benefit of deferment or exemption from payment of tax, shall be entitled to refund of tax, paid or payable by it on the purchases made from a taxable person within the State, for use in manufacturing, processing or packing of taxable goods and no input tax credit (ITC) shall be admissible/available in respect of such purchases. It was further provided under Commentary No. 22 under Section 13 of PVAT Act that ITC will not be available in respect of entry tax paid on purchases made by exempted units.

The Excise and Taxation Commissioner further clarified vide circular No. 463-84 dated 2.3.2007 that a dealer dealing in both exempted and non-exempted goods, is not allowed to set off the ITC on purchases made for exempted goods against the out put tax liability of non exempted goods.

(a) Audit of the scheme (November 2012 and January 2013) showed that in three cases¹ of assessment/refund for the period 2010-11, the dealers (exempted units) were allowed inadmissible refund of ₹ 1.15 crore paid as entry tax.

The Government in its reply stated (May 2013) in respect of AETC Amritsar-II that as per Section 13A of PVAT Act 2005, every taxable person is entitled to ITC in respect of entry tax paid by him, if such goods are used for sale in the State or in the course of inter State trade or commerce or in the course of export as per amendment inserted with effect from 21-11-2007 vide no.3-leg/2008 dated 09/01/2008. Hence, refund was rightly allowed by

¹ Amritsar-II and Faridkot.

the Designated officer. The reply of the Government is not acceptable since condition no. 2(1) notified on 6.4.2005 does not allow refund of entry tax paid by the exempted units.

(b) Audit (July 2012 and December 2012) of six assessment/refund cases showed that dealers were allowed ITC of ₹ 7.15 crore against the admissible ITC of ₹ 4.21 crore. The balance ITC of ₹ 2.94 crore were required to be claimed as refund since it was input tax paid on purchases made in connection with manufacturing of exempted goods. This also resulted in short debit of exemption by ₹ 2.94 crore.

(c) Audit (July 2012 to November 2012) of assessment cases of 10 dealers² for the year 2005-06 to 2006-07 showed that exemption to the tune of ₹ 2.05 crore were incorrectly debited to the accounts of the dealer as against the correct exemption of ₹ 3.78 crore leading to short debit of exemption of ₹1.73 crore.

(d) Audit found (July 2012 to November 2012) in assessment cases of seven dealers³ for the year 2005-06 to 2006-07 that the exemption accounts were debited only to the extent of refund of ₹ 8.85 lakh as against the refund of ₹ 92.70 lakh which resulted in short debit of exemption of ₹ 83.85 lakh.

The Department accepted and debited the exemption to the tune of ₹ 29.05 lakh in case of Jalandhar-II.

(e) Audit (July 2012 to November 2012) of assessment cases of two dealers⁴ for the years 2007-09 showed that the exemption account of the dealers were debited by ₹ 2.26 crore on account of inter-state stock transfer as against ₹ 3.47 crore resulting in short debit of exemption of ₹ 1.21 crore.

In case of a dealer of AETC Amritsar-II, the Government stated that the firm made branch transfer from purchases made within the state as well as inter-state purchase and debited exemption on pro-rata basis. The reply of the government is not acceptable as sub condition (ii) of condition 3 requires that output tax on inter-state stock transfer be calculated at the rate of four *per cent* on the estimated value of goods so transferred.

2.3.2 Inadmissible allowance of Notional Input Tax Credit

Sub condition (7) of condition 5 of D&E VAT conditions provides that a taxable person which is an exempted unit shall not be entitled for notional input tax credit on purchases of raw material manufactured in any other exempted unit.

² Muktsar 9 and Sangrur 1.

³ Bathinda-2, Sangrur-3, Jalandhar-II 1 and Fatehgarh Sahib 1.

⁴ Ferozepur 1 and Amritsar-II 1.

Audit (December, 2010 and 2011) of assessment for the year 2006-07 of a dealer under AETC Ferozepur showed that the assessee had made gross sale of ₹ 107.57 crore including ₹ 92.70 crore of exempted sale and the dealer made exempted purchase of ₹ 16.81 crore out of which ₹ 14.48 crore was consumed in exempted sales. The dealer was allowed ₹ 49.88 lakh notional input tax credit on purchases made from exempted unit, against admissible notional input tax credit of ₹ 9.29 lakh. This resulted into inadmissible allowance of notional input tax credit of ₹ 40.60 lakh.

