

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

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2.1 Tax administration

Sales Tax/Value Added Tax laws and rules framed thereunder are administered at the Government level by the Additional Chief Secretary (Excise and Taxation). The Excise & Taxation Commissioner (ETC) is the head of the Excise and Taxation Department who is assisted by two Additional ETC, one Joint ETC, six Deputy ETCs, 12 Assistant ETCs and 69 Excise & Taxation Officers (ETOs). They are assisted by Excise and Taxation Inspectors and other allied staff for administering the relevant Tax laws and rules.

2.2 Results of Audit

In 2014-15, test check of the records of nine units relating to VAT/Sales tax assessments and other records showed underassessment of tax and other irregularities involving ₹132.11 crore in 176 cases, which fall under the following categories as given in **Table 2.1**:

Table 2.1

			₹ in crore
Sr. No.	Categories	Number of cases	Amount
1.	Performance audit on ' <i>System of assessment under VAT</i> '	01	13.85
2.	Under-assessment of tax	10	0.94
3.	Acceptance of defective statutory <i>C & F</i> forms	43	7.85
4.	Evasion of tax due to suppression of sales/purchases	05	0.08
5.	Irregular/incorrect/excess allowance of ITC	57	2.05
6.	Application of incorrect rate of tax	24	2.16
7.	Other irregularities	36	105.18
Total		176	132.11

During the course of the year, the Department accepted underassessment and other deficiencies of ₹18.17 crore in 154 cases, which were pointed out in earlier years out of which an amount of ₹2.74 crore was realised in 130 cases of which ₹1.00 crore in 101 cases pertain to previous years and ₹1.74 crore in 29 cases for the year 2014-15.

A performance audit on '*System of assessment under VAT*' having money value of ₹13.85 crore and few illustrative cases involving ₹2.49 crore are discussed in the following paragraphs.

2.3 Performance audit on 'System of Assessment under VAT'

Highlights

- *The cases pending for assessment increased from 72,524 in 2009-10 to 1,38,168 at the end of 2013-14 (an increase of 91 per cent). The percentage of disposal of cases during the period of 2009-10 to 2013-14 was between 20 and 25 per cent of the cases due for assessment.*
(Paragraph 2.3.6.4)
- *Penalty of ₹38.56 crore for late/non-filing of returns could not be imposed/recovered from the dealers due to non-maintenance of registers/database of returns.*
(Paragraph 2.3.6.5)
- *In the absence of provision of disclosure of nomenclature of goods in the HPVAT, ITC claimed by the dealers could not be co-related and verified with the nature of business.*
(Paragraph 2.3.8)
- *Application of wrong method for calculating deferred tax liability on the closing stock, resulted in irregular allowance of ITC of ₹1.60 crore, besides interest of ₹0.43 crore was also leviable.*
(Paragraph 2.3.9.1)
- *Underassessment of Gross turnover (GTO) or taxable turnover (TTO) by ₹45.80 crore due to non-reconciliation of gross receipts/turnover with the certified receipts/accounts, resulted in short levy of tax of ₹5.94 crore, besides interest of ₹0.62 lakh was also leviable.*
(Paragraph 2.3.10)
- *Tax on the sales of ₹183.31 crore in 22 cases were assessed at the rate of four/five per cent instead of correct rates of 12.50/13.75 per cent, resulting in short realisation of tax of ₹1.94 crore, besides interest of ₹1.58 crore was also leviable.*
(Paragraph 2.3.12)

Introduction

The Himachal Pradesh General Sales Tax (HPGST) Act, 1968 was in existence upto 31 March 2005. Thereafter, the Himachal Pradesh Value Added Tax (HPVAT) Act, 2005 and the other Acts as well as the rules framed thereunder governed the laws relating to the levy, assessment and collection of Sales Tax/VAT in the State since April 1st 2005. Besides, Central Sales Tax (CST) Act, 1956 and the rules framed thereunder are in operation for inter-state sales. A dealer registered under the repealed Act and who continued to be registered on or immediately before 1st April 2005 and liable to pay tax was deemed to be registered under the HPVAT Act. Under the HPVAT, Act and Rules made thereunder, every registered dealer is required to furnish self-assessed periodical returns in Form 'VAT-XV', a quarterly return within 30 days from the expiry of each quarter of a financial year and liable to pay tax due from him within the time specified in the tax demand notice (TDN) (not less than 15 days and not exceeding 30 days).

2.3.2 Organisational set up

Additional Chief Secretary (Excise and Taxation) is the administrative head of the department at the Government level. The Excise and Taxation Commissioner (ETC) is the head of the department (HOD) who is empowered with the work of superintendence and administration of various fiscal measures. He is assisted by the two additional ETCs, One joint ETC, six deputy ETCs, 12 Assistant Excise and Taxation Commissioners (AETCs), 69 Excise and Taxation Officers (ETOs), Excise and Taxation Inspectors (ETIs) and other allied staff in the administration of Acts/Rules in the Department.

2.3.3 Audit Objectives

The performance audit was conducted with a view to assess:

- the efficiency and effectiveness of the system of assessment under VAT;
- existence and comprehensive of adequate rules and procedures/provisions in the Act and Rules for assessments of VAT;
- compliance to the existing provision in the Act/Regulation and collection of tax revenue; and
- whether an adequate internal control and monitoring mechanism exists in the department to prevent leakage of revenue.

2.3.4 Scope of audit and methodology

The performance audit of '*System of Assessment under VAT*' covering the period 2009-10 to 2013-14 was conducted between November 2014 and June 2015 in ETC and five field offices¹ out of 12 units. The selection of these units was made by applying IDEA random sampling technique. Selection of the assessment cases was made on the basis of the Gross Turnover of the dealers *viz.* where GTO of a dealers was ₹one crore and above 100 *per cent*, above ₹50 lakh and below ₹one crore 50 *per cent* and above ₹20 lakh and below ₹50 lakh 25 *per cent*, in audit.

An entry conference was held in January 2015 with the Additional Chief Secretary, (Excise and Taxation), Government of Himachal Pradesh wherein the objectives, scope and methodology for conducting the performance audit were discussed. The draft report on performance audit was forwarded to the Department and to the Government in August 2015 and the exit conference with Additional Chief Secretary (Excise and Taxation) and the Commissioner was held in September 2015. The replies of the Government and department have been incorporated in the respective paragraphs. We acknowledge the co-operation extended by the Department in providing necessary information and records for facilitating audit.

¹ AETCs Baddi, Shimla, Nahan, Solan and Una

2.3.5 Audit Criteria

The audit criteria were derived from the following sources:

- Orders issued by the Department/Government regarding criteria for selection of cases for assessment
- HPVAT Act and Rules
- CST Act, 1956
- Notification/Circulars issued by respective State Governments and
- Judgments of various Courts

System deficiencies

2.3.6 Procedure for registration, assessment and recovery of tax revenue under HP VAT Act

A brief of provisions/system relating to Assessments of VAT under HPVAT Act, 2005 for the purpose of effecting recovery of Government dues is given in **Appendix-I**.

