

## CHAPTER-II VALUE ADDED TAX/ SALES TAX

### 2.1 Tax Administration

Value Added Tax laws and rules framed thereunder are administered at the Government level by the Additional Chief Secretary (Finance). The Commissioner of Commercial Tax (CCT) is the head of the Commercial Tax Department (CTD), who is assisted by one Special CCT, four Additional CCTs, 11 Joint CCTs, 23 Deputy CCTs, 103 Assistant CCTs and Commercial Tax Officers (CTOs). They are assisted by Commercial Tax Inspectors and other allied staff for administering the relevant Tax laws and rules.

### 2.2 Results of Audit

We test checked the records of 84 units of Commercial Tax Department during 2014-15 and noticed underassessment of tax and other irregularities involving ₹ 190.72 crore in 510 cases which fall under the categories mentioned in **Table 2.2**:

**Table 2.2**

Sl. No.	Category	No. of cases	Money Value (₹ in crore)
1	<b>Performance Audit of System of Registration, Assessment and Collection under VAT</b>	1	124.21
2	Non/short levy of tax, interest and penalty due to application of incorrect rate of tax and mistake of computation	294	37.39
3	Irregular /excess grant of set-off, Input tax credit and grant of incorrect concession/exemption	136	9.58
4	Other irregularities	79	19.54
	<b>Total</b>	<b>510</b>	<b>190.72</b>

During the course of the year, the Department accepted underassessment of tax and other irregularities of ₹ 6.63 crore in 116 cases, which were pointed out in audit during 2014-15 and earlier years. An amount of ₹ 2.31 crore was recovered in 95 cases.

A Performance Audit of **System of Registration, Assessment and Collection under VAT** involving ₹ 124.21 crore and few illustrative audit observations involving ₹ 7.55 crore are mentioned in the succeeding paragraphs.

## 2.3 Performance Audit of System of Registration, Assessment and Collection under VAT

### Highlights

- There was absence of provisions in the GVAT Act to conduct surveys on regular basis to identify/ detect the unregistered dealers to bring them under the tax net.

**(Paragraph 2.3.8.2)**

- There was uneven allocation of audit assessment cases to various assessing authorities and rush of assessment in the last quarter of the fourth year.

**(Paragraph 2.3.9.2 and 2.3.9.3)**

- The provisions in the Notification for remission of tax on sale of oiled /de-oiled cakes created disparity between the manufacturers and traders and subsequent loss of potential revenue to the Government due to non reduction in tax credit of ₹ 3.31 crore.

**(Paragraph 2.3.10)**

- Non-adoption of uniform policy on levy and assessment of Entry Tax on purchase of specified goods in the course of inter-State trade or commerce resulted in non-levy of entry tax of ₹ 1.30 crore.

**(Paragraph 2.3.11)**

- Non-assessment and levy of purchase tax on goods purchased from the unregistered dealers resulted in non-levy of tax of ₹ 52.97 lakh.

**(Paragraph 2.3.12)**

- There was ambiguity in the entries of the list of industrial inputs.

**(Paragraph 2.3.13.2)**

- Application of incorrect rate of tax due to mis-classification of goods resulted in short levy of tax of ₹ 16.52 crore.

**(Paragraph 2.3.13.3 and 2.3.13.4)**

- Incorrect determination of turnover of sales resulted in short levy of tax of ₹ 24.22 crore.

**(Paragraph 2.3.14.3)**

- There was excess allowance of input tax credit of ₹ 1.27 crore.

**(Paragraph 2.3.15)**

- Irregularities in assessment under CST Act involved tax implication of ₹ 50.21 crore.

**(Paragraph 2.3.16)**

- Arrears of revenue of ₹ 20,765 crore were pending for recovery as on 31 March 2015. Of these, ₹ 10,228 crore pertained to *sub judice* cases.

**(Paragraph 2.3.17)**

### 2.3.1 Introduction

The Gujarat Value Added Tax Act, 2003 (GVAT Act) and the Gujarat Value Added Tax Rules, 2006 (GVAT Rules) framed thereunder govern the levy, assessment and collection of Value Added Tax (VAT) in the State. Under GVAT Act, tax is levied at each stage of sales with allowance of credit of tax paid on purchases (called input tax credit) to nullify cascading effect of multiple taxation. Thus, all the registered dealers are liable to pay tax only on value addition. The GVAT Act is administered by the Commercial Tax Department (the Department) of the Government of Gujarat (GoG).

The GVAT Act provides for registration of dealers, filing of periodical returns, self assessment by the dealers and audit assessment of the cases selected by the Department to ascertain the correctness of levy and payment of tax etc. The relevant provisions in the GVAT Act are briefly mentioned as under:

#### Registration of Dealers

Section 21 of the GVAT Act stipulates that any dealer whose total turnover exceeded threshold limit of ₹ five lakhs and taxable turnover exceeded ₹ 10 thousand in a year shall not carry on business as a dealer unless he possesses a valid certificate of registration. The dealers whose turnover does not exceed the threshold limit or dealing in tax free goods mentioned in Schedule I of the Act, can however, carry on the business as un-registered dealer.

#### Self-Assessment by the Dealers

Section 29 of the Act stipulates that every registered dealer shall furnish a correct and complete Return in respect of the transactions made by him in Form-201/202. Further, Section 33 of the Act stipulates submission of an Annual Return in Form 205 containing the details of the Self Assessment made by the dealer. The form is supported by the necessary statutory forms and audited accounts.

#### Audit Assessment by the Department

Section 34 of the Act stipulates that in the cases of dealers, where the Commissioner is not satisfied with the bonafides of any claim of tax credit, exemption, refund, deduction, concession, rebate or genuineness of any declaration or evidence furnished in support thereof, shall be subject to audit assessment by the Department.

#### Collection of tax

Section 42 of the Act stipulates that the amount of tax payable by a dealer on finalisation of the assessment shall be paid within 30 days from the date of service of demand notice. In case of default in the payment, the tax shall be recovered as arrears of revenue under the Gujarat Land Revenue Code.

### 2.3.2 Trend of revenue collection

The Commercial Tax receipts *vis-à-vis* total tax receipts of the Government of Gujarat during the period 2010-11 to 2014-15 were as mentioned in **Table 2.3.2**:

**Table 2.3.2**

(₹ in crore)

Year	Total Tax receipts of the State	Commercial Tax receipts	Percentage of Commercial Tax to total Tax receipts
2010-11	36,339	24,893	67
2011-12	44,252	31,202	71
2012-13	53,897	39,465	73
2013-14	56,372	40,976	73
2014-15	61,340	44,145	72

Thus, the total tax receipts of the Department increased from ₹ 24,893 crore to ₹ 44,145 crore registering an increase of 77.34 *per cent* during the last five years.

#### Reasons for selection of the Performance Audit

During our local audit, we have come across various system as well as compliance deficiencies. The Government of India (GoI) is planning to implement the Goods and Service Tax (GST), so it was felt appropriate to conduct Performance Audit (PA) to address the system deficiencies in the VAT registration, assessment and collection for better implementation of upcoming GST.

### 2.3.3 Organisational set-up

The Value Added Tax is administered by the Commercial Tax Department (the Department). The Department functions under the control and supervision of the Additional Chief Secretary, Finance Department, Government of Gujarat. The Department is headed by Commissioner of Commercial Tax (CCT). He is assisted by a Special Commissioner and four Additional Commissioners.

The Department has 11 Divisions, 25 Range offices and 103 Unit offices headed by Joint Commissioners (JCCT), Deputy Commissioners (DCCT) and Assistant Commissioners (ACCT) respectively. There are seven Special Registration Units<sup>1</sup> (SRUs) responsible for registration of dealers. Apart from above, there are eight Corporate Cells at CCT office and 13 Corporate Cells in 11 Divisions, headed by DCCT. The Joint Commissioner is the administrative head of the division while the DCCT and ACCT are responsible for audit assessment of the dealers.

<sup>1</sup> There are seven SRUs, 2 at Ahmedabad and one each at Bhavnagar, Gandhinagar, Rajkot, Surat and Vadodara, which are created for the purpose of registration of dealers. The registration of the dealers in remaining offices is being done by the concerned ACCT offices.

### 2.3.4 Audit Objectives

We conducted the Performance Audit with a view to ascertain whether:

- the system of registration of dealers is efficient and effective to bring the eligible dealers into the tax net;
- the criteria for selection of cases for audit assessment was formulated on the basis of risk assessment and the cases were selected accordingly;
- the audit assessment was conducted properly within the stipulated timeframe and additional dues, if any, were recovered as prescribed under the Act/Rules; and
- the system of internal control was adequate and effective and the monitoring mechanism was functioning effectively.

### 2.3.5 Audit Criteria

The audit criteria are derived from the following Acts and also the Rules made thereunder which govern the process of system of registration, assessment and collection under VAT by the Department:

- i The Gujarat Value Added Tax Act, 2003
- ii The Gujarat Value Added Tax Rules, 2006
- iii The Central Sales Tax Act, 1956
- iv The Gujarat Tax on Entry of Specified Goods into Local Area Act, 2001
- v The Gujarat Sales Tax Act, 1969
- vi Guidelines/manual/instructions issued by the Department.

### 2.3.6 Scope of Audit and Methodology

We conducted the Performance Audit (PA) of “System of registration, assessment and collection under VAT” during January to June 2015 covering the period from 2010-11 to 2014-15.

We selected 15 offices (10 ACCT offices and five Corporate Cells) involving revenue of ₹ 14,839 crore. The units were selected on the basis of the maximum revenue earned during 2013-14 and their geographical location in such a manner that the sample selected represented the picture of the entire State. The revenue earned by these selected units was 36.21 *per cent* of total revenue of Commercial Tax Department during 2013-14 of ₹ 40,976 crore. In addition to above we also selected four SRUs<sup>2</sup> out of seven SRUs and office of the CCT.

The Department had assessed 7,650 cases in these 15 selected offices during 2013-14 and 2014-15 from which we selected 3,438 cases for test check based on the following criteria:

<sup>2</sup> SRU: Division 1 and 2 Ahmedabad, Division 5 Vadodara, Vapi unit

**Table 2.3.6**

Particulars of cases having	Number of cases assessed	Percentage of selection	Number of cases selected/ audited
Turnover in excess of ₹ five crore	2,363	100	2,363
Turnover between ₹ two and ₹ five crore	953	50	489
Turnover between ₹ 50 lakh and ₹ two crore	1,228	20	261
Turnover below ₹ 50 lakh	3,106	10	325
<b>Total</b>	<b>7,650</b>		<b>3,438</b>

We conducted an entry conference on 12 March 2015 with the Commissioner of Commercial Tax, Gujarat State, wherein scope and methodology to be adopted in conducting the PA was explained to the departmental officers. The Draft Audit Report was forwarded to the Department and to the Government in September 2015. An exit conference was held on 19 October 2015, wherein major findings of the PA were discussed with the Commissioner of Commercial Tax, Gujarat State. The replies received during exit conference and at other points of time have been appropriately commented upon in the relevant paragraphs of the report.

The audit assessment finalised prior to 2013-14 had already been audited and scrutinised by the statutory auditor in the respective years. As such, the records of audit assessment finalised during 2013-14 and 2014-15 were checked during PA. Performance Audits relating to arrears of revenue and self assessment had been featured in the Audit Reports of the Comptroller and Auditor General of India for the year 2012-13 and 2013-14 respectively. These are under discussion in the PAC and as such cases relating to arrears of revenue and self assessment have been excluded from the scope of audit for this PA.

### **2.3.7 Acknowledgement**

The Indian Audit and Accounts Department acknowledges the co-operation extended by the Department for providing necessary information and records required for the preparation of the Report.

### **Audit findings**

### **2.3.8 Registration**

Section 21 of the GVAT Act stipulates that any dealer whose total turnover exceeded threshold limit of ₹ five lakhs and taxable turnover exceeded ₹ 10 thousand in a year shall not carry on business as a dealer unless he possesses a valid certificate of registration.

A dealer is required to apply for registration before the registering authority in the Commercial Tax Department in Form-101, to obtain a certificate of registration. The Department is required to issue a provisional registration

certificate within three working days from the date of receipt of the application. After conducting the verification of the information/particulars, furnished in the Application Form, by the Department, the provisional registrations are converted into permanent registration certificates within a period of 30 days. With effect from 1 December 2011, the Department has provided facility of online registration. Thus, the dealers can apply for registration certificate through the Value Added Tax Information System<sup>3</sup> (VATIS).