2.3.3 Excess availing of exemption

Audit found (July 2012) in the assessment of six dealers⁵ for the year 2006-07 and 2007-08 that the available balance of exemption was taken as ₹ 16.46 crore as against the actual balance of exemption of ₹ 15.04 crore leading to excess allowance of exemption of ₹ 1.42 crore.

In case of Jalandhar-II, Department stated that exemption of five lakh had been debited, however, reply in respect of others and reply of the Government were still awaited.

The above points were brought to the notice of the Department and Government. The replies wherever received have been incorporated and are awaited in respect of others (October 2013).

2.4.1 Excess/inadmissible allowance of refund

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

Audit of assessment of four dealers for the period 2008-09 to 2010-11 showed that they were allowed inadmissible refund of ₹ 83.61 lakh in contravention of the various provisions of the Act as per details given in table 2.2:

⁵ Bathinda 1, Ludhiana II 1, Sangrur 2, Moga 1 and Jalandhar II 1.

Table 2.2

(₹ in lakhs)

| Sl. No. | District | period | Amount | Nature of irregularities |
|---------|-----------------|------------------|--------------|---|
| 1 | Amritsar I | 2008-09 | 3.42 | Allowed refund of ₹ 5.28 lakh inclusive of inadmissible notional input tax credit of ₹ 3.42 lakh. |
| 2 | Mohali | Apr-10 to Jun-10 | 2.17 | Inadmissible entry tax of ₹ 2.17 lakh was refunded. |
| 3 | Fatehgarh Sahib | Jan-10 to Mar-10 | 10.28 | As against the refund of entry tax of ₹ 35.35 lakh, ₹ 45.63 lakh was allowed. |
| 4 | Mohali | Apr-09 to Jun-09 | 67.74 | The dealer restored ITC of ₹ 264.36 lakh in respect of vehicle of received back from job work on ₹ 6,608.88 lakh against ₹ 4,915.32 lakh, resulted in excess allowance of refund of ₹ 67.74 lakh. |
| | | Total | 83.61 | |

The matter was brought to the notice of the Department/Government (June 2012). In respect of case at serial number 4, Government stated (February 2013) that provisional assessment under Section-30 of PVAT Act 2005 was finalised creating an additional demand of ₹ 67.74 lakh which stands adjusted in the refund for the quarter ended June 2010, whereas the refund order states that the amount has been retained subject to final assessment. The reply furnished by government is not acceptable as the final assessment is still awaited. In respect of remaining three cases, their replies were awaited (October 2013).

2.4.2 Non/short/excess/inadmissible allowance of Input Tax Credit

Section 13 of PVAT Act provides that a taxable person shall be entitled to input tax credit, in such manner and subject to such conditions, as may be prescribed, in respect of input tax on taxable goods, including capital goods, purchased by him from a taxable person within the State during the tax period.

Audit (between February 2011 and May 2012) of 12 cases of assessments for the period 2005-11 showed that the dealers were allowed excess claim of ITC of ₹ 3.64 crore in contravention to the various provisions of the Act as per details given in table 2.3:

Table 2.3

(₹ in lakhs)