2.3.6.1 Registered dealers under VAT

At the time of implementation of VAT system (April 2005) in the State there were 34,602 registered dealers which rose to 62,798 dealers in 2013-14.

2.3.6.2 Non-detection of unregistered dealers

It was noticed that no provision existed in the HPVAT Act and Rules for periodic analysis of dealers below threshold limit² to prevent the unregistered dealers avoiding registration. No instruction was issued by the department in this regard. Absence of a mechanism for periodical review of dealers below threshold limit (eight lakh) keeps the option open for the unregistered dealers to evade payment of tax even after crossing the threshold limit.

The Joint ETC stated in exit conference (September 2015) that the periodical analysis of the dealers would be done on priority basis.

2.3.6.3 Non-allotment of Tax Identification Number (TIN)

As per rule 5 (4) every VAT registration certificate shall bear a unique number known as Taxpayers Identification Number (TIN) which consisting of eleven digits. TIN under VAT regime is required to be issued to all the dealers on registration. The first two digits of TIN stand for abbreviated name of State, next two-digit represents the Charge code, next four digits represent the registration number, next one digit represents the Act identification code and the remaining two are for check code.

Audit test checked the records of five AETCs (between August 2014 and March 2015) out of which in two AETCs³ it was noticed that 1,299 dealers were still holding old GST/CST registration number and had not been allotted TIN even after nine years of implementation of the VAT. These dealers were out of the

² Eight lakh and below

³ AETCs Baddi and Una

VAT database but participate in the VAT chain undetected and secured from the in-built mechanism of scrutiny in the system, therefore, possibility of evasion of tax could not be ruled out from such dealers. Audit, further, noticed that neither the RC of these dealers was suspended/cancelled nor any effort for allotment of TIN was made by the department.

The ETC admitted the audit observations in exit conference (September 2015) and apprised that the necessary directions to all the AETCs would be issued shortly to identify and issued TIN to them or canceled the RC of the dealers.

2.3.6.4 Pendency in assessment of VAT

The year wise number of cases pending for assessment at the beginning of the year, assessment due, assessment made and assessment pending at the end of each year during 2009-10 to 2013-14 were as under:-

Table 2.3

Year	Opening balance	New cases due for assessment during the year	Total assessments due during the year	No. of cases deemed assessed	No. of cases scrutinized/ assessed	Assessment made during the year (5 + 6)	Balance at the end of the year (4 - 7)	Percentage of disposal cases (Col. 7 to 4)
1	2	3	4	5	6	7	8	9
2009-10	72,524	41,382	1,13,906	4,406	23,146	27,552	86,354	24
2010-11	86,354	45,342	1,31,696	4,793	28,679	33,472	98,224	25
2011-12	98,224	48,881	1,47,105	5,182	30,108	35,290	1,11,815	24
2012-13	1,11,815	52,290	1,64,105	5,348	30,341	35,689	1,28,416	22
2013-14	1,28,416	44,497	1,72,913	8,447	26,298	34,745	1,38,168	20

Source: Figures supplied by the department.

It may be seen that the percentage of disposal during the year 2009-10 to 2013-14 ranged between 20 and 25 per cent.

The cases assessed were less than the new cases added in all the five years which was indicative of the inadequate capacity of the department to finalise the assessment cases in a time bound manner.

Age wise pendency of cases as on 31 March 2014 was as under:

Sr. No.	Cases pending for finalization	Number of cases
1.	more than seven years	3,467
2.	more than five years but less than seven years	16,258
3.	more than three years but less than five years	43,550
4.	upto three years	74,893
Total		1,38,168

This is indicative the fact that the department did not take effective steps to dispose of the cases in a time bound manner which resulted in piling up of the outstanding cases of assessment and blocking of Government revenue.

Addl. Chief Secretary (E&T) admitted the audit observation in exit conference (September 2015) and directed to ETC to issue the necessary directions to all the AETCs to look into the matter at their own level and deemed assessments may be increased to reduce the pendency.

2.3.6.5 Late/non-submission of returns

Under the HPVAT Act and Rules made thereunder, every registered dealer is required to furnish self-assessed periodical returns in Form VAT-XV, a quarterly return within 30 days from the expiry of each quarter of a financial year. Rule 40 (5), further, provides that every registered dealer shall also furnish an annual return for the preceding year in Form VAT-XV-A on or before 31st October next accompanying therewith a copy of final account including balance sheet, profit and loss account-cum-manufacturing/trading accounts for the year. Further, if the GTO of the dealer during the previous financial year was rupees five crore or more, he shall furnish monthly return within 30 days from the expiry of each month of a financial year. Section 16 (6) of the Act provides that if a dealer fails without sufficient cause to furnish the return by the prescribed date, the dealer shall be liable to pay penalty at the rates prescribed in the Act.

The audit obtained the information from the database of the department and noticed that penalty of ₹21.45 crore was imposed by the department to those dealers who filed their returns late and recovered only ₹3.71 crore which resulted in short recovery of ₹17.74 crore. Whereas 69,426 dealers who had not filed their annual returns, the penalty of ₹20.82 crore at the rate of ₹3,000 per annual return for the period 2011-12 to 2013-14 was not being imposed/recovered by the Department. Therefore, penalty amounting to ₹38.56 crore was not recovered by the Department as detailed in **Table 2.4**:

Table - 2.4

Year	Total No. of dealers	No. of dealers who filed the returns	No. of returns filed late	Penalty imposed ₹ in crore	Recovery made ₹ in crore	Balance amount yet to be recovered ₹ in crore	Dealers who did not file the returns	Penalty imposed	Remarks
2011-12	49,235	23,136	29,205	2.50	0.91	1.59	26,099	The department had not supplied data.	The amount of penalty in respect of non-filer of returns was worked out as per details below: 2011-12=₹7.83 crore 2012-13= ₹6.57 crore 2013-14= ₹6.42 crore Total = ₹20.82 crore
2012-13	55,644	33,731	26,791	4.09	1.59	2.50	21,913		
2013-14	62,798	41,384	22,218	14.86	1.21	13.65	21,414		
Total			78,214	₹21.45	₹3.71	₹17.74	69,426	38.56 crore	(₹20.82 cr.+₹17.74 cr.)

Source: Figures supplied by the department.

On this being pointed out (between November 2014 and June 2015), the Department admitted the audit observations in exit conference (September 2015) and stated that the penalty on late filing of returns would be made automatic through IT system and necessary instructions in this regard would be issued to all the AETCs.

