

## CHAPTER II: TAXES/VAT ON SALES, TRADE

### 2.1 Tax administration

The Haryana Value Added Tax Act, 2003 (HVAT Act) and rules framed thereunder are administered by the Additional Chief Secretary (Excise and Taxation). The Excise and Taxation Commissioner (ETC) is the head of the Excise and Taxation Department and he is assisted by Additional ETCs, Joint ETCs (JETCs), Deputy ETCs (DETCs) and Excise and Taxation Officers (ETOs). They are assisted by Excise and Taxation Inspectors and other allied staff for administering the relevant tax laws and rules.

### 2.2 Results of audit

In 2016-17, test check of the records of 39 out of 63 units (Revenue: 30 and expenditure: 09) relating to VAT/Sales tax assessments and other records revealed under-assessment of tax and other irregularities involving ₹ 1,339.32 crore, in 2,303 cases, falling under the following categories as depicted in the **Table 2.1**.

**Table-2.1- Results of audit**

Revenue			
Sr. No.	Categories	Number of cases	Amount (₹ in crore)
1	Performance Audit on “Exemption and concessions against declaration forms”	645	518.66
2.	Evasion of taxes due to suppression of sales/purchases	203	103.41
3.	Under-assessment of Tax	388	137.00
4.	Acceptance of defective statutory ‘Forms’	131	52.58
5.	Irregular/Incorrect/Excess allowance of ITC	199	89.78
6.	Other irregularities	710	425.83
<b>Total (I)</b>		<b>2,276</b>	<b>1,327.26</b>
Expenditure			
1.	Non receipts of utilisation certificate	1	11.59
2.	Other irregularities	26	0.47
<b>Total (II)</b>		<b>27</b>	<b>12.06</b>
<b>Grand Total (I+II)</b>		<b>2,303</b>	<b>1,339.32</b>

During the year, the Department accepted under-assessment and other deficiencies of ₹ 526.50 crore in 823 cases, out of which ₹ 246.89 crore involved in 208 cases were pointed out during the year and the rest in earlier years. The department recovered ₹ 84.41 lakh in 42 cases in the year 2016-17, out of which 21 cases involving ₹ 46.78 lakh relates to this year and rest in earlier years.

One Performance Audit on “Exemption and Concessions against declaration forms” involving tax effect of ₹ 518.66 crore and a few illustrative audit observations involving ₹ 122.23 crore are discussed in the following paragraphs.

## **2.3 Exemption and Concessions against declaration forms**

### **2.3.1 Highlights**

- Assessing Authorities allowed wrong exemption, nil/concessional rate of tax on sale against invalid declaration forms C,E1,F and H and allowed concessional sale to non existing dealers resulting in non levy of tax of ₹ 17.37 crore besides penalty of ₹ 103.27 crore was also leviable.

**(Paragraphs 2.3.7)**

- Assessing Authorities did not levy additional tax and penalty of ₹ 262.24 crore for misuse of forms VAT D1 and D2.

**(Paragraphs 2.3.8.1 and 2.3.8.3)**

- Assessing Authorities did not levy penalty of ₹ 79.35 crore for misuse of C forms.

**(Paragraph 2.3.8.4)**

- Assessing Authorities failed to assess and levy tax of ₹ 25.77 crore on inter-State sale without C Form.

**(Paragraphs 2.3.8.5)**

- Assessing Authorities applied incorrect rate of tax on inter-State sale without C forms, resulting in short levy of CST of ₹ 8.07 crore.

**(Paragraph 2.3.8.6)**

- Declaration forms printed by department were without security features such as logo and water mark even after departmental instructions of May 2013.

**(Paragraph 2.3.15.1)**

- Assessing Authority allowed Input Tax Credit against invalid VAT C4 form, resulting in under-assessment of tax of ₹ 2.13 crore and penalty of ₹ 6.38 crore was also leviable.

**{Paragraph 2.3.16 (b) (i)}**

### **2.3.2 Introduction**

The assessment, levy and collection of tax on sales in Haryana is governed by the Haryana Value Added Tax Act, 2003 (HVAT Act) and rules made there-under (HVAT Rules, 2003). The State Government may by notification and subject to such restrictions and conditions as may be specified therein, exempt any class of dealers or any goods or class of goods, in whole or in part from payment of tax under the Act for such period as may be specified in the notification. The registered dealer purchasing the goods exempted from payment of tax and concessional rate of tax under the Act, shall furnish a

declaration or certificate in Form VAT D-1<sup>1</sup>, VAT D-2<sup>2</sup>, VAT C-3<sup>3</sup> to the effect that the goods purchased were used by him for the purpose or in the manner and within the period specified in the notification granting such exemptions/concessions. Benefit of payment of tax for goods sold by a registered dealer to another registered dealer shall be allowed on submission of certificate in Form VAT-C-4<sup>4</sup>.