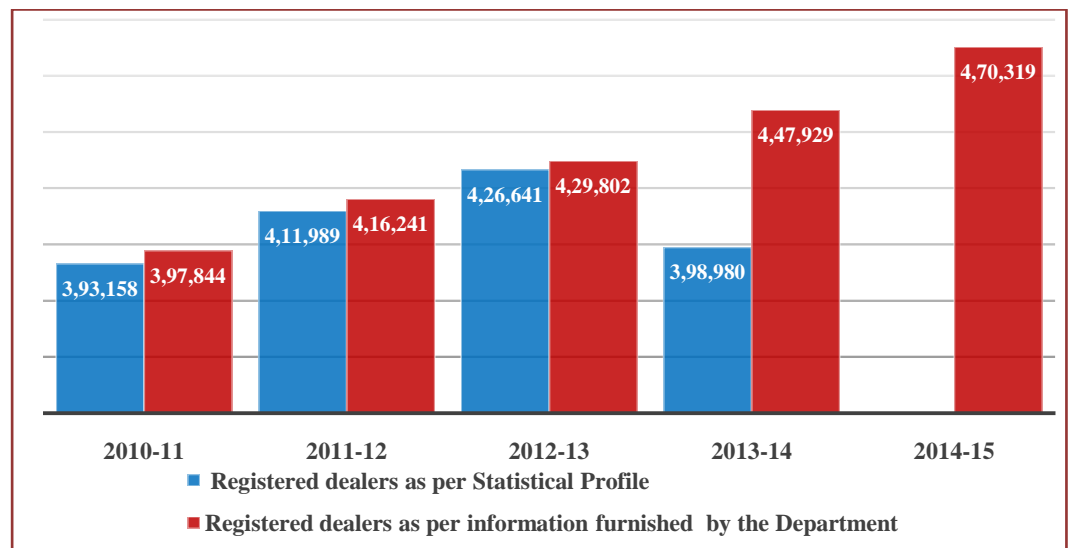
We noticed that 1,63,545 dealers had applied for registration certificates during 2010-15 and in all these cases the Department had issued registration certificates within the prescribed time limit indicating that the system is working efficiently and the process of getting registration certificate was easy and dealer friendly.

### 2.3.8.1 Discrepancies in the figures of registered dealers

“Statistical Profile” is a publication brought out by the Commercial Tax Department indicating the information relating to various activities of the Department. This includes the data relating to the registration of the dealers.

As per the information furnished by the Department to audit, the number of registered dealers increased from 3,93,158 to 4,70,319 registering an increase of 19.63 *per cent* during the period 2010-11 to 2014-15. However, we noticed variance in figures of registered dealers mentioned in the Statistical Profile published by the Department and that furnished by the Department to us for the period 2010-11 to 2014-15 as mentioned in the **Chart 2.3.8.1**:

**Chart 2.3.8.1**



The Statistical Profile for the year 2014-15 has not been prepared so far. As would be seen from the above there has been variance between the two sets of

<sup>3</sup> The IT system of the Commercial Tax Department for filing and processing of returns and other works

figures in each year. However, the difference in figures was very wide during 2013-14. The Department may reconcile the figures and furnish/depict it correctly.

The Department in the exit conference stated that the figures would be reconciled and reasons for deviation would be intimated to audit.

### **2.3.8.2 Identification of unregistered dealers for registration and Results of Amnesty Scheme**

Survey is an important tool for identification of those unregistered dealers who are liable to be registered under the GVAT Act. In this regard a mention was made for devising a system for identification and registration of unregistered dealers in Paragraph No. 2.2.8.1 and 2.2.8.4 of the report of the Comptroller and Auditor General of India for the year 2008-09. No efforts were found on records or produced to audit to indicate that the Department had made any effort to identify and register the unregistered dealers till October 2014. The efforts made after October 2014 for registration of dealers are briefly discussed as follows.

#### **Amnesty Scheme**

The Government announced an amnesty scheme in October 2014 which *inter alia* provides option for the registration of unregistered civil works contractors and developers by remission of interest and penalty. Under this scheme, upto March 2015, 938 dealers have opted/applied for registration retrospectively from the date of commencement of business. The dealers deposited tax of ₹ 31.58 crore under this scheme. Thus, though the Department was aware of the fact that business was being carried out by the unregistered dealers, it had made no efforts to identify and register the dealers.

#### **Instructions for survey**

The Additional Commissioner (Enforcement) in October 2014 had issued instructions to the concerned JCCT/DCCT/ ACCT for conducting surveys in their jurisdictional area to identify the unregistered dealers (URDs) to bring them under tax net. However, in all the units test checked, the Department had not conducted any survey to identify and bring the URDs into tax net, even after issuance of instructions in October 2014. This indicates that the Department was not following its own instructions and no system for implementing these instructions was found on record.

The results of the Amnesty Scheme underlines the need for conducting surveys on regular basis as the possibility of the dealers other than works contract dealers having remained outside the tax net cannot be ruled out. Further, there is no provision for conducting such surveys in the GVAT Act, though such a provision exists in the Maharashtra VAT Act (Section 66).

The Department in the exit conference stated that though there is no provision in the GVAT Act for conducting survey for identification of unregistered dealers, the data to identify the unregistered dealers are being gathered from various sources such as Customs Offices, Sub-Registrar Offices, Municipal Corporations, etc.



The Department further stated in the exit conference that they are going to engage Indian Institute of Management (IIM) Ahmedabad to get the trends in various sectors so that sector specific data of income may be available with the Department. Thus, the fact remains that no regular system had been put in place by the Department to monitor the registration of the URDs at periodical intervals.

**Department may put in place a suitable regulatory mechanism for bringing the unregistered dealers under the tax net.**

### **2.3.9 Finalisation of audit assessments by the Department**

**2.3.9.1** Section 34(2) of the GVAT Act provides for audit assessment, where the Commissioner is not satisfied with the bonafides of any claim of tax credit, exemption, refund, deduction, concession, rebate, or genuineness of any declaration or evidence furnished by a dealer in support thereof with self-assessment (i.e. returns). For the purpose of selection of dealers for audit assessment, the Department generates tasks each year on the basis of criterion prescribed under Rule 31(3) of the GVAT Rules, such as total turnover (in excess of ₹ 10 crore), annual tax payable (exceeding ₹ 25 lakh), input tax credit exceeding 10 *per cent* (claimed compared to the previous year) etc and the other criteria to be fixed by the Department under this rule from time to time.

The periodical returns are required to be filed by the dealers to their jurisdictional ACCT unit offices. The records of such returns are also required to be maintained by the jurisdictional officers. The Commissioner of Commercial Tax (CCT) office collects the year wise data, on the basis of annual returns furnished by the dealers, from the ACCT Offices falling under the prescribed categories wherein details of turnover of sale/purchase, amount of tax credit, amount of tax payable, exemptions availed by dealers, Units in Special Economic Zone (SEZ) etc. are furnished. The cases of dealers are selected for audit assessment on the basis of this data. Further, the Department had selected 8.68 to 16.06 *per cent* of live dealers for audit assessment during the period 2010-11 to 2014-15. Consequently, majority of the dealers remained out of purview of audit assessment. In such a scenario, the selection process plays an important role to ensure selection of appropriate cases for audit assessment.

The total number of dealers *vis- a- vis* cases selected under audit assessment were as mentioned in **Table 2.3.9.1**:

**Table 2.3.9.1**

Year	Number of live dealers	Number of dealers whose details were furnished by the unit offices in prescribed categories	Number of cases selected for audit assessment	Percentage of 4 to 2
1	2	3	4	5
2010-11	3,93,158	Not made available	34,135	8.68
2011-12	4,11,989	1,88,674	43,200	10.49
2012-13	4,26,641	2,22,482 <sup>4</sup>	56,430	13.23
2013-14	3,98,980	2,94,264	64,080	16.06
2014-15	4,70,336	3,15,555	50,819	10.80

(Source: Data furnished by the Department)

We scrutinised the process of selection of cases for audit assessment and observed that the Department had prescribed comprehensive categories for the collection of data of dealers for audit assessment. In March 2015, the Department has generated the task for audit assessment for the period 2012-13 by selecting all the cases having turnover above ₹ 10 crore and also in respect of remaining cases certain parameters based on risk assessment such as provisional assessment, amount of tax credit claimed, decrease in tax payable compared to previous year etc. were applied. Thus, Department had selected the cases in accordance with the prescribed criteria.

### **2.3.9.2 Allotment of cases to different assessing authorities**

The cases selected for audit assessment by the CCT office were being allotted by the jurisdictional JCCT to different assessing authorities (AAs). The Department had informed that on an average 10, 10 and 5 cases per month are to be allotted to each CTO, ACCT and DCCT respectively for audit assessment. A comparison of these norms with the actual cases allotted in 15 selected offices finalised by the AAs during the year 2013-14 and 2014-15 revealed as mentioned in **Table 2.3.9.2**:

<sup>4</sup> Excluding dealers of Division-6 Bhavnagar

**Table 2.3.9.2**

Assessing Authority	Average number of cases to be assigned to each AA by the Department		Maximum and minimum number of cases found to have been finalised by each assessing authority by audit		Upper half average cases <sup>5</sup>
			Minimum	Maximum	Lower half average cases <sup>6</sup>
	Monthly	Annually	Annually	Annually	
CTO	10	120	8	298	156
					71
ACCT	10	120	23	222	158
					47
DCCT	5	60	30	94	70
					30

(Source: As per information furnished by the Department and data collected from the 15 test checked offices)

It is evident from the above details that:

- The allotment of cases to various AAs varied from 8 to 298 cases in respect of CTOs, from 23 to 222 cases in respect of ACCTs and from 30 to 94 cases in respect of DCCTs.
- In respect of two<sup>7</sup> ACCTs, the number of cases assessed was 222 and 208, while in case of eight ACCTs of five<sup>8</sup> units allotment was below 100 cases.

Thus, the average number of cases assigned to the AAs was not in consonance with the criteria fixed by the Department itself. In such a situation some of the AAs were over burdened and consequently the possibility of adverse impact on the quality of assessment cannot be ruled out.

The CCT in exit conference stated that the contention of audit was reasonable and the allotment of cases to various AAs for audit assessment would be rationalised in future.

### 2.3.9.3 Delay in issue of notices and finalisation of audit assessments

Section 33(3)(c) of the GVAT Act provides for issuance of notice for audit assessment within two years from the date of closure of the financial year. Further, Section 34(9) provides for completion of audit assessment of the selected cases within four years from the end of their financial year.

The details regarding selection of cases for audit assessment and finalisation of assessments are as mentioned in **Table 2.3.9.3**:

<sup>5</sup> The average in respect of half number of AAs who were allotted more cases than the remaining half.

<sup>6</sup> The average in respect of half number of AAs who were allotted less cases than the remaining half.

<sup>7</sup> ACCT-104 Gandhidham, 94 Rajkot

<sup>8</sup> ACCT-57 Ankleshwar, 56 Bharuch, 58, 65 Surat, 74 Vapi

**Table 2.3.9.3**

Financial year	Month of task generation	Month of issue of notices to the dealers for audit assessment	Month to appear for audit assessment as per notices	Completion of assessment in most of the cases	Number of cases of task generated
2008-09	February 2011	March 2011	April 2011	2012-13	34,135
2009-10	February 2012	March 2012	April 2012	2013-14	43,200
2010-11	February 2013	March 2013	April 2013	2014-15	56,430
2011-12	February 2014	March 2014	April 2014	Pending	64,080
2012-13	February 2015	March 2015	April/May 2015	Pending	50,819
2013-14	Pending	Pending	Pending	Pending	

(Source: Data furnished by the Department and unit offices)

- Thus, cases for audit assessment were selected and notices for their assessment were issued by the Department in the last quarter of the second year from the end of the financial year i.e. just prior to the lapse of the time period.

We observed that the AAs issued notices to all the dealers in the month of March every year with the instruction to appear for audit assessment within 15 to 30 days of issuance of notices with books of accounts and other supporting documents.