2.3.6.6 Non-Scrutiny of returns

Section 21(1) of the HP VAT Act 2005 provides that the returns furnished by a dealer shall be duly acknowledged in the manner prescribed and where all the returns relating to any year have been filed and are correct and complete in material particulars, the dealer shall, subject to the provisions of sub-section (2), be deemed to have been assessed for that year, provided that where the returns are not complete in material particulars, the dealer shall be given an opportunity to complete the same within 15 days of service of the notice. As per Section 60 and Rule 44 of the HP Act/VAT Rules 2005, the scrutiny of every return filed

under Section 16 of the Act is required to be done. If, any dealer is found to have made payment of tax less than what is payable by him for the tax period as per the return furnished, the AA shall serve a notice in prescribed form to make payment of extra amount of tax.

Audit called for the information and records relating to the scrutiny of self-assessed returns from five AETCs (between January and June 2015) but these AAs did not furnish specific reply and records relating to initial scrutiny was not provided to audit. However, audit noticed from the data supplied by the department that due to non-scrutiny/partial scrutiny of periodical and annual returns at the initial stage, the objectives of the system of deemed assessment introduced for reducing the pendency was not fulfilled which resulted in accumulation of pendency from 72,524 cases at on the start of 2009-10, the number of outstanding cases rose to 1,38,168 at the end of 2013-14.

Audit, further, scrutinised the assessment records (between September and November 2014) of AETC, Shimla for the year 2013-14 and noticed that the dealer filed two annual returns alongwith different Trading and Profit and Loss Accounts for the year 2008-09 and both the returns were received in November 2009. Out of these, one account did not pertain to the dealer. Audit, further, noticed that to evade the tax, the figures of sales in the quarterly returns were tempered and removed with fluid to match with the figures of annual return furnished for suppressing the GTO/TTO of ₹13.93 lakh. The AA did not detect this mistake and finalised the assessment of the dealer (December 2013) for the period 2008-09 on the basis of tempered return. This resulted in under assessment of tax ₹2.82 lakh.

On this being pointed out (November 2014), the Department re-assessed the case (January 2015) and created an additional demand of ₹4.52 lakh after imposing 100 *per cent* penalty on the evaded amount of tax. In exit conference (September 2015), the Addl. Chief Secretary (E&T) stated that it was a serious nature of irregularity and directed the ETC to call for the explanation from the concerned AAs.

2.3.7 Delay in service of notice for assessment

Section 21 (5) of the HPVAT Act provides that if a dealer does not furnish returns in respect of any period by the prescribed date, the AA shall, within five years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess, to the best of his judgment, the amount of tax, if any, due from the dealer. As per Rule 67, the appropriate AA shall, in each case selected for scrutiny to check where the returns are not complete and in other cases where it appears to the Appropriate AA to be necessary to make an assessment, serve a notice in Form VAT-XXIX.

Test check of the records of pending assessment cases (between January 2015 and June 2015) of five AETCs for the years 2009-10 to 2013-14 out of which in two AETCs⁴, it was found that in 73 cases notices were served to the dealers after expiry of the time limit fixed for assessment. Delay in service of notices within the prescribed time limit of five years from the assessment period ranged

⁴ AETCs Baddi and Una

between five and eight years, which resulted in assessment of these cases have becoming time barred.

The ETC admitted the audit observations in exit conference (September 2015) and apprised that the concerned AETCs would be instructed that the notices may be served to the defaulters in time so assessment of such cases finalised within the prescribed time limit to avoid the piling up of pendency.

2.3.7.2 Delay in finalizing the assessments

Test check of the records of the assessments of five AETCs (between January 2015 and March 2015) out of which in two AETCs⁵, it was noticed that in six cases there was delay ranging between five to eight years in issuing first notice for assessment for the tax period 2005-06 to 2007-08 and in other three cases, no notice was served even after a lapse of six years. The AAs had levied incorrect tax on interstate sale and allowance of concessional rate of tax against invalid forms *C & F*, which resulted in under assessment of tax of ₹1.34 crore, including interest and penalty as detailed in **Appendix-II**.

2.3.7.3 Barred Assessments

During verification of records of three Appellate Authorities⁶, in one Appellate Authority audit noticed that out of 180 test checked cases, in five cases the AAs finalized the assessments (between March 2009 and December 2012) with delay ranged between five and six years and created an additional demand (AD) of ₹22.88 lakh. All the dealers filed appeals against the orders of the AAs on the grounds that no notice was served for the assessment within the prescribed time limit of five years; hence, the assessment had become time barred by limitation. The appellate authority accepted the appeal and cases of the dealers were remanded back to the AA. A case of the dealer was remanded back on the guidelines that the dealer may be allowed to deposit tax part (₹1.34 lakh) only and the interest and penalty (₹2.32 lakh) waived off. Laxity on the part of department for not initiating assessment proceeding within five years declared the assessment of these cases barred by the limitation resulted in loss of revenue of ₹21.55 lakh.

The ETC admitted the audit observations in exit conference (September 2015) and apprised that the necessary directions to all the AETCs would be issued shortly to finalise the assessments without any delay to avoid the assessment become time barred.

2.3.8 Absence of provision of nomenclature of goods in the VAT Rules

Section 11 (1) of the HP VAT Act, 2005, provides that the input tax credit (ITC) which a purchasing registered dealer is entitled to claim, shall be the amount of input tax paid or payable by such purchasing dealer to the selling registered dealer, on the turnover of purchases made by him during the tax period. Rule 41 of the HP VAT Rules, further, stipulates that every registered dealer shall append to his return a list of sales and the list of purchases in Form LS-I as specified in return in Form VAT-XV. Form LP-I prescribed for claiming ITC does not

⁵ AETCs Baddi and Una

⁶ Mandi, Palampur and Shimla

specify the nomenclature of the goods to claim ITC. In absence of this, authenticity of ITC claimed could not be verified.

Audit test checked the records of five AETCs (between November 2014 and June 2015) and it was noticed in AETC Baddi that in four cases the dealers furnished particulars of goods in LP-I and found that these goods were not used as raw material and were also not capital goods and claimed irregular ITC on such goods.

The States of Kerala and Uttar Pradesh had assigned HSN codes (Harmonized System of Nomenclature code) to the goods specified in the Schedule for proper identification of goods, which can be replicated.

2.3.8.2 Absence of provisions in Rules for furnishing Form-I for the Assessment Period

As per notifications of July 1999 and June 2009, government had allowed concessional rate of Central Sales Tax at one *per cent* (one and half *per cent* from April 2014) of the taxable turnover of such goods manufactured for interstate sale/trade by the dealers running industrial units in HP with the condition for availing the concession was that the unit located in industrially backward areas should have employed 80 *per cent* of its total manpower amongst the bonafide Himachalis. Notification of March 2005, further, provides that the manpower percentage for bonafide Himachalis is 70 *per cent* for industrial developing areas.

Para 4 (V) of notification 1999 provides that such industrial units are required to obtain a certificate in FORM-I prescribed by the Department of Industries of the Government of HP vide Notification dated 23-07-99 where the industrial unit is registered. This FORM-I is issued for a particular year to certify that the conditions required under Rule No. 10.3 of State Industrial Policy, 2004, have fulfilled by the concerned industrial unit for availing benefit of one *per cent* concessional rate under the CST. The department issued instructions to all the AETCs in May 2014 that Form-I is not required to be furnished annually.