Under the Central Sales Tax Act, 1956 (CST Act) and the rules framed thereunder, the dealers are eligible for certain exemptions/concessions of tax on inter-State sale/transaction to the registered dealers, transfer of goods to branches/agents and on export/import of goods out of/into the territory of India on the strength of prescribed declaration in forms C<sup>5</sup>, E-1, E-II<sup>6</sup>, F<sup>7</sup>, H<sup>8</sup>, I<sup>9</sup> and J<sup>10</sup> along-with supporting certificates and documents as provided under Sections 5 (3), 6 (2), 6 (4), 6 A, 8 (3) and 8 (8) of CST Act.

### 2.3.3 Audit Objectives

The performance audit aims to ascertain whether:

- an effective system of printing of declaration forms with security features (to avoid unauthorised printing and misuse of forms), custody and issue of declaration forms exists in the department;
- proper database for issue of declaration forms exists and the same is being uploaded on TINXSYS;
- cross verification of the transactions/declaration forms of the dealers conducted by the AAs was effective in verifying the genuineness of the exemptions/concessions claimed on declaration forms produced by the dealers;
- various provisions/instructions regarding exemptions and concessions were correctly implemented by AAs at the time of assessment; and
- internal control mechanism was effective to ensure proper utilisation of declaration forms so as to prevent leakage of revenue.

<sup>1</sup> Form VAT D-1 for making purchases/sales at concessional rate of tax for specific purposes.

<sup>2</sup> Form VAT D-2 for making purchases (without payment of tax) to comply with an order of export of goods outside the territory of India.

<sup>3</sup> Form VAT C-3 for making purchases at concessional rate of tax by government.

<sup>4</sup> Form VAT C-4 for claiming benefit of Input Tax Credit (ITC).

<sup>5</sup> Form C for making inter-State purchases/sales at concessional rate of tax.

<sup>6</sup> Form E-1 and E-II for making purchase and further sale during movement of goods from one State to another.

<sup>7</sup> Form F for making transfer of goods (without payment of tax) to branches/agents in other States.

<sup>8</sup> Form H for making purchases (without payment of tax) to comply with an order of export of goods outside the territory of India.

<sup>9</sup> Form I for making purchases by a unit in Special Economic Zone (SEZ).

<sup>10</sup> Form J for making purchases by diplomatic mission, consulate, United Nation and other international body and diplomatic agent, consular, officials and personnel thereof.

### **2.3.4 Scope and methodology**

The assessment records relating to assessments made during 2013-14 to 2015-16 of 10 districts<sup>11</sup> out of 23 districts have been selected for the Performance Audit on random selection basis by applying probability proportional to size without replacement (monetary unit sampling) method through IDEA software. The records of selected districts were test checked between January and May 2017. Related material available at headquarter in respect of other districts has also been included in the Performance Audit.

An entry conference was held in January 2017 with the Additional Chief Secretary Excise and Taxation Department wherein the audit objectives, audit criteria and methodology adopted for selection of districts were explained/discussed. The draft Performance Audit report was forwarded to the Government in July 2017. An exit conference was held on 27 July 2017 with the Additional Chief Secretary (Excise and Taxation Department), ETC, AETCs, and other officers. The views of the Department/Government have been incorporated in the Performance Audit report.

### **2.3.5 Audit criteria**

The audit criteria were derived from the following sources:

- HVAT Act and Rules, 2003;
- CST Act, 1956 and CST Rules, 1957;
- Notifications, instructions and circulars issued by Government/department; and
- Judicial pronouncements of Hon'ble courts/Tribunal.

### **Audit findings**

#### **Systemic Deficiencies**

### **2.3.6 TINXSYS**

Tax Information Exchange System (TINXSYS) is a centralised exchange of all inter-State dealers spread across various States and Union Territories (UTs) of India. The website was designed to help the Commercial Taxes Departments of various States and UTs to effectively monitor inter-State trade. TINXSYS can be used by any dealer to verify the counter party inter-State dealer in any other State. Apart from dealer verification, Departmental officials were required to use TINXSYS for verification of Central Statutory Forms issued by other State Commercial Taxes Departments and submitted to them by the dealers in support of claim for concessions. TINXSYS also

---

<sup>11</sup> Gurugram (East), Jagadhri, Jhajjar at Bahadurgarh, Jind, Mewat, Palwal, Panipat, Rewari, Sirsa and Sonapat.

provides Management Information System and Business Intelligence Reports to the Commercial Taxes Departments to monitor inter-State trade movements and enables the Empowered Committee (EC) to monitor the trends in inter-State trade.

### **2.3.6.1 Non-uploading of data on TINXSYS**

The Ministry of Finance, Government of India (GOI), had instituted the website TINXSYS and asked the States to make it operational and usable for uploading data relating to Central declaration forms for verification of transactions/ forms on an all India basis. The Department had also issued instructions in December 2011 for uploading information relating to issue of all central declaration forms on website TINXSYS.