We further observed that the assessments in most of the cases were finalised in the fourth year from the end of the financial year as would be revealed from the following data.

In nine<sup>9</sup> ACCT offices out of 31,772 cases, 12,022 cases i.e. 38 *per cent* cases and in three<sup>10</sup> DCCT offices, out of 414 cases, 277 cases i.e. 67 *per cent* cases were assessed in the last quarter of the fourth year. Information was not provided by the remaining offices.

Thus, in absence of a timely and rational approach for audit assessment, the Department had to resort to rush of assessment in the last quarter of the fourth year from the end of the financial year to avoid cases becoming time barred. Such approach by the Department might have hampered the quality of assessment and loss of potential revenue cannot be ruled out. There is a tremendous scope to streamline the existing system. Audit has noticed a number of discrepancies in the audit assessment finalised by the Department. A few of these are mentioned in the succeeding paragraphs.

**The Department may ensure proper allocation of cases for audit assessment among various AAs and prescribe monthly/quarterly targets of audit assessments to the various AAs to ensure that flow of assessments is streamlined.**

<sup>9</sup> 9,21 Ahmedabad, 57 Ankleshwar, 56 Bharuch, 94 Rajkot, 58, 65 Surat, 41 Vadodara, 74 Vapi

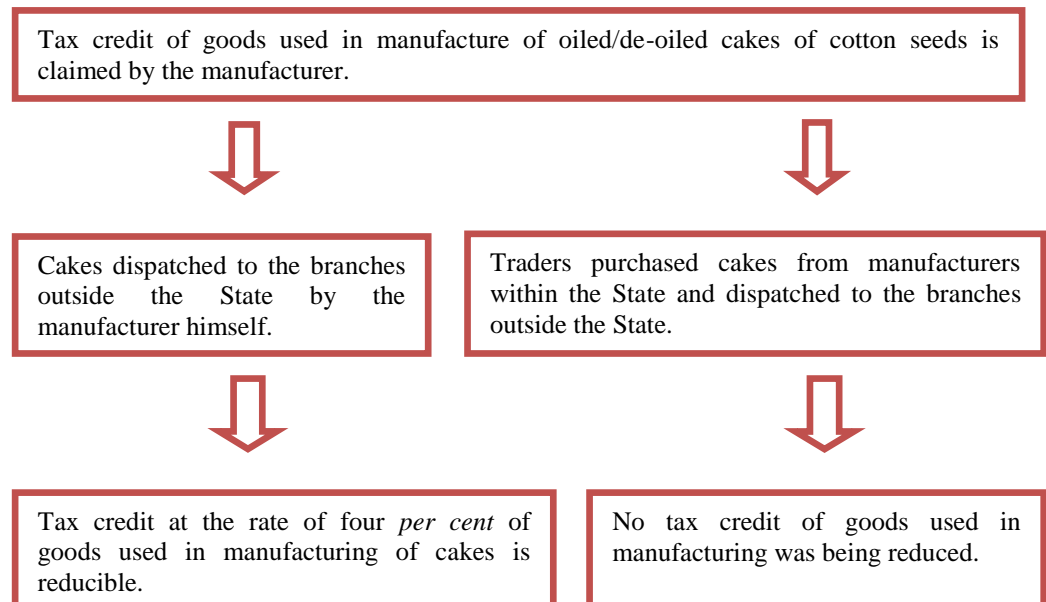
<sup>10</sup> Corporate Cell-2 Ahmedabad, 1 Surat, 1 Vadodara

The CCT stated that in future the statutory notices to intimate the dealers whose cases have been selected for audit assessments would be issued well in advance and later, dealers would be called for assessments by issuing notices under the work plan. He further stated that due to absence of workplan in previous years, the AAs used to assess a large number of cases in last quarter of the year. From the current year, the assessment workload has been rationalised in workplans for each officer and the assessments are being done in consonance with these plans so that rush of assessments in the last quarter can be avoided.

### 2.3.10 Inadequate provisions in Notification for remission of tax

Under Section 41 of the GVAT Act, the Government vide notification dated 18.05.2006 remitted the whole of tax payable by a registered dealer on the sale of oil cakes and de-oiled cakes of cotton seeds. Further, there is no restriction in the notification for allowance of remission where such cakes are subsequently dispatched by the purchasers in the course of branch transfer outside the State.

Under Section 11(3)(b) of the GVAT Act, the tax credit of taxable goods purchased within the State and used in manufacturer of oiled and de-oiled cakes of cotton seed is reducible at the rate of four *per cent* of the purchases where a manufacturer dispatched such cakes in the course of branch transfer outside the State. However, in case, a manufacturer makes intra-state sale of such cakes and subsequently local purchasing dealer makes branch transfer outside the State, the ITC was not reduced from the manufacturer. Also the local dealer was not liable to pay tax. The mechanism is further illustrated as under:



We observed in three cases pertaining to two offices<sup>11</sup> that the dealers had purchased oiled/de-oiled cakes of cotton seed of ₹ 82.83 crore from the manufacturers within the State. The dealer despatched these cakes to their branches outside the State. The tax credit of local purchases of goods used in

<sup>11</sup> ACCT-32 Vijapur, 94 Rajkot

the manufacture of such cakes was availed by the manufacturers while as a result of remission, the output tax was not paid on intra-State sale of such cakes which was subsequently despatched to the branches outside the State without payment of tax. Thus, the tax credit of goods used in manufacture of cakes which were despatched to the branches outside the State by traders could not be reduced. This involved non-reduction of tax credit to the extent of ₹ 3.31 crore.

Thus, the provisions in the Notification for remission of tax, created disparity between the manufacturers and the traders of such cakes and subsequent loss of potential revenue to the Government due to non reduction in tax credit.

**The Government may consider inserting provisions in GVAT Act for levy of purchase tax on purchases of oiled/de-oiled cakes of cotton seeds which are disposed off other than sale/resale within the State.**

In the exit conference, the CCT accepted the fact and stated that relevant provisions in the notification would be amended to remove the disparity.

### **2.3.11 Non-adoption of uniform policy on levy and assessment of Entry Tax**

Section 3 of the Gujarat Tax on Entry of Specified Goods into Local Area Act 2001, provides for levy of entry tax on 'motor vehicles' and 'yarn' of all types (except Nylon Yarn, Polyester Viscose Yarn and Cotton Yarn) at the rate of 15 per cent and five per cent respectively. Further, Section 8 of the Act, *ibid*, provides for assessment for entry tax, subject to few conditions.

Section 11(5) of the GVAT Act, stipulates that the tax credit of entry tax shall not be admissible for purchases of goods used in manufacture of tax free goods and vehicles of any type and its equipment except when purchasing dealer is engaged in the business of sales of such vehicles. Further, as per explanation below Rule 14(5)(5) of the GVAT Rules, 2006, for the purpose of calculating the tax credit, where the amount of tax under the Entry Tax Act is shown payable by the dealer in his return for a tax period, then such amount of tax shall be considered to have been paid in such tax period.

We observed that the Department was not following any uniform policy regarding levy and separate assessment of entry tax. In 15 assessment cases pertaining to three offices<sup>12</sup> the AAs had finalised separate assessments for entry tax on inter-State purchases of motor vehicles where the entry tax was paid by the dealers. While in 29 assessment cases of seven offices<sup>13</sup> pertaining to period 2009-10 to 2011-12, where the entry tax was not paid by the dealers, the AAs had not made any separate assessment under Entry Tax Act on inter-State purchases of motor vehicles, kota stone, marble etc. worth ₹ 1,471.69 crore involving tax implication of ₹ 194.16 crore. Thus, the Department was finalising the assessments separately in those cases only where the entry tax was paid by the dealers.

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<sup>12</sup> ACCT-56 Bharuch, DCCT Corp-1 Surat, Corp-2 Surat

<sup>13</sup> ACCT-94 Rajkot, 56 Bharuch, 65 Surat, 74 Vapi, DCCT Corp-1,2 Surat, Corp-1 Vadodara

As a result of non adoption of uniform policy on levy and separate assessments for entry tax, we observed in five assessments of four dealers pertaining to three offices<sup>14</sup> that the dealers had effected inter-State purchases of motor vehicles viz. Dumpers, Loader etc. and yarn worth ₹ 10.46 crore where Dumper, Loader etc. were used in the execution of works contract and yarn was used in manufacture of tax free fabrics. Though, entry tax was leviable on above purchases, tax credit of entry tax in respect of these items, if paid was not admissible as per provisions above. However, neither the dealers paid entry tax at the time of purchase of such goods nor the AAs made a separate assessment for entry tax at the time of audit assessment. This resulted in non-levy of entry tax to the extent of ₹ 1.30 crore excluding interest and penalty.

- Further, in case of one dealer, pertaining to ACCT-56, Bharuch, though Assessing Officer had assessed entry tax of ₹ 5.17 lakh on inter-State purchases of backhoe loader and concrete mixer, DCCT (Appeal) stayed (November 2010) the recovery stating that levy of entry tax on above goods was *sub-judice* before the Honourable High Court of Gujarat. The judgement was delivered (July 2014) by the Hon'ble HC in favour of revenue, however, the Department had not effected the above recovery till date.
- Entry tax is leviable on all types of yarn except nylon yarn, polyester viscose yarn and cotton yarn.

Two dealers had effected inter-State purchases of yarn and chemicals worth ₹ 4.06 crore. There was nothing in the records about the kind of yarn purchased by the dealers. In absence of this audit could not ascertain the liability of levy of entry tax on this yarn.

Thus, in absence of uniform policy on levy and assessment of entry tax it could not be ascertained whether entry tax leviable, wherever applicable was paid by the dealers or not.

**The Department may adopt a uniform policy for levy and assessment of tax separately under the Entry Tax Act 2001, so that possibility of leakage of entry tax, if any, can be plugged in.**

In the exit conference, the CCT accepted (October 2015) the audit contention and stated that the levy and assessment of entry tax would be ensured in each case and necessary changes in the prescribed forms of payment and returns of entry tax would be introduced after due deliberations.

### 2.3.12 Non-levy of purchase tax on purchases from unregistered dealers

**2.3.12.1** Section 9(1) of the GVAT Act provides for levy of purchase tax on purchases made from unregistered dealers (URD). As per Section 11 of the GVAT Act, tax credit shall not be admissible where the goods are used in manufacture of tax free goods or in lump-sum works contracts.

<sup>14</sup> ACCT-94 Rajkot, 104 Gandhidham and 65 Surat

- **Non-furnishing of registration status of dealers:** In 17 assessment cases of manufacturers/works contractors pertaining to two offices<sup>15</sup> the dealers, who were manufacturers of tax free goods (Grey fabric)/ Works contractors having permission to pay lump-sum tax, had made purchases of goods valued at ₹ 79.53 crore within the State. However, neither the dealers had furnished details regarding registration status of the dealers from whom goods were purchased nor the AAs had ascertained the liability of the dealers to pay purchase tax of ₹ 3.92 crore (at the rate of five *per cent*) in the event of such purchases being URD purchase.
- **Non-levy of purchase tax:** The Government of Gujarat vide Notification No. GHN-61 dated 16.05.2006 exempted whole of the purchase tax on purchase of the agricultural produce from URD if such purchases are intended for resale within the State. Thus, purchase tax is leviable where the dealers had not sold/resold such goods within the State.

In 24 assessment cases pertaining to ACCT-94, Rajkot the dealers had purchased 'cotton' worth ₹ 543.97 crore from farmers (URD) within the State which was used in the manufacture of cotton bales, cotton seeds, wash oil, oil cakes etc. and sold in the course of inter-State trade and commerce or export. Since, the dealers had not resold the agricultural produce purchased from URD within the State, they were liable to pay purchase tax under Section 9(1). However, neither the dealers paid purchase tax on such purchases of agricultural produce nor the AAs had assessed purchase tax. The non-assessment of purchase tax involved was of ₹ 21.76 crore.

Thus, due to non-assessment of purchase tax by the AAs, the Department was not able to ensure that there was no leakage of revenue in terms of payment of purchase tax.

