

CHAPTER-II

TAXES ON SALE, TRADE ETC

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2.1 Tax Administration

Commercial Taxes Department is the most important revenue-earning Department of the State. The Additional Chief Secretary to the Government of Meghalaya, Excise, Registration, Taxation and Stamps (ERTS) Department is in overall charge of the Sales Tax Department at the Government level. The Commissioner of Taxes (COT) is the administrative head of the Department. He is assisted by a Deputy Commissioners of Taxes (DCT) and three Assistant Commissioners of Taxes (ACT). One of the ACT, functions as the Appellate Authority. At the district level, 17 Superintendents of Taxes (ST) have been entrusted with the work of registration, scrutiny of returns, collection of taxes, levy of interest and penalty, issue of road permits/declaration forms, enforcement and supervision of check gates *etc.* The collection of tax is governed by the provisions of the Central Sales Tax (CST) Act, 1956, the CST Rules, 1957, the Meghalaya Value Added Tax (MVAT) Act, 2003, the MVAT Rules, 2005 and the *Meghalaya (Sales of Petroleum and Petroleum Products including Motor Spirit and Lubricants Taxation) (MSL) Act*. With the introduction of VAT on 1 May 2005, the Meghalaya Sales Tax (MST) Act and the Meghalaya Finance (Sales Tax) (MFST) Act were in place, were repealed.

2.2 Internal audit

The Sales Tax Department has no separate Internal Audit Wing (IAW). Despite the same being pointed out in the Performance Audits carried out from time to time, no action has been taken by the Department to create an IAW to monitor the working of the Department. In the absence of a separate IAW, the Department solely relies upon the audit carried out by the Accountant General.

Recommendation: *The Department may look into the possibility of creating an Internal Audit Wing to effectively monitor its functioning.*

2.3 Results of Audit

Test check of the records of 18 units relating to VAT during 2014-15 revealed under-assessment of tax and other irregularities involving ₹ 113.97 crore in 133 cases which fall under the following categories:

Table 2.1

Sl. No.	Category	Number of cases	(₹ in crore)
			Amount
1.	Non/Short realisation of tax	05	0.19
2.	Evasion of tax	01	0.12
3.	Loss of revenue	09	18.90
4.	Other irregularities	118	94.76
Total		133	113.97

During the course of the year, the Department accepted under assessments and other deficiencies of ₹ 55.27 crore in 55 cases. An amount of ₹ 0.33 crore was realised in 06 cases during the year 2014-15.

A PA on “Working of Taxation Check Gates in Meghalaya having financial impact of ₹ 63.06 crore, an Audit on the theme “Deduction of tax at source” having financial impact of ₹ 70.51 crore and few illustrative cases having financial impact of ₹ 48.37 crore, in terms of under-assessment/short levy/non-levy of tax and other provisions of the Acts are discussed in the succeeding paragraphs.

2.4 Performance Audit on “Working of Taxation Check Gates in Meghalaya”

Highlights

➤ There was disproportionate distribution of staff vs vehicles’ movement in the check gates. During the last six years, not a single manpower need analysis was undertaken by Taxation Department in order to ascertain the actual requirements of the check gates vis-à-vis the volume of workload.

Para 2.4.8.1

➤ No records were available at the check gates to ensure that physical verification of vehicles was done as per the norms. There was lack of monitoring to ensure that prescribed norms for inspection of vehicles as fixed was followed by all check gates. Infrastructural facilities for inspection of vehicles were also lacking considerably at all the checkgates.

Para 2.4.8.2

➤ Failure to effectively monitor movement of overloaded vehicles resulted in movement of 76,214 MT of excess load of coal and 53,364 MT of excess load of limestone through the check gates which resulted in loss of revenue of ₹ 12.84 crore to the State due to additional security (in the form of advance tax) and penalty not being realised.

Para 2.4.8.3

➤ Between 2009-10 and 2013-14, two taxation check gates detected 26,762 offence cases on which composition fee of ₹ 29.80 lakh only was realised as against ₹ 13.38 crore as per the provision of the MVAT Act.

Para 2.4.8.5

➤ Most of the check gates were housed in dilapidated structures which were not suitable for storage and use of IT equipment, records and registers. Only two gates i.e., Umkiang, and Byrnihat were functional in respect of online data recording. Absence of proper infrastructure created a hindrance in effective discharge of duties by the officials.

Para 2.4.8.10

➤ Absence of a check gate at the last exit point of the National Highway rendered the objective of setting up of a check gate at Byrnihat futile as the Department had no control over the import of taxable goods into the State by dealers situated in the areas between Byrnihat and Khanapara.

Para 2.4.8.11

➤ The Department had not prescribed any norms for periodic inspection of check gates by supervisory officers. Three most important check gates (Byrnihat, Dainadubi and Umkiang) cumulatively reported only 4 inspections (6 per cent) during the last six years with not a single inspection at the COT level.

Para 2.4.9.2

2.4.1 Introduction

With a view to monitoring the entry and exit of goods to and from Meghalaya in the course of inter State trade and preventing evasion of tax by the dealers of Meghalaya, the State Government is empowered to set up check gates at strategic locations across the State both under the erstwhile Meghalaya Sales Tax Act, and the Meghalaya Value Added Tax (MVAT) Act, 2003.

The State Government has established 19 check gates at strategic locations across the State between August 1979 and December 2011 of which, 12¹ are functional². The check gates with the exception of Byrnihat (which is headed by a Superintendent of Taxes and is an independent office) are headed by Inspectors and are attached to some Superintendent of Tax offices³.

The officers-in-charge of check gates are responsible for inspection of vehicles carrying taxable goods both into and outside Meghalaya by way of inspection of documents such as road permits and other prescribed documents, issuing transit passes in case of vehicles which use Meghalaya as a transit to go to other States and maintaining records of goods being carried by the vehicles/transporters. With the introduction of computerisation in the Taxation Department, the officers-in-charge are also responsible for endorsing the road permits issued online for making real-time data (pertaining to entry of goods) available to the assessing officers in the unit offices. In addition, the officers-in-charge are also empowered to realise additional security (in case of excess carriage of coal and limestone beyond 9 MT) and levy penalty under Section 76 for violation of the provisions of the MVAT Act and Rules.

2.4.2 Organisational setup

The Commissioner of Taxes is the administrative head of the Taxation Department and responsible for monitoring the functioning of the check gates. The COT is assisted by a Deputy Commissioner of Taxes and three Assistant Commissioners of Taxes. At the field level, Superintendent of Taxes (STs)/ Inspectors of Taxes (ITs) assigned with the supervision of the check gates are responsible for efficient management of the check gates. For this purpose, each ST/IT in charge of the check gate is assisted by a team of ITs and checkers for inspection and verification of the documents

¹ **Ri-Bhoi:** (i) Byrnihat (ii) Umsiang (iii) Iew Mawroh (iv) Umling **West Khasi Hills:** (v) Athiabari **East Jaintia Hills:** (vi) Umkiang **West Jaintia Hills:** (vii) Garampani **North Garo Hills** (viii) Bajengdoba (ix) Mendipathar (x) Dainadubi **West Garo Hills:** (xi) Tikrikilla **South West Garo Hills:** (xii) Garobadha

² The other seven were declared non-functional in 1997.

³ (i) Tikrikilla, Bajengdoba & Garobadha – **ST, Tura, Circle-I** (ii) Athiabari – **ST, Nongstoin** (iii) Dainadubi – **ST, Williamnagar** (iv) Umkiang – **ST, Khliehria** (v) Garampani – **ST, Jowai** (vi) Mendipathar – **ST, Williamnagar** (vii) Umsiang & Iew Mawroh – **ST, Nongpoh**

carried by the transporters or vehicles carrying taxable goods, realisation of additional security, compounding of offences and recording of data.

2.4.3 Audit objectives

The Performance Audit (PA) was carried out with a view to ascertaining:

- Whether the provisions of the Acts/Rules governing the functioning of the check gates were adequate to ensure that no lapses occurred in effective management of check gates?
- Whether the check gates were complying with the provisions of the regulatory Acts/Rules/executive orders *etc.* and whether there were leakages of revenue as a result of non-compliance with the Acts/Rules?
- Whether there was adequate co-ordination between the check gates and the unit offices?
- Whether the check gates were equipped with proper infrastructure in terms of space, manpower, location, computerisation, networking *etc.* for efficient discharge of duties?
- Whether the Department had adequate internal controls in terms of supervision by senior management, periodical verification of information from DMR/Forest/Assam check gates, regular transfer of officials *etc.* to ensure that there was no leakage of revenue from the check gates?

2.4.4 Audit Scope & Methodology

The Performance Audit (PA) was conducted during June 2015 to September 2015 covering the period from 2008-09 to 2013-14. The PA covered the review of twelve functional check gates. In addition, Boxirhat and Srirampur check gates located on the West Bengal-Assam border being the main check gates from where all goods from mainland India enter the North East, and Jhalukbari, Khanapara and Digarkhal check gates on Assam-Meghalaya border were also covered for benchmarking the performance of Taxation check gates in Meghalaya *vis-à-vis* the check gates of other States.

The methodology adopted during the course of audit entailed explaining the audit objectives to the Department/Government during an 'Entry Conference' held in May, 2015, scrutiny of records at all check gates and unit offices, interaction with the auditee personnel, analysis of data with reference to audit criteria, raising of audit queries, issue of audit memos and seeking clarifications and discussion of audit findings with the Management.

The findings were communicated to the Department in November 2015 and an Exit Conference was held in December 2015 where the views of the Department to the findings were discussed. The replies, wherever received, have been appropriately incorporated in the relevant paragraphs.

2.4.5 Audit criteria

The following Acts/Rules/notifications were followed by audit for carrying out the PA:

- The Meghalaya Value Added Tax Act, 2003.
- The Meghalaya Value Added Tax Rules, 2005.
- The Central Sales Tax Act, 1956.
- The Central Sales Tax (Registration & Turnover) Rules, 2005.
- Meghalaya Financial Rules, 1984.
- Notifications/circulars orders pertaining to check gates issued by the Taxation Department, Government of Meghalaya between 2005-06⁴ and 2013-14.
- Notifications/circulars orders pertaining to check gates issued by the COT, Meghalaya between 2005-06 and 2013-14.

2.4.6 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the Taxation Department in providing necessary information and records for audit.

2.4.7 Trend of revenue

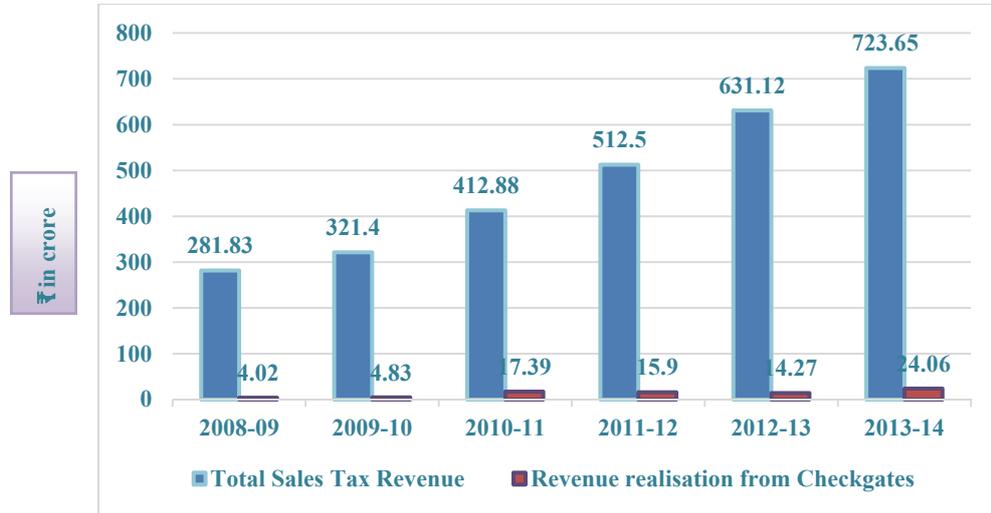
The year-wise realisation of revenue by the check gates *vis-à-vis* the total sales tax receipts of the State is shown in the following table:

Table 2.2 (Trend of Revenue)

Year	<i>₹ in crore</i>		
	Revenue from checkgates	Total Sales Tax revenue	Percentage of checkgate revenue to total revenue
2008-09	4.02	281.83	1.42
2009-10	4.83	321.40	1.50
2010-11	17.39	412.88	4.21
2011-12	15.90	512.50	3.10
2012-13	14.27	631.12	2.26
2013-14	24.06	723.65	3.32

A bar graph to illustrate the realisation of revenue by the check gates *vis-à-vis* the total sales tax receipts of the State is shown below:

⁴ 2005-06 was the year from which VAT was introduced in the State hence notifications issued since 2005-06 were taken into account.



The bulk of revenue was in the form of additional security on coal, which accounted for an average of 98 per cent of the total check gate receipts during the period.

Among the check gates (**Details in Annexure-I**), Dainadubi check gate was the highest revenue earner for the Department. During the period, Dainadubi check gate realised ₹ 69.46 crore which accounted for 86 per cent of all check gate receipts.

2.4.8 Audit findings

Audit objective 1: *Whether the provisions of the Acts/Rules governing the functioning of the check gates were adequate to ensure that no lapses occurred in effective management of check gates?*

2.4.8.1 Norms not fixed for deployment of staff in check gates

The Taxation Department has not fixed norms for assessing the staff requirement and posting of staff in check gates. The check gate wise details of goods carrying vehicles crossing the check gates *vis-à-vis* the staff strength is shown below:

Table No. 2.3

Name of the Checkgate	Year-wise number of transport vehicles crossing the checkgate							Present Staff Strength	
	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	TOTAL	No. of ITs	No. of checkers
Byrnihat & Umling	457995	489095	557219	731864	613859	602701	3452733	15	26
Dainadubi	90711	91573	99920	114956	115898	92545	605603	4	14
Umkiang	33139	35382	44733	55091	53962	62201	284508	4	16
Bajengdoba	13824	13430	12612	12119	11119	10183	73287	2	4
Athiabari	13306	8606	3436	26072	18077	1462	70959	2	8
Tikrikilla	3397	3260	5130	5117	4131	5772	26807	2	3
Garampani	1473	1778	369	1140	2775	4229	11764	2	4
Garobadha ⁵	0	0	0	1565	3584	2665	7814	2	4
Mendipathar	698	1509	523	613	522	642	4507	2	2

⁵ The checkgate was established in December 2011. Hence no vehicles crossing the check gate prior to December 2011 were recorded.