Scrutiny of records of ten DETC (ST) offices revealed that the Department had not uploaded the details of declaration forms i.e. C, F, H, E-I, E-II on TINXSYS.

The Department stated that C forms is being issued online from June 2015. Reply of the department was not tenable as the department had issued instructions in 2011 that all declaration forms issued manually were to be uploaded on TINXSYS.

### **Compliance deficiencies**

#### **2.3.7 Under-assessment due to wrong exemption/concession against false forms and allowing benefit of tax on sale to non existing dealers**

Under Section 8 (4) of the CST Act, a registered dealer is entitled to benefit of concessional rate of tax at two *per cent* on production of declaration form C. Section 6 (2) of the CST Act read with Rule 12 (4) of CST Rules, and provision contained in sub section (3) of Section 8, transit sale is exempt from tax on production of transfer of documents and declarations in forms E-1 and C. Under Section 6A of the CST Act, transfer of goods to branch or agent from one State to other State is exempt from tax on production of F forms. Under Section 5 (3) of the CST Act and Rule 12 (10) of CST Rules, sale or purchase of any goods occasioning the export of those goods out of the territory of India is exempt from tax on complying with the agreement or order for such export and on production of declaration form H. Penalty under Section 9 (2A) of CST Act read with Section 38 of HVAT Act is leviable for submitting wrong documents to evade payment of tax.

Audit noticed that the AAs had wrongly allowed concessions/exemptions of tax amounting to ₹ 17.37 crore, against false declaration in forms C, E-1, F and H, exemption of tax on sales/purchases to non existing dealers, wrong

consignment of sale and non levy of penalty amounting to ₹ 103.27 crore, for invalid claim of CST sale as tabulated below:-

Sr. No.	Number of DETCs	Number of dealers	Assessment years	Short/ Under-assessment of tax (₹ in crore)	Mandatory penalty (₹ in crore)	Nature of irregularities
1	13 <sup>12</sup>	74	2010-11 to 2014-15	11.04	33.11	The AAs allowed concessional rate of tax against C forms valuing ₹ 142.42 crore. On cross verification by audit from concerned Authorities, forms valuing ₹ 62.40 crore and from website TINXSYS forms valuing ₹ 52.92 crore were found false or not issued to the purchasing dealer, resulting in under-assessment of tax of ₹ 11.04 crore and penalty of ₹ 33.11 crore.
2	3 <sup>13</sup>	3	2010-11 to 2011-12	0.11	0.32	The AAs allowed exemption of tax against E-1/C forms valuing ₹ 16.69 crore. On cross verification by audit from concerned Authorities, forms valuing ₹ 3.31 crore were confirmed as false resulting in under-assessment of tax of ₹ 0.11 crore and penalty of ₹ 0.32 crore.
3	6 <sup>14</sup>	15	2011-12 to 2012-13	1.13	3.39	The AAs allowed exemption of tax against F forms valuing ₹ 29.91 crore. On cross verification by audit from concerned Authorities, forms valuing ₹ 23.29 crore were found false, resulting in under-assessment of tax of ₹ 1.13 crore and penalty of ₹ 3.39 crore.
4	1 <sup>15</sup>	1	2012-13	0.16	0.48	The AA allowed exemption of tax against H forms valuing ₹ 3.23 crore. On cross verification by audit from concerned Authorities forms valuing ₹ 3.23 crore were found false, resulting in under-assessment of tax of ₹ 0.16 crore and penalty of ₹ 0.48 crore.

<sup>12</sup> Ambala, Faridabad (West), Gurugram (East), Jagadhri, Jhajjar, Jind, Mewat, Narnaul, Panipat, Rewari, Rohtak, Sirsa and Sonapat.

<sup>13</sup> Gurugram (East), Kurukshetra and Sirsa.

<sup>14</sup> Bhiwani, Faridabad (West), Hisar, Jind, Rewari and Sonapat.

<sup>15</sup> Fatehabad.