Thus, the non-application of the rules uniformly resulted in non-reduction of tax credit. A few instances involving tax implication of ₹ 52.97 lakh are given below:

**2.3.12.2** Notification No. GHN-14 dated 29-06-2010 specified reduction of tax credit at the rate of two *per cent* of the purchase turnover of goods mentioned in the notification when the goods are sold/ used as raw material in the manufacture of goods which are sold in the course of inter-State trade or commerce w.e.f. 01.07.2010. 'Cotton' was exempted from reduction in tax credit on account of inter-State sales vide Notification No. GHN-35 dated 7.9.2010 (effective from 1.10.2010). Thus, tax credit was required to be reduced on purchases of 'cotton' between the period 1.7.2010 and 30.9.2010.

In five cases pertaining to ACCT-94, Rajkot the dealers had purchased cotton worth ₹ 2.64 crore between 1.7.2010 and 30.9.2010 from URD which was used in the manufacture of cotton bales, cotton seeds, wash oil, oil cakes etc. sold in the course of inter-State trade or commerce. Thus, tax credit of ₹ 5.28 lakh was required to be reduced at the rate of two *per cent* in the event of payment of purchase tax. However, purchase tax was neither paid by the

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<sup>15</sup> ACCT-94 Rajkot and 65 Surat



dealers nor assessed by the AAs during audit assessment resulting in non levy of purchase tax of ₹ 5.28 lakh and consequent non-reduction of tax credit to that extent.

Similarly, in one case pertaining to DCCT, Corporate-2, Surat, the dealer had made purchases of ₹ 30.54 crore which included URD purchases also, the quantum of which could not be ascertained as complete details were not made available to audit. The dealer effected inter-State sales worth ₹ 311.11 crore which constituted 72.73 per cent of the gross sales turnover. Thus, tax credit was required to be reduced at the rate of two per cent of ₹ 22.21 crore, had the dealer paid purchase tax on above URD purchases. However, non-assessment of purchase tax by the AA resulted in non levy of purchase tax of ₹ 44.42 lakh and consequent non-reduction of tax credit to that extent.

**2.3.12.3** Section 11(3)(b) of the GVAT Act provides for reduction in tax credit at the rate of four per cent of the taxable turnover of purchases 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.

In one case pertaining to ACCT-74, Vapi, the dealer had made URD purchases worth ₹ 7.13 crore. The dealer had also branch transferred goods worth ₹ 20.13 crore (11.45 per cent of the gross sales turnover) from the total turnover of ₹ 175.80 crore. Thus, tax credit was required to be reduced at the rate of four per cent of URD purchases of ₹ 81.69 lakh (at the rate of 11.45 per cent) used in branch transfer. However, non-assessment of purchase tax by the AA resulted in non-levy of purchase tax of ₹ 3.27 lakh and consequent non-reduction of tax credit to that extent.

**The Department may consider to assess purchase tax liability during audit assessment on goods which were purchased from the unregistered dealers so that leakage of revenue, if any, may be plugged in.**

In the exit conference, the Department accepted the audit observation and stated that the remedial measures would be taken wherever purchase tax has not been collected.

### Compliance deficiencies

In addition to the system deficiencies as discussed in the previous paragraphs, we also noticed compliance deficiencies which are discussed below:

### 2.3.13 Classification of goods/commodities for application of rate of tax under GVAT Act

**2.3.13.1** Section 7 of the GVAT Act provides for levy of tax on turnover of sales of goods specified in the Schedule II or Schedule III of the Act at the rate set out against each of them. All goods other than those specified in Schedule I or Schedule III and in the preceding entries of Schedule II fall under entry 87 of Schedule II attracting tax at the rate of 15 per cent including additional tax at the rate of 2.5 per cent. The Department has neither finalised HSN codes nor it is mandatory for the dealers to mention name and entry of goods sold in the returns filed by them though there is specific column in the returns to

mention the same. Moreover, VATis Module does not prompt to mention name of commodity in the returns filed on-line and the returns are accepted even if the relevant columns are left blank. Thus, the AAs are required to ascertain the classification of goods for ascertaining and levying correct rate of tax during the assessment.

We observed in 68 cases involving turnover of sales of ₹ 833.98 crore pertaining to 10 offices<sup>16</sup> that either the dealers in their periodical returns as well as VAT auditors in VAT Audit Reports had not furnished the classification of the goods or had not furnished supporting documents for bifurcation of commodities leviable to tax at the rate of 12.5 per cent and five per cent respectively. The classification/ bifurcation of goods was also not ascertained by the AAs while finalising the assessments and tax was levied at lower rate of five per cent. In absence of this, the correctness of the rate of tax applied could not be ascertained.

**2.3.13.2** The industrial inputs as specified by the Government under entry 42A of the Schedule-II attract rate of tax of five per cent including additional tax of one per cent. The Government of Gujarat vide Notification dated 31.03.2006 had specified the industrial inputs wherein Central Excise (CE) Heading, Sub-heading and Tariff Item Numbers have been specified. Some of the entries are as mentioned in **Table 2.3.13.2**:

**Table 2.3.13.2**

Sl. No.	Description of Goods	Central Excise		
		Heading No.	Sub- heading No.	Tariff Item No.
37	Hydrogen, rare gases and other non-metals excluding medicinal grade oxygen	28.04	-	-
38	Hydrogen			2804.10
39	Argon			2804.21
40	Helium			2804.29.10
41	Nitrogen			2804.30.00
42	Oxygen			2804.04

As per Central Excise Tariff Act, 1985, heading no. 28.04 covers 'Boron', 'Tellurium silicon', Phosphorus', 'Arsenic' and 'Selenium' apart from the items stated in the entries mentioned above but these entries have not been mentioned in the above notification. However, the Department was treating all the goods falling under heading 2804 as industrial inputs. The Department had provided tariff item numbers only for the five items. In absence of the tariff item numbers, it could not be ascertained whether other items were to be considered as industrial inputs or not.

After this being pointed out, the CCT accepted the audit contention and stated in the exit conference that all necessary steps would be taken to remove these ambiguities. He further stated that commodity code based on HSN has been

<sup>16</sup> ACCT-9, 21 Ahmedabad, 57 Ankleshwar, 56 Bharuch, 104 Ghandhidham, 94 Rajkot, 58, 65 Surat, 41 Vadodara, 74 Vapi

introduced in the Check post forms. A more wide spread use of the code is under the consideration of the Department.

**2.3.13.3** Entry 18 of Schedule II of the GVAT Act pertaining to ‘chemicals’ was deleted w.e.f. 01.08.2009 vide the Gujarat Value Added Tax (Amendment) Act No. 12 of 2009. As a result, w.e.f. 01-08-2009, chemicals other than those notified as ‘industrial inputs’ are taxable at the rate of 15 *per cent* including additional tax of 2.5 *per cent*. Chemicals falling under Central Excise Tariff Heading 3204, 3206 and 3207 were notified as industrial inputs vide Notification No. GHN-4 dated 15.2.2010. Thus, during the period between 01.08.2009 and 14.02.2010, tax on the chemicals falling under the above tariff headings was required to be levied at the rate of 15 *per cent*.

In 27 cases pertaining to six offices<sup>17</sup>, we observed from the excise invoices/ bill of lading available on record that the dealers had incorrectly paid tax at the rate of five *per cent*, on sale of chemicals falling under tariff heading 3204, 3206 and 3207, instead of correct rate of 15 *per cent* during the period between 01.08.2009 and 14.02.2010. The irregularity was not detected and rectified by the AAs during the audit assessment also. This resulted in short levy of tax of ₹ 7.07 crore excluding interest and penalty leviable thereon.

The Department accepted our observation in one case (July 2015) and raised demand of ₹ 35.19 lakh. The reply in the remaining cases has not been received (October 2015).

**2.3.13.4** We observed in 22 cases pertaining to 11 offices<sup>18</sup> that tax was paid by the dealers at lower rates due to incorrect classification of goods or application of incorrect rate of tax. The AAs had also not rectified the mistakes and tax was not levied at appropriate rates during audit assessment. This resulted in short levy of tax of ₹ 9.45 crore excluding interest and penalty as mentioned in **Table 2.3.13.4**:

**Table 2.3.13.4**

(₹ in lakh)			
Sl. No.	Office (No. of dealers)	Nature of objection	Short levy of VAT excluding interest and penalty
1	ACCT-9 Ahmedabad (1), 57 Ankleshwar (2), 94 Rajkot (4), 41 Vadodara (2), 65 (1), 58(2) Surat, 74 Vapi (1), DCCT-Corp-1 Vadodara (2)	Under Section 7 of the GVAT Act, tax is leviable, under the residuary entry 87 of Schedule II, at the rate of 15 <i>per cent</i> on sale of batteries, automobile parts, water treatment plant, currency counting machines, fire-fighting equipment, reflectors etc. The AAs finalised assessments in respect of 15 dealers dealing with the above goods valued at ₹ 59.77 crore incorrectly and levied tax at the rate of four/five <i>per cent</i> , on sale of	610.46

<sup>17</sup> ACCT-9, 21 Ahmedabad, 57 Ankleshwar, 56 Bharuch, 58 Surat, 74 Vapi

<sup>18</sup> ACCT-9, 21 Ahmedabad, 57 Ankleshwar, 56 Bharuch, 94 Rajkot, 58, 65 Surat, 74 Vapi, 41 Vadodara, DCCT-Corp-2 Surat, Corp-1 Vadodara

		these goods instead of correct rate of 15 per cent.	
2	ACCT-21 Ahmedabad (1), 94 Rajkot (1), 65 Surat (1)	The sale of Scissor lift, water treatment plant, electric motor parts fall under the residuary entry 87 of Schedule-II and attract tax at the rate of 15 per cent. The AAs classified these goods valued at ₹ 17.63 crore as parts of machinery used in manufacture of goods and levied tax on sale of these goods under entry-58A of Schedule-II, at the rate of four/five per cent instead of correct rate of 15 per cent.	174.29
3	ACCT-9 Ahmedabad (1)	The tax was levied at the rate of 0.6 per cent on sale of Ready Mix Concrete (RMC) valued at ₹ 16.51 crore treating it as works contract while it is right to sale and attracts rate of tax at 15 per cent under residuary entry 87 of Schedule-II. After adjustment of tax paid and ITC, there was short levy of ₹ 1.33 crore.	133.39
4	ACCT-94, Rajkot (1)	Under Entry-39 of Schedule-II of the Act, tax is leviable at the rate of 5 per cent including additional tax of one per cent on sale of imitation jewellery. In assessment, imitation jewellery valued at ₹ 86.98 lakh was classified as gold/precious stone jewellery and tax was levied at the rate of one per cent instead of correct rate of five per cent.	3.48
5	ACCT-56 Bharuch (1)	The Government vide Notification dated 11.10.2006 fixed the rate of lump-sum tax at two per cent on works contract of installation and commissioning of Fire-fighting equipment. In assessment this work valued at ₹ 6.96 crore was treated as civil works contract and tax was levied at the rate of 0.6 per cent instead of two per cent as the above work was not specified as civil works contract.	9.74
6	ACCT-21 Ahmedabad (1)	Under Section 7 of the Act, tax was leviable at the rate of 15 per cent including additional tax at 2.5 per cent between period 01-08-2009 and 14-02-2010 and w.e.f. 15-02-2015 at five per cent including additional tax of one per cent on sale of Guar Dal Powder. The AA in assessment treated Guar Dal Powder valued at ₹ 2.04 crore as tax free goods under Schedule-I of the Act and no tax was levied on sale of it which was taxable.	13.17
	<b>Total</b>		<b>944.53</b>

The Department in exit conference stated (October 2015) that all these cases would be re-examined and remedial action would be taken in this regard under intimation to audit.

### 2.3.14 Determination of turnover

**2.3.14.1** Section 7 of the GVAT Act provides for levy of tax on the turnover of sales, which remains after deducting there from the turnover of sales of goods not subject to tax under this Act, at the rates specified in Schedule II or III. Thus, correct determination of turnover by the AA at the time of assessment is important for levy of tax. Section 63 of the Act provides for submission of VAT Audit Report, while Rule 20(6) of the GVAT Rules provides for submission of Trading Account, Profit and Loss Account and the Balance Sheet to the jurisdictional CTO in case of dealers having turnover in excess of ₹ one crore.