Iew Mawroh	0	0	0	222	132	423	777	1	3
Umsiang	133	187	109	141	51	43	664	1	3
Total	614676	644820	724051	948900	824110	782866	4539423	37	87

From the table it may be seen that there was disproportionate distribution of staff vs vehicles' movement in the check gates. Three check gates (Bajengdoba, Garampani and Garobadha) with 73287, 11764 and 7814 goods vehicles passing through respectively had the same staff strength although Bajengdoba recorded ten times as many vehicles as compared to Garobadha during the period 2008-09 to 2013-14. Tikrikilla check gate, which recorded more than twice the number of vehicles passing through Garampani and more than thrice the number of vehicles passing through Garobadha, had lesser staff compared to the other two. The all-State average of vehicles to staff ratio was 5646:1. However, the check gate wise ratio is given in the following table:

Table No. 2.4

Name of the Check gate	Average number of vehicles crossing the check gate/year	Average staff posted in the check gate	Vehicle to staff ratio
Byrnihat and Umling	575456	39	14755:1
Dainadubi	100934	17	5937:1
Umkiang	47418	17	2789:1
Bajengdoba	12215	6	2036:1
Athiabari	11827	10	1183:1
Tikrikilla	4468	5	894:1
Garobadha	2605	6	434:1
Garampani	1961	6	327:1
Mendipathar	751	4	188:1
Iew Mawroh	130	4	33:1
Umsiang	111	4	28:1

From the above, it may be seen that Byrnihat and Umling which had the highest average number of vehicles crossing through them had the most disproportionate staff ratio while the lower rung check gates had a very healthy staff ratio. The skewed posting scenario in the State in the absence of any prescribed norms not only had a negative effect on the staff efficiency but also indicated poor manpower deployment and management on the part of the COT. In a situation where the important check gates were highly understaffed, it was humanly not possible for the staff posted in these check gates to efficiently discharge their duties.

On this being pointed out, the Department stated (December 2015) that operational feasibility was achieved through deployment of additional ITs in checkgates having higher vehicle movement.

The reply is not acceptable as the responsibility of assessing the staff requirements in relation to the workload lay with the COT since effective functioning of a check gate depended on the proper deployment of manpower. However, during the last six years not a single manpower need analysis was undertaken by Taxation Department in order to ascertain the actual requirements of the check gates *vis-à-vis* the volume of workload so as to work out viable solutions to the issue such as by way of

redeployment from the check gates with little or no trade movement. The inadequate staff strength had been impacting the revenue collection in those check gates which are discussed in the subsequent paragraphs.

Recommendation No. 1: *The Taxation Department may prescribe norms for deployment of staff in check gates based on a proper analysis of the manpower need of the check gates vis-à-vis the volume of business.*

Audit Objective 2: *Whether the check gates were complying with the provisions of the regulatory Acts/Rules/executive orders etc. and whether there were leakages of revenue as a result of non-compliance with the Acts/Rules?*

In order to ensure proper realisation of tax, provisions had been made in the Act/Rules and executive orders issued from time to time by the Government for realisation of tax at specified rate and impose fines and penalty in case of default by transporters for carriage of goods without proper and authorised documents through the check gates.

Audit observed the following deficiencies:

2.4.8.2 Norms for physical verification of Goods vehicles not followed

The COT, Meghalaya in 1979 prescribed norms of physical verification of 10 per cent of goods vehicles passing through the check post every day. A prescribed norm for inspection of vehicles would therefore ascertain the correctness of declarations furnished by the transporters at the check gates with the goods actually transported and would check and restrict activities to prevent scope for any evasion of tax by unscrupulous dealers.

Audit scrutiny however revealed that no records were available at the check gates to ensure that physical verification of vehicles was done as per the norms. Audit also noticed that none of the check gates had proper lay-bys⁶, infrastructure for loading and unloading, ramp, weighbridges, godowns and manpower in any of the check posts which are essential pre-requisites for carrying out physical verification.

Follow up reports on such inspection was also absent at the COT office which indicated lack of monitoring by senior officials to ensure that prescribed norms for inspection of vehicles as fixed was followed by all check gates.

A bench mark of adequate infrastructure at check gates was made with reference to the Composite check gate constructed by Assam State in 2010-11 at Srirampur, which is situated 4 km ahead of the Assam-West Bengal inter-State border on NH 31(C). The checkgate ensured single window clearance of the traffic entering and exiting through the check gate

⁶ *An area at the side of a road where vehicles may pull off the road and stop.*

after observing all the formalities. The checkgate had six lay-bys on either side of the main National Highway. The vehicles entering Assam first moved through the weigh bridges and after completion of formalities such as measuring weights, checking of goods, *etc.*, the vehicles were parked inside the six lay-bys before the same are passed and issued gate passes by the different gates. Similarly, the vehicles exiting Assam move through the weigh bridges and are allowed to cross the gates after completion of the due formalities in all the departmental gates.



Byrnihat Taxation Check gate, Meghalaya. No lay-bys for parking of vehicles



Checking Ramps for inspection of vehicles at Srirampur Composite check gate, Assam



Umkiang Taxation Check gate, Meghalaya. No lay-bys and no space on the highway to stop the trucks



Parking sheds for loading & unloading at Srirampur Composite check gate, Assam

Besides infrastructural facilities for residential campus, the following additional facilities were available at Srirampur check gate in Assam:

- Three weigh bridges on either side of the high way; two weighbridges of 100 tonne and four weigh bridges of 60 tonne capacity;
- Two checking ramps;
- Two store houses;
- Three toilets and wash rooms for the truckers;
- Four parking sheds for the vehicles with a total capacity for 48 vehicles;
- Canteen;
- Police barrack for the security staff inside the office campus;
- Guest house for the visiting officers;
- DG sets & CCTVs; and
- SBI branch within the official campus of the Composite gate.

It would thus be observed that the infrastructural facilities were lacking considerably at the check gates in the State of Meghalaya.

On this being pointed out, the Department stated (December 2015) that the norms prescribed in 1979 were not relevant in the present time due to absence of infrastructure to support the huge increase in traffic over the last three decades.

The reply is not acceptable as the fact that the Department, despite having knowledge of the increase in the volume of trade, failed to analyse the growth in traffic at the checkgates and make suitable modifications to the norms even once in the last three decades.

Recommendation No. 2: *The Government may create adequate infrastructure at the check-posts and put a mechanism in place to ensure the objective of physical inspection norms of 10 per cent of the vehicles crossing the gates.*

2.4.8.3 Loss of revenue due to failure to check movement of outgoing vehicles

As per orders of the Commissioner of Taxes, Meghalaya, for carrying of coal/limestone exceeding the permissible limit, additional security in the form of advance tax at the rate of ₹ 193⁷ and ₹ 35 per MT of excess load for coal and limestone respectively has to be realised by the check gate authority on the basis of weighment slips received from an authorised weighbridge.

Wherever any goods in movement are without proper documents, the officer in charge of the check post shall impose a penalty equal to five times the value of tax or twenty *per cent* of the value of goods, whichever is higher as per Section 76 of the MVAT Act.

Audit scrutiny of records of two taxation check gates⁸ revealed that excess load of 3,53,006 MT of coal and 1,98,354 MT of limestone were transported through the two taxation check gates during the period 2009-14. However, on cross verification of records of DMR check gates/Transport Weighbridge⁹, it was found that during the same period, excess load of 4,29,220 MT of coal and 4,65,250 MT of limestone were detected by the DMR /Transport officials. This clearly indicated failure on the part of the taxation officials to check movement of overloaded vehicles without proper documents through their check gates which enabled movement of 76,214¹⁰ MT of excess load of coal and 53,364 MT of excess load of limestone thereby resulting in loss of revenue of ₹ 12.84 crore¹¹ to the State due to additional security (in the form of advance tax) and penalty on excess load transported not being realised.

⁷ Additional security on coal was levied @ ₹ 120/MT upto 05.08.2012 which was enhanced to ₹ 193/MT w.e.f. 06.08.12. The additional security of ₹ 35/MT on limestone was fixed w.e.f May 2007.

⁸ Byrnihat and Umkiang taxation check gates

⁹ Approved Weighbridge of the Transport Department

¹⁰ Difference of 17958 MT and 58256 MT pertains to 2009-12 and 2013-14 respectively

¹¹ ₹ 2.14 crore (additional security); ₹ 10.70 crore (penalty)

2.4.8.4 Penalty on excess loading of coal and limestone not imposed

Under Section 76 of the MVAT Act, every consignment entering or leaving the state in the course of inter-State trade must be accompanied by valid documents such as *challans*, bills of sale, despatch memos, *etc.* Wherever any goods in movement are without proper documents, the officer in charge of the check post shall impose a penalty equal to five times the value of tax or twenty *per cent* of the value of goods, whichever is higher.

On examination of records of two taxation check gates, Byrnihat and Umkiang, audit observed that these check-gates realised only additional security money from the defaulting trucks carrying excess load of coal and limestone without imposition of penalty as per the Act *ibid*. During 2009-14, an amount of ₹ 3.65 crore and ₹ 3.58 crore was realised by Umkiang and Byrnihat check gates respectively being additional security on 10,91,677 MT of coal and limestone carried by trucks in excess of the permissible load¹². Failure to impose penalty had therefore resulted in loss of revenue of ₹ 36.15 crore¹³ during the period of PA.

2.4.8.5 Short levy of Composition¹⁴ fee

Under the provision of Section 90(xviii) of the MVAT Act, whoever imports into or exports from the State and furnishes incorrect or fictitious names or addresses of consignors or consignees or incorrect particulars of goods in the documents accompanying the goods while such goods are in transit shall be punishable with simple imprisonment which may extend to six months or with fine not exceeding rupees ten thousand or with both. Further under Section 96 of the Act the Commissioner may, for any offence punishable under Section 90 accept from any person charged with such offence by way of composition of offence a sum not exceeding five thousand or double the amount of tax, whichever is greater.

From a test check of the composition registers of two taxation check gates, Umkiang and Byrnihat for the period 2009-10 to 2013-14, it was noticed that composition registers did not mention full details of the consignments including value of the goods and the nature of offence committed. As a result, the ground on which such fines were imposed could not be ascertained. During this period, in 26,762¹⁵ offence cases detected by the

¹² In Meghalaya, permissible load is 9 MT

¹³ In absence of records on value of goods and tax involved passing through the check-gates without documents, penalty is calculated at five times on the basis of additional security money realised at the check-gates

¹⁴ If a dealer/transporter commits any offence for which he is liable for prosecution under Section 90, then in lieu of such prosecution, he can opt for compounding of his offence by paying composition fee for the offence committed.

¹⁵ 1122 cases was detected in Umkiang taxation check gate and 25640 cases was detected in Byrnihat check gate

two taxation check gates, the composition fee of ₹ 29.80 lakh only was realised as against ₹ 13.38 crore¹⁶ as per the provision of the MVAT Act.

Recommendation No. 3: *Necessary steps may be taken to analyse the reasons for non-detection of overloading of coal and limestone and effective measures be taken to curb them. Fines and penalty should be imposed on the defaulters as prescribed to reduce cases of movement of vehicles without valid documents.*

2.4.8.6 Transporters not registered

Under Section 80 of the MVAT Act, every transporter operating its transport business relating to the carriage of taxable goods in Meghalaya has to be registered with the ST, Enforcement Branch (EB) for the purpose of effective monitoring of movement of taxable goods into Meghalaya. Under Section 81, every registered transporter shall maintain an account in Form 17 showing the details of import of taxable goods into Meghalaya and submit the same to the ST every month. Further under Rule 29(1) of the MVAT Rules, every transporter liable for registration shall submit an application for registration within thirty days from the commencement of business. For violation of the provisions of Sections 80 and 81, penalty not exceeding ₹ 10,000 is leviable.

During the period from April 2008 to March 2014, 30 transporters imported 1,71,968 consignments of goods valued at ₹ 1,982.87 crore into Meghalaya. Cross-check with the records of the ST, EB, Shillong revealed that five¹⁷ transporters were not registered with the ST, EB, Shillong.

Absence of a system of co-ordination between the checkgates and the ST, EB thereby resulted in five unregistered transporters being allowed to operate in the State, which leaves a scope for evasion of tax by these transporters. Besides, penalty not exceeding ₹ 0.37 crore¹⁸ was also leviable from these transporters but the same was not levied.

It was also seen during the course of the Performance Audit that there was no system of exchange of information between the check gates and the ST, EB by way of monthly reports on movement of transporters. As such, there was no control mechanism with the ST, EB to tally the correctness of monthly returns provided by the transporters to the ST, EB.

During the period between 2008-09 and 2013-14, 62813 consignments out of 166981 consignments (38 per cent) crossing the Byrnihat checkgate were not accompanied by road permits. During the same period, the ST, EB, Shillong detected only 959 consignments not accompanied by road

¹⁶ $26762 \times ₹5000 = ₹13.38 \text{ crore}$

¹⁷ *Out of 30 transporters only one was operating in Garo Hills and the same was registered with the ST, EB, Tura.*

¹⁸ $\text{Penalty for non-registration} = ₹10000 \times 8 = ₹80,000$

$\text{Penalty for non-submission of monthly returns} = ₹10000 \times 12 \text{ months} \times 6 \text{ years} \times 5 \text{ transporters} = ₹36,00,000$

$\text{Total} = (₹80,000 + ₹36,00,000) = ₹36,80,000$

permits thereby resulting in 61854 consignments actually entering the State undetected by the ST, EB which leaves a scope for evasion of tax by these transporters and potential loss of revenue to the State.

Recommendation No. 3: *The Taxation Department may make it compulsory for all transporters to register with the ST, EB failing which such transporters may not be allowed to carry their consignments into Meghalaya. The Department may also introduce a system of periodic exchange of information between the checkgates and the STs, EB.*

2.4.8.7 Lack of controls on inter-State movement of goods

As per Section 77 of the MVAT Act, when a motor vehicle coming from any place outside the State and bound for any other place outside the State, and carrying any taxable goods passes through the State, the driver or other person in charge of such vehicle shall obtain in the prescribed manner a Transit Pass (TP) from the officer in charge of the first check-post or barrier after his entry into the State and deliver it to the officer in charge of the last check post or barrier before his exit from the State failing which it shall be presumed that the goods carried thereby have been sold within the State by the owner or person in charge of the vehicle.

- Cross verification of the records of Assam check posts with Meghalaya entry check post at Byrnihat revealed that during the period from 2009-10 to 2013-14, the check posts of Assam issued 2,76,686 TPs to vehicles carrying goods valued at ₹ 20,842.73 crore which were passing through Meghalaya and destined for Tripura, Mizoram, etc. However during the same period, the entry check post of Meghalaya at Byrnihat issued only 3,719 transit passes to vehicles carrying goods valued at ₹ 52.46 crore which were passing through Meghalaya and were bound for Tripura, Mizoram, etc.