Sr. No.	Number of DETCs	Number of dealers	Assessment years	Short/ Under-assessment of tax (₹ in crore)	Mandatory penalty (₹ in crore)	Nature of irregularities
5	3 <sup>16</sup>	10	2010-11 to 2013-14	1.93	5.79	The AAs allowed consignment/transfer of goods against declaration forms F valuing ₹ 36.80 crore without verification of transactions as required vide instructions issued in March 2006. Cross verification from issuing offices revealed that transactions valuing ₹ 36.80 crore were made to non-existing dealers resulting in under-assessment of tax of ₹ 1.93 crore. Penalty of ₹ 5.79 crore was also leviable.
6	1 <sup>17</sup>	1	2012-13	0.67	--	The AA wrongly allowed consignment sale of ₹ 12.73 crore as the dealer had no title over the goods received on consignment basis for sale and the dealer could not make further consignment of such goods to his agent in other States against F forms resulting in under-assessment of tax of ₹ 0.67 crore, besides interest was also leviable.
7	3 <sup>18</sup>	13	2011-12 to 2013-14	2.33	7.00	The AAs allowed concessional rate of tax against C forms valuing ₹ 33.79 crore. On cross verification from issuing offices, C forms valuing ₹ 33.79 crore involving tax of ₹ 2.33 crore were found issued by non-existing purchasing dealers resulting in under-assessment of tax of ₹ 2.33 crore. Penalty of ₹ 7.00 crore was also leviable.
8	2 <sup>19</sup>	10	2011-12 to 2013-14	-	53.18	The AAs proved that no transactions had been made by these dealers valuing ₹ 103.49 crore and levied tax accordingly but failed to levy penalty of ₹ 53.18 crore for bogus claim of CST sale. On this being pointed out, the AA Sirsa imposed penalty of ₹ 2.57 crore in three cases (May 2016).
	<b>Total</b>	<b>127</b>		<b>17.37</b>	<b>103.27</b>	

The assessing authorities were required to verify the genuineness of declaration forms from the authorities of other States /TINXSYS website before allowing benefit of concessional rate of tax. However, the assessing

<sup>16</sup> Gurugram (West), Hisar and Jind.

<sup>17</sup> Gurugram (East).

<sup>18</sup> Sirsa, Hisar and Jind.

<sup>19</sup> Sirsa and Jagadhari.

authorities had failed to verify the genuineness of declaration Form 'C' and also on electronic form i.e. TINXSYS website which could be verified on real time basis. The department admitted the above observations and assured that the corrective action will be taken in these cases.

### **2.3.8 Non adherence to provisions of exemptions and concessions**

#### **2.3.8.1 Misuse of form VAT D-1**

Section 7 (3) of the HVAT Act provides that where taxable goods are sold by one dealer to another dealer, tax is leviable at a lower rate (four *per cent*) if the purchasing dealer furnishes a declaration in form VAT-D1 certifying that the goods are meant for use for the purpose specified therein. Further, as per Section 7 (5) of the HVAT Act, if an authorised dealer after purchasing any goods fails to make use of the goods for the specified purpose, the AA may impose upon him, by way of penalty, a sum not exceeding one and a half times of the tax which would have been levied additionally. Further, the department issued instructions in March 2013 that works contractors who have not opted for lump sum tax are not entitled to purchase the goods against form VAT D-1.

Scrutiny of records of nine DETC (ST)<sup>20</sup> offices revealed that 18 dealers had purchased goods against declaration in form VAT D-1 valuing ₹ 1,131.88 crore. Out of these, 11 were regular works contractors who had not opted for lump sum scheme, purchased goods valuing ₹ 31.92 crore and seven dealers who had purchased goods valuing ₹ 1,099.96 crore against forms VAT D-1 failed to use these goods for the purposes for which these goods were purchased. Thus, these dealers who misused forms VAT D-1 were liable to pay additional tax and penalty. The AAs while finalising assessment between March 2013 and March 2016 levied penalty of ₹ 0.67 crore in two cases but in other cases the AAs failed to levy additional tax of ₹ 101.00 crore and penalty of ₹ 151.00 crore for misuse of forms VAT D-1. This resulted in under-assessment of additional tax and penalty of ₹ 252.00 crore.

The Department admitted the audit observations to the extent that penalty was leviable but levy of additional tax had not been admitted. Reply of the department was not tenable as the differential tax and penalty both were leviable under aforesaid provision of the Act.

#### **2.3.8.2 Under-aseessment due to short VAT D-1**

Scrutiny of records of DETC (ST) Palwal office in September 2016 revealed that a dealer claimed sale of goods at concessional rate valuing ₹ 7.61 crore

---

<sup>20</sup> Bhiwani, Faridabad (West), Gurugram (West), Jagadhri, Kurukshetra, Panchkula, Rewari, Rohtak and Sirsa.



against declaration in forms VAT D-1. The AA while finalising assessment in November 2015 assessed the dealer to tax at concessional rate against forms VAT D-1. But the dealer had submitted forms VAT D1 for ₹ 1.19 crore only i.e. short by ₹ 6.42 crore. Allowing benefit of concessional rate of tax on ₹ 6.42 crore without forms VAT D-1 resulted in under-assessment of tax of ₹ 0.57 crore.

During exit conference, the Department admitted the audit observations and assured that action will be taken as per provision of the Act.

### **2.3.8.3 Misuse of form VAT D-2**

Under Rule 21 of HVAT Rules, a VAT dealer may purchase goods against form VAT D-2 (without payment of tax) for complying with the order for export of those goods out of India. Further, under section 7 (5) of HVAT Act, if any dealer fails to make use of goods purchased for the specified purpose, the dealer will be liable to pay additional tax and penalty not exceeding one and a half times of the tax leviable on the sale/purchase of those goods.