Audit test checked the records of AETC, Baddi and noticed that in nine cases, the assessments of the dealers/Industrial units were finalized on the basis of the certificate furnished in FORM-I which did not pertain to the year of assessment. The concerned unit had already availed the benefit of concessional rate of tax under this Form-I furnished by the dealer. Therefore, the benefit of one *per cent* concessional rate of tax under the State Industrial Policy 2004 was irregular. Thus, the concessional rate of tax of ₹1.40 crore allowed to these industrial units without fulfilling the above requirement resulted in under assessment of CST of ₹1.40 crore on the turnover of ₹139.62 crore as in such cases normal rate of tax as applicable against form C was to be levied.

The Addl. Chief Secretary (E&T) admitted the audit observations in exit conference and stated that to watch the position of Himachal domicile employees, a letter is being issued to the Industries Department that the FORM-I once issued will be valid till withdrawal by the Industries department. The reply of the department is not acceptable as it was in contravention of the provisions of the Government notifications dated 30 March 2005 and 18 June 2009. The Form-

I should be issued by the Industries Department annually, only after verifying the percentage of Himachalis employees employed in the unit, to avoid wrong benefit of the exemption.

2.3.8.3 Absence of provision in the Act for allowing deduction of Job work

The HP VAT Act does not provide any mechanism for allowing deduction of job work receipt/charges from the GTO. Even in the prescribed format of Monthly/Quarterly and Annual Returns, no separate column exists to depict Job work receipt/charges. In such type of cases, provision for allowing deduction of labour charges to work contractors is applied by the AA and deduction of job work charges is allowed to the selling registered manufacturing dealers from the Gross turnover.

Audit test checked the records of five AETCs (between November 2014 and June 2015) out of which in two AETCs⁷ it was noticed that the job work-manufacturing units also manufactured goods for sale, and furnish consolidated Manufacturing, profit and Loss Account of their sale, purchase, and job work charges received during the assessment year. The said consolidated account did not specify that how much material was manufactured from the raw material received for job work and how much material manufactured for sale through purchases made during the year. Audit, further, noticed that in eight cases, the documents relating to receipt of job work charges, receipt of job work material for processing and copy of agreements for job work were not available in the record file of the dealer. In the absence of the exact provision of the Act, deduction of job work charges of ₹15.35 crore in eight cases were allowed by the AA from the Gross Turnover reported to the Department and the tax deduction on account of job work receipt claimed by the dealer in such cases could not be verified.

The ETC stated in exit conference (September 2015) that the matter would be looked into and outcome if any, intimated to audit accordingly.

2.3.8.4 Absence of mechanism to verify the tax deposited before allowing ITC

Under the HP VAT Act, a registered dealer is entitled to claim benefit of ITC to the extent of amount of tax paid by him to the local VAT dealers. The Act does not provide for submission of tax invoices along with the return. List of purchases (LP-I) furnished alongwith the return do not contain details relating to deposit of tax in the treasury by the selling dealer.

Audit scrutinised the information collected from the department (June 2015) and noticed that the Flying Squad (South Zone), Parwanoo, HP during their inspection (between September 2014 and February 2015) had detected 11 dealers based at Baddi, Solan, Kala-Amb and Parwanoo who were making fictitious sales and purchases with intention to defraud the state exchequer and making false ITC claim by issuing fake sale bills to the purchasing dealers. Scrutiny of information, further, showed that in these cases the AA concerned had denied the ITC of ₹3.05 crore including interest of ₹62.93 lakh claimed on the purchases of ₹33.38 crore during 2011-12 to 2014-15 by these dealers.

⁷ AETCs Baddi and Una

On being pointed out (June 2015) the ETC intimated (September 2015) that out of ₹3.05 crore, an amount of ₹1.77 crore had been recovered.

The Joint ETC in exit conference (September 2015) stated that the process for deducting the dealers who were making the fictitious sale and purchase would be continued and AAs will also be directed to do so.

2.3.8.5 Deficiencies in the HPVAT, IT system software

The Government of India through Empowered Committee (EC) of State Finance Ministers is assisting the Excise and Taxation Department of the State of Himachal Pradesh in computerisation of the HP VAT and Allied Taxes processes. The main aim of the project is to provide electronic services to the taxpayers as well as tax administrators.

Audit noticed that the database maintained by the department was incomplete and following deficiencies in the IT system of VAT applications were noticed.

- i. The dealer wise categorization according to the trade (manufacturer, traders and dealers who fall in lump sum scheme) was not displayed by the system.
- ii. System did not display alert through pop-up of return/tax defaulters.
- iii. System did not block TIN access of tax/return defaulters.
- iv. Online notices were not served to dealers relating to rectification of errors in the returns filed and amount of tax due to be paid by them.

2.3.8.6 Deficiencies noticed in the database

- i. Dealer wise information relating to the updated position of the finalization of assessment was not available.
- ii. Data/information relating to pendency in finalization of assessment cases was not available.
- iii. The system did not display dealer wise information of tax arrears.

The Joint ETC stated in exit conference (September 2015) that the IT system was being updated accordingly as per the requirement of the department and all aspects would be covered in this.

Compliance Deficiencies

The AAs while finalising the assessments did not observe some of the provisions of the Act/Rules in some cases as mentioned in the succeeding paragraphs:

2.3.9.1 Irregular allowance of ITC

Under Section 11 (3) of the HPVAT Act 2005, ITC shall be allowed to the extent of the amount of input tax paid by the purchasing dealer on the purchase of taxable goods made by him in the State, from a registered dealer holding a valid certificate of registration. As per notification of May 2007, the amount of ITC shall be admissible to a dealer on the purchase value of the goods sold by him during the tax period.

Test check of the records of five AETCs⁸ (between April 2014 and March 2015) showed that the AAs while finalizing the assessments (between May 2013 and July 2014) for the periods 2007-08 to 2012-13 of 31 dealers, allowed ITC by adopting different methods. However, on the basis of proportion of local purchases to the total purchases, closing stock of these dealers were aggregated to ₹47.89 crore during the tax periods out of intra-state purchases made from the registered dealers during those years on which no ITC was allowable. The AAs while allowing ITC of ₹27.10 crore on closing stocks had also deferred the tax liability of the dealers to that extent which was otherwise recoverable for the tax periods on the date of assessment. This resulted in irregular allowance of ITC of ₹1.60 crore⁹, besides interest of ₹0.43 crore was also leviable.

On being pointed out, the ETC intimated (September 2015) that out of ₹2.03 crore, an amount of ₹1.26 crore¹⁰ including interest had been recovered by three AETCs and efforts were being made to recover the balance amount.