Thus it can be seen that during the period covered by PA, 2,72,967 vehicles carrying goods valued at ₹ 20,790.27 crore were allowed to enter Meghalaya without TPs which implied that:

- the vehicles did not exit Meghalaya and sold their goods within Meghalaya which resulted in potential loss of revenue to the State; or
- in the event of lack of correct information pertaining to the actual number of vehicles which were issued TPs at the entry checkgate at Byrnihat, there was every possibility that all the vehicles did not exit the State and that some of the vehicles might have offloaded their goods in the State.

In both the situations, the exit checkgate at Umkiang or the Enforcement Branch were in no position to verify the number of vehicles which were actually supposed to exit the State and thus there was inadequate or no control mechanism to regulate the movement of such goods in the State.

The details of TPs issued year-wise by the checkgates at Assam *vis-à-vis* the TPs issued by the entry checkgate at Byrnihat are shown in the following table:

Table No. 2.5 (₹ in crore)

Year	TPs issued by Assam check gates for vehicles passing through Assam and Meghalaya and destined for Tripura and Mizoram		TPs issued by Meghalaya check gate at Byrnihat for vehicles passing through Meghalaya and destined for Tripura and Mizoram		Difference	
	Number of TPs issued	Value of goods	Number of TPs issued	Value of goods	Number of TPs issued	Value of goods
2009-10	48393	3122.51	286	7.44	48107	3115.07
2010-11	57311	4122.18	166	2.67	57145	4119.51
2011-12	60924	4556.35	73	1.65	60851	4554.70
2012-13	56151	4466.16	1372	2.18	54779	4463.98
2013-14	53907	4575.53	1822	38.52	52085	4537.01
Total	276686	20842.73	3719	52.46	272967	20790.27

- It was further observed that out of 3,719 TPs issued by Byrnihat check gate to vehicles passing through Meghalaya and bound for Tripura, Mizoram *etc.*, during 2009-14, 78 TPs were not endorsed back by the exit checkgate at Umkiang. In the event of non-receipt of endorsed TPs, there was every possibility that the vehicles did not cross the checkgate and offloaded the goods in the State resulting in potential loss of revenue. Despite non-receipt of the endorsed TPs from the exit checkgate, no action was taken by the ST of the entry checkgate at Byrnihat to take up the matter with the exit checkgate or forward the details of such transporters to the Enforcement Branch.

Recommendation No. 4: *It may be ensured that TPs are issued to each and every vehicle that enters the State carrying taxable goods destined for other States.*

Audit Objective 3: *Whether there was adequate co-ordination between the check gates and the unit offices?*

Under Rule 53 of the MVAT Rules, every transporter/dealer who imports taxable goods into the State shall *inter alia* submit a Road Permit (RP)¹⁹ in Form-40, which details the particulars of goods being imported into the State, to the Officer-in-charge of the checkgate. As per Rule 58(2)(vi) of the Rules *ibid*, the Officer-in-charge shall verify the particulars of the RP, retain the “Original” foil of the RP and return the “Duplicate” foil to the transporter/dealer. He shall send the “Original” foil to the ST who had issued the RP to the dealer. As per the prevailing practice, the Officer-in-charge of check-gate is to send the dealer-wise details of RP every month to the concerned ST.

An evaluation was done to assess whether the check-gates were furnishing the RP details in time to the unit offices and whether the unit offices were

¹⁹ Road Permit is issued by the ST of the circle concerned to which the dealer belongs and is to be applied for in advance before importing the consignment into the State. Each Road Permit is for import of one consignment.

utilising the information received from the check gates for proper assessment of tax liability of the dealers. The following short-comings were noticed:

2.4.8.8 RP details not furnished by checkgates

It was observed during the course of the PA that Byrnihat and Umkiang checkgates were fully computerised and networked to the Departmental intranet and the concerned STs had complete information pertaining to the movement of goods from the checkgates using RPs. The other nine non-computerised checkgates, however, did not forward the RP details to the respective unit offices.

Despite non-receipt of information from the checkgates, no efforts were made by the concerned STs to either call for the information from the checkgates or apprise the Commissioner regarding non-furnishing of RP details by the checkgates. Thus, the concerned STs had no way to track the movement of goods into the State by the dealers under their circles.

2.4.8.9 Check gate information not utilised by the unit offices

Under Section 40 of the MVAT Act, if a dealer fails to pay the full amount of tax due per quarter, then simple interest at the rate of 2 *per cent* per month from the end of the month following the quarter is leviable. In addition, for non-payment of tax, penalty not exceeding twice the amount of tax involved is also leviable under Section 90 read with Section 96 of the Act *ibid*.

During the course of PA, records of two²⁰ of the non-computerised checkgates were examined in details. Based on the information obtained from the checkgates pertaining to import of taxable goods into the State, Audit cross-verified the same with the three²¹ ST offices to which these cases related. The following deficiencies were observed as result of the cross-verification:

- In Bajengdoba Checkgate, audit noticed that four²² dealers dispatched and sold 59607 MTs of limestone to M/s Virgo Cement Ltd., Damas between February 2011 and February 2013.

Cross-check of records in the concerned circles revealed that none of the four dealers were registered. Thus, in the absence of information sharing between the checkgate and the ST offices, there was non-declaration of sale amounting to ₹ 4.17 crore²³ by unregistered dealers resulting in loss of revenue of ₹ 0.21 crore,

²⁰ Bajendoba and Dainadubi.

²¹ STs, Tura I, Tura II & Williamnagar

²² M/s Jingman Marak (4734 trucks), M/s Marwan Sangma (584 trucks), M/s Payfifthson Sangma (373 trucks) and M/s Stoni Sangma (932 trucks) totalling 6623 trucks of limestone. Each truck carried limestone ranging from 9 MT to 15 MT. Taking minimum of 9 MT per truck, the quantity works out to 59607 MT.

²³ The Taxation Department has fixed the minimum sale price of limestone at ₹700 per MT.
Turnover = ₹700 X 59607 = ₹4.17 crore

being the VAT amount on sale, on which penalty not exceeding ₹ 0.42 crore was also leviable.

- Two dealers²⁴ disclosed taxable turnover at 13.5 per cent amounting to ₹ 0.32 crore in their quarterly returns for the period December 2011 to March 2013. Cross verification of the records in Dainadubi Taxation check gate, however, revealed that the dealers purchased cement valued at ₹ 1.24 crore during the same period. The dealer, thus, concealed minimum turnover of ₹ 0.92 crore on the sale of cement and evaded tax amounting to ₹ 0.12 crore. Besides, penalty not exceeding ₹ 0.24 crore and interest at prescribed rate was also leviable.
- Scrutiny of incoming vehicle register maintained by Dainadubi Taxation Check gate revealed that a dealer²⁵ purchased cement (taxable at 13.5 per cent) valued at ₹ 10.26 lakh during June 2012 to March 2013, the returns filed by the dealer for the same period did not include the purchases made. The dealer, thus, concealed the turnover of ₹ 10.26 lakh on the purchase of cement and evaded tax amounting to ₹ 1.39 lakh. Besides, penalty not exceeding ₹ 2.77 lakh and interest at prescribed rate was also leviable.
- It was observed that a dealer²⁶ disclosed purchase of goods amounting to ₹ 6.57 lakh purchase of 13.5 per cent goods for the period from April 2012 to March 2013. Cross check of the incoming register of Bajengdoba taxation check gate revealed that the dealer purchased cement amounting to ₹ 19.15 lakh during the same period. Thus, the dealer concealed purchase of ₹ 12.58 lakh leading to non-realisation of tax of ₹ 1.70 lakh on resale of cement.
- Two dealers²⁷ disclosed taxable turnover at 13.5 per cent amounting to ₹ 21.83 lakh in their quarterly returns for the period April 2012 to March 2013. Cross verification of the records in Bajengdoba Taxation check gate, however, revealed that the dealers actually purchased goods valued at ₹ 62.93 lakh during the same period. The dealer, thus, concealed minimum turnover of ₹ 41.10 lakh and evaded tax amounting to ₹ 5.55 lakh. Besides, penalty not exceeding ₹ 11.10 lakh and interest at prescribed rate was also leviable.
- Scrutiny of the incoming register of Bajengdoba check gate revealed that three dealers²⁸ purchased cement valued at ₹ 54.52 lakh during the year 2012-13. On cross verification with the concerned ST offices it was observed that these dealers were not registered²⁹. Thus, these dealers carried out business without being

²⁴ M/s Binod Pandey, M/s Latindra Sangma

²⁵ M/s Maruti Enterprise

²⁶ M/s Samad Hardware

²⁷ M/s Suranjan Karmakar & M/s Monoranjan Das

²⁸ Nimesh Enterprise, Bikash Enterprise & Nisha Enterprise of Mankachar

²⁹ The names of these dealers were neither available in both the offices of the Superintendent of Taxes, Tura-I & II nor in the list of registered dealers obtained from the COT.

registered leading to evasion of tax of ₹ 7.36 lakh on resale of cement.

As can be seen from the above cases, there were short realisation of revenue amounting to ₹ 1.12 crore to the State on account of concealment of turnover by dealers and business carried out by unregistered dealers which was mainly due to non-verification of RP details and failure on the part of unit offices to utilise the information furnished by the check gates at the time of assessment or submission of tax returns by the dealers. The revenue loss could have been avoided if the unit offices had utilised the information received from the check gates and used it to corroborate with the tax returns submitted by the dealers to check any evasion by the dealers.

Audit objective 4: *Whether the check gates were equipped with proper infrastructure in terms of space, manpower, location, computerisation, networking etc. for efficient discharge of duties?*

2.4.8.10 Poor working environment in check gates

Checkgates not only help in regulating the movement of goods into and from the State but are also an important means of safeguarding Government's revenue interests. It is therefore imperative that checkgates are equipped with proper infrastructure and healthy working environment to motivate the checkgate officials in discharging their duties efficiently.

During the course of the PA, Audit visited the checkgates in order to assess the working conditions. During the course of the visit, it was observed that there was complete lack of infrastructure such as IT equipment, office, electricity, etc. as detailed in the following paragraphs:

➤ Poor infrastructure to support the IT equipment

It was observed that all the checkgates had been equipped with computers and related IT equipment. However, due to lack of infrastructure to support the IT equipment, most of the equipment had been stacked away in corners in dilapidated conditions without being put to use as depicted in the following pictures.



Brand new Computers stacked away in a corner without being put to use in Dainadubi checkgate.



Computer & its peripherals kept in temporary structures at Mendipathar taxation check gate.

Most of the check gates were housed in dilapidated structures, which were not suitable for storage and use of IT equipment. Generators had been provided to the checkgates but funds for fuel for running the generators were not provided, as a result of which, un-interrupted power was not assured. The status of the levels of computerisation in the various check gates is shown in the table below.

Table No. 2.6

Sl No	Checkgate	Details of IT equipment/work stations	Whether connected to Department's intranet	Power back up	Online data recording	Present status
1	Umkiang	11	Yes	Yes	Yes	Functional
2	Byrnihat &Umling	6	Yes	Yes	Yes	Functional
3	Garobadha	4	No	No	No	Not functional
4	Dainadubi	7	Yes	Yes	No, modem out of order	Non functional
5	Mendipathar	4	No	Yes	No	Non functional
6	Bajengdoba	4	Yes	Yes	No	Non functional
7	Athiabari	7	No	Yes	No	Non functional
8	Tikrikilla	4	No	Yes	No	Non functional
9	Garampani	2	No	Yes	No	Non functional
10	Iew Mawroh	Nil	No	NA	No	Non functional
11	Umsiang	Nil	No	NA	No	Non functional

From the table above, it could be seen that out of 11 check gates, only two gates *i.e.*, Umkiang, and Byrnihat were functional in respect of online data recording. Two gates *i.e.*, Dainadubi and Bajengdoba although connected to the Department's intranet were non- functional as the modems were out of order. Two check gates, Iew Mawroh and Umsiang had not been issued any IT equipment. Offline data recording of the detailed information of the commodities and dealers involved in each consignment is not being done in any of the check gates which would have assisted the STs at the time of assessment and would have checked evasion of tax to a great extent. Computerisation of check gates would not only help in the overall efficiency of the check gate but would also assist the STs in unit offices for verification of figures included in the respective returns submitted by a

dealer. Mere distribution of computers by the COT to the check gates would not accomplish the objectives of computerisation.

➤ *Lack of office infrastructure*

It was observed that in most of the cases, the checkgates were housed in dilapidated structures which were not suitable for accommodating the checkgates officials or for proper maintenance of records and registers as can be seen in the following pictures.



New generator kept in the open without any security, prone to vandalism and vagaries of nature.



Vehicles' movement registers lying in a heap in a corner, prone to theft and destruction.



Heaps of Road Permits lying in an open room without any doors.



Wall damaged in one of the rooms where Road Permits are kept.

In the absence of proper infrastructure to support the checkgate officials, it created a hindrance in effective discharge of duties by the officials. In all the cases, the checkgate officials complained³⁰ of the working environment and the lack of access to proper infrastructure.

On this being pointed out, the Department stated (December 2015) that the National Informatics Centre had been requested to develop a system to enable inter-departmental access of data uploaded by the check gates of various Departments. The Department also stated that maintenance of infrastructure at interior check gates was difficult considering their remoteness.

³⁰ *In random personal interviews with the checkgate officials.*

The reply is not acceptable as interlinking of data across departments will only work if all the check gates are computerised. However, the Department has not made any action plan to address this issue. Moreover, the remoteness of check gates makes it even more important for the Department to address the issue of infrastructure considering the nature of work, which the check gates have to perform.

Recommendation No.5: *The Department should work out an action plan to make the working conditions in the checkgates more amenable to the Government officials working in these checkgates so as to motivate them and to improve their productivity. Efforts maybe made to address the issue of incomplete computerisation and ensure that online connectivity be upgraded for uninterrupted data flow between check gates and field offices.*

2.4.8.11 Check gate not established at strategic location

Under Section 76 of the MVAT Act, 2003 as well the erstwhile Taxation laws of Meghalaya, the State Government can establish check gates at strategic locations on the major trade routes. Under Rule 53 of the MVAT Rules, 2005 for import of taxable goods into Meghalaya, Road Permit in Form 40 along with the Invoice is to be furnished to the officer-in-charge of the check gate by the owner or the person in charge of the check gate. Each Road Permit allows entry of one consignment of taxable goods.

The National Highway, which connects the mainland India, the northern parts of Assam and other North-Eastern States with Shillong in Meghalaya and continues further south to reach the Southern parts of Assam, Tripura and Mizoram is the most important trade route for the State. However, the 100 km long GS Road³¹ is very uniquely placed considering the fact that the highway lies entirely in Meghalaya up to Byrnihat and thereafter the highway lies in both Assam and Meghalaya with one side of the road falling in Meghalaya and the other side of the road falling in Assam upto Khanapara (12 km from Byrnihat) and thereafter the Highway falls entirely in Assam.