Scrutiny of records of three DETC (ST)<sup>21</sup> offices between March 2015 and December 2016 revealed that eight dealers purchased Paddy, Rice, Packing material and Utensils during 2011-12 to 2013-14 valuing ₹ 98.97 crore against forms VAT-D2 for export out of India but failed to export themselves and sold the said goods valuing ₹ 80.88 crore to the local dealers for further export against forms VAT-D2, and became liable for penal action. While finalising assessment between May 2013 and March 2016, DETC (ST) Rewari levied additional tax of ₹ 38.74 lakh but failed to levy penalty of ₹ 58.11 lakh. In the case of DETC (ST) Kaithal and Sonapat, the AAs allowed the deduction of export against forms VAT D-2 but failed to levy tax of ₹ 3.86 crore. In addition, penalty of ₹ 6.38 crore was also leviable. This resulted in non-levy of additional tax and penalty of ₹ 10.24 crore.

On this being pointed out, DETC (ST) Sonapat stated in August 2016 that in one case additional demand of tax of ₹ 0.15 crore had been created.

During exit conference, the Department admitted the audit observations and assured that action will be taken as per provision of the Act.

### **2.3.8.4 Non levy of penalty under Section 10A of CST Act**

As per Section 8 (3) of CST Act, a registered dealer can purchase goods against declaration C form for resale, use in manufacturing/processing/packing of goods for sale etc., but cannot purchase goods for self use i.e. for any purpose other than specified under the said Section. Further, Section 10 A

<sup>21</sup> Kaithal, Rewari and Sonapat.

of the Act provides for levy of penalty not exceeding one and a half times of the tax for non-use of the goods purchased for specified purpose.

Scrutiny of records of four<sup>22</sup> DETC (ST) offices between June 2015 and May 2017 revealed that in eight cases the dealers had purchased Ready mix concrete (RMC), Cement, Air conditioner and Furniture between October 2014 and March 2017 valuing ₹ 616.95 crore involving tax of ₹ 62.57 crore against forms C. These dealers were not entitled to purchase these goods against forms C as the said goods were not used in manufacturing activities. AA levied penalty of ₹ 14.50 crore in one case and failed to levy penalty of ₹ 79.35 crore in seven cases.

During exit conference, the Department admitted the audit observations and assured that action will be taken as per provision of the Act.

#### **2.3.8.5 Non levy of tax on inter-State sale**

Section 8 (1) and (2) of CST Act provides that rate of tax applicable on the sale of goods in the state will be applicable on inter-State sale of such goods without form C.

Scrutiny of records of DETC (ST) Kurukshetra and Sirsa offices between May and June 2016 revealed that in four cases dealers sold tobacco products and Batteries valuing ₹ 130.01 crore during 2013-14 and 2014-15 and claimed concessional rate of tax without submitting C forms. AAs while finalising assessment of these dealers between July and December 2015, failed to assess inter-State sale of ₹ 130.01 crore. Non assessment of tax on inter-State sale without C forms, resulted in under-assessment of tax of ₹ 25.77 crore.

On this being pointed out DETC (ST) Sirsa stated in June 2016 in three cases that additional demand of ₹ 25.11 crore had been created.

During exit conference, the Department admitted the audit observations and assured that action will be taken as per provision of the Act and further intimated (August 2017) that the recovery was under process.

#### **2.3.8.6 Incorrect rate of tax on inter-State sale**

Scrutiny of records of DETC (ST) Panipat, Rewari and Sirsa offices between May 2016 and May 2017 revealed that 13 dealers sold tobacco products and building material valuing ₹ 64.80 crore during 2011-12 and 2014-15 and claimed concessional rate of tax against C forms. AAs while finalising assessments between November 2013 and December 2015, assessed the tax at the rate of 2 per cent, 5 per cent and 12.5 per cent in absence of C forms instead of correct rate of tax 12.5 per cent and 20 per cent. Application of

---

<sup>22</sup> Ambala, Jhajjar, Panipat and Rewari.

incorrect rate of tax on inter-State sale without C forms resulted in under-assessment of tax of ₹ 8.07 crore.

On this being pointed out, DETC (ST) Sirsa stated in June 2016 in two cases that order had been rectified and additional demand of ₹ 5.25 crore had been created.

During exit conference, the Department admitted the audit observations and assured that action will be taken as per provision of the Act and further intimated (August 2017) that the recovery was under process.

#### **2.3.8.7 Non levy of tax without declaration forms**

Section 6 (2) of CST Act provides for exemption of tax on subsequent sale during movement of goods from one State to another on production of declarations in form E-1 and C. Section 8 (1) of CST Act provides that rate of tax applicable on the sale of goods in the State will be applicable on inter-State sale of such goods without declaration forms.