We observed in 17 cases pertaining to five offices<sup>19</sup> that the dealers had not furnished the documents (i.e. Trading Account, Profit and Loss Account and the Balance Sheet) prescribed under Rule 20(6) along with his returns. The AAs had assessed turnover of sales/purchases on the basis of VAT Audit Report only without verifying other certified accounts viz. Balance Sheet/ Profit and Loss Account which were required to be furnished by the dealers. In such cases, the correctness of the turnover of sales/purchases adopted by the AAs for assessment could not be ensured.

**2.3.14.2** Under Section 8 of the GVAT Act, Credit/Debit notes are required to be furnished for the claim of deduction towards sales price/goods returned and to substantiate that the excess tax had not been borne by the purchaser of the goods. In absence of Credit/Debit notes, tax is leviable even though the dealer had claimed any deductions towards sale price/ goods returned.

We observed in 13 cases pertaining to eight offices<sup>20</sup> that the AAs had allowed deduction of ₹ 14.57 crore from the taxable turnover towards goods returned or discount accorded to the purchaser, though the Credit/ Debit notes were not furnished by the dealers in support of such claims. Thus, allowance of deductions from the taxable turnover involving tax implication of ₹ 1.17 crore without verifying the supporting documents was incorrect.

**2.3.14.3** In 63 assessment cases, we observed from the VAT Audit Report/ Profit and Loss Account/ Balance Sheet/ Returns filed by the dealers that there was short levy of tax of ₹ 24.22 crore excluding interest and penalty as mentioned in **Table 2.3.14.3**:

**Table 2.3.14.3**

		(₹ in crore)
Sl. No.	Nature of observation	Short levy of VAT
1	As per Section 2(24) of the GVAT Act 'sale price' means the amount of valuable consideration received or receivable by a dealer for any sale of goods made including the amount of duties levied or leviable under the Customs Act, 1962 and any sum charged for anything done	2.40

<sup>19</sup> ACCT-57 Ankleshwar, 56 Bharuch, 104 Gandhidham, 65, 58 Surat

<sup>20</sup> ACCT-9, 21 Ahmedabad, 57 Ankleshwar, 56 Bharuch, 104 Gandhidham, 65, 58 Surat, 94 Rajkot

	<p>by the dealer in respect of the goods at the time of or before delivery thereof.</p> <p>We observed in 13 assessment cases pertaining to four offices<sup>21</sup> that the AAs had not included customs duty/ transportation/logistics charges etc. worth ₹ 46.63 crore in the taxable turnover. This irregular deduction from the taxable turnover resulted in short realisation of tax to the extent of ₹ 2.40 crore excluding interest and penalty.</p>	
	<p>After this being pointed out, the ACCT, Gandhidham did not accept audit observation in four cases stating that the custom duty was paid by the seller on behalf of purchasers and did not form part of sale price.</p> <p>Reply of the AA is not acceptable since as per provisions stated above, duties levied or leviable under the Customs Act form part of sale price. Reply in respect of remaining cases was not furnished.</p>	
2	<p>We observed in 30 cases pertaining to 13 offices<sup>22</sup> that the AAs assessed the sales turnover less than the value of goods purchased/consumed or the sales turnover assessed was less than the total receipts reflected in certified accounts or the amount of sale of scrap/plant and machinery was not included in taxable turnover. This resulted in escapement of taxable turnover of ₹ 190.27 crore and consequent short levy of tax to the extent of ₹ 17.97 crore excluding interest and penalty.</p>	17.97
	<p>After this being pointed out, the AA did not accept audit observation in one case stating that the sales turnover was decided as per the sales register as the separate accounts were not being maintained for the Depot in the State of Gujarat.</p> <p>Reply of the AA is not acceptable as the amount of sales turnover assessed at ₹ 503.73 crore was less than the value of goods of ₹ 401.86 crore brought on branch transfer basis and profit element of ₹ 180.58 crore certified by the statutory auditor.</p>	
3	<p>Under Section 2(30) of the GAVT Act, tax is leviable on taxable turnover of sales in relation to works contracts on the amount of sales remaining after deducting there from the charges towards labour, service and other like charges.</p> <p>We observed in 12 assessment cases of five offices<sup>23</sup> that deemed sale of the goods involved in the execution of the works contract was either (i) incorrectly arrived at less than the amount of goods consumed to the extent of ₹ 59.40 crore or (ii) irregular/ excess deductions of ₹ 6.23 crore was allowed from the total turnover as exempted items.</p> <p>This resulted in under determination of turnover to the extent of ₹ 65.63 crore and consequent short levy of tax to the extent of ₹ 3.46 crore excluding interest and penalty.</p>	3.46
4	<p>Section 14A of the GVAT Act provides for payment of lump-sum tax at the rate of 0.6 <i>per cent</i> by the works contractors on total receipt in respect of civil works contracts. Further, Section 14D provides for payment of lump-sum tax at the rate of four <i>per cent</i> of the total turnover of sales in respect of dealers who are engaged in the business of sale of eatables in any form.</p> <p>We observed in eight cases pertaining to four offices<sup>24</sup> that AAs had irregularly allowed deductions from the total receipts of works contract/ sale of eatables as labour charges/ tax free sales though tax</p>	0.39

<sup>21</sup> ACCT-56 Bharuch, 104 Gandhidham, 94 Rajkot, DCCT Corp-2 Surat

<sup>22</sup> ACCT-9, 21 Ahmedabad, 57 Ankleshwar, 56 Bharuch, 104 Gandhidham, 94 Rajkot, 58, 65 Surat, 41 Vadodara, 74 Vapi, DCCT Corp-5 Ahmedabad, Corp-2 Surat and Corp-1 Vadodara

<sup>23</sup> ACCT-56 Bharuch, 94 Rajkot, 58 Surat, 41 Vadodara, DCCT Corp-2 Surat

<sup>24</sup> ACCT-56 Bharuch, 94 Rajkot, 41 Vadodara, 74 Vapi

	was required to be levied on total receipts. This irregular deduction of ₹ 19.29 crore from the taxable turnover resulted in short realisation of tax to the extent of ₹ 39.05 lakh excluding interest and penalty.	
<b>Total</b>		<b>24.22</b>

### 2.3.15 Excess allowance of Input Tax Credit

As per Section 11 of the GVAT Act, a registered dealer is eligible for Input Tax Credit (ITC) equal to the amount of tax paid by him on purchase of taxable goods in the State used in manufacture of taxable goods. We observed in 21 assessment cases that the AAs had allowed excess tax credit of ₹ 1.27 crore excluding interest and penalty as mentioned in **Table 2.3.15**:

**Table 2.3.15**

(₹ in Lakh)			
Sl. No.	Office (No. of assessments)	Nature of objection	Excess allowance of ITC
1	ACCT-9 (1), 21(2), Ahmedabad, 56 Bharuch (1), 65 Surat (3), 94 Rajkot (3), 41 Vadodara (2)	Under Section 11(5)(h) of the Act, the tax credit shall not be allowed for purchases of the goods which are used in manufacturing or packing of tax free goods.  We observed in 12 assessment cases pertaining to six offices that AAs had allowed the tax credit of the goods of ₹ 12.21 crore purchased within the State which were used in manufacture of tax free goods and the goods of ₹ 6.10 crore were consumed in the process of job-works wherein no output tax was paid. This resulted in irregular grant of tax credit to the extent of ₹ 57.45 lakh.	57.45
2	ACCT-94 Rajkot (1), 41 Vadodara (1)	Under Section 8(2) of the Act, the tax credit shall not be allowed to a purchasing dealer where a selling dealer had reduced tax liability by issuing credit notes with tax.  We observed in two assessment cases pertaining to two offices that:  The AA in one case had not reduced the tax credit of ₹ 15.65 lakh received by the dealer on account of discount of the amount of ₹ 1.20 crore with tax.  In another case tax credit of ₹ 1.09 lakh on the goods used in fabrication of shed valued at ₹ 21.79 lakh was granted involving tax implication of ₹ 1.09 lakh.  This resulted in excess allowance of tax credit to the extent of ₹ 16.74 lakh.	16.74
3	ACCT-9 (1), 21 (1) Ahmedabad, 74 Vapi (1)	As per the GVAT Act; in case of excess input tax credit carried forward, tax credit will be refunded not later than two years from the end of the year.  In one assessment case, the AAs had allowed the refund of tax credit which remained unadjusted against the output tax liability without verifying the admissibility as the tax credit was brought forward continuously for four years.  In another case, refund of tax credit was allowed	28.82



		<p>which was raised due to allowance of deductions towards sub-contract, not claimed in returns and certified accounts.</p> <p>This resulted in irregular refund to the extent of ₹ 28.82 lakh.</p>	
4	<p>ACCT-94 Rajkot (1), 41 Vadodara (1), DCCT Corp-2 Ahmedabad (1), Corp-1 Vadodara (1)</p>	<p>The Government vide Notification dated 7-9-2010 specified that w.e.f. 01-07-2010, goods mentioned in the notification shall not be entitled for the tax credit to the extent of two percent on the taxable turnover of purchases within the State for which tax credit is admissible when the goods are sold/resold in the course of inter-State trade or commerce or used as raw material in the manufacture of such goods.</p> <p>In four assessment cases, the AAs reduced the tax credit of ₹ 38.53 lakh instead of ₹ 62.17 lakh on purchases of goods of ₹ 31.09 crore which were sold/resold in the course of inter-State trade or commerce or used as raw material in the manufacture of goods which were sold in the course of inter-State trade or commerce. This resulted in excess allowance of tax credit to the extent of ₹ 23.64 lakh excluding interest and penalty.</p>	23.64
		<b>Total</b>	<b>126.65</b>

### 2.3.16 Assessment under Central Sales Tax Act, 1956

Under Section 6 of the CST Act, every dealer shall be liable to pay tax under this Act on all sales of goods effected by him in the course of inter-State trade or commerce during any year. Further, as per Section 9(2) of the CST Act, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under GVAT Act shall assess, re-assess, collect and enforce payment of tax payable by a dealer under this Act and provisions regarding interest and penalty under GVAT Act are applicable to the CST assessment also.

#### 2.3.16.1 Irregular exemption from tax as indirect export

Section 5(3) of the CST Act stipulates that the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export. These transactions are termed as indirect export by the seller and no tax is leviable on such sale where the purchasing dealers had purchased such goods for the purpose of complying with the agreement or order for such export. Further, under Section 5(4) of the Act, the exemption from tax shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the assessing authority a declaration in Form-H duly filled by the exporter to whom the goods are sold.



We observed in 67 assessment cases pertaining to 11 offices<sup>25</sup> that the AAs had allowed deductions of ₹ 507.30 crore from the taxable turnover as indirect export though statutory Form-H was not duly filled by the merchant exporter (purchaser). In absence of complete details, it could not be ascertained whether the goods were purchased for the purpose of complying with, the agreement or order for or in relation to export. This resulted in irregular deduction from the taxable turnover involving tax implication of ₹ 24.16 crore.

The AAs in respect of four cases replied that information in Form-H was not being furnished by the dealers due to their concern of the disclosure of business secret.

The reply is not tenable as the exemption from the tax could not be extended where the required supporting documents and duly filled in statutory forms as prescribed under the Act, were not furnished by the dealers. Reply of the Department in remaining cases is awaited (October 2015).

### 2.3.16.2 Irregular exemption as HSS

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, provided the transaction is supported by documentary evidence such as bill of entry, agreement of sale etc. to the effect that the sale has occurred before the goods have crossed the customs frontier of India.

We observed in two cases pertaining to two offices<sup>26</sup> that deductions were allowed from the taxable turnover as High Seas Sale (HSS) though supporting documents such as agreement of HSS, bill of entry etc. were neither furnished by the dealers nor verified by the AAs. In these cases, without verifying the proofs/details, the correctness of exemption from the tax on turnover of sales of ₹ 6.77 crore could not be ascertained.

### 2.3.16.3 Short levy of CST

As per Section 8(1) read with Section 8(4) of the CST Act, every dealer, who in the course of inter-State trade or commerce, sells goods to a registered dealer, shall be liable to pay tax at the rate of two *per cent* of his turnover or at the rate applicable to the sale or purchase of such goods inside the State under the sales tax law of that State, whichever is lower provided that the dealer selling the goods furnishes a declaration in Form 'C' in original duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars. In case of non-furnishing of Form 'C' or furnishing incomplete forms, the dealer is liable to pay tax at the rates applicable to the local sales.