2.3.9.2 Wrong allowance of ITC on branch transfer/consignment

Under section 11(4) of the HPVAT Act, 2005, the ITC shall be allowed only to the extent by which the amount of input tax paid in the State exceeds four *per cent* on purchases of goods sent outside the state otherwise than by way of sale as branch transfer or consignment sale in the course of inter-state trade or commerce.

Test check of the records of five AETCs, out of which in four AETCs¹¹ it was noticed that 14 dealers had made branch transfer of goods valued at ₹94.37 crore during the years 2007-08 to 2011-12. The AA while finalising (between May 2013 and March 2014) the assessments of these dealers did not disallow ITC on stock transfer as provided under the provisions of the Act *ibid*. This resulted in excess allowance of ITC of ₹94.11 lakh¹², besides interest of ₹92.00 lakh was also leviable.

2.3.9.3 Allowance of ITC on manufacturing/sale of tax-free goods

As per the Section 11(7) of the HP VAT Act, a purchasing dealer shall claim no ITC and this shall not be allowed to him for tax collected on the purchase of goods used in the manufacture, processing, or packing of goods, declared tax free.

Audit test checked the assessment records of five AETCs (between November 2014 and March 2015) out of which in two AETCs¹³, it was noticed that while finalising the assessment of two dealers (between May 2013 and January 2014) the AAs assessed GTO of ₹19.32 crore including tax free turnover of ₹1.88 crore and allowed ITC of ₹39.32 lakh on the purchases for the tax periods 2010-11 and 2011-12 against the allowable ITC of ₹35.75 lakh allowable after deducting

⁸ AETCs Baddi, Sirmour, Shimla, Solan and Una

⁹ AETCs Baddi (11 dealers: ₹30.74 lakh), Sirmour (one dealer: ₹1.08 lakh), Shimla (one dealer: ₹105.62 lakh), Solan (14 dealers: ₹20.10 lakh) and Una (four dealers: ₹2.78 lakh)

¹⁰ AETCs Shimla: ₹1.10 crore, Solan: ₹14.05 lakh and Una: ₹2.04 lakh

¹¹ AETCs Baddi, Sirmour, Solan and Una

¹² AETCs Baddi (four dealers: ₹2.07 lakh), Sirmour (four dealers: ₹10.24 lakh), Solan (five dealers: ₹81.70 lakh) and Una (one dealer: ₹0.10 lakh)

¹³ AETCs Shimla and Una

credits on goods utilised for manufacturing of tax-free goods, resulted in excess ITC of ₹3.58 lakh, besides interest of ₹2.27 lakh was also leviable.

On this being pointed out, the Department intimated (September 2015) that out of ₹5.85 lakh, an additional demand of ₹4.42 lakh including interest had been created of which ₹1.65 lakh recovered by AETC Una and efforts were being made to recover the balance amount. AETC Shimla had not furnished any reply.

2.3.9.4 Excess allowance of ITC on incorrect calculation/computation

As per Section 16 (8) of the HPVAT Act, 2005, if a dealer has maintained false or incorrect accounts with a view to suppressing his sales, purchases or stocks of goods or has furnished false or incorrect returns or information, the AA may direct him to pay by way of penalty in addition to the tax to which he is assessed or is liable to be assessed, an amount which shall not be less than twice the amount of tax assessed.

Audit test checked assessment records of five AETCs (between April 2014 and March 2015) and noticed that 26 dealers had claimed excess ITC of ₹4.74 lakh in 30 cases for the tax periods from 2005-06 to 2011-12, by incorrect calculation/computation of the ITC in their returns. The AAs while finalising the assessment of these dealers (between April 2013 and April 2014) did not scrutinise the return properly and allowed ITC as claimed by the dealers. This resulted in under assessment of tax of ₹4.74 lakh. Besides, interest of ₹3.00 lakh and penalty not less than twice the amount of tax was also leviable.

On this being pointed out, the Department intimated (September 2015) that an amount of ₹1.50 lakh¹⁴ including interest had been recovered by four AETCs, and ETC also in exit conference apprised that the necessary direction would be issued to the concerned AAs to look into the matter at their own level and recover the balance amount from the dealers.

2.3.10 Incorrect determination of turnover

Under Section 2(v) (zd) of the HPVAT Act 2005, 'turnover' means aggregate amount of sales, purchases and parts of sales and purchases made by any dealer and includes any sum charged on account of freight, storage, demurrage, insurance and for anything done by the dealer in respect of the goods at the time of or before delivery thereof.

Audit test checked the records of five AETCs (between April 2014 and March 2015) and noticed that AAs while finalising the assessments of 17 dealers for the periods 2007-08 to 2012-13 (between April 2013 and March 2014), assessed GTO at ₹505.25 crore as against ₹651.05 crore. Audit, further, noticed that AAs did not take cognizance of either of gross receipts/turnover determined lesser by 29 challans or assessed on lower side to that of certified receipts/accounts whereas in some other cases either turnover was taken lesser than the actual work done by the contractor. This resulted in short levy of tax of ₹5.94 crore. Besides, interest of ₹50.62 lakh was also leviable.

¹⁴ AETCs Baddi: ₹ 0.02 lakh, Shimla: ₹0.71 lakh, Solan: ₹0.67 lakh and Una: ₹0.10 lakh

On this being pointed out, the Department intimated (September 2015) that an amount of ₹1.11 lakh including interest had been recovered in three cases and the ETC apprised in exit conference (September 2015) that the necessary direction would be issued to the concerned AAs to look into the matter at their own level and recover the amount from the dealers.

2.3.11 Suppression of Purchase/Sales

As per Section 16 (8) of HP VAT Act, if a dealer has maintained false or incorrect accounts with a view to suppress his sales or purchases, he is liable to pay by way of penalty (in addition to the tax to which he is assessed or is liable to be assessed) an amount equal to twice the amount of tax to which he is assessed or is liable to be assessed.

Audit test checked the assessment records of four AETCs (between June 2014 and August 2014) for the tax period 2008-09 to 2012-13 and noticed that in 10 cases, dealers have maintained incorrect accounts and suppress their sales or purchases. Audit, further, noticed that neither any sale was made against these suppressed purchases nor were disclosed correctly in the Trading Account. The AAs while finalising the assessments (between May 2013 and February 2015) did not levy tax and penalty on the suppressed turnover of purchases which resulted in short levy of tax of ₹14.32 lakh, besides, interest/penalty of ₹13.43 lakh was also leviable detailed in **Appendix-III**.

2.3.12 Application of incorrect rate of tax

As per Schedule-A under Section 6 of HP VAT Act, 2005, tax is leviable on sales made by a dealer. Schedule-A, further, provides that tax shall be levied at the prescribed rates at every point of sale in respect of goods specified therein.