| Sl. No. | District | Period | Excess ITC | Nature of irregularities |
|---------|---|--------------|---------------|--|
| 1 | Tarn Taran | 2008-09 | 2.64 | Credit notes of ₹ 21.15 lakh received on gross purchases of ₹ 549.89 lakh by the dealer were not reduced from the gross purchase at the time of allowing ITC resulting in excess allowance of ITC of ₹ 2.64 lakh. |
| 2 | Amritsar-I | 2006-08 | 5.41 | The ITC of ₹ 89.07 lakh instead of admissible ITC of ₹ 81.60 lakh on eligible purchases of ₹ 6.95 crore was allowed resulting in excess allowance of ITC of ₹ 7.47 lakh. |
| 3 | Amritsar-I | 2007-08 | 2.06 | |
| 4 | Jalandhar-I | 2007-08 | 6.43 | Non reversal of ITC on account of manufacturing tax free goods resulted in excess allowance of ITC of ₹ 6.43 lakh. |
| 5 | Patiala | 2007-08 | 5.28 | NITC at rate of four <i>per cent</i> instead of three <i>per cent</i> admissible to the extent of CST charged was allowed resulting in excess allowance of NITC of ₹ 5.28 lakh. |
| 6 | Ludhiana-II | 2005-06 | 2.04 | Purchase return of ₹ 51.06 lakh was not deducted from the gross purchases of ₹ 352.08 lakh resulting in excess allowance of ITC of ₹ 2.04 lakh on purchases. |
| 7 | Sangrur | 2005-06 | 5.10 | ITC on Capital goods to the tune of ₹ 7.49 lakh instead of ₹ 2.39 lakh was allowed resulting in excess allowance of ITC of ₹ 5.10 lakh. |
| 8 | Fatehgarh Sahib | 2005-06 | 5.70 | Allowance of ITC of ₹ 14,68,024 at four <i>per cent</i> instead of ₹ 7,34,012 at two <i>per cent</i> as notional ITC as admissible to the extent of CST chargeable resulted in excess allowance of notional ITC of ₹ 7.33 lakh |
| 9 | Fatehgarh Sahib | 2005-08 | 1.63 | |
| 10 | Hoshiarpur, Barnala and Ludhiana-I | 2007-11 | 27.44 | Inadmissible allowance of ITC of ₹ 27.44 lakh on purchase of diesel of ₹ 297.17 lakh by dealers not engaged in sale of diesel. |
| 11 | Barnala and Hoshiarpur | 2009-11 | 150.96 | Non reversal of ITC ₹ 150.96 lakh on account of Entry Tax and non-apportionment in respect of branch transfer. |
| 12 | Amritsar-I, Barnala, Fatehgarh Sahib, Hoshiarpur and Mohali | 2005-10 | 149.34 | Non reversal of input tax credit of ₹ 149.34 lakh on account of Branch transfer made by the dealers. |
| | | Total | 364.03 | |

In case of Amritsar-I at serial number 2 and 3, Department stated (February 2013) that the dealers have received credit notes and selling dealer has deposited full amount of VAT. The reply of the Department is not acceptable, as the audit observations point out on wrong calculation of ITC.

In case of Patiala, the Department stated (February 2013) that the condition 5 (5) (ii) is applicable only where exempted goods are sold as such in the course of inter-state trade. The reply of the Department is not acceptable as there is no mention in the condition 5(5) (ii) regarding goods sold as such.

In case of Ludhiana II at serial number 6, the Department stated (February 2013) that the purchases return was shown in VAT-20 due to technical error. The reply of the Department is not acceptable as the observation raised by the audit was from the Annual Statement which was duly certified by the Chartered Accountant. Besides, the dealer also failed to rectify the error, if any, which came to his notice as provided under Sub-Section-4 of Section 26 of the Act, within specified period. Moreover, no statement in this regard was recorded by designated officer during finalisation of assessment. In remaining cases replies were awaited (October 2013).

2.4.3 Short levy of tax

Audit noticed (between July 2011 and July 2012) in the assessment cases for the years 2005-06 to 2008-09 of seven dealers, the designated officer while finalising assessment short levied output tax of ₹ 4.51 crore on account of mis-classification, short computation of taxable turnover and irregular allowance of deduction from gross turnover as per details given in table 2.4:

Table 2.4

(₹ in lakhs)