We observed in 14 assessment cases pertaining to six offices<sup>27</sup> that in six cases AAs had levied tax at the concessional rate of two *per cent*, instead of local

<sup>25</sup> ACCT-21 Ahmedabad, 57 Ankleshwar, 56 Bharuch, 104 Gandhidham, 94 Rajkot, 58 Surat, 41 Vadodara, 74 Vapi, DCCT Corp-2 Ahmedabad, Corp-2 Surat, Corp-1 Vadodara

<sup>26</sup> ACCT-21 Ahmedabad, 41 Vadodara

<sup>27</sup> ACCT-9,21 Ahmedabad, 57 Ankleshwar, 104 Gandhidham, 94 Rajkot, 74 Vapi

rate of five *per cent* or fifteen *per cent* including additional tax, on inter-State sales not supported by declaration in Form 'C'. Further, in the case of eight dealers, the AAs had incorrectly accepted duplicate Form 'C' and levied tax at concessional rate. This resulted in short levy of CST of ₹ 1.72 crore excluding interest and penalty.

#### **2.3.16.4 Non levy of CST**

Under Section 6(A) of the CST Act, consignment sale (branch transfer) shall be exempt from payment of tax on production of statutory Form-F. In the case of non-furnishing of the statutory forms and supporting documents, the dealer is liable to pay tax at the rates applicable to the local sales.

We observed in four assessment cases pertaining to two offices<sup>28</sup> that AAs had allowed deduction of ₹ 39.28 crore from the taxable turnover of sales where the statutory Forms 'F' in support of branch transfer of goods were not furnished. This resulted in non-levy of CST of ₹ 1.86 crore excluding interest and penalty.

#### **2.3.16.5 Non-levy of tax due to irregular deductions from the taxable turnover**

As per Section 3(b) of the CST Act, 1956, a sale or purchase of goods shall be deemed to have taken place in the course of inter-State trade or commerce if the sale or purchase is effected by a transfer of *documents of title* (Railway Receipt /Lorry Receipt etc.) to the goods during their movement from one State to another. Further, as per Section 6(2) of the Act, *ibid*, all subsequent inter-State sales to registered dealers by transfer of documents during movement of goods are exempt from sales tax on production of Form 'E-I' (first inter-State sale) or 'E-II' (subsequent sale by the transferors) and Form 'C'. Moreover, in *Cinezac Technical Services V/s State of Kerala (2009) 25 VST 165 (Kerala HC DB)* it was held that a pre-arranged sale would not be treated as subsequent inter-State sale. Similar view was taken in *State of Karnataka V/s A & G Products and Technologies (2008) 13 VST 177=37 MTJ 337 (Kar HC DB)* and it was held that goods appropriated to the ultimate buyer even before commencement of movement of goods would not be exempted from CST.

- We observed in eight assessment cases pertaining to five offices<sup>29</sup> that AAs had allowed claim of ₹ 1,144.31 crore towards RR sale though the original seller had consigned goods to the ultimate buyer and there was no endorsement of lorry receipts by the subsequent selling dealer during movement of goods i.e. the goods were appropriated to their subsequent buyer before the movement of goods commenced. As such, claim of RR sale was against the provisions. Hence, irregular acceptance of claim towards RR sales during assessments by the AAs had resulted in non-levy of tax of ₹ 22.47 crore excluding interest and penalty.

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<sup>28</sup> ACCT-9 Ahmedabd, 32 Vijapur

<sup>29</sup> ACCT-57 Ankleshwar, 58 Surat, 41 Vadodara, DCCT Corp-1 Vadodara, Corp-2 Ahmedabad

- Further, in 21 assessment cases of eight offices<sup>30</sup>, we observed that the AAs had allowed deductions from the taxable turnover as RR sale where the supporting documents such as transportation documents etc. in support of the fact that sale was effected during the movement of goods were not furnished by the dealers. In these cases without verifying such proofs/details, the correctness of exemption from tax on turnover of sales of ₹ 203.21 crore could not be ascertained.

### 2.3.17 Collection of tax

In terms of Section 42 of the GVAT Act, the unpaid amount of tax (after deducting the tax already paid) is required to be paid, together with interest and penalty, if any, by the dealer within 30 days of notice of demand.

During the test check we observed that the assessments were being done in the system and if any demand is raised as a result of assessment, the task of such demand is created in the account of the concerned AA in the VATis system. The task remains open till the amount is not recovered and closed by the AAs. Thus, the pending recoveries are watched through the system.

The arrears of revenue for the year 2010-11 to 2014-15 are as mentioned in **Table 2.3.17**:

**Table 2.3.17**

(₹ in crore)

Year	Opening balance of arrears	Arrears added during the year	Arrears collected during the year	Cummulative arrears at the end of the year	Tax receipts	Percentage of cumulative arrears to the revenue of the year	Pending arrears of sub judice cases
2010-11	10,916	5,830	2,238	14,508	24,893	58	5,934
2011-12	14,508	3,057	999	16,566	31,202	53	8,136
2012-13	16,566	2,434	884	18,117	39,465	46	9,603
2013-14	18,117	3,422	3,029	18,510	40,976	45	9,182
2014-15	18,510	2,628	373	20,765	44,145	47	10,228

(Source: Statistical profile and data furnished by the Department)

As can be seen from the above, though on one hand the absolute number of arrears has increased, as a percentage of tax receipt the position has improved. The Department has also recovered ₹ 7,523 crore during five years.

The Department also has a constraint in terms of the *sub-judice* cases, where such cases would remain pending until the cases get adjudicated. Arrears of ₹ 20,765 crore were pending as at the end of the March 2015. The age wise analysis shows that ₹ 8,532 crore were pending at various stages for a period exceeding five years.

**In view of the large number of arrears cases, the Government needs to find an innovative way to settle the cases promptly.**

<sup>30</sup> ACCT-9, 21 Ahmedabad, 57 Ankleshwar, 58, 65 Surat, 94 Rajkot, DCCT Corp-1 Vadodara, Corp-2 Ahmedabad

The Department in the exit conference stated that a large share of arrears of revenue pertains to *sub-judice* cases. However, recovery action would be expedited in the remaining cases.

### 2.3.18 Weak internal audit

The Department has an internal audit wing working under DCCT (Audit) at field level and headed by JCCT (Audit) at HO level. The Commissioner of Commercial Tax (CCT) vide circular dated 30-06-2010 had instructed that 25 DCCT (Audit) shall inspect the ACCT offices in their jurisdiction on quarterly basis and inspect the cases where provisional refund was granted and post audit the cases where audit assessment has been completed. Every DCCT (Audit) shall initiate pre/post audit in 125 cases per month. Further, the jurisdictional DCCT shall check 20 *per cent* cases per month where new registration certificates were issued.

The number of cases where the Department initiated pre-audit and post-audit during the period 2010-11 to 2014-15 was as mentioned in **Table 2.3.18**:

**Table 2.3.18**

Sl. No.	Year	Minimum number of cases to be pre/post audited by each DCCT	Number of cases pre audited	Number of cases post audited	Special audit
1	2010-11	1500	2	48	17
2	2011-12	1500	29	23	5
3	2012-13	1500	19	29	1
4	2013-14	1500	48	9	0
5	2014-15	1500	-	-	-
	<b>Total</b>		<b>98</b>	<b>109</b>	<b>23</b>

(Source: Statistical Profile of the Commercial Tax Department; data not furnished by the Department for the year 2014-15)

- Number of cases pre audited or post audited by the Department was very low.
- The targets fixed by the CCT office were not achieved.

During the course of audit, we called for the information regarding number of cases where new registration certificates were issued and checked by the DCCT. However, all the offices furnished a nil report to this effect. This indicates that the internal audit wing was not functioning as intended and there is a scope to streamline its functioning. The Department needs to ensure compliance with its own instructions.

The Department in the exit conference stated that the data of Statistical Profile would be reconciled. The Department further stated that the cases where refund in excess of ₹ 25,000 is payable are pre-audited by the Department.

### 2.3.19 Conclusion

During the Performance Audit, we observed that in Gujarat, all the services, such as, registration, filing of returns, claims of refund, assessment and recovery are done through the ACCT offices (under single window system) in respect of all dealers irrespective of amount of tax payable /refund. While in Maharashtra, this single window system facility is available only for large tax payer units. This is a positive aspect of Gujarat VAT administration.

In our audit, we noticed a number of system deficiencies which indicate that there is a scope for further improvement in the system. The system deficiencies mainly consisted of non-conduct of drive or survey to identify and bring the URDs under tax net, absence of uniform policy for levy and assessment of entry tax and purchase tax, lacunae in notification for remission of tax on sale of oiled/de-oiled cakes of cotton seeds etc.

Apart from above system deficiencies, our test check revealed non-levy/short levy of tax to the tune of ₹ 124.21 crore in respect of the cases scrutinised by the Department. The fact that we could notice such instances in the cases already scrutinised by the Department points to a scope to streamline the working of the Department.

### 2.3.20 Summary of recommendations

We recommend that:

- Department may put in place a suitable regulatory mechanism for bringing the unregistered dealers under the tax net.
- The Department may ensure proper allocation of cases for audit assessment among various AAs and prescribe monthly/quarterly targets of audit assessments to the various AAs to ensure that flow of assessments is streamlined.
- The Government may consider inserting provisions in GVAT Act for levy of purchase tax on purchases of oiled/de-oiled cakes of cotton seeds which are disposed off other than sale/resale within the State.
- The Department may adopt a uniform policy for levy and assessment of tax separately under the Entry Tax Act 2001, so that possibility of leakage of entry tax, if any, can be plugged in.
- The Department may consider to assess purchase tax liability during audit assessment on goods which were purchased from the unregistered dealers so that leakage of revenue, if any, may be plugged in.
- In view of the large number of arrears cases, the Government needs to find an innovative way to settle the cases promptly.

## 2.4 Non/ Short levy of VAT due to misclassification

Under Section 7 of the GVAT Act 2003, tax on the turnover of sales of goods shall be levied at the rates specified in Schedule II or Schedule III of the Act. Additional tax at the rate of 2.5/1 *per cent* is also leviable from 1 April 2008. Further, as per entry no. 87 of Schedule II, all goods other than those specified in Schedule I or Schedule III and in the preceding entries of Schedule II attract tax at the rate of 12.5 *per cent*.

During test check of the assessment records of seven offices<sup>31</sup> we noticed<sup>32</sup> in 44 assessments<sup>33</sup> of 40 dealers that there was short levy of VAT of ₹ 2.19 crore due to misclassification of commodities as mentioned in **Table 2.4**. Besides, interest and penalty is also recoverable, wherever applicable.

**Table 2.4**

(₹ in lakh)

Sl. No.	Office (No. of dealers)	Applicable rate of tax ( <i>per cent</i> )	Rate applied ( <i>per cent</i> )	Nature of observation	Non/ Short levy of VAT
1	ACCT, Unit-10, Ahmedabad (10) ACCT, Unit-11, Ahmedabad (16) ACCT, Unit-21, Ahmedabad (9)	4+1	0	As per entry 37 of Schedule II, husk of all types including groundnut husk are taxable at the rate of four <i>per cent</i> . Further, husk of all types excluding 'groundnut husk' and 'rice husk' are exempt from whole of tax by entry 18 of Notification No. (GHN-44)VAT-2006- S.5(2)(3)-TH Dated 29-4-06 u/s 5(2). Thus, 'rice husk' is taxable at the rate of five <i>per cent</i> including additional tax at the rate of one <i>per cent</i> . However, the Assessing Authority (AA) had treated the rice husk (rice bran/ rice polish) valued at ₹ 15.17 crore as exempted goods by classifying it as cattle feed under entry 11 of Schedule I and did not levy any tax. Thus, there was non levy of VAT due to misclassification.	75.83
After this being pointed out, the Department accepted (August 2015) our observation and initiated revision/reassessment proceedings in 26 cases.					
2	ACCT-5 Ahmedabad (1)	12.5+2.5	0.6	The Honourable Supreme Court of India in case of Commissioner of Service Tax, Delhi vs. G M K Concrete Mixing (P) Ltd <sup>34</sup> , held that delivering Ready Mix Concrete (RMC) at site and also performing other incidental activities of pouring, pumping and laying of RMC, etc. amounts to sale instead of works contract. RMC falls under entry number 87 of Schedule-II	69.65

<sup>31</sup> ACCT-5,10,11,21 Ahmedabad, 72 Bilimora, 59 Surat, 75 Vapi

<sup>32</sup> Between September 2013 and October 2014

<sup>33</sup> For the year 2006-07, 2007-08, 2008-09, 2009-10 and 2010-11 finalised between October 2010 and February 2014.