The Taxation Department has a check gate at Byrnihat, which is not strategically located as the entire stretch of the 12 km highway up to Assam falls beyond the jurisdiction of the check gate. Absence of a check gate at the last exit point of the Highway renders the objective of setting up of a check gate at Byrnihat futile as the Taxation Department had no control over the import of taxable goods into the State by dealers situated in the areas between Byrnihat and Khanapara.

³¹ *The National Highway from Shillong to Guwahati is commonly referred to as the Guwahati-Shillong road or the GS Road.*



Map of the GS Road between Byrnihat and Khanapara.

During the course of the PA, an exercise³² was undertaken by Audit to ascertain the volume of trade carried out by dealers beyond the check gate and it was observed that at least 100 dealers were situated beyond the check gate which included 59 manufacturing units and 18 gas filling stations among others.

Cross-check of records of some of the dealers situated beyond the check gates revealed the following:

- Between April 2013 and March 2015, a manufacturing unit³³ disclosed outside purchase of ₹ 32.50 crore although no road permits or NOCs were issued to the dealer during the period.
- Between April 2014 and March 2015, two dealers³⁴ disclosed exempt sale of ₹ 0.17 crore and taxable sale of ₹ 0.03 crore. During the period, the dealers did not apply for any road permits/NOCs and also did not claim any Input Tax Credit. The fact that the dealers disclosed sale in the event of not having made any inter or intra-State purchases during the period indicated that there was no control of the Department over the business carried out by the dealers.
- Between April 2011 and March 2015, a dealer³⁵ applied for four road permits, which authorised him to import four consignments of goods. However, scrutiny of the dealer's records revealed that during the same period, the dealer actually imported 23 consignments of goods into the State which indicated that 19 consignments were illegally imported by the dealer without any Road Permits.

³² The Audit Team made a site visit of the areas between Byrnihat and Khanapara accompanied by checkgate officials in order to identify the names of the dealers.

³³ M/s AA Nutritions.

³⁴ M/s Abhishek Store, M/s S.P. Store.

³⁵ M/s Excel Foods.

- Between June 2012 and March 2014, six petrol pump dealers³⁶ imported/sold motor spirits and diesel valuing ₹167.35 crore. However, during the same period, not a single road permit was either applied for or granted to the dealers. Thus, the entire quantity of motor spirits and diesel procured during the period was without the knowledge of the check gate officials and consequently the concerned Superintendent of Taxes.
- A hardware dealer³⁷ was carrying on trade activities without obtaining any road permits and failed to submit tax returns in time. The ST, Byrnihat conducted enquiry on two occasions (August 2011 and July 2012) and found that the dealer was carrying on business without proper records. In absence of proper purchase and sales records, the tax liability of the dealer was assessed on assumptive basis. Since the dealer's place of business was beyond the taxation check-gate, the scope of purchase and sale of taxable goods could be carried out easily. The scope of concealment of turnover and further evasion of taxes by the dealer therefore could not be ruled out.
- A dealer³⁸ submitted quarterly returns for the period from April 2010 to March 2011 disclosing 'NIL' turnover for the period. Cross-verification with the records of the Taxation check gate of Assam located at Srirampur on the Assam-West Bengal border revealed that during the same period, the dealer actually imported 'Soap' amounting to ₹ 0.57 crore from a Siliguri based dealer and imported the same into the State through 31 consignments. The fact that the dealer was situated beyond the check gate enabled him to import the taxable goods into the State without the knowledge of the Taxation Department and evade tax amounting to ₹ 0.08 crore on which penalty³⁹ not exceeding ₹ 0.16 crore was also leviable.

The above observations indicated that the site selection for setting up of the check gate was done without any analysis, resulting in scope for evasion of tax by unscrupulous dealers. It may be further mentioned here that the Forest Department, Government of Meghalaya has set up a check gate at Khanapara, which is far more suitable as a check gate location than the present one.

On this being pointed out, the Department stated (December 2015) that availability of land was the main factor in the Department's inability to set up a check gate beyond the existing one.

The reply is not acceptable as the Department has not made any effort to either acquire land for setting up a new check gate or monitor the activities of dealers located beyond the present check gate.

³⁶ M/s NES Jorabat, M/s Alta Filling Station, Meera Service Station, Megha Service Station, Marwet Petroleum Agency & M/s J. Marbaniang.

³⁷ M/s Manisha Hardware.

³⁸ M/s Rajendra Yadav.

³⁹ Not exceeding twice the amount of tax evaded under Section 96 of the MVAT Act.

Recommendation No. 6: *The Taxation Department may consider suitable measures for installation of a checkgate at a more strategic location. This may include seeking co-operation from the Government of Assam at the highest level for utilising a portion of their land for setting up of a checkgate at Khanapara on a quid pro quo basis.*

Audit Objective 5: *Whether the Department had adequate internal controls in terms of supervision by senior management, periodical verification of information from DMR/Forest/Assam check gates, regular transfer of officials etc. to ensure that there were no leakages of revenue from the check gates?*

2.4.9 Internal Controls

Internal controls are safeguards that are put in place by the management of an organisation to provide assurance that its operations are proceeding as planned. Internal controls help in strengthening the public accountability of an organisation and maintaining standards of probity, prudence and ethics.

The fact that Taxation Department contributes major source of revenue to the State exchequer calls for effective internal controls over the operations of the Taxation Department.

2.4.9.1 Absence of Internal Audit Wing

Audit scrutiny revealed that the Taxation Department had no independent internal audit wing. The Examiner of Local Accounts (ELA) was responsible for conducting internal audit of State Government departments.

The evaluation of the system of working of the check posts was never conducted by the ELA. Furthermore, during the period of PA, there was no proposal made to ELA from the Taxation Department requesting for assessment of the internal functioning of the taxation check posts and suggest ways and means to plug leakage of revenue. The inaction on the part of the Department to conduct internal inspections of check gates indicated the lackadaisical attitude towards strengthening the internal control mechanism.

On this being pointed out, the Department while accepting (December 2015) the facts stated that shortage of officers was the major factor for not having set up an internal audit wing. The Department further stated that the State Government had been requested (October 2015) to sanction posts at senior level to enable the creation of an internal audit wing. Further development in this regard was awaited.

2.4.9.2 Inspections not carried out by supervisory officers

Regular inspection of the check gates by the supervisory officers is a key control activity for ensuring the satisfactory functioning of the check gates and is also an important tool for risk assessment.

The Taxation Department had not prescribed any norms for periodic inspection of check gates by supervisory officers. It was, however, noticed that during the period from 2008-09 to 2013-14, a total of 69 inspections were carried out at different supervisory levels as shown below.

Table No. 2.7

Name of the check gate	No. of vehicles crossing the check gate during 2008-14	Revenue collection (₹ in lakh)	No of Inspections/Supervisions between 2008-09 & 2013-14			Total
			At ST level	At ACT/DCT level	At COT level	
Byrnihat	3452733	448.68	NA	--	--	NIL
Dainadubi	605603	6946.14	1	1	--	2
Umkiang	284508	443.99	1	1	--	2
Bajengdoba	73287	17.09	16	--	8	24
Athiabari	70959	175.45	<i>No records available</i>			
Tikrikilla	26807	4.95	20	--	13	33
Garampani	11764	NIL	--	2	--	2
Garobadha	7814	4.96	--	1	--	1
Mendipathar	4507	4.47	2	1	--	3
Iew Mawroh	777	NIL	--	--	--	NIL
Umsiang	664	NIL	2	--	--	2
Total	4539423	8045.73	42	6	21	69

From the table above, it could be seen that the three most important check gates (Byrnihat, Dainadubi and Umkiang), which recorded the highest traffic and revenue collection during the period cumulatively reported only 4 inspections (6 per cent) with not a single inspection at the COT level. As there were no inspections by the supervisory officers, the Department had no means to know the issues affecting the effective functioning of the check gates.

It was further observed that apart from two cases, in none of the remaining 67 inspection reports, there were no remarks /comments made by the supervisory officers on the shortcomings and other issues impacting the effective functioning of the check gates. This indicated that the inspections were merely carried out in terms of record rather than suggesting weaknesses /shortcomings for corrective actions.

2.4.9.3 Inadequate Management Information System

Information and communication are essential basis for realisation of all the internal control objectives. An efficient organisation should develop an efficient and relevant information database, which is appropriate, timely, current, accurate and accessible. It is only when relevant information pertaining to an organisation is available can the efficiency and effectiveness of the organisation's operations be evaluated. A Management Information System (MIS) is a computerised database of financial

information organised and programmed in such a way that it produces regular reports on operations for every level of management in a company.

Audit examination revealed that the Department/Government had not yet developed well-defined MIS. There were no structured databases available in respect of check gates and its controlling unit offices in terms of regular reports/returns. Computerisation of all check gates were not completed and even the computerised check gates had no system to enable inter-departmental access of data uploaded by the check gates of various departments. A database linking all the check gates data with the main server was yet to be achieved. In absence of such data bank, an assessment on the efficiency and effectiveness on monitoring by the Commissionerate could not be carried out by Audit.

On this being pointed out, the Department, while accepting the facts, stated (December 2015) that a proposal had been sent (December 2015) to the State Government for creation of specialised cells dedicated to statistical research, computerisation and Management Information System. Further development in this regard was awaited.

2.4.10 Follow up on previous recommendations

The following recommendations were made in the previous Performance Audit (featured in the Audit Report 2007-08) on “Working of taxation check gates in Meghalaya” for the period covering 2002-03 to 2007-08.

- Issuing specific instruction for verification of the transit documents of each and every vehicles passing through the check posts. Also, physical verification of 10 *per cent* of the vehicles prescribed by the COT may be made mandatory.
- Making it mandatory for the unit offices to maintain prescribed registers and also to take cognizance of the way bills/road permits while finalising the assessments in the interest of Government revenue.
- Ensuring co-ordination between the check posts of the Taxation Department and DMR to arrest the scope of evasion of tax.
- Erection/shifting of check post at strategic points so that no dealer can transport taxable goods without crossing the check post.
- Setting up an independent internal audit wing to ensure compliance with the rules and regulations. Supervisory inspection should be made obligatory for proper enforcement of Acts, Rules and executive instructions.
- Periodical return to the COT showing receipt, issue and balance of receipt books in each check post may be made mandatory.

During the course of the present PA, it was noticed that none of the above recommendations were adopted by the ERTS department and no corrective steps were taken. This is evident from the fact that a number of the above shortcomings/lapses pointed out by audit were still persistent which are commented in earlier paragraphs. This action of the Department/

Government shows the lackadaisical attitude to implement effective measures in the interest of the State for maximising revenue collections.

2.4.11 Conclusion

- The working of check gates, which were established to prevent/check avoidance or evasion of tax, was adversely affected due to lack of adequate infrastructure for carrying out physical inspection of vehicles.
- Deployment of manpower at check gates was skewed without proper manpower analysis / basis, which was a major contributing factor for revenue leakages.
- There was lack of co-ordination between the check gates and the unit offices with respect to verification of Road Permits, maintenance of details of potential dealers and utilization of information of check gates by the STs, leading to concealment of turnover by dealers.
- Control on movement of vehicles through the check gates was poor, which resulted in substantial number of goods vehicles escaping notice of the check post authorities leading to evasion of tax.
- Transporters of taxable goods meant for other states were allowed to pass through the Byrnihat check gate in Meghalaya without issue of TPs leaving ample scope for possibility of consignments being unloaded in Meghalaya.
- The checkgate at Byrnihat was not located strategically, resulting in export of goods remaining undetected, and also resulting in acceptance of turnover disclosed by the dealers without any scope of further verification.
- Internal control mechanism was weak as evidenced by absence of internal audit, shortfall in inspection by the departmental officers and absence of database.

2.4.12 Summary of recommendations

The Department/State Government may consider the following recommendations to check evasion of tax:

- The Taxation Department may prescribe norms for deployment of staff in check gates based on a proper analysis of the manpower needs of the check gates *vis-à-vis* the volume of business.
- The Government may create the necessary infrastructure at the check-posts so as to achieve the objective of physical inspection norms of 10 *per cent* of the vehicles crossing the gates.
- Necessary steps may be taken to analyse the reasons for non-detection of overloading of coal and limestone and effective measures be taken to curb them. Fines and penalty should be imposed on the defaulters as prescribed to reduce cases of movement of vehicles without valid documents.

- It may be ensured that Transit Passes are issued to each and every vehicle that enters the State carrying taxable goods destined for other States.
- The Department should work out an action plan to make the working conditions in the checkgates more hospitable to the Government officials working in these checkgates so as to motivate them and to improve their productivity. Efforts may be made to address the issue of incomplete computerisation and ensure that online connectivity be upgraded for uninterrupted data flow between check gates and field offices.
- The Taxation Department may consider suitable measures for installation of a checkgate at a more strategic location. This may include seeking co-operation from the Government of Assam at the highest level for utilising a portion of their land for setting up of a checkgate at Khanapara on a *quid pro quo* basis.

2.5 Audit on the theme “Deduction of Tax at Source”

Highlights

➤ *Out of seven departments test checked by audit, VAT of ₹ 7.98 crore was not deducted/ short deducted by the DDOs from 670 contractors’ bills. Further, failure of the departments to deduct VAT at source from the bills of the contractors and submit details of works to the respective STs resulted in evasion of VAT of ₹ 1.68 crore by the contractors.*

Para 2.5.7.1

➤ *Failure of the departments to award works to dealers/contractors who were not registered in the State resulted in loss of revenue of ₹ 18.80 crore to the State.*

Para 2.5.7.2

➤ *Wrong computation of taxable turnover by the DDO from the contractors’ bills resulted in loss of revenue of ₹ 15.24 crore to the State and undue benefit was given to the contractors to that extent.*

Para 2.5.7.3 A

➤ *Due to incorrect application of rate of works contract by the DDO, there was short-realisation of VAT of ₹ 2.54 crore.*

Para 2.5.7.4

➤ *Undue benefit of ₹ 37.81 crore was extended to a contractor by the ST due to incorrect application of rate of VAT on works contract and unrealistic assessment of taxable turnover.*

Para 2.5.9.1

➤ *Internal control mechanism was weak as was evident from the fact that there was no regular conduct of trainings, seminars and workshops on TDS and also failure of the Taxation Department to impose penalties against erring departments for failing to deduct TDS.*

Para 2.5.8

2.5.1 Introduction

The Meghalaya Value Added Tax (MVAT) Act, 2003 which regulates the collection of tax in the State has special provisions for deduction of tax at source. As per Section 106 of the MVAT Act and Rule 39 of the MVAT Rules, 2005 every person working in any Government Department including companies, corporations *etc.* wholly or substantially owned by the Government, responsible for making payments in respect of any sale or supply of goods or transfer of the right to use goods or works contracts must deduct tax at source while making such payments and credit the same to the Government within ten days from the expiry of the month to which such deduction relates.