(i) Scrutiny of records of DETC (ST) Gurugram (West) office in October 2016 revealed that a works contractor claimed stock transfer against forms F valuing ₹ 19.35 crore during 2012-13 and 2013-14 in the returns. AA while finalising assessment in September 2015, failed to assess inter-State stock transfer of ₹ 19.35 crore without F forms. Non levy of tax on stock transfer of goods without form F resulted in under-assessment of tax of ₹ 2.54 crore.

During exit conference, the Department admitted the audit observations for the year 2012-13 and informed that the case for the year 2013-14 was under examination.

(ii) Scrutiny of records of DETC (ST) Sirsa office in January 2017 revealed that a dealer sold Rice worth ₹ 2.39 crore against forms C and E1 during the year 2014-15. AA while finalising assessment in November 2015 failed to assess inter-State sale without declaration in C and E1 forms. Non levy of tax on sale without declaration forms had resulted in under-assessment of tax of ₹ 0.12 crore.

During exit conference, the Department stated that the case had already been sent to Revisional Authority for taking suitable action for some other reasons.

#### **2.3.9 Misclassification of sale**

(i) As per provisions of Section 4 (2) of the CST Act, 1956 a sale or purchase of goods shall be deemed to take place inside a State, if the goods are within the State in the case of specific or ascertained goods, at the time the contract of sale is made and in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer whether assent of the other party is prior or subsequent to such appropriation.

Scrutiny of records in seven<sup>23</sup> DETC (ST) offices revealed that 18 dealers had sold goods valuing of ₹ 49.57 crore during 2010-11 to 2013-14 to the dealers of Haryana and claimed benefit of concessional rate of tax against forms C obtained from local dealers treating the sale as inter-State sale on the plea that goods were consigned by the purchasing dealers of Haryana to the dealers of other States. But the goods were within the State at the time of contract of sale between the dealers of Haryana and as such tax was leviable under HVAT Act. AAs while finalising assessments admitted the claims of the dealers and assessed the sale at concessional rate of tax on production of C forms. This resulted in under-assessment of tax of ₹ 4.64 crore.

(ii) Section 6 (2) of CST Act provides for exemption of tax on subsequent sale during movement of goods from one State to another on production of declarations in form E-1 and C.

Scrutiny of records of DETC (ST) Gurugram (East), Gurugram (West) and Jhajjar offices between December 2014 and April 2017 revealed that five dealers claimed exemption of tax under section 6 (2) of CST Act during 2010-11 to 2012-13 on sale against declaration forms E-1 and C valuing ₹ 9.76 crore and the same was allowed by the AAs while finalising assessment between July 2013 and February 2016. But these dealers purchased goods valuing ₹ 9.76 crore from Haryana dealer and further sold to another dealer of Haryana and claimed exemption under section 6 (2) of CST Act by submitting E-1 and C forms. As the dealer had purchased and sold the goods within Haryana and first movement of goods took place from Haryana, the exemption was wrongly allowed to the dealer. Allowing wrong exemption resulted in under-assessment of tax of ₹ 0.78 crore.

During exit conference, the Department admitted the audit observations and assured that action will be taken as per provision of the Act and further intimated (August 2017) that the recovery was under process.

### ***2.3.10 Incorrect deduction against invalid documents***

Section 8 of the Central Sales Tax Act provides that every dealer in the course of inter-State trade or commerce, sells goods to a registered dealer, shall be liable to pay tax at the rate of two *per cent*. Tax at concessional rate is allowable against original declaration forms only.

Scrutiny of records of four DETC (ST)<sup>24</sup> offices revealed that four dealers had sold goods at concessional rate of tax valuing ₹ 20.81 crore against declaration in VAT D-1 and C forms during 2011-12 and 2012-13. The AAs while finalising assessments in November 2013 and March 2016, assessed sale

---

<sup>23</sup> Faridabad (West), Gurugram (East), Gurugram (West), Jagadhri, Jhajjar, Panipat and Rewari.

<sup>24</sup> Jind, Palwal, Panipat and Panchkula.

---

of ₹ 20.81 crore at concessional rate of tax against photocopies of VAT D-1 and C forms. Allowing incorrect benefit of concessional rate of tax against photocopies of VAT D-1 and C forms resulted in under-assessment of tax of ₹ 2.04 crore.

The Department stated in the exit conference that original documents were kept in separate files and concessions/exemptions were allowed under the Act. Reply of the department was not correct as the concessions/exemptions were allowable on production of original declarations/forms only and no documents were furnished during audit and the same was also verified in October and November 2017.