Audit test check of the records of five AETCs (between April 2014 and March 2015) out of which in three AETCs¹⁵ it was noticed that in 22 cases, 11 dealers had made intra-state sales of ₹183.31 crore during the years 2005-06 and 2012-13 which was taxable at the rate of 12.5 or 13.75 *per cent*. The AAs while finalizing the assessments (between April 2013 and June 2014) of 22 cases, had assessed the sales at the rate of four or five *percent* instead of correct rates of 12.50 or 13.75 *percent*. These omissions resulted in short realisation of tax of ₹1.94 crore¹⁶, besides, interest of ₹1.58 crore was also leviable.

2.3.13 Short realisation of interest

As per Section 19 (1) of the HP VAT Act 2005, if a dealer fails to pay the tax due by the prescribed date, he becomes liable to pay interest at the rate of one *per cent* on the tax due for a period of one month and at the rate of one and a half *per cent* per month thereafter, till the default continues. Section 19 (2) of the act *ibid* further, provides that if the amount of tax or penalty due from a dealer is not paid by him within the period specified in the notice of demand or if no period is specified within thirty days from the service of such notice, the dealer shall, in addition to the amount of tax or penalty, be liable to pay simple interest on such

¹⁵ AETCs Baddi, Sirmour and Solan

¹⁶ AETCs Baddi (four dealers: ₹7.05 lakh), Sirmour (three dealers: ₹131.41 lakh) and Solan (four dealers: ₹55.82 lakh)

amount at the rate of one *per cent* for a period of one month and at the rate of one and a half *per cent* per month thereafter, till the default continues.

Audit test checked the assessment records of five AETCs out of which in two AETCs¹⁷ it was noticed (between July 2014 and March 2015) that the AAs, while finalising the assessments of 34 dealers (between October 2012 and March 2014) for the years 2007-08 and 2011-12, created tax demand of ₹1.49 crore and levied interest of ₹0.16 crore against the leviable interest of ₹1.05 crore on the additional demands of these dealers, resulted in short levy of interest ₹88.74 lakh.

On this being pointed out, the Department intimated (September 2015) that out of ₹88.74 lakh, ₹18.16 lakh had been recovered from five dealers and efforts were being made to recover the balance amount.

2.3.14 Internal Control

2.3.14.1 Internal Audit System

Internal Audit Wing (IAW) of an organisation is vital wing for monitoring its functioning. It helps the management to take corrective action wherever necessary to ensure that systems are functioning reasonably well and stated objectives are achieved. Internal Audit Branch has been set up under the Finance Department in the office of the ETC which is required to conduct internal audit in various field offices of the department.

Audit called for the information (July 2015), the department intimated that internal audit wing (IAW) attached to the office of the Commissioner consists six post of Section Officers (F&A), out of which three SOs were in position and one junior auditor working against the post of SO. Two posts of SOs were lying vacant. The internal audit required and actually conducted by the IAW during the years 2009-10 to 2013-14 is mentioned in the **Table - 2.5** below:

Table - 2.5
Inspection Reports (IRs) and para wise details of audit conducted by the IAW

Year	No. of units required to be audited	No. of units audited by IAW	No. of units pending for audit by IAW	No. of IR and Paras pending at the beginning of the year		No. of IR and Paras added during the year		Total No. of IR and Paras during the year		No. of IR and Paras settled during the year		No. of IR and Paras outstanding at the end of year	
2009-10	11	0	11	94	731	0	0	94	731	0	0	94	731
2010-11	11	8	3	94	731	08	58	102	789	03	46	99	743
2011-12	13	5	8	99	743	05	51	104	794	02	17	102	777
2012-13	13	9	4	102	777	09	85	111	862	02	15	109	847
2013-14	13	1	12	109	847	01	07	110	854	01	03	109	851

Source: Figures supplied by the department.

A perusal of the information furnished by the department showed that out of 11/13 auditable units, only 1 to 9 units were audited each year from 2009-10 to 2013-14. There were 94 IRs and 731 paras outstanding at the beginning of 2009-10 which rose to 109 IRs and 851 paras at the end of 2013-14. This shows

¹⁷ AETCs Baddi and Sirmour

that the internal audit system prevailing in the department was not providing reasonable assurance on the adequacy of the safeguards against evasion of tax.

2.3.14.2 Non-maintaining of Demand and Collection Register

As per Rule 42 of HP VAT Rules 'Demand and collection Register' (DCR) was required to be maintained by each Assessing Authority in Form VAT-XVII containing the details of payment of tax, penalty, interest, lump sum by way of composition, other amount, input tax carried over by dealers to watch, submission of returns and payment of tax.

Audit test checked the records (between November 2014 and June 2015) of five AETCs and noticed that neither the DCR was being maintained in these units nor any record to indicate the opening balance, receipts and clearance of the assessment during a particular year/quarter was available in the department. In the absence of DCR, the department was not able to track the submission of returns and payment of tax.

2.3.14.3 Incorrect maintenance of database of assessed cases

Audit test checked the assessment records (between January 2015 and March 2015) for the year 2013-14 of five AETCs and noticed that in AETC, Baddi, the AA had finalized the assessment of a dealer¹⁸ for the period 2003-04, 2004-05 and 2005-06, in March 2010 and created an additional demand (AD) of ₹1,872/- under VAT and ₹19,371/- under CST and same had been deposited by the dealer in April 2010. Audit, further, noticed that the ex-parte assessment for the above periods was again finalised in March 2014 and created an AD of ₹36.22 lakh under VAT and ₹42.42 lakh under CST. This shows the incorrect maintenance of records which resulted in assessment of a dealer for the same assessment period twice, by the AA.

Similarly, in AETC, Baddi, audit, further, noticed that in two cases¹⁹ un-signed assessment orders for the year 2005-06 to 2008-09 were kept in the dealer's file. The assessment of these cases had been finalized by the AA (between August 2013 and March 2014) and additional demand of ₹1.46 crore created. This aspect could not be ascertained in audit whether the assessment orders of these cases had been passed and Tax Demand Notice (TDN) for created demand issued or not. This was also not entered in the disposal register. This shows the lack of monitoring and updating the records at AA level, resulting in non-completion of assessment.

The ETC admitted the audit observations in exit conference and apprised that both assessments of a dealer would be examined and why this irregularity had been arisen, the records of this case would be called for.

2.3.15 Non-filing of monthly returns

As per Rule 40 (1) of HP VAT rules, 2005 every registered dealer whose GTO during the preceding financial year was rupees five crore or more shall furnish the return monthly within 30 days from expiry of each month of a financial year.

¹⁸ M/s Crete Industries, Nalagarh

¹⁹ M/s Nemat Enterprises, Nalagrah and M/s Chowksy Chemicals Pvt. Ltd. Nalagarh

Section 16 (6) of the HP VAT Act, provides that if a dealer fails without sufficient cause to furnish the return, he shall be liable to pay penalty at the prescribed rates.