The issues relating to the system of tax deduction at source (TDS) in Meghalaya was taken up by audit in order to assess the efficacy of the tax

deduction mechanism in the Government Departments and the overall management & monitoring of the same by the Taxation Department.

2.5.2 Audit Objectives

The Audit was carried out on the following broad objectives:

- Whether the provisions relating to TDS were effectively complied with by the Government Organisations?
- Whether the TDS was remitted to Government account in the manner and time as prescribed?
- Whether the internal control mechanism to oversee the TDS process was in place and was adequate?

2.5.3 Audit Scope and methodology

The Audit covering the period from 2009-10 to 2013-14 was conducted between November 2014 and March 2015 through test check of records of one Central Government Organisation⁴⁰, one Autonomous body⁴¹, one Corporation⁴² and 27 other units under the State Government⁴³. Based on the information obtained from the unit offices, Audit cross-verified the same with records of the Superintendents of Taxes (ST) of 11 Circles under the Commissioner of Taxes (COT), Meghalaya.

2.5.4 Audit Criteria

The audit findings were benchmarked against the criteria derived from the following Acts/Rules/notifications:

- Meghalaya Value Added Tax, 2003;
- Meghalaya Value Added Tax Rules, 2005; and
- State Government notifications and executive orders issued from time to time

2.5.5 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the Government departments and the Taxation Department in providing necessary information and records for audit. An Entry Conference was held with the COT on 29 October 2014 in which the audit methodology and scope of audit was discussed. The findings of Audit were

⁴⁰ Directorate General of Assam Rifles, Shillong

⁴¹ North Eastern Hill University, Shillong

⁴² Meghalaya Energy Corporation Limited

⁴³ **Public Works Department:** (1) NEC Division Tura, (2) Tura North Division, (3) NH cum Central Division Tura, (4) Building Division Tura, (5) DPIU/PMGSY Tura (6) Ampati Division, (7) Barengapara Division, (8) NH Division Shillong, (9) Building Division Shillong, (10) Central Division Shillong, (11) Umsning Division and (12) Nongpoh Division; **Health Department:** (1) Health Engineering Wing Shillong, (2) Directorate of Health Services (Medical Institutions), (3) Directorate of Health Services (Maternity & Child Health) and (4) Mission Director (NRHM); **Public Health Engineering Department:** (1) Tura, (2) Tura North and (3) Ampati Divisions; **Water Resources Department:** (1) Chief Engineer (WR), Shillong and (2) Garo Hills (WR) Division; **Community & Rural Development Department:** (1) Rongram, (2) Selsella and (3) Myllem blocks; **Directorate of Public Instruction, Tourism Department:** (1) Hotel Pinewood, Shillong; **Sports Department:** Directorate of Sports and State Sports Council

communicated to the Government on 13 July 2015 following which, an Exit conference was held on 28 October 2015 in which all the audit observations were discussed with the COT. The replies of the Taxation and other Government Departments have been incorporated at appropriate places.

2.5.6 Trend of Revenue Collection

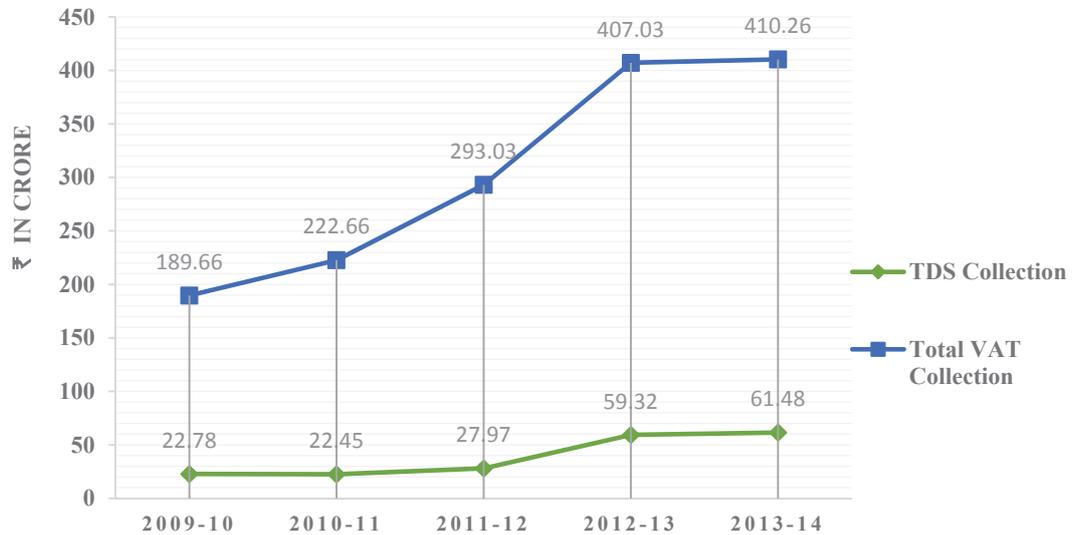
VAT collected from Government departments, as compared to total VAT Receipts of the State for the period 2009-10 to 2013-14, was as follows:

Table 1 (₹ in crore)

Year	Total VAT receipts of the State	Amount of VAT collected (TDS) from Government departments/contractors	Percentage of VAT collection from Government Departments out of total VAT receipts of the State	Percentage of increase / (decrease) in VAT collection from Government Departments
2009-10	189.66	22.78	12.01	--
2010-11	222.66	22.45	10.08	(-) 1.45
2011-12	293.03	27.97	9.55	(+) 24.59
2012-13	407.03	59.32	14.57	(+) 112.08
2013-14	410.26	61.48	14.99	(+) 3.64

(Source: Information furnished by the COT and STs of all Taxation Circles)

A graph depicting the trend in collection of VAT through TDS is shown below.



From the graph it may be seen that the year-wise trend of revenue collection through TDS *vis-à-vis* the total VAT realised was almost similar. The Taxation Department, however, did not maintain a database of revenue collected through TDS and targets for TDS collection from Government departments were also not fixed. To increase the revenue collection from TDS, fixing of targets in this respect is extremely essential as the percentage of TDS collection with respect to the actual expenditure of the State was extremely low during the years 2009-10 to 2012-13. Thus,

the Taxation Department should maintain a database of revenue collected from TDS on a regular basis and fix targets of the same so as to enhance the amount of revenue collected from this source and plug the loopholes in the collection process.

2.5.7 Audit Findings

Audit Objective 1: Whether the provisions relating to TDS were effectively complied with by the Government departments?

2.5.7.1 Irregularities in deduction of tax at source by the Drawing & Disbursing Officers (DDOs)

The objective of TDS is to ensure realisation of tax from dealers/contractors carrying on business in Government Departments or in establishments under the control of the Government.

Section 106 (2) of the MVAT Act stipulates that the DDO should deduct VAT at source from the contractors' bills on sale or supply of goods under works contract. Such tax shall be calculated at the rate of 12.5 per cent (increased to 13.5 per cent from February 2011) after allowing a percentage of deduction from the value of work towards labour and other services as prescribed in Schedule-IV A of the Act. The DDOs are not authorised to make assessment but to ensure deduction of tax for facilitating regular assessment by the ST.

Based on the information furnished by the Departments, test check of vouchers was carried out by audit. Scrutiny revealed that the DDOs in a number of cases failed to deduct VAT as per the provisions of the Act resulting in short/non deduction of VAT as discussed in the following paragraphs.

(A) Tax not deducted at source

Test check of vouchers involving work value of ₹ 2 lakh and above in respect of seven Departments for the period under review revealed that in 402 cases, the DDOs did not realise VAT at source amounting to ₹ 4.81 crore from the contractors' bills as summarised below:

Table-2 (₹ in crore)

Name of the Department (No of Divisions)	No of contractors (No. of bills)	Total Work Value	Taxable turnover on which VAT was realisable	VAT not deducted
PWD (06)	85 (113)	34.46	25.67	3.27
PHE (03)	49 (83)	1.41	1.05	0.14
Water Resources (01)	05 (06)	2.02	1.52	0.19
Health Engineering Wing, Shillong	09 (22)	5.15	3.86	0.52
NRHM, Shillong	04 (04)	0.12	0.09	0.01
DIPR, Shillong	23 (153)	4.94	3.71	0.49
Director of Sports & Youth Affairs, Shillong	7 (21)	1.83	1.83	0.19
Total	182 (402)	49.93	37.73	4.81

(B) Short deduction of tax at source

Test check of vouchers involving work value of ₹ 2 lakh and above in respect of four Departments for the period under review revealed that in 847 cases, the DDOs did not deduct full VAT from the contractors' bills as prescribed resulting in short deduction of VAT of ₹ 3.17 crore from the contractors' bills as summarised below:

Table-3 (₹ in crore)

Name of the Department	No of contractors (No. of bills)	Total Work Value	Taxable turnover on which VAT was realisable	VAT to be deducted	VAT deducted	VAT short deducted
PWD	415 (696)	52.63	39.48	5.26	2.64	2.62
PHE	41 (89)	3.42	2.57	0.34	0.10	0.24
Water Resources	24 (28)	3.47	2.60	0.34	0.15	0.19
DIPR, Shillong	8 (34)	2.34	1.75	0.23	0.11	0.12
Total	488 (847)	61.86	46.40	6.17	3.00	3.17

To examine the possibility of evasion of tax by the dealers involved in the above cases of short-deduction and non-deduction of tax by concealing the turnover in their returns, Audit test checked the case records of 132 dealers out of the 670 dealers (20 per cent) and observed that in 36 cases, there was concealment of turnover resulting in evasion of tax as discussed in the succeeding paragraphs:

- **TDS not deducted and submission of nil returns**

Between September 2010 to March 2014, four Divisions under two departments⁴⁴ awarded works contract to 10 contractors amounting to ₹ 2.83 crore but did not deduct VAT amounting to ₹ 0.27 crore from the bills of the contractors. Cross verification of the case records of the contractors with the Taxation Department revealed that the contractors did not disclose the turnover in the quarterly returns. Thus, failure of the Departments to deduct VAT at source and also failure of the contractors to subsequently furnish details of works executed by them to the Taxation Department resulted in evasion of tax of ₹ 0.27 crore.

- **Short-deduction of TDS and submission of nil returns**

Between May 2009 to March 2014, 14 Divisions under two departments⁴⁵ awarded 125 works contracts to 21 contractors amounting to ₹ 6.81 crore and deducted VAT of ₹ 0.34 crore from the bills of the contractors instead of ₹ 0.67 crore thereby resulting in short deduction of TDS amounting to ₹ 0.33 crore. On cross verification of these cases in the Taxation Department, audit observed that these contractors had not disclosed the turnover of these works contracts in their quarterly returns. Thus, short-deduction of VAT at source by the Departments was compounded by the duplicity of contractors in not furnishing details of works contracts by the

⁴⁴ Public Health Engineering & Public Works Department.

⁴⁵ Public Health Engineering & Public Works Department.

contractors in the assessment files which resulted in evasion of tax of ₹ 0.33 crore.

• **Short-deduction of TDS and submission of returns with reduced turnover**

Between October 2005 and March 2014, two departments awarded works contracts valuing ₹ 16.11 crore to five⁴⁶ dealers and deducted VAT of ₹ 0.67 crore from the bills of the contractors instead of ₹ 1.59 crore. Cross-verification of the case records of the dealers in the Taxation Department revealed that the dealers while submitting returns for the above mentioned period declared reduced turnover of ₹ 5.44 crore and submitted *challans* for VAT amount of ₹ 0.51 crore. Thus, the dealers concealed turnover of ₹ 10.67 crore and evaded tax of ₹ 1.08 crore⁴⁷. Furthermore, the fact that the dealers submitted TDS *challans* for ₹ 0.51 crore despite actual deduction of ₹ 0.67 crore with a difference of ₹ 0.16 crore indicates that the entire amount of TDS deducted was not deposited by the departments.

Recommendation No. 1: *The Taxation Department should ensure that all departments deduct tax at specified rates. A mechanism should be in place to facilitate cross-verification of the works executed by contractors and proper deduction and deposition of TDS between Taxation Department and other Government departments.*

2.5.7.2 Loss of revenue due to awarding of works contracts to unregistered dealers

Section 3 of the MVAT Act stipulates that a dealer:

- (a) whose turnover during the year preceding the commencement of the MVAT Act (i) exceeded ₹ 1 lakh or who was (ii) liable to pay tax under any of the Repealed Acts or the Central Sales Tax (CST) Act, 1956 or;
- (b) whose turnover calculated from the commencement of any year exceeds ₹ 1 lakh or (ii) who has become liable to pay tax under the CST Act shall be liable to pay VAT. Further, Section 31 of the Act mandates registration of a dealer before carrying on business in the State.

The COT in August 2012 had also instructed all the Government departments to ensure that no work orders be issued to non-registered dealers/contractors so as to avoid any scope of tax evasion.

However, test check of records of Director General of Assam Rifles (DGAR), Shillong; Meghalaya Electric Energy Corporation Limited, 12 PWD Divisions⁴⁸, three PHE Divisions⁴⁹ and Water Resource Depart-

⁴⁶ M/s R.B. Corporation, M/s RGS Construction Company, M/s Joseph Ch Marak, M/s Artist Pyngrope, M/s Donbok Myria. (Details in **Annexure-II**)

⁴⁷ 13.5 per cent on (75 per cent of ₹ 10.67 crore) = ₹ 1.08 crore.

⁴⁸ (1) NEC Division Tura, (2) Tura North Division, (3) NH cum Central Division Tura, (4) Building Division Tura, (5) DPIU/PMGSY Tura, (6) Ampati Division, (7) Barengapara Division, (8) NH Division Shillong, (9) Building Division Shillong, (10) Central Division Shillong, (11) Umsning Division and (12) Nongpoh Division.

⁴⁹ (1) Tura, (2) Tura North and (3) Ampati Divisions

ment⁵⁰ revealed that these departments awarded works contracts to 645 dealers/contractors valued at ₹ 362.12 crore who were not registered under the MVAT Act.

It was further observed that (a) in respect of dealers/contractors from outside the State, no VAT was deducted at source from their bills and (b) in respect of local unregistered dealers there were cases of either short deduction or non-deduction of VAT. The details of cases where the departments had not realised/short-realised VAT are summarised as under:

(A) Dealers from outside the State

Table-4 (₹ in crore)

Name of the Department	Number of unregistered dealers/contractors	Value of works executed by the dealers/contractors	Amount of VAT involved ⁵¹	Amount of VAT realised	VAT non-realised/short realised
DGAR, Shillong	387	338.53	16.93	NIL	16.93
MeECL	02	14.79	0.74	NIL	0.74
Total	389	353.32	17.67	NIL	17.67

(B) Dealers from within the State

Table-5 (₹ in crore)

Name of the Department	Number of unregistered dealers/contractors	Value of works executed by the dealers/contractors	Amount of VAT realisable	Amount of VAT realised	VAT non-realised/short realised
PWD	172	15.48	1.51	0.60	0.91
PHE	8	0.16	0.02	0.003	0.02
Water Resources	23	3.76	0.36	0.16	0.20
Total	203	19.40	1.89	0.66	1.13

Thus, the decision of the departments to award works to dealers/contractors who were not registered in the State resulted in loss of revenue of ₹ 18.80 crore to the State. The loss could have been avoided had the departments complied with the instructions of the COT and ensured the registration of the dealers in the State before awarding of works to them as per the provisions of the MVAT Act.