| Sl. No. | District | Period | Short levy of tax | Nature of irregularities |
|--------------|--------------|---------|-------------------|---|
| 1 | Ludhiana I | 2005-07 | 11.91 | Gross sales of ₹ 585.85 lakh were inclusive of tax free goods of ₹ 90.95 lakh. The deduction on account of tax-free sales of ₹ 388.69 lakh was allowed resulting in excess deduction of ₹ 297.74 lakh. As a result output tax of ₹ 11.91 lakh was short levied. |
| 2 | Ludhiana I | 2008-09 | 58.48 | Control panel, an unclassified item, was levied tax at the rate of four <i>per cent</i> instead of 12.5 <i>per cent</i> resulting in short levy of output tax of ₹ 58.48 lakh. |
| 3 | Mohali | 2007-08 | 54.28 | Tax was assessed on ₹ 21.07 crore instead of ₹ 33.83 crore which resulted in short levy of tax of ₹ 54.28 lakh. |
| 4 | Mohali | 2005-06 | 298.55 | Levied tax on gross turnover of ₹ 74.43 crore instead of ₹ 98.32 crore resulted in short levy of output tax of ₹ 298.55 lakh. |
| 5 | Jalandhar I | 2007-09 | 6.18 | Unclassified item lubricants of ₹ 72.74 lakh was levied tax at four <i>per cent</i> instead of 12.5 <i>per cent</i> resulting in short levy of output tax of ₹ 6.18 lakh. |
| 6 | Jalandhar II | 2006-07 | 16.39 | Levied tax at the rate of two <i>per cent</i> instead of four <i>per cent</i> on government sales against D forms resulting in short levy of CST of ₹ 16.39 lakh. |
| 7 | Nawanshahar | 2005-06 | 5.62 | CST was levied on ₹ 1,410.70 lakh of sales instead of ₹ 1,551.11 lakh leading to non levy of tax on sales of ₹ 140.41 resulted in short levy of CST of ₹ 5.62 lakh. |
| Total | | | 451.41 | |

In case of Serial No. 4, the Department stated (February 2013) that Audit has taken gross turnover as per book version from the trading account, in which company had inadvertently added value of stock transfer twice. The reply of the Department is not acceptable because, as per certified trading account, the gross turnover was ₹ 98.32 crore which was inclusive of branch transfer. The

gross turnover was required to be taken as ₹ 98.32 crore instead of ₹ 74.43 crore.

In respect of case at Serial No. 5, the Department stated (February 2013) that the dealer mistakenly wrote the joint figure of lubricants along with the other sale. The reply of the Department was not acceptable as the item wise account was maintained in Trading and Profit and Loss Account which was duly certified by the statutory auditor. In remaining cases the replies were awaited (October 2013).

2.4.4 Inadmissible availing of exemption

Government of Punjab vide notification No. S.O.17/CA/74/56/S-8/2004 dated 08/10/2004 issued under Section 8(5) of CST Act 1956, allowed the payment of tax payable by M/s Apollo Fibres Ltd., Hoshiarpur in respect of inter State sales of polyster, staple fibre and staple yarn manufactured out of the expanded capacity of their unit, at the concessional rate of half *per cent* subject to production of 'C' Forms. The concession was allowed for five years commencing from the date of commercial production of these goods.

It was judicially held by Hon'ble Punjab and Haryana High Court in case of Lauren Organics Ltd. Vs State of Haryana vide (2007)-6-VST-38(P&H) that when unit availing exemption carried out manufacturing process for first few years of exemption period and thereafter carrying on production on behalf of another company, withdrawal of exemption granted to the earlier unit was justified.

Six companies including M/s Apollo Fibres Ltd. Hoshiarpur, (engaged in manufacture, sale and/or conversion of polyester products) engaged in same business as separate small entities decided to get united with a single unified entity engaged in both manufacturing and marketing of the final products with in-house manufacturing of feed stock and got amalgamated with M/s Indian Petro-Chemicals Corporation Ltd. which was engaged in the business of manufacturing and marketing of Mono Ethylene Glycol (MEG) which is the critical raw material for manufacture of polyester products, and new amalgamated company was named as Reliance Industries (September 2006).

Audit (May 2012) of assessment case of the dealer for the year 2006-07 showed that the dealer made inter-state sale of ₹ 218.58 crore of Polyester staple fibre and polyester yarn and availed concessional rate of CST at the rate of half *per cent*. This was not admissible as the newly emerged unit was not entitled to avail concessional rate of tax and was liable to pay tax at the rate of two *per cent* on inter-State sale. Thus, the availment of concessional rate of CST resulted in short levy of CST ₹ 3.28 crore.

The matter was brought to the notice of the Government/Department; their replies were awaited (October 2013).