<sup>34</sup> 36 STR 913 (SC) [2015] 51 GST 719 (SC)

				<p>of the GVAT Act and attracts tax at the rate of 15 <i>per cent</i> including additional tax of 2.5 <i>per cent</i>.</p> <p>The dealer was engaged in manufacture of RMC and providing and laying the same by transit mixers at the site of customers. The dealer was not executing works contract on its own. Thus, supply of RMC valued at ₹ 12.83 crore at the site of customers was 'sale of RMC' instead of works contract. However, the AA assessed the dealer on lump-sum tax basis by treating the above transaction as works contract and levied tax at the rate of 0.6 <i>per cent</i> instead of correct rate of 15 <i>per cent</i>. This resulted in short levy of VAT.</p>	
After this being pointed out, the Department accepted (May 2015) our observation and raised demand on reassessment.					
3	ACCT, Unit-72, Bilimora (2)	12.5+2.5	4+1	<p>Entry 136 of Notification No. GHN-33 dated 31.3.2006 specifies Printing ink, writing ink or drawing ink, whether or not concentrated or solid (falling under Central Excise Tariff Heading 32.15) as Industrial Input. 'Other Ink' is not covered under the above entry as the notes under the said notification clarified, where the description in respect of any commodity in the notification is different in any manner from the corresponding description in the Central Excise Tariff Act, 1985 then such commodity shall not be covered by the scope of the notification. Further, Ball Pen Ink is classified as 'Other Ink' under Central Excise Tariff Heading 32.15. Thus, Ball Pen Ink cannot be classified as Industrial Input under entry 136 of the Notification and is liable to be taxed at the rate of 12.5 <i>per cent</i> instead of four <i>per cent</i>. However, the AA had levied tax at the rate of four <i>per cent</i> instead of 12.5 <i>per cent</i> on sale of Ball Pen Ink valued at ₹ 5.30 crore.</p>	47.70
On this being pointed out, the concerned JCCT did not accept (December 2014) our observation stating that ball pen ink could be used in ball pens only and is required to be classified as writing ink. Thus, tax was collected properly. Reply of the JCCT is not acceptable as the notes of notification clarified where the description in respect of any commodity in the notification is different in any manner from the corresponding description in the Central Excise Tariff Act, 1985 then such commodity shall not be covered by the scope of the notification.					
4	ACCT, Unit-75, Vapi (1)	12.5 +2.5	4+1	<p>'Litharge' does not fall under any entry of Industrial Inputs under Notification No. GHN-33 dated 31.3.2006 and attracts tax at the rate of 15 <i>per cent</i> including additional tax of 2.5 <i>per cent</i> under entry 87 of the Schedule-II of the Act.</p> <p>The AA during assessment classified the 'Litharge' as industrial input and</p>	19.12

				levied tax on sale turnover of ₹ 1.91 crore at incorrect rate of five <i>per cent</i> including additional tax of one <i>per cent</i> instead of 15 <i>per cent</i> .	
After this being pointed out, the Department accepted (June 2015) the audit observation and recovered an amount of ₹ 34.56 lakh including interest and penalty.					
5	ACCT, Unit-59 Surat (1)	12.5 +2.5	4+1	As per determination dated 13.9.2011 under Section 80 of the GVAT Act, the 'Construction chemicals' viz. 'KEM Bond AR', 'KEM Bond SBR' and 'Roff Bond Repair' fall under entry 87 of Schedule II and attract tax at the rate of 15 <i>per cent</i> including additional tax at the rate of 2.5 <i>per cent</i> .  The AA in assessment classified the 'Construction chemicals' viz. 'KEM Bond AR', 'KEM Bond SBR' and 'Roff Bond Repair' as Industrial Inputs (Prepared binders for foundry moulds or cores) under entry 154 of Notification No. GHN-33 dated 31.3.2006 and levied tax at incorrect rate of five <i>per cent</i> instead of 15 <i>per cent</i> .	6.22
The Department did not accept (August 2015) our observation and stated that the dealer had paid the tax treating the chemicals as industrial inputs as per notification GHN-33 dated 31.3.2006. The reply is not acceptable because as per determination dated 13.9.2011 under Section 80 of the GVAT Act, the above goods fall under entry 87 of Schedule II attracting tax at the rate of 15 <i>per cent</i> including additional tax of 2.5 <i>per cent</i> .					
<b>Total</b>					<b>218.52</b>

We pointed out these cases to the Government in May 2015. The Government confirmed (July/ August 2015) replies of the Department in 13 cases. We are awaiting their replies in the remaining cases (October 2015).

## 2.5 Short levy of VAT due to escapement of turnover

Section 7(1) of the GVAT Act, 2003 provides for levy of tax on the turnover of sales of goods specified in Schedule II or Schedule III at the applicable rate. Further, under Section 2(24), sale price means the amount of valuable consideration paid or payable to a dealer or received or receivable by a dealer for any sale of goods made including the amount of duties levied or leviable under the Central Excise Tariff Act, 1985 or the Customs Act, 1962 and any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof.

During test check of the assessment records of seven offices<sup>35</sup>, we noticed<sup>36</sup> in assessments of eight dealers<sup>37</sup> that there was short levy of tax of ₹ 0.56 crore due to escapement of turnover as mentioned in **Table 2.5**:

<sup>35</sup> ACCT-6 Ahmedabad, 102 Jamkhabhalia, 99 Jamnagar, 94 Rajkot, 45, 46 Vadodara and DCCT-DCCT (Enforcement) Vadodara

<sup>36</sup> Between September 2013 and July 2014

<sup>37</sup> For the year 2006-07, 2008-09 and 2009-10 finalised between February 2011 and March 2013



Table 2.5

(₹ in lakh)

Sl. No.	Office (No. of dealers)	Nature of observation	Short levy of VAT
1	ACCT, Unit-102, Jamkhambhaliya (1)	The dealer was dealing in batteries which were taxable at the rate of 15 per cent including additional tax of 2.5 per cent. As per Profit and Loss Account, the sales turnover of the dealer was of ₹ 30.11 crore. However, the AA had assessed turnover of sales at ₹ 28.77 crore only on the basis of the returns filed by the dealer without cross checking with the certified accounts. Thus, turnover of ₹ 1.34 crore escaped from levy of tax.	20.17
2	ACCT, Unit-94, Rajkot (1)	As per Schedule of Fixed Assets of Balance Sheet, there was sale of Plant and Machinery/ vehicles worth ₹ 42.83 lakh which were taxable, though were not mentioned in returns. The Assessing Authority (AA) had also not levied any tax on the above sales.	3.54
The jurisdictional JCCT vide letter dated 17.4.2014 stated that demand of ₹ 6.93 lakh had been raised after reassessment.			
3	DCCT, Enforcement, Vadodara (1)	The Hon'ble Supreme Court in the case of M/s Mohamed Ekram Khan & Sons (135 STC 515) dated 21-07-2004 held that warranty claims received from parent company are to be treated as sale of spare parts and tax is to be levied accordingly. As per Profit and Loss Account, the dealer was in receipt of warranty claims worth ₹ 46.06 lakh which were taxable. However, the AA had not levied tax on the above income/ claims.	2.30
4	ACCT, Unit-45, Vadodara (1)	The dealer had effected branch transfer purchases worth ₹ 13.51 crore, whereas he had paid tax on sales turnover of ₹ 13.07 crore. Considering the opening stock of ₹ 3.51 lakh, closing stock of ₹ 12.01 lakh and profit margin of the dealer at 0.24 per cent, tax was required to be paid on sales turnover of ₹ 13.45 crore. Thus, sales turnover of ₹ 0.38 crore escaped from levy of tax.	1.77
The Department accepted (April 2015) our observation and raised demand of ₹ 6.01 lakh on reassessment.			
5	ACCT, Unit-6, Ahmedabad (1) ACCT, Unit-45, Vadodara (1)	Under Section 2(24) of the GVAT Act, delivery facility charges/ Liquidated Damages incurred before the delivery of goods and recovered from the customers, form the part of sale price and are taxable under the Act. The dealers had recovered 'delivery facility charges'/ 'Liquidated Damages' worth ₹ 1.80 crore from its customers. However, the AA had not levied tax on the above receipts related to sales transactions.	19.72
On this being pointed out, the Department accepted (April 2015) our observation in one case and initiated revision proceedings.			
6	ACCT, Unit-99 Jamnagar (1)	Under Section 2(24) of the GVAT Act, any amount disclosed related to the business, forms the part of sale price and VAT is leviable on it. The dealer had disclosed additional income of ₹ one crore during enforcement proceedings by the Income Tax Department. However, the AA had not considered the above income for the purpose of levy of value added tax.	5.55

The concerned JCCT accepted (December 2013) our observation and raised demand of ₹ 12.12 lakh on reassessment			
7	ACCT, Unit-46, Vadodara (1)	Under Section 2(24) of the GVAT Act, the amount of duties levied or leviable under the Central Excise Tariff Act, 1985 form the part of sale price and tax is leviable thereon. The dealer had made payment of ₹ 52.36 lakh to the Central Excise and Customs Department pursuant to survey carried out by the Department. The above amount was required to be included in the sales turnover and assessed to tax. However, the AA had not considered the above amount for the purpose of levy of tax.	2.61
The Department accepted (April 2015) our observation and raised demand on reassessment.			
<b>Total</b>			<b>55.66</b>

We pointed out these cases to the Government in May 2015. The Government confirmed (July/ August 2015) replies of the Department in seven cases. We are awaiting their reply in the remaining case (October 2015).

## 2.6 Non/short levy of tax/ additional tax

Section 7(1) of the GVAT Act, 2003 provides for levy of tax on the turnover of sales of goods specified in Schedule II or Schedule III at the applicable rate. Whereas, Section 7(1A) provides for levy of additional tax at the rate of 2.5 per cent/ one per cent. Further, as per Section 2(23) of the Act *ibid* sale includes transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

During test check of the assessment records of four offices<sup>38</sup>, we noticed<sup>39</sup> in five assessments<sup>40</sup> of four dealers that there was non/ short levy of tax/ additional tax of ₹ 0.57 crore as mentioned in **Table 2.6**. Besides, interest and penalty is also recoverable, wherever applicable.

**Table 2.6**

(₹ in lakh)

Sl. No.	Office (No. of dealers)	Nature of observation	Tax/ Additional Tax
1	JCCT, Flying Squad, Ahmedabad (1)	Rule 18 B(3) of GVAT Rules, 2006 provides that the eligible unit availing tax remission shall pay additional tax into Government Treasury after adjusting input tax credit of the additional tax paid on purchases of taxable goods. Out of total additional tax liability of ₹ 83.92 lakh, the dealer was liable to pay additional tax of ₹ 50.33 lakh in cash after adjusting ITC of ₹ 33.59 lakh of additional tax paid on purchases. However, the AA had adjusted the above amount from the total ITC available with the dealer.	50.33
The Department accepted (July 2015) our observation and recovered the amount by adjusting the dues from the amount of refund payable to the dealer.			