Recommendation No. 2: *The State Government may consider making it mandatory that all Government contracts are awarded only to dealers/contractors registered in the State.*

2.5.7.3 Undue benefit to contractors

(A) Due to wrong computation of taxable turnover

Section 5 of the Meghalaya Value Added Tax, 2003 stipulates that the taxable turnover of sales in relation to a works contractor shall be part of the gross turnover of sales (total value of goods transferred in property either in same form or other form) during any period after deducting there

⁵⁰ Garo Hills (WR) Division

⁵¹ Calculated at the minimum VAT rate of 5 per cent.

from the charges towards labour, services and other like charges and subject to such conditions as may be prescribed by the State Government. In respect of civil structures like buildings, roads, etc., the percentage of deduction towards labour and other services fixed by the State was 25 per cent which was to be reduced from the gross turnover to arrive at the taxable turnover on which VAT on works contract was to be charged. Thus, on 75 per cent of the gross value of works executed by the contractor, VAT at 13.5 per cent is to be charged.

On examination of works undertaken by the Assam Rifles Engineering Branch under DGAR, Shillong for the period from 2009-10 to 2013-14, it was observed that the Division did not adopt the correct procedure of deducting VAT on the total value of the works executed by the contractors as per MVAT Act & Rules. During the period from 2009-10 to 2013-14, 941 bills involving works valued at ₹ 356.42 crore were passed by the Division on which VAT amounting to ₹ 33.41 crore⁵² was required to be deducted. However, the Division deducted ₹ 18.17 crore as VAT from the bills of the contractors resulting in short realisation of VAT amounting to ₹ 15.24 crore.

Thus, wrong computation of taxable turnover by the DDO from the contractors' bills resulted in loss of revenue of ₹ 15.24 crore to the State and consequent undue benefit to the contractors.

(B) Due to liability of payment (VAT) being borne by the Department

As per Section 106 of the MVAT Act, all Government Departments are to deduct tax at source while making payments to contractors. Further as per Section 3 of the MVAT Act, the primary liability to pay VAT rests on the dealer/contractor effecting the sales/executing the work.

Examination of records of the Campus Development Department, North Eastern Hill University (NEHU), Shillong for the period from 2009-10 to 2013-14 revealed that NEHU awarded works to three contractors⁵³ valued at ₹ 38.34 crore⁵⁴ with the condition that the applicable VAT of ₹ 3.37 crore would be borne by NEHU.

Thus, by excluding the VAT liability from the contract value, NEHU violated the provisions of Section 106 of the MVAT Act as it failed to deduct tax at source. This has resulted in undue benefit to the contractors to the tune of ₹ 3.37 crore. Further, the contractors also violated the

⁵² The rate of VAT on works contract was 12.5 per cent upto 24.02.11 and thereafter from 25.02.11, this rate increased to 13.5 per cent.

⁵³ M/s Shrolenson Marbaniang: (i) Construction of Cultural Park Building at Permanent Campus, NEHU, Shillong under North East India Centre of Diversities (NEICOD) and (ii) Raising of additional floor over the existing building for School of Technology at Shillong; M/s B.D. Marbaniang: Construction of Laboratory at NEHU, Shillong; M/s Caroline Pala: Construction of Cluster of Classrooms at NEHU, Shillong under University with Potential for Excellence (UPE) & XIth Plan.

⁵⁴ Estimates for construction were as per the Schedule of Rates (SOR). Calculation of VAT in the bills of the three contractors were made at the rates of 12.5 per cent and 13.5 per cent applicable at the time of passing of these bills.

provisions of Section 3 of the MVAT Act by failing to pay the applicable VAT on the works executed.

2.5.7.4 Loss of revenue due to incorrect application of VAT on Works Contract

As per Section 2(xlv) of the MVAT Act, “works contract” means and includes any contract or agreement which is carried out for cash or for deferred payment or for any other valuable consideration such as building construction, manufacture, processing, fabrication, erection, installation, laying, fitting out, improvement, modification, repair or commissioning of any movable or immovable property.

Section 5(1) of the MVAT Act stipulates the rate of VAT to be applied on the turnover of sales of goods specified in Schedule II, III & IV and as per Schedule IV of the Act, the rate of VAT on Works Contract was fixed at 12.5 *per cent* which was revised to 13.5 *per cent* in February 2011 vide notification No ERTS(T)/36/2005/191 dated 25.02.11.

From the records of the Chief Engineer, Rural Electrification, MeECL Shillong it was observed that the work for implementation of Rajiv Gandhi Gramin Vidyutikaran Yojana (RGGVY) projects in Jaintia Hills, Ri-Bhoi and East Khasi Hills districts under the Tenth Plan was awarded to three⁵⁵ contractors between July 2007 and September 2007 on turnkey basis by splitting up the works into two parts - one contract for supply of materials for the project and another for erection contract for construction works on village electrification including installation of electric lines and other electric works.

Scrutiny of records relating to the above turnkey projects executed by the three contractors revealed that materials worth ₹ 45.64⁵⁶ crore were supplied to the Corporation and VAT of ₹ 2.53 crore was deducted from the bills of the contractors at a rate lower than the prescribed rate of 12.5 *per cent*. As per the Act, VAT at the rate of 12.5 *per cent* amounting to ₹ 5.07⁵⁷ crore was required to be realised from these turnkey projects, being works contract.

Thus, due to incorrect application of rate there was short-realisation of VAT of ₹ 2.54 crore.

Audit Objective 2: Whether the TDS was remitted to Government account in the manner and time as prescribed?

2.5.7.5 Delay in deposit of TDS

Section 106 (3) of the MVAT Act read with Rule 39 of the MVAT Rules stipulates that tax deducted shall be deposited within ten days of each

⁵⁵ M/s Marbaniang Enterprise, M/s Dhar Construction Company and M/s G M Syiemlieh

⁵⁶ M/s Marbaniang Enterprise: ₹ 26.32 crore; M/s Dhar Construction Company: ₹ 17.70 crore ; G M Syiemlieh: ₹ 1.62 crore

⁵⁷ $(456440432 \times \text{Rate of VAT}) / (100 + \text{Rate of VAT})$

month by the DDO and details of such deductions should be forwarded to the Assessing Authority in prescribed form.

On examination of the case records pertaining to remittances of VAT deducted by the PWD, PHE, Health & Water Resources Departments in three⁵⁸ districts, the following deficiencies/irregularities were observed:

- VAT deducted from the contractors bills were kept in Civil Deposit by the Divisions at the end of each quarter and the same were actually remitted in the next quarter by withdrawing these civil deposits and issuing cheques to the concerned STs for deposit into the Government account. Thus, in every case there was a delay of at least three months in remittance of Government revenue due to idle parking of funds in Civil Deposit. As a result, VAT amounting to ₹ 8.75 crore deducted by 15 DDOs⁵⁹ in the three districts were not credited to the Government account as on 31 March 14.
- It was further observed that in 46 cases, three departments did not deposit the VAT deducted from the contractors' bills within the stipulated period resulting in delays in deposit of TDS ranging from 03 days to 429 days as detailed below.

Table-6

District	Name of the Department	Circle	No of VAT cheques involved	Amount (₹ in crore)	Period of Delay ⁶⁰
Garo Hills	PWD, Building Division, Tura	ST, Tura, Circle I & II	6	0.93	03 days to 47 days
	PWD NEC Division, Tura		2	1.00	05 days to 28 days
	PWD North Division, Tura		4	1.51	03 days to 73 days
	PWD Central Division, Tura		3	0.58	41 days to 72 days
	PWD, Ampati Division		4	0.88	3 days to 112 days
	PHE, Tura Division		2	0.06	02 days to 09 days
	Water Resources, Tura		6	0.95	26 days to 56 days
Ri-Bhoi	PWD, Nongpoh and Umsning Divisions	ST, Nongpoh	19	9.36	30 days to 429 days
Total			46	15.27	

- One cheque numbered “409548” dated 05.03.12 of ₹ 0.90 crore was forwarded to the ST, Tura Circle II in March 2012 by PWD, Tura North Division. Audit observed that the ST failed to deposit cheque in time and returned the cheque in February 2014 (after lapse of two years) to the Division for its re-validation against which the Division issued a fresh cheque (dated July 2014) in

⁵⁸ Garo Hills, East Khasi Hills and Ri-Bhoi districts.

⁵⁹ Public Works Department.

⁶⁰ Delay calculated by considering date of deposit of the cheques for a particular quarter by the 10th of the following month.

September 2014 which was immediately credited. The delay of more than two years in the process of remitting the TDS amount by the ST apart from the delay by the Division resulted in blocking of Government revenue amounting to ₹ 0.90 crore.

Agreeing to the audit observation, the COT (September 2015) stated that the Government had been requested to issue specific instructions to the DDOs not to park the TDS deducted into “8443 Civil Deposit” but to credit it to the Revenue Receipt Head. The COT further stated that directions had been issued to all the STs to not delay presentation of cheques to the banks for clearing.

2.5.7.6 TDS not deposited

Two⁶¹ divisions deducted VAT amounting to ₹ 19.15 crore as TDS from the contractors’ bills on works contracts executed between May 2011 and March 2014. However, the TDS deducted was not deposited into the proper Head of Government account till date of Audit (July 2015). While non-deposit of TDS is highly irregular, this government money is prone to misuse and is a matter of serious financial irregularity.

2.5.7.7 Deposit of TDS into incorrect Head of Account

As per the extant practice, in respect of National Highway works, contractors’ bills are duly verified and forwarded by the PWD Divisions to the Regional Office, Guwahati for clearance after making necessary deductions such as security deposits, VAT, income tax, etc. from the bills. After the bills are cleared, cheques are issued to the Division by the Regional Office for making payment to the contractors and remittance to receipt heads of concerned Government agencies to which the deductions relate to.

Audit observed that one PWD Division⁶² received eight cheques amounting to ₹ 7.83 crore on VAT deducted from the contractors’ bills relating to the period from 2009-10 to 2013-14. The Divisions instead of crediting these cheques to the Head of Account “0040-Sales Tax” of Taxation Department wrongly credited them to the Head “8782-102-Public Works Remittances”.

Thus, failure on the part of the Divisions to correctly credit Government receipts into proper Head of Account, had resulted in wrong accounting of TDS amounting to ₹ 7.83 crore.

⁶¹ Barengapara Division: ₹ 65.53 lakh (June 2009-March 2013): Health Engineering Wing, Shillong: ₹18.49 crore (Sep 10 to March 15).

⁶² NH Division, Shillong.

Audit Objective: Whether the internal control mechanism to oversee the TDS process was in place and was adequate?

2.5.8 Internal Control Mechanism

Examination of the various internal controls existent in the Taxation Department for overseeing tax deduction by the Government Departments revealed lack of adequate internal controls which are discussed in the succeeding paragraphs.

2.5.8.1 Absence of a suitable mechanism to monitor compliance of the MVAT provisions by Government departments

As per Rule 41 of the MVAT Rules, all Government departments which deduct tax at source are required to give a certificate showing details on tax deducted to the concerned ST in Form 26.

Out of the 31 Departments selected by audit for test check, 16⁶³ Government departments failed to submit a single certificate in Form 26 showing details of tax deducted by them during the period covered by audit.

Cross verification with the concerned STs revealed that not a single ST maintained a separate register/database to monitor the submission of Form 26 by the departments. As a result, despite non-submission of the certificates, no notices were served to the erring departments by the Taxation Department as the STs were in no position to list out the defaulters.

2.5.8.2 Failure to conduct training/seminars/Workshops

In order to disseminate information on TDS by Government departments in an effective manner, it was imperative that the Taxation Department should hold training programmes or workshops for the Government offices, many of which are in remote locations and are unaware of most or any of the provisions relating to TDS as provided in the MVAT Act and Rules.

During the period covered by audit (2009-10 to 2013-14), not a single training programmes was taken up by the Taxation Department. In respect of PWD, however, three trainings were conducted in 2012-13 and that too at the initiative of the PWD Department. During the same period, audit pointed out 1345 cases of non/short deposition of TDS by the departments and concealment of turnover thereof by the contractors/dealers having a revenue impact of ₹ 8.21 crore. Viewed against this backdrop, lack of initiative by the Taxation Department to sensitise other departments which were not proficient with the Taxation laws especially with the provisions

⁶³ ***Health Department: Four units; DIPR; MeECL: Two units; C&RD : 3 Blocks; NEHU; PWD : Three Divisions in Shillong; DGAR, Shillong; MTDC: One unit; Sports Department***

of works contracts can be attributed for TDS related short comings in other departments as far as TDS is concerned.

Recommendation No. 2: *The Taxation Department should conduct workshops and seminars for all the concerned tax deducting departments for creating awareness and capacity building in connection with the correct procedures in respect of TDS.*

2.5.8.3 Absence of database

Although the process of registration of dealers, payment of challans, way-bills administration, transit pass/ transit documents and declaration of 'C' forms had been computerised in the Taxation Department, the Department did not maintain a database of works contractors and Government suppliers. The Department also did not maintain a database of Government departments deducting tax at source from the contractors'/suppliers' bills. In absence of such crucial records, scrutiny/assessments made by the STs would not give a correct picture of tax liability of the contractors/suppliers as there remained ample scope of concealment of turnover by contractors/suppliers with consequent revenue leakage as pointed out in this Report. Lack of initiative by the Taxation Department towards creation of database to capture transactions of Government departments further compounded the problem as the Department had no means of gathering information on work orders issued by other departments to contractors and VAT deducted thereon.

2.5.8.4 Penalties not imposed

Section 90 (xix) of the Meghalaya Value Added Tax, 2003 stipulates that if the DDO fails to deduct tax at source as required under section 106 of the Act, he shall without prejudice to his liability under any law for the time being in force and in addition to the tax or any other dues recoverable under this Act, on conviction, be punishable with simple imprisonment which may extend to six months or with fine not exceeding rupees ten thousand or both. To ensure that the provisions of the Act were adhered to by all DDOs, the Commissioner of Tax in August 2012 directed all departments to carry out deduction of tax at source.