### **2.3.11 Benefit of tax without verification**

Criteria for selection of cases for scrutiny assessment for the years 2013-14 and 2014-15 was circulated in May 2015 and 2016 respectively. Cases having ITC of more than ₹ 25 lakh or gross turn over above ₹ 10 crore in a year were to be selected for scrutiny assessment. Further, as per instructions issued in July 2013 hundred *per cent* verification of purchases and actual payment of tax alongwith inter-State transactions and declaration forms thereof were to be verified at the time of scrutiny assessments.

Scrutiny of records of DETC (ST) Sirsa revealed that 120 cases for the assessment year 2013-14 and 2014-15 having GTO of more than ₹ 10 crore or ITC more than 25 lakh involving tax of ₹ 155.48 crore were assessed under deemed scheme under section 15(1) of HVAT Act instead of scrutiny under Section 15 (3) of HVAT Act without verifying the ITC and by creating demand for non submission of declaration forms for inter-State transactions. By not taking eligible cases for scrutiny assessment, benefit of ITC of ₹ 155.48 crore was allowed without verification of purchases and actual payment of tax.

During exit conference, the Department admitted the audit observations and assured that action would be taken.

### **2.3.12 Non levy of interest**

Section 8 (1) of the CST Act provides for levy of tax at concessional rate of two *per cent* against declaration form C. As per Section 9 (2A) of the CST Act read with Section 14 (6) of HVAT Act interest is leviable in case of default of payment of tax.

(i) Scrutiny of records of DETC (ST) Rohtak office revealed that one dealer claimed sale of detergent at concessional rate against forms C valuing ₹ 30.37 crore during 2012-13 and the same was allowed by the AAs while finalising assessment in March 2016. The dealer was required to pay minimum

tax at the rate of two *per cent* valuing ₹ 0.50 crore along with returns which he failed to deposit. As such the dealer was liable to pay interest of ₹ 0.42 crore.

(ii) Scrutiny of records of DETC (ST) Rohtak revealed that four dealers claimed exemption of tax on sale during 2012-13 and 2013-14 against Form H. AAs while finalising assessment between November 2015 and March 2016, created additional demand of ₹ 3.73 crore due to non submission of H forms. As the dealer could not prove his claim at the time of assessment the dealer was liable to pay interest on tax not paid along with returns. Thus, non-levy of interest on due tax resulted in under-assessment of tax of ₹ 3.07 crore.

During exit conference, the Department admitted the audit observations and assured to initiate the corrective action.

### ***2.3.13 Benefit of excess carry forward of tax***

Section 8 (1) of HVAT Act provides that input tax credit will be allowed on purchases made from VAT dealers after payment of tax which will be adjusted against output tax liability of the dealer and if found excess of output tax liability the same will be carried forward to next year for adjustment of future tax liability.

Scrutiny of records of DETC (ST) Rohtak revealed that a dealer was allowed excess carry forward of tax of ₹ 25 lakh for the year 2013-14. As per verification done by audit, the C forms submitted by the dealer in the year 2012-13 were found fake as the same were not issued by the concerned authority. AA while finalising assessment for the year 2013-14 in October 2015, allowed excess carry forward of tax of ₹ 25 lakh for the year 2013-14 but no action was taken by AA for the year 2012-13 whereas the dealer had submitted false declaration forms. This resulted in under-assessment of tax of ₹ 25 lakh.

During exit conference, the Department admitted the audit observations and assured to initiate the corrective action.

### ***2.3.14 Wrong acceptance of form VAT C-3***

Section 7 (3) (b) of HVAT Act read with Rule 21 of HVAT Rules provides that goods sold to the Government not being a registered dealer against declaration in form VAT C-3 will be taxable at concessional rate of tax of four *per cent*. Further, material transferred in execution of works contract in respect of non government departments will be assessed at the rate applicable to the sale of such material.

Scrutiny of records of DETC (ST) Rohtak revealed that a works contractor executed works contract for Haryana State Roads and Bridges Corporation

(HSRBC) Rewari and submitted forms VAT C-3 valuing ₹ 24.08 crore. AA while finalising assessment assessed transfer of material at the rate of four *per cent* instead of full rate of tax 5.25 and 12.5 *per cent* treating the works contract executed for Government Department. HSRBC was not a Government Department and the material transferred in execution of works contract was assessable at the rate applicable to sale/purchase of such material. Assessing the dealer to tax at lower rate by accepting invalid forms VAT C-3 resulted in under-assessment of tax of ₹ 1.04 crore.

During exit conference, the Department admitted the audit observations and assured to initiate action as per law.

### **2.3.15 Internal control mechanism**

Internal control is an integral process by which an organisation governs its activities through a system of checks and balances to achieve its objectives effectively. An inbuilt internal control mechanism and strict adherence to codes and manuals provide reasonable assurance to the department about compliance of applicable rules, reliability of financial reporting, effectiveness and efficiency in its operations.

Internal audit is a tool in the hands of Management to ensure that the prescribed systems are functioning well.

Audit noticed that no internal audit of receipt and issue of declaration forms, was conducted by the Department.