<sup>38</sup> ACCT-18 Ahmedabad, 83 Amreli, 45 Vadodara, JCCT: Flying Squad, Ahmedabad

<sup>39</sup> between December 2012 and May 2014

<sup>40</sup> for the year 2008-09 and 2009-10 finalised between February 2012 and March 2014

2	ACCT, Unit-18, Ahmedabad (1) Unit-45, Vadodara (1) Unit -83 Amreli (2)	<ul style="list-style-type: none"> <li>The AA incorrectly assessed the deemed sale of goods used in execution of works contract at ₹ 2.18 crore instead of ₹ 2.98 crore which was arrived at by adding gross profit element to the net consumption of goods. This resulted in non-levy of tax on goods worth ₹ 79.22 lakh involving tax effect of ₹ 3.96 lakh.</li> <li>The AA had allowed deductions of ₹ 2.82 crore from the total receipts of works contract of ₹ 3.86 crore, instead of eligible deductions of ₹ 1.20 crore for the previous year. Thus, the AA had allowed excess deductions from the taxable turnover to the extent of ₹ 1.68 crore with tax effect of ₹ one lakh.</li> <li>Similarly in two cases incorrect determination of turnover resulted in short levy of tax of ₹ 1.39 lakh.</li> </ul>	6.36
After this being pointed out, the Department accepted (April 2015) our observations in three cases and raised demand of ₹ 5.75 lakh while revision proceedings had been initiated in the other case.			
<b>Total</b>			<b>56.69</b>

We pointed out these cases to the Government in May 2015. The Government confirmed (July/ August 2015) replies of the Department in four cases. We are awaiting their reply in the remaining case (October 2015).

## 2.7 Non/short reduction/ reversal of Input Tax Credit

During test check of the assessment records of six offices<sup>41</sup>, we noticed<sup>42</sup> in eight assessments<sup>43</sup> of eight dealers that the Assessing Authority (AA) had either not reversed/reduced ITC or had reduced ITC less than that was due to the Government side. This had resulted in non/short reduction/reversal of ITC to the extent of ₹ 52.50 lakh. Besides, interest and penalty was also not recovered, as per provisions of the Act as explained in **Table 2.7**:

**Table 2.7**

(₹ in lakh)				
Sl. No.	Name of office (No. of dealers)	Assessment year Date of assessment	Nature of observation	Non/ short reduction/ reversal of ITC
1	ACCT, Unit-8, Ahmedabad (1)	2008-09 6.3.2013	Under Rule 28(8)(b)(vi-a)(3) of the GVAT Rules, 2006, if a dealer (who has opted for payment of <i>lump-sum</i> tax) has already claimed the tax credit for the goods held in the stock on the date of effect of permission and such goods are going to be used in the works contract for which permission to pay <i>lump-sum</i> tax is sought for, he shall reverse	25.31

<sup>41</sup> ACCT-8,9,11 Ahmedabad, 57 Ankleshwar, 24 Gandhinagar  
DCCT-18 Valsad

<sup>42</sup> Between August 2013 and September 2014

<sup>43</sup> For the year 2008-09, 2009-10 and 2010-11 finalised between April 2012 and September 2013

			such tax credit. The AA had not reduced ITC on stock of work-in-progress, raw material and consumables worth ₹ 5.77 crore held on the date of opting for permission for payment of <i>lump-sum</i> tax, which were used in the execution of works contract.	
2	ACCT, Unit-11, Ahmedabad (1), Unit-57, Ankleshwar (3), Unit-24, Gandhinagar (1)	2008-09 and 2009-10 26.4.2012, 3.11.2012 and 21.6.2012	Section 11(5)(h) prohibits allowance of tax credit on goods used in manufacture of tax free/exempted goods. We observed in five cases of three offices that the AAs had reduced ITC of ₹ 27.98 lakh instead of ₹ 51.52 lakh on purchases of goods of ₹ 9.55 crore which were used in the job work.	23.53
3	ACCT Unit-9, Ahmedabad (1)	2009-10 24.8.2012	Section 11(3)(b) of the GVAT Act prescribes for reduction in tax credit at the rate of four <i>per cent</i> of the taxable turnover of purchases branch transferred/ used as raw materials in the manufacture/ packing of goods which are branch transferred out of State. The AA had reduced ITC of ₹ 0.42 lakh only instead of ₹ 2.91 lakh on purchases of goods of ₹ 72.94 lakh used in the manufacture of goods which were branch transferred out of the State.	2.49
4	DCCT, Range-18, Valsad (1)	2010-11 3.9.2013	Section 11(3)(b)(iii) of the GVAT Act prescribes for reduction in tax credit at the rate of four <i>per cent</i> of the fuels used in the manufacture of goods. The AA had not reduced ITC at the rate of four <i>per cent</i> of purchase of natural gas (fuel) valued at ₹ 29.26 lakh which was used in manufacture of goods.	1.17
			<b>Total</b>	<b>52.50</b>

After this being pointed out in March 2015, the Department accepted (July 2015) our audit observation in five cases and recovered an amount of ₹ 2.17 lakh in two cases and for the remaining cases, replies are awaited.

We pointed out these cases to the Government in May 2015. The Government confirmed (July/ August 2015) replies of the Department in five cases. We are awaiting their replies in the remaining cases (October 2015).

## 2.8 Non/ Short levy of interest (VAT/CST)

Under Section 30(5) of the GVAT Act, 2003 where a dealer does not pay the amount of tax within the time prescribed for its payment, then there shall be paid by such dealer for the period commencing on the date of expiry of the aforesaid prescribed time and ending on date of payment of the amount of tax, simple interest at the rate of eighteen *per cent* per annum, on the amount of tax not so paid or on any less amount thereof remaining unpaid during such period. Further, under Section 42(6) of the Act, *ibid*, where the amount of tax assessed or reassessed for any period, exceeds the amount of tax already paid by the dealer for that period, the dealer shall pay simple interest at the rate of eighteen *per cent* per annum on the amount of tax remaining unpaid for the period of default. By virtue of Section 9(2) of the CST Act, provisions of interest and penalty as per GVAT Act, become applicable to CST assessment also.

During test check of the assessment records of six offices<sup>44</sup>, we noticed<sup>45</sup> in eight assessments<sup>46</sup> of seven dealers that the AA had calculated interest incorrectly on delayed payment of tax due to incorrect calculation/adoption of period of delay. The AA had levied interest of ₹ 192.06 crore, instead of correct interest of ₹ 194.12 crore, resulting in short levy of interest of ₹ 2.48 crore. Besides, penalty at applicable rates was also leviable. Irregularities in assessments have been explained in **Table 2.8**:

**Table 2.8**

(₹ in lakh)				
Sl. No.	Name of office (No. of dealers)	Assessment year Date of assessment	Nature of observation	Non/ Short levy of interest
1	DCCT, Petro-1, Ahmedabad (1)	2009-10 10.02.2014	The Hon'ble Supreme Court of India vide its judgement dated 13 September 2012 directed 'Essar Oil Limited' to pay principal amount of dues with interest at the rate of 10 <i>per cent</i> on reducing balance basis in eight equal quarterly instalments. However, while calculating the interest, the Department calculated the period for payment of tax incorrectly which resulted in short levy of interest.	123.59
2	DCCT, Corporate-1, Division-2, Ahmedabad (1), DCCT, Enforcement-	2009-10 29.03.2013	The AAs were required to calculate the interest for the period from due date of payment of tax till the date of order of assessment. But the interest was levied for the period from the date of completion of assessment period till the date of order of assessment, which resulted in short	58.31

<sup>44</sup> ACCT-6 Ahmedabad, 33 Kadi, 61 Surat, DCCT: Petro-1, Enforcement-2, Corporate Cell-1, Division-2, Ahmedabad

<sup>45</sup> Between August 2013 and August 2014

<sup>46</sup> For the year 2007-08, 2008-09 and 2009-10 finalised between December 2011 and March 2014

	2, Ahmedabad (1)		levy of interest of ₹ 58.31 lakh.	
3	DCCT, Corporate-1, Division-2, Ahmedabad (1)	2009-10 25.03.2014	Section 30(6) states that where a dealer is liable to pay interest under sub-section (5) or under sub-section (7) of Section 42 and he makes payment of an amount which is less than the aggregate of the amount of tax, penalty and interest, the amount so paid shall be first applied towards the amount of interest, thereafter the balance, if any, towards the amount of penalty and thereafter the balance, if any, towards the amount of tax.  The dealer had made payment of an amount of ₹ 29.89 crore which was less than outstanding amount of tax of ₹ 31.70 crore and interest of ₹ 0.51 crore. The AA had not adjusted the amount so paid towards interest first which resulted in short levy of interest of ₹ 58.86 lakh	58.86
4	ACCT, Unit-33, Kadi (1) Unit-6, Ahmedabad (1), Unit-61 Surat (1)	2008-09 Self-assessed 2008-09 21.01.2013	The dealer had irregularly availed ITC of ₹ 5.74 lakh in the monthly returns and therefore, was liable to pay output tax to that extent. But, interest at the rate of 18 <i>per cent</i> was not levied by the AA. Besides, interest on the amount of unpaid tax was levied incorrectly to the extent of ₹ 3.74 lakh in two cases by the AAs.	6.86
	<b>Total</b>			<b>247.62</b>

After this being pointed out in March 2015, the Department accepted (May 2015) our observation in six cases and recovered (August 2015) ₹ 3.12 lakh in one case and the reply for the remaining cases is awaited.

We pointed out these cases to the Government in May 2015. The Government confirmed (July 2015) replies of the Department in five cases. We are awaiting their replies in the remaining cases (September 2015).

## 2.9 Non/ short levy of penalty

During test check of assessment records of five offices<sup>47</sup>, we noticed<sup>48</sup> in assessments of seven dealers<sup>49</sup> that there was non/ short levy of penalty of ₹ 1.23 crore as mentioned in **Table 2.9**:

<sup>47</sup> ACCT-3,6,22 Ahmedabad, 92 Morbi  
DCCT-17 Surat

<sup>48</sup> Between August 2013 and August 2014

<sup>49</sup> For the year 2006-07, 2007-08, 2008-09 and 2010-11 finalised between March 2011 and March 2013

Table 2.9

(₹ in lakh)

Sl. No.	Name of office (No. of dealers)	Nature of observation	Non/ short levy of penalty
1	ACCT, Unit-92, Morbi (3), ACCT, Unit-6, Ahmedabad (1)	Section 34(12) provides for levy of penalty not exceeding one and half times of the difference between the tax paid with returns and the amount assessed or reassessed where the tax assessed or reassessed exceeds 25 per cent of the amount of tax already paid. Though the amount of tax assessed (₹ 106.93 lakh) in audit assessment by the AA exceeded the amount of tax paid (₹ 29.77 lakh) by the dealers with returns by more than 25 per cent, no penalty was levied under Section 34(12) of the Act.	115.74
The Department accepted (July 2015 in respect of one case and August 2015 in respect of three cases) our observation in all the cases and initiated recovery proceedings.			
2	ACCT, Unit-22, Ahmedabad (1) ACCT, Unit-3, Ahmedabad (1) DCCT, Range-17, Surat (1)	Section 31(3) of the GVAT Act, 2003 stipulates that the tax collected and deposited under the provisions of this Act to which a dealer may be held not liable shall not be refunded to the dealer and the amount of such tax shall stand forfeited to the Government. Further, under Section 31(4) of the Act <i>ibid</i> , if any person collects any amount by way of tax in contravention of the provisions of the Act, he shall be liable to pay, in addition to any tax payable, a penalty equal to the amount so collected.  We observed in respect of two cases that the dealers had collected tax at the rate of 15 per cent instead of five per cent on sale of Glass Pearls (Beads) and scraps and in another case dealer had collected tax of ₹ 38.62 lakh instead of ₹ 37.09 lakh on sale of motor vehicles and their spare parts. Thus, the dealers had collected tax in excess of tax required to be collected as per provisions of the GVAT Act. However, the AAs had not levied any penalty under Section 31(4) of the Act.	7.03
The Department in respect of one case accepted (July 2015) our observation and initiated recovery proceedings. The Department did not accept (May 2015) our observation in another case stating that the dealer had sold mixed scrap through tender without categorisation of goods. Hence, the dealer had collected tax at higher rate. Reply of the Department is not acceptable as the dealer had clearly mentioned category of scrap in sales invoices raised by him which were taxable at the rate of five per cent. The Department did not accept (July 2015) the audit observation in the remaining one case and stated that though dealer had collected the excess amount, he had remitted the excess amount so collected into the Government account. Therefore, penalty is not leviable. Reply of the Department is not acceptable as the Section 31(3) and 31(4) are separate sections that provide for forfeiture of excess collected amount and levy of penalty respectively.			
		<b>Total</b>	<b>122.77</b>

We pointed out these cases to Government in May 2015. The Government confirmed (July/ August 2015) replies of the Department in all the cases.