Audit scrutiny of records of three test checked Block Offices⁶⁴ revealed that the DDOs were not deducting VAT at source from the bills. Reasons cited by the DDOs for non-deduction of tax at source was that the scheme money was directly released to the beneficiaries in a number of schemes. Audit scrutiny however revealed that the DDOs were not deducting tax at source even from those bills where works were executed departmentally and materials were being issued to the beneficiaries. Moreover, there was no correspondence by the Community and Rural Development (C&RD) Department asking for remission or clarifications on modalities to be

⁶⁴ *Rongram and Selsella blocks in Garo Hills and Myllem block in East Khasi Hills.*

adopted for VAT deduction in respect of the schemes introduced at the Block levels. This clearly indicated violation of the provisions of the MVAT Act in deduction of VAT at source on the part of the C&RD Department.

Despite the departments not complying with the Rules regarding deduction of tax at source, awarding of works to unregistered dealers /contractors and not furnishing details to the STs as per the MVAT Act and Rules, no action was taken by the Taxation Department to impose penalty on the erring departments. Absence of initiatives by the Taxation Department to sensitise, clarify doubts and suggest the procedure to be adopted by the departments to boost revenue generation through TDS by way of conducting training/workshops/ seminars points out the lackadaisical attitude of the Taxation Department in this regard.

Recommendation No. 4:

- ***The Taxation Department should take action against all the Government departments which fail to submit the TDS information in the prescribed forms.***
- ***Strict steps to impose penalties on the defaulting departments, not deducting tax at source, should be taken to ensure regularity and curb revenue loss to the State.***

2.5.9 Other Points of Interest

2.5.9.1 Incorrect application of rate of VAT on Works Contract and unrealistic assessment of taxable turnover

The State Government levies tax on works contract at a uniform rate⁶⁵ of 13.5 *per cent* after deducting there from, the charges towards labour and services as stipulated in Section 5 of the MVAT Act. Further, it was held⁶⁶ by the Supreme Court of India that the value of the goods involved in the execution of works contract will have to be determined by taking into account the value of the entire works contract and deducting these from the charges towards labour and services. The Apex court also held that the State Legislature is empowered to tax all the goods involved in the execution of a works contract at a uniform rate which may be different from the rates applicable to individual goods because the goods which are involved in the execution of the works contract when incorporated in the works can be classified into a separate category for the purpose of imposing tax.

The work for “2-laning of Nongstoin- Shillong section of NH-44 and Nongstoin-Rongjeng-Tura” road in the State of Meghalaya was awarded to

⁶⁵ *Schedule IV attached to the Act.*

⁶⁶ *Gannon Dunkerley & Co. Vs State of Rajasthan and Larsen & Toubro Vs Union of India [1993] 88 STC 204 (SC).*

a contractor⁶⁷ in February 2011. As per the terms and conditions of the contract, VAT applicable in respect of works contract was to be levied from the bills of the contractor.

Scrutiny of the bills of the contractor for the period between April 2009 and March 2014 indicated that the company had executed total work value of ₹ 1009.66 crore up to 31 March 2014 on which VAT of ₹ 28.22 crore was deducted at source by the PWD, NH Division, Shillong. The total turnover included exempted sale of ₹ 408.32 crore of items involving only labour such as earthwork, site clearance *etc.* and ₹ 601.34 crore of items involving both materials and labour.

While submitting returns, out of the total work value of ₹ 1009.66 crore, the contractor claimed exempted sale of ₹ 744.19 crore and taxable sale of ₹ 265.47 crore. The ST accordingly calculated (May 2014) the tax liability of the company up to March 2014 at ₹ 28.22 crore. However, no details or accounts of labour and other charges in the contract agreement was available.

The following irregularities were noticed in deduction of tax at source and assessment of VAT by the ST:

(A) Out of sales turnover of ₹ 265.47 crore, VAT at the rate of 5 *per cent* was charged on sales turnover of ₹ 44.68 crore⁶⁸ instead of the rate of 13.5 *per cent*. This resulted in short realisation of VAT of ₹ 3.80 crore⁶⁹.

(B) Since the charges towards labour, services and other like charges in works contract were not ascertainable from the terms and conditions of the contract agreement, the ST irregularly accepted the returns submitted by the company for claiming exempted sale of ₹ 744.19 crore (which was 74 *per cent* of the gross turnover) without ascertaining the actual quanta of exempt sale from the books of accounts of the contractor. The total work value of ₹ 1009.66 crore already included exempted sale of ₹ 408.32 crore on earthwork *etc.* In the absence of detailed accounts, the additional claim of exempt sale on the balance amount of ₹ 601.34 crore by the contractor was irregular and the determination of taxable turnover made by the ST was unrealistic and resulted in under-assessment of taxable turnover of ₹ 335.88 crore⁷⁰ involving revenue of ₹ 34.01 crore.

2.5.10 Conclusion

➤ There were cases of non/short deduction of TDS by the Government departments and concealment of the turnover by the contractors.

⁶⁷ BSC & SC (JV).

⁶⁸ ₹ 29.86 crore pertains to the period from 01.10.11 to 30.09.12 and ₹ 14.62 crore pertains to the period from 01.10.12 to 31.03.14. For ₹ 29.86 crore, loss on VAT was highlighted in the Audit Report (Revenue Sector), Government of Meghalaya for the year ended 31 March 2013.

⁶⁹ 8.5 *per cent* of ₹ 44.68 crore = ₹ 3.80 crore

⁷⁰ ₹ 601.35 crore - ₹ 265.47 crore = ₹ 335.87 crore.

13.50 *per cent* of (75 *per cent* of ₹ 335.87 crore) = ₹ 34.01 crore.

- There was a system failure to prevent unregistered dealers getting works contracts within the State resulting in loss of revenue.
- There were cases of delay in deposit and also non-deposit of VAT deducted at source by the departments.
- There was absence of adequate internal control mechanism in the Taxation Department as observed from not conducting training, seminars and workshops on TDS, weak monitoring of the Government departments, absence of database and also failure of the Taxation Department to take action against departments for not furnishing information on TDS.

2.5.11 Recommendations

In the light of audit findings during the course of audit of TDS, the following recommendations are made with a view to maximising Government revenue:

- The Taxation Department should ensure that all departments deduct tax at specified rates. A mechanism should be in place to facilitate cross-verification of the works executed by contractors and proper deduction and deposit of TDS between Taxation Department and other Government departments.
- The State Government should make it mandatory that all Government contracts are awarded only to dealers/contractors registered in the State.
- The Taxation Department should liaise with all Government departments to ensure that tax deducted is timely and properly deposited into the Government Accounts.
- The Taxation Department should take strict action to impose penalties on the defaulting departments not deducting tax at source. Regular periodical trainings, workshops and seminars should be conducted by the Taxation Department for all the concerned tax deducting departments for creating awareness and capacity building in connection with the correct procedures to be adopted in respect of TDS.

TRANSACTION AUDIT

2.6 Loss of revenue due to assessment not being completed

Failure to carry out timely assessment allowed a dealer to escape the liability to pay tax amounting to ₹ 0.08 crore on which penalty not exceeding ₹ 0.16 crore and interest of ₹ 0.28 crore was not levied.

[ST, Circle-I, Shillong; October 2014]

Under Section 35 of the Meghalaya Value Added Tax (MVAT) Act, 2003 and the Rules made thereunder, every dealer shall submit a quarterly return duly accompanied by the treasury receipt showing the amount of tax payable by him as per the return. Further, under Section 45 of the MVAT

Act if the returns furnished by a dealer are incorrect or if a dealer closes his business then the ST can assess him to the best of his judgement. If a dealer fails to pay the full amount of tax due per quarter, then simple interest at the rate of 2 *per cent* per month from the end of the month following the quarter is leviable under Section 40 of the MVAT Act. In addition, for non-payment of tax, penalty not exceeding twice the amount of tax involved is also leviable under Section 90 read with Section 96 of the Act *ibid*.

A dealer⁷¹ submitted his returns for the period between May 2005 and March 2008 disclosing a taxable turnover of ₹ 5.60 crore on which tax amounting to ₹ 0.46 crore was leviable; against which, the dealer paid ₹ 0.38 crore thereby resulting in short payment of tax of ₹ 0.08 crore. For non-payment of tax, interest⁷² amounting to ₹ 0.19 crore and penalty not exceeding ₹ 0.16 crore was also leviable. In addition, the dealer belatedly paid the tax for the above mentioned periods with delays ranging between 21 days and 316 days for which he was liable to pay additional interest of ₹ 0.09 crore. The dealer stopped submitting returns after March 2008 and there were no trade related activities in his records⁷³ indicating closure of business.

Despite non-furnishing of returns/furnishing of incorrect returns, no action was taken by the ST to assess the dealer on best judgement basis. Failure of the ST to carry out timely assessment resulted in loss of revenue amounting to ₹ 0.52 crore.

On this being pointed out (December 2014), the ST while admitting the facts (January 2015) stated that the dealer had been assessed on best judgement basis and demand notice for realisation of Government dues amounting to ₹ 0.15 crore had been issued to the dealer. The ST further stated that the dealer had closed his business in 2008 and was presently untraceable.

It would thus be observed that delay in timely completion of assessment by the ST enabled the dealer to escape the liability to pay tax resulting in a loss of revenue to the State exchequer to the said extent.

No further reply in this regard has been received from the Taxation Department, Government of Meghalaya (November 2015).

⁷¹ *M/s Manmall Dungarmall.*

⁷² *Calculated upto March 2015.*

⁷³ *The dealer stopped applying for road permits/'C' forms etc.*

2.7 Loss of revenue due to acceptance of incorrect claim of ITC

A dealer fraudulently claimed ITC of ₹ 3.84 crore on which penalty not exceeding ₹ 7.68 crore and interest amounting to ₹ 5 crore was not realised.

[ST, Circle-I, Shillong; October 2014]

Under the provisions of Section 11 of the MVAT Act, Input Tax Credit (ITC) is allowed to a registered dealer for intra-State purchase of goods intended for re-sale from another registered dealer. ITC is the tax paid by the second dealer while purchasing goods from another dealer in the course of intra-State trade and is allowed as a set-off against the tax payable by the second dealer while making subsequent sale. Further, under Section 11 read with Section 16 of the MVAT Act, for availing ITC a dealer must maintain all evidence in support of such a claim and the burden of proving the eligibility for claiming ITC shall be on the dealer. If a dealer falsely claims ITC, then penalty not exceeding twice the amount of tax involved is leviable under Section 90 read with Section 96 of the Act *ibid*.

A dealer⁷⁴ submitted returns for the period between May 2005 and March 2012 disclosing intra-State purchase of goods valued at ₹ 227.02 crore and claimed ITC of ₹ 3.84 crore on such purchases and accordingly paid the output tax after adjusting the ITC as set-off. However, examination of the dealer's records revealed that the dealer did not provide for any documentary evidence in support of his claim of ITC. As such, the ITC claim was irregular and was liable to be rejected. However, the same was not detected by the ST as he failed to assess the dealer and the case records were left untouched thereby allowing the dealer to avail undue benefit of ITC amounting to ₹ 3.84 crore on which penalty not exceeding ₹ 7.68 crore and interest amounting to ₹ 5 crore (upto March 2015) was leviable. The dealer stopped submitting returns after March 2012 and there were no trade related activities in his records⁷⁵ indicating closure of business.

Despite the dealer with such a high volume of business having stopped furnishing of returns, no action was taken by the ST to assess the dealer on best judgement basis or even to ascertain the status of the dealer's business. Failure of the ST to carry out timely assessment thus resulted in loss of revenue amounting to ₹ 16.52 crore.

On this being pointed out (December 2014), the ST while admitting the facts (January 2015), stated that the dealer had been assessed on best judgement basis and demand notice for realisation of Government dues amounting to ₹ 14.34 crore had been issued to the dealer. The ST further

⁷⁴ M/s K.R. Deb & Sons.

⁷⁵ The dealer stopped applying for road permits/'C' forms etc.

stated that the dealer had long since closed his business and was presently untraceable.

It would thus be observed that delay in completion of assessment by the ST enabled the dealer to irregularly avail ITC benefit resulting in a loss of revenue to the State exchequer to the said extent.

No further reply in this regard has been received from the Taxation Department, Government of Meghalaya (November 2015).

2.8 Loss of revenue due to acceptance of fake declaration forms

Failure of the ST to timely assess a dealer resulted in loss of revenue due to underassessment of tax amounting to ₹ 4.82 crore due to acceptance of fake declaration forms on which penalty not exceeding ₹ 9.64 crore and interest amounting to ₹ 7.76 crore was not levied.

[ST, Circle-II, Shillong; December 2014]

Under the provisions of Section 6A of the Central Sales Tax (CST) Act, 1956 a registered dealer is exempt from payment of tax on stock transfer of goods otherwise than by way of sale if such transfer is supported by a declaration in Form 'F'. Further under Section 8 of the CST Act, a registered dealer is entitled to claim concessional rate of tax of 2 per cent on sale of goods to a registered dealer in course of interstate trade if such transfer is supported by declaration in Form 'C'. If a dealer submits false returns or evades the liability to pay tax, then the ST can assess him to the best of his judgement under Section 45 of the MVAT Act and also levy penalty not exceeding twice the tax evaded under Section 90 read with Section 96 of the Act *ibid*.

For the period between May 2005 and March 2010, an automobile dealer⁷⁶ disclosed stock transfer of goods valued at ₹ 32.13 crore to a dealer⁷⁷ based in Nagaland and claimed full exemption from payment of tax on the stock transfer by submitting 18 declarations in Form 'F'. The dealer also disclosed inter-State sale of goods valued at ₹ 7.83 crore and paid tax amounting to ₹ 0.18 crore at concessional rate by submitting 13 declarations in Form 'C'. After March 2010, the dealer stopped making inter-State transactions by way of sale/stock transfer and also stopped all trade related activities⁷⁸ after June 2012, which indicated closure of his business.

Cross-verification of the declaration forms by audit with the Taxation Department of Nagaland revealed that the declaration forms, submitted by the dealer, had not been issued by the Department at all. As such, the forms were fake and were liable to be rejected by the ST and tax

⁷⁶ M/s Kim Hyundai.

⁷⁷ Only one transaction was shown to a dealer based in Manipur in September 2005.

⁷⁸ The dealer stopped applying for road permits/'C' forms etc.

amounting to ₹ 4.82 crore was to be realised⁷⁹ on which penalty not exceeding ₹ 9.64 crore and interest⁸⁰ amounting to ₹ 7.76 crore was also leviable.

Despite the fact that the dealer did not furnish returns, no action was taken by the ST to assess the dealer on best judgement basis or even ascertain the status of the dealer's business. Failure of the ST to carry out timely assessment and verify the genuineness of the declaration forms thus resulted in loss of revenue amounting to ₹ 22.22 crore.

The case was reported to the Taxation Department, Government of Meghalaya in April 2015; their reply has not been received (November 2015).

2.9 Evasion of tax

A dealer concealed purchase of ₹ 42.79 crore and evaded tax of ₹ 6.37 crore on which penalty not exceeding ₹ 9.56 crore and interest amounting to ₹ 2.93 crore was not levied.