2.3.15.1 Audit test check of the assessment records of five AETCs (between January 2015 and May 2015) and noticed that the AAs finalized (between December 2008 and February 2015) the assessments of 55 dealers for the period 2006-07 to 2013-14. The GTO of these dealers during the preceding financial year was more than the rupees of five crore and they did not furnish monthly return of the concerned financial year. Audit, further, noticed that scrutiny of return was not performed properly and the AAs did not impose penalty on non-filing of monthly return of these dealers. This resulted in non-imposing of penalty of ₹24.93 lakh.

On this being pointed out, the Department intimated (September 2015) that out of ₹24.93 lakh, an amount of ₹0.66 lakh including interest had been recovered from five dealers by AETCs Baddi and Sirmour and efforts were being made to recover the balance amount.

2.3.15.2 Audit, further, noticed that 43 dealers did not file their monthly returns on due date and paid the due amount of tax by delay of 12 months. The AAs neither scrutinised the returns properly nor levied interest and penalty on belated submission of returns. This resulted in non-levy of interest of ₹21.22 lakh. Besides, penalty of ₹66.33 lakh was also leviable.

On this being pointed out, the Department intimated (September 2015) that out of ₹21.22 lakh, an amount of ₹3.09 lakh had been recovered from the dealers and the Addl. Chief Secretary (E&T) in exit conference (September 2015) directed the ETC to issue the necessary instructions to all the AETCs to frame at least five on-line assessments by 30th November 2015 and all the AETCs may be directed to issue the notices to the dealers to submit their monthly returns on-line.

2.3.16 Conclusion and Recommendations

- VAT is an important source of revenue of the State Government. No instruction was issued by the department for periodic analysis of dealers below threshold limit (eight lakh) to prevent the unregistered dealers avoiding registration. Absence of this mechanism keeps the option open for the unregistered dealers to evade payment of tax even after crossing the threshold limit.

The Government may set-up a mechanism to monitor regularly turnover of the unregistered dealers to ensure that the dealers who cross the threshold limit (eight lakh) are brought under the tax net.

- The non-disposal of the assessment cases in a time bound manner resulted in piling up of the outstanding cases of assessment and blocking of government revenue.

The Government may formulate an effective action plan and evolve a mechanism to monitor finalisation of assessments cases timely.

- Form LP-I prescribed for claiming ITC does not specify the nomenclature of the goods to claim ITC. In absence of this, authenticity of ITC claimed could not be verified.

The Government may consider introducing the system of HSN codes to ensure that undue ITC claims of dealers are not admitted.

- List of purchases (LP-I) furnished alongwith the return do not contain details relating to deposit of tax in the treasury by the selling dealer.

The Government may insert an additional column (s) for recording essential details/information like amount of tax deposited, date and number of treasury challans/bank draft/cheque etc. in the LP-I to ensure genuineness and correctness of the tax deposited by the selling dealers while allowing ITC.

- Delay in service of notices within the prescribed time limit of five years from the assessment period ranged between five and eight years. This resulted in assessment of these cases becoming time barred.

The Government may put in place a suitable mechanism to ensure that notices for assessment are served in time so that these cases do not become time barred.

Other audit observations**2.4 Application of incorrect rate of tax**

The AAs had applied incorrect rate of tax of one per cent instead of correct rate of two per cent to 10 dealers during the intervening period of notifications resulted in short realisation of tax of ₹15.22 lakh.

As per the provisions of CST Act, 1956, the concessional rate of tax of one *per cent* was applicable on inter-state sales made by a manufacturer of Himachal Pradesh up to 31 March 2009. The concessional rate of tax of one *per cent* was further, allowed vide notification dated 18 June 2009 with immediate effect. Thus, inter-state sale made by a manufacturing unit between 01 April 2009 and 17 June 2009, was taxable at prevailing rate i.e. at the rate of 2 *per cent* under the CST Act.

Audit noticed from the records of two AETCs between October 2013 and January 2015 that 10 dealers had made inter-state sales for the tax period 2009-10 taxable at the rate of one *per cent* and during the period 01 April 2009 to 17 June 2009 at the rate of two *per cent*. But the AAs while finalising these assessments between May 2012 and July 2014, had assessed the sales at the rate of one *per cent* for whole of the year. Thus, application of incorrect rate of tax during the intervening period of notifications resulted in short realisation of tax of ₹15.22 lakh²⁰.

On this being pointed out, the ETC intimated (September 2015) that out of ₹15.22 lakh, an amount of ₹8.81 lakh had been recovered and efforts were being made to recover the balance amount.

Audit reported the matter to the Government in January 2015; their replies have not been received (December 2015).

2.5 Acceptance of invalid, duplicate and defective statutory forms

Acceptance of invalid, duplicate and defective statutory forms 'C' by the AAs and allowing exemption/concessional rate of tax resulted in short levy of tax of ₹18.18 lakh in nine cases on which interest of ₹20.19 lakh was also leviable.

The Form-‘C’ is issued by a purchasing dealer in two copies. The copy marked ‘original’ is enclosed by the selling dealer with his return and the copy marked ‘duplicate’ is retained by purchasing dealer in his records. It has also been judicially held²¹ that production of original copy of Form-‘C’ for claiming concessional rate of tax is mandatory to prevent the form being misused for the commission of fraud and collusion with a view to evade payment of tax. Besides, interest at the prescribed rates is also leviable on the unpaid amount of tax.

²⁰ AETCs Kangra: one dealer: ₹0.96 lakh and Nurpur: Nine dealers: ₹14.26 lakh

²¹ Commissioner Sale Tax v/s M/s Prabhu Dayal Prem Narayan (1988) 71 STC (SC) and Delhi Automobiles Pvt. Ltd. v/s Commissioner of Sales Tax (1997) 104 STC 75 (SC)

Audit scrutiny of the records of four AETCs (between April 2014 and April 2015) showed that while finalising the assessments of nine dealers between June 2013 and March 2014 for the tax periods 2006-07 to 2011-12, the AAs irregularly allowed concessional rate of tax on interstate sales valued at ₹3.83 crore without verifying the declaration Forms-'C' produced in support of the transactions which were either duplicate/incomplete/defective copies or found not on record as detailed in **Appendix-IV**. These forms were liable to be rejected at the time of assessment. Non-rejection of the forms resulted in short levy of tax of ₹18.18 lakh²² on which interest of ₹20.19 lakh was also leviable.

On this being pointed out, the Department intimated (October 2015) that an amount of ₹15.22 lakh²³ (including interest of ₹6.04 lakh) had been recovered by two AETCs from four dealers.

2.6 Wrong allowance of concessional rate of tax

The AAs had applied concessional rate of tax of one per cent on inter-state sale of ₹36.72 crore to a manufacturing unit instead of applicable rates of 2 per cent as the beneficiary had not furnished complete Form-I. This resulted in under assessment of tax of ₹22.08 lakh, besides interest of ₹13.25 lakh was also leviable.