[ST, Circle-II, Shillong; December 2014]

Under Section 11(4) of the Assam (Sales of Petroleum *etc.*) Taxation Act, 1955 (as adapted by Meghalaya) if the ST is not satisfied with the correctness of returns furnished by a dealer, then the ST can assess the dealer to the best of his judgement. Further under Section 16(1)(c) of the Act if the dealer has concealed particulars of his turnover, then the dealer is liable to pay as penalty, in addition to the tax payable, a sum not exceeding one and half times the tax payable. In addition, interest is leviable under Section 20A of the Act *ibid* as follows:

For the first 60 days from the due date ⁸¹	12 per cent per annum
Beyond 60 days from the due date	24 per cent per annum

For the period between April 2012 and December 2013, a dealer disclosed inter-State purchase of 'Motor Spirits' (MS) at ₹ 4.03 crore and 'High Speed Diesel' (HSD) at ₹ 9.32 crore from an oil marketing company⁸² in Assam and the same was accepted and assessed by the ST in May 2014. However, based on information obtained from the Commissioner of Taxes, Meghalaya it was seen that during the same period the dealer actually purchased MS valued at ₹ 17.61 crore and HSD valued at ₹ 38.53 crore.

⁷⁹

Transaction	Amount (₹ in cr.)	Tax @ 12.5 per cent (₹ in crore)
Stock transfer	32.13	4.02
Sale	7.83	0.98
Total	39.96	5
Tax already paid		0.18
Tax to be realised		4.82

⁸⁰ Calculated upto March 2015.

⁸¹ Due date is the end of the month following the quarter.

⁸² Indian Oil Corporation Limited.

While completing the assessments, the ST failed to take into account all connected records which thereby enabled the dealer to conceal purchase of MS worth ₹ 13.58 crore and HSD worth ₹ 29.21 crore resulting in evasion of tax amounting to ₹ 6.37 crore⁸³ on which penalty not exceeding ₹ 9.56 crore and minimum interest⁸⁴ of ₹ 2.93 crore was also leviable.

The case was reported to the Taxation Department, Government of Meghalaya in April 2015; their reply has not been received (November 2015).

2.10 Electricity duty not realised

Failure of the ST to assess the liability of electricity duty on MeECL resulted in electricity duty amounting to ₹ 13.74 crore not being realised on which penalty of ₹ 54.96 crore was not levied.

[ST, Circle-VII, Shillong; February 2015]

The Assam Electricity Duty Act, 1964 (as adapted by Meghalaya) and the Rules made thereunder stipulate that:

- the Meghalaya Energy Corporation Limited (MeECL) shall levy and pay to the State Government a duty called the ‘electricity duty’ at the rate of six paise per unit of energy supplied to consumers within 15 days or the close of the month to which it pertains. [Section 3(1)(a) & Rule 3];
- the ST shall assess the electricity duty payable and issue a demand notice after a month from the expiry of the half yearly period to which the duty relates [Rule 7 & Rule 6];
- for non-payment of electricity duty, the ST can levy a sum, not exceeding four times the amount of duty, by way of penalty on MeECL [Section 8]; and
- any duty or penalty remaining unpaid by the MeECL shall be recoverable as an arrear of land revenue or by deduction from amounts payable by the State Government to the MeECL [Section 9].

It was seen from the records of the MeECL that the Corporation had been regularly collecting electricity duty from the consumers but failed to deposit the electricity duty to the Government. The Corporation even failed to regularly submit the half yearly returns showing the amount of energy consumed and electricity duty payable thereon. Based on a statement furnished by the MeECL, it was observed that between October 1989 and March 2013, the Corporation realised ₹ 14.42 crore as electricity duty from the consumers against which, it paid only ₹ 0.68 crore to the Government thereby resulting in non-payment of electricity duty amounting to ₹ 13.74 crore. After March 2013, MeECL failed to submit

⁸³ Tax on HSD: 12.5 per cent on ₹29.21 crore = ₹3.65 crore
Tax on MS: 20 per cent on ₹13.58 crore = ₹2.72 crore
Total = ₹6.37 crore

⁸⁴ Calculated from the quarter ended December 2013 upto March 2015.

any returns showing the amount of electricity duty collected and any payment made thereof to the Government.

Despite the MeECL failing to deposit the electricity duty collected from the consumers and also failing to submit returns, no action was taken by the ST to either direct MeECL to produce the books of accounts in order to assess the liability or issue demand notices under Rule 6 for payment of the duty which was collected but not deposited or levy penalty on the amount defaulted or even forward the case for initiation of recovery proceedings.

Failure of the ST to take recourse to the provisions of the Act/Rules thus resulted in electricity duty amounting to ₹ 13.74 crore not being deposited on which penalty not exceeding ₹ 54.96 crore was also leviable.

The case was reported to the Taxation Department, Government of Meghalaya in June 2015; their reply has not been received (November 2015).

2.11 Inadmissible remission of tax

An industrial unit irregularly claimed excess remission on sale of ₹ 2.20 crore resulting in short payment of tax of ₹ 0.11 crore on which penalty not exceeding ₹ 0.22 crore and interest of ₹ 0.05 crore was not levied.

[ST, Nongpoh; September 2014]

Under the Meghalaya Industries (Tax Remission) Scheme, 2006 eligible industrial units⁸⁵ are eligible for remission of tax collected by way of retaining 99 *per cent* of the tax collected on sale of finished goods manufactured by the units not exceeding the installed capacity. Further, under Section 39 of the MVAT Act, each and every return furnished by a registered dealer is subject to scrutiny by the ST to *inter alia* verify the correctness of return and payment of tax thereon. If a dealer prepares incorrect returns, then penalty not exceeding twice the amount of tax involved is leviable under Section 90 read with Section 96 of the Act *ibid*.

An industrial unit⁸⁶ with an installed capacity of 225 MT per annum was granted eligibility for seeking incentives under the Tax Remission Scheme of 2006. For the period between April 2011 and March 2012, the dealer disclosed sale of 458.13 MT of goods valued at ₹ 4.33 crore with tax effect of 0.22 crore on which he claimed tax remission of ₹ 0.21 crore and paid ₹ 0.01 crore as tax to the Government and the same was accepted by the ST during scrutiny in August 2013. However, based on the installed capacity of the unit, remission upto 225 MT valued at ₹ 2.13 crore only

⁸⁵ Units which having fulfilled all the conditions were granted clearance by the Single Window Agency. The Single Window Agency has been set up under the Chairmanship of the Chief Minister to facilitate and expedite clearances for setting up industries in the State.

⁸⁶ M/s W.K. Industries.

was allowable. The unit thus irregularly claimed excess remission on sale of 233.13 MT of goods valued at ₹ 2.20 crore resulting in short payment of tax of ₹ 0.11 crore⁸⁷ on which penalty not exceeding ₹ 0.22 crore and interest of ₹ 0.05 crore was also leviable.

Despite excess claim of remission on sale of goods exceeding the installed capacity, the ST failed to detect the same during scrutiny thereby resulting in short payment of tax to the said extent.

The case was reported to the Taxation Department, Government of Meghalaya in December 2014; their reply has not been received (November 2015).

2.12 Under assessment of tax

Allowance of incorrect rate of tax by the ST and furnishing of revised returns by the dealer with reduced turnover resulted in underassessment of tax amounting to ₹ 0.10 crore on which penalty not exceeding ₹ 0.20 crore and interest⁸⁸ of ₹ 0.05 crore was not levied.

[ST, Nongpoh; September 2014]

In Meghalaya, all residuary items which do not fall under any of the Schedules I to III of the MVAT Act are classified under Schedule-IV of the Act and are taxable⁸⁹ at 13.5 *per cent*. Accordingly, 'cooked food' being a residuary item is taxed at 13.5 *per cent*. Under Section 35(5) of the MVAT Act, if a dealer discovers any omission in his return for any quarter then he may furnish a revised return before the expiry of the next quarter. Further, under Section 90(vi) read with Section 96 of the Act *ibid*, if a dealer evades in any way the liability to pay tax then penalty not exceeding twice the amount of tax involved is leviable.

2.12.1 A dealer⁹⁰ dealing in 'cooked food' submitted returns for the period between April 2007 and December 2013 disclosing a total turnover of ₹ 1.13 crore out of which he claimed exempted sale of ₹ 0.66 crore. Despite the dealer not dealing in any exempted goods⁹¹, the ST while scrutinising the returns in April 2013 allowed the claim.

Failure of the ST to check the correctness of return thus resulted in underassessment of tax amounting to ₹ 0.09 crore on which penalty not exceeding ₹ 0.18 crore and interest⁹² of ₹ 0.04 crore was also leviable.

⁸⁷ Tax @ 5 per cent of ₹ 2.20 crore = ₹ 11 lakh.
Remission @ 99 per cent of ₹ 0.11 crore = ₹ 10.89 lakh.
Short payment of tax is the amount remitted i.e., ₹ 10.89 lakh (or ₹ 0.11 crore)

⁸⁸ Calculated upto June 2014.

⁸⁹ 12.5 per cent upto February 2011.

⁹⁰ M/s Makhan Bhog.

⁹¹ The State Government has notified a list of items under Section 8 of the MVAT Act which are exempted from tax.

⁹² Calculated upto June 2014.

2.12.2 It was also observed that the dealer submitted returns for the period between April 2008 and March 2010 disclosing taxable sale of ₹ 0.11 crore. The dealer subsequently submitted revised returns for the above mentioned period by reducing the turnover from ₹ 0.11 crore to ₹ 0.05 crore. Although the returns for every quarter were submitted after a gap of more than sixty days following the next quarter, the same was accepted by the ST at the time of scrutiny (April 2013) thereby resulting in short payment of tax of ₹ 0.008 crore on which penalty not exceeding ₹ 0.02 crore and interest amounting to ₹ 0.01 crore was also leviable.

The dealer stopped submitting all returns after March 2014 which indicated closure of his business. Failure of the ST to check the discrepancies in the returns at the time of scrutiny resulted in loss of revenue amounting to ₹ 0.15 crore.

The case was reported to the Taxation Department, Government of Meghalaya in December 2014; their reply has not been received (November 2015).

2.13 Short levy of interest

A dealer belatedly paid the tax for which ₹ 0.37 crore was leviable as interest against which ₹ 0.01 was levied thereby resulting in short levy of interest amounting to ₹ 0.36 crore.

[ST, Circle-II, Tura; June 2014]

Under Section 35 of the Meghalaya Value Added Tax (MVAT) Act, 2003 and the Rules made thereunder, every dealer shall submit a quarterly return duly accompanied by the treasury receipt showing the amount of tax payable by him as per the return. If a dealer fails to pay the full amount of tax due per quarter, then simple interest at the rate of 2 *per cent* per month from the end of the month following the quarter is leviable under Section 40 of the MVAT Act.

A dealer⁹³ submitted quarterly returns for the period between May 2005 and December 2011 disclosing tax liability of ₹ 58.26 crore and paid the tax belatedly for each quarter with delays ranging between 2 days and 270 days for which he was liable to pay interest of ₹ 0.37 crore. The ST, however, while scrutinising the dealer for the above mentioned period in September 2013 levied interest of only ₹ 0.01 crore thereby resulting in short levy of interest of ₹ 0.36 crore.

On this being pointed out (September 2014), the ST while admitting the facts (November 2014) stated that interest had been re-calculated and notice for payment of interest had been issued to the dealer. A report on realisation of the interest was awaited (November 2015).

⁹³ M/s Premchand Champalal

No further reply has been received from the Taxation Department, Government of Meghalaya (November 2015).

2.14 Concealment of turnover

A dealer concealed turnover of ₹ 37.45 crore on sale of coal and evaded tax of ₹ 1.50 crore on which penalty not exceeding ₹ 3 crore and interest of ₹ 0.33 crore was not levied.

[ST, Circle-II, Tura; June 2014]

In Meghalaya, all dealers engaged in inter-State sale of coal have to obtain 'P' forms on payment of advance tax from the STs which authorise the dealers to transport nine MT of coal per truck. The Commissioner of Taxes in August 2012 revised⁹⁴ the rate of 'P' form from ₹ 1100 per truck to ₹ 1736 per truck by enhancing the sale price of coal from ₹ 3044 per MT to ₹ 4825 per MT.

During the period from January 2014 to March 2014, a dealer⁹⁵ utilised 12013 'P' forms for dispatch of 1.08 lakh MT of coal valued at ₹ 52.11 crore⁹⁶ in course of inter-State trade. The dealer while submitting return for the aforementioned period disclosed sale turnover of only ₹ 14.61 crore which was accepted by the ST at the time of assessments.

Failure of the ST to take into account all available information at the time of assessment, thus, resulted in non-detection of concealed turnover of ₹ 37.50 crore and consequent evasion of tax amounting to ₹ 1.50 crore on which penalty not exceeding ₹ 3 crore and interest of ₹ 0.33 crore was leviable.

The case was reported to the Taxation Department, Government of Meghalaya in June 2015; their reply has not been received (November 2015).

2.15 Irregular assessment of tax at concessional rate without 'C' form(s)

There was under assessment of tax amounting to ₹ 0.86 crore due to allowance of concessional rate of tax on inter-State sale of coal not supported by 'C' forms on which penalty not exceeding ₹ 1.71 crore and interest of ₹ 0.19 crore was not levied.

[ST, Williamnagar; March 2015]

Under Section 8 of the CST Act, every dealer in the course of inter-State trade can avail concessional rate of tax at 2 per cent if such sale is made to a registered dealer and is accompanied by a declaration in Form 'C'. Else,

⁹⁴ Vide notification No. CTAS-12/2010/1027 dated 03.08.2012

⁹⁵ M/s Santi Coal traders.

⁹⁶ $12013 \text{ 'P' forms} \times 9 \text{ MT} = 1.08 \text{ lakh MT}$
 $1.08 \text{ lakh MT} \times ₹ 4825 = ₹ 52.11 \text{ crore}$

such sale is taxable at the local rate. In Meghalaya, coal is taxable at 4 *per cent*.

A dealer⁹⁷ submitted return for the period from January 2014 to March 2014 disclosing a turnover of ₹ 42.85 crore and the entire turnover was assessed at the concessional rate of 2 *per cent* by the ST while making assessment in November 2014. Examination of the case records of the dealer, however, revealed that the dealer did not submit any 'C' form(s) for the aforementioned period in support of his claim for assessment at concessional rate of tax.

Failure of the ST to assess the dealer at the full rate of tax despite not having furnished declaration forms, thus, resulted in underassessment of tax of ₹ 0.86 crore on which penalty not exceeding ₹ 1.71 crore and interest of ₹ 0.19 crore was leviable.

The case was reported to the Taxation Department, Government of Meghalaya in June 2015; their reply has not been received (November 2015).

⁹⁷ *M/s N. Sangma Coal Agency*