The Excise and Taxation Department, Government of Himachal Pradesh vide notifications dated July 1999 and June 2009 had allowed concessional rate of Central sales tax at one *per cent* of the taxable turnover of such goods manufactured for inter-state sale/trade by the dealers running industrial units in Himachal Pradesh which are registered with Excise and Taxation Department of HP Government. One of the conditions for availing the concession was that the unit located in industrially backward areas should have employed 80 *per cent* of its total manpower from amongst the bonafide Himachalis.

Audit test checked the assessment records of AETC Solan and noticed that the AA finalised (May 2013) the assessment of one manufacturing unit²⁴ for the years 2010-11 to 2011-12 and applied the concessional rate of tax of one *per cent* on inter-state sale of ₹36.72 crore. The industrial unit located in industrially backward area, however, produced certificate in Form-I in which position of employed bonafide Himachalis ascertained was left blank. Audit noticed that Industry Department issued this Form-I in the year 2007-08 and the same was utilized to avail concessional rate of tax for above period also. Thus, allowance of concessional rate of one *per cent* to the unit instead of applicable rates of 2 *per cent* on incomplete form resulted in under assessment of tax of ₹22.08 lakh, on which interest of ₹13.25 lakh was also leviable.

Audit reported the matter to the Department and the Government in August 2014; their replies have not been received (December 2015).

²² AETCs Chamba (one dealer: ₹0.68 lakh), Nurpur (one dealer: ₹3.92 lakh), Solan (six dealers: ₹13.34 lakh) and Una (one dealer: ₹0.24 lakh)

²³ AETCs Solan (three dealers: ₹15.17 lakh) and Una (one dealer: ₹0.05 lakh)

²⁴ M/s Dev Resins Pvt. Limited

2.7 Excess allowance of labour charges

Excess deduction of ₹2.75 crore from the GTO on account of labour charges by the AAs resulted in under assessment of tax of ₹13.74 lakh in two cases, besides interest of ₹6.92 lakh was also leviable.

Rule 69 (2) of HPVAT Act, 2005 provides that where the labour charges are not determinable from the accounts of the works contractors or are considered unreasonably high in consideration of the nature of the contract, the deductions towards labour charges shall be allowed by the AAs according to limits prescribed in column (3) for the type of contract specified in column (2) of the table of the Rules *ibid*.

Audit noticed (March 2015) from the assessment records of AETC Chamba that AAs while finalising the assessments of two dealers in September 2013 for the tax period 2011-12 to 2012-13, allowed the deduction of ₹4.65 crore from the Gross Turnover on account of labour charges as claimed by the dealer, against the admissible deduction of ₹1.90 crore. The AAs had not mentioned any basis for allowance of excess labour charges of more than 25 per cent. Thus, excess allowance of ₹2.75 crore on account of labour charges resulted under assessment of tax of ₹13.74 lakh, besides interest of ₹6.92 lakh was also leviable.

Audit reported the matter to the Department and the Government in March 2015, the ETC intimated (September 2015) that notices had been issued to the dealers and the cases were under process. The reply of the Government has not been received (December 2015).

2.8 Allowance of Input Tax Credit (ITC)

2.8.1 Irregular allowance of ITC

Application of wrong method for calculating deferred tax liability on the closing stock resulting in irregular allowance of ITC of ₹1.59 crore in 58 cases, besides interest of ₹0.51 crore was also leviable.

As per section 16 (8) of the HP VAT Act, 2005 as amended, *inter-alia*, provides that if a dealer has maintained false or incorrect accounts with a view to suppressing his sales, purchases or stocks of goods or has concealed any particulars of his sales or purchases or has furnished to, produced before, any authority under this Act or rules made thereunder any account, return or information which is false or incorrect in any material particular, the Commissioner or any person appointed to assist him under sub-section (1) of Section 3 may, after affording such dealer a reasonable opportunity of being heard, direct him to pay by way of penalty in addition to the tax to which he is assessed or is liable to be assessed, an amount which shall not be less than twice the amount of tax to which he is assessed.

Scrutiny of the records between October 2013 and March 2015 of three AETCs²⁵ showed that AAs assessed the annual returns of 52 dealers for the tax periods 2008-09 to 2012-13 and allowed ITC by adopting different methods. On the

²⁵ AETCs Bilaspur (one dealer: ₹4.28 lakh), Chamba (25 dealers: ₹23.29 lakh), Kangra (2012-13) (14 dealers: ₹34.28 lakh) and Kangra (2013-14) (12 dealers: ₹38.68 lakh)

basis of proportion of local purchases to the total purchases, closing stock of these dealers were aggregated to ₹33.90 crore during the tax periods out of intra-state purchases made from the registered dealers during those years on which ITC was not allowable. The AAs while allowing ITC of ₹1.01 crore on closing stock had also deferred the tax liability of the assesseees which was otherwise recoverable for the tax periods on the date of assessment. This resulted in irregular allowance of ITC amounting to ₹1.01 crore.

The matters were reported to the Department and the Government between September 2014 and March 2015; the ETC intimated (October 2015) that AETCs, Bilaspur, Chamba and Kangra had recovered an amount of ₹28.32 lakh including interest of ₹4.61 lakh (December 2015).

2.8.2 ITC on sale of tax free goods

Section 11(7) of the HP VAT Act, provides that no ITC shall be claimed by a purchasing dealer and this shall not be allowed to him for tax collected on the purchase of goods used in the manufacture or processing or packing of goods, declared tax free under Section 9.

Test check of records of AETCs Kangra and Nurpur between October 2013 and January 2015, showed that AAs had assessed the cases of four dealers at the GTO of ₹121.86 crore including tax-free turnover of ₹14.92 crore for the tax period between 2008-09 and 2011-12. Audit, however, noticed that AAs disallowed the ITC of ₹3.32 lakh against the actual disallowance of ₹32.21 lakh on sales of tax free goods, resulted in excess allowance of ITC of ₹28.89 lakh²⁶ on which interest of ₹23.20 lakh was also leviable.

2.8.3 Wrong allowance of ITC on branch transfer

Section 11(4) (a) of the HP VAT Act, 2005 provides that notwithstanding anything contained in sub-section (3), the ITC shall be allowed only to the extent by which the amount of input tax paid in the State exceeds 4 *per cent* on purchases of goods sent outside the state otherwise than by way of sale in the course of inter-state trade.

Audit scrutiny of assessment records between November 2014 and January 2015 of the AETCs, Nurpur showed that AAs while finalising the assessments of two dealers for the tax period 2008-09 and 2009-10, had not disallowed ITC ₹29.85 lakh on stock transfer as provided under the provisions of the Act *ibid*. This resulted in short realisation of revenue of ₹29.85 lakh, besides interest of ₹28.28 lakh was also leviable.

On this being pointed out, the AETCs stated that after going through the concerned records, the reply would be furnished.

The matters were reported to the Department and the Government between September 2014 and March 2015; reply has not been received (December 2015).

²⁶ AETCs Kangra (three dealers: ₹23.10 lakh) and Nurpur (one dealer: ₹5.79 lakh)