### **Printing, Storage issue and utilisation of declaration forms**

#### **2.3.15.1 Printing and custody of declaration forms**

Registered dealers avail exemptions/concessions of tax by using the CST forms in the course of inter-State trade. The Department issued instructions in May 2013 that the printing of declaration forms should be strictly as per sample approved by Excise and Taxation Commissioner (ETC). The paper of forms should be superior quality having security features with water mark. The base of C form was Government of India Logo in yellow colour. The form should have unique number which should be checked before supply. The form will also be got tested from Government approved lab as per Bureau of Indian Standard(BIS).

Scrutiny of records of ETC office revealed that the paper quality of C, E-1 and E-II, F and H forms was inferior due to which forged forms could easily be printed and even the durability of forms was not up to the mark. The ETC office had supplied wrong serial numbered printed declaration forms to DETC (ST) Gurugram (West) in July 2013. As per instruction the E-1 forms were required to be printed with serial number HR/013E-1-00010001 to 50,000 whereas department got printed and supplied E-1 forms from serial number 1,31,141 to 1,31,200 and 1,30,820 to 1,31,000. The Department had not sent

sample of forms for testing as per BIS standards. The declaration forms had no embossing of Logo of Government of India and water mark.

During exit conference, the Department admitted the audit observations and assured compliance of instructions issued by the Department.

#### **2.3.15.2 Non maintenance of proper accounts of declaration forms**

Audit scrutiny of records of ETC office revealed that the Department had got printed declaration forms from Government press as well as private printer during the year 2013-14 but no proper stock and distribution records had been maintained. Further scrutiny of records of four DETC (ST) offices revealed the following deficiencies:-

- In DETC (ST) Panipat and Sonapat offices 3,032 C forms were returned back (December 2015) by Record Keepers of wards to Nazir (incharge of stock) but the same were not shown received back in stock. Further 175 C forms were short accounted in stock of C forms.
- The ETC office had issued 5,000 H forms to the office of DETC (ST) Panipat in November 2014 but only 1,000 H forms were received (November 2014) resulting in short receipt of 4,000 H forms.
- There was closing stock of 52,000 C forms as on April 2017 in the office of the DETC(ST) Rewari but the detail given in issue register showed closing stock of 5,883 C forms leaving unexplained difference of 46,117 C forms. It was further noticed that six C forms were short accounted for in stock register. Further, as per stock register there was a closing stock of 13,000 F forms whereas as per issue register there was a closing stock of 4,080 F forms as on April 2017 leaving unexplained difference of 8,920 F forms.
- The DETC (ST) Nuh at Mewat had issued 105 C forms to the dealers but no acknowledgement was obtained from the dealer. Misuse of these forms could not be ruled out.

During exit conference, the Department admitted the audit observations.

#### **2.3.15.3 Physical verification of stock of declaration forms**

As per provisions contained in Rule 15.16 of Punjab Financial Rules Volume-1 as applicable to State of Haryana, physical verification of all the consumable goods and materials should be undertaken at least once in a year and discrepancies, if any, should be recorded in the stock register for appropriate action by the competent authority.

Scrutiny of records of ETC and 10 DETC (ST) offices revealed that no physical verification of the declaration forms was carried out.



During exit conference, the Department admitted the audit observations and assured compliance of instructions.

#### ***2.3.15.4 Database of sample of current and obsolete declaration forms of other States***

As per Rules 7(7) and (8) of CST (Haryana) Rules, 1957, the Excise and Taxation Department may, by notification, declare that the declaration form of a particular series, design or colour shall be deemed as obsolete and invalid with effect from such date as may be specified in the notification. A copy of such notification shall be sent to other State Governments for publication in their official gazettes.

Scrutiny of records of ETC office revealed that 239 forms of declaration E-1 had become obsolete as intimated by DETC (ST) Gurugram (West) in July 2013 but no notification in this regard was issued by the Department. Further scrutiny of records revealed that the Commercial Tax Departments of other States demanded sample of declaration forms which the department supplied but failed to keep sample of declaration forms of the other State to identify the fake or forged declaration forms. Therefore, there was a risk of acceptance of invalid and obsolete declaration forms.

#### ***2.3.15.5 Non-maintenance of database of concessions/exemptions***

Under CST Act, 1956 and the Rules made thereunder, registered dealers are eligible for certain exemptions and concessions of tax on inter-State transactions on submission of prescribed declarations in form 'C' and 'F', having negative impact on the revenue of the State. A database of revenue forgone on major commodities sold/transferred out of Haryana is essential so that the Department is vigilant in respect of the commodities where the dealers prefer claims of concessions and exemptions in large number.

Scrutiny of records of ETC and 10 DETC (ST) offices between January 2017 and May 2017 indicated that the Department had not maintained a database of such exemption/concession. Such a database can be used by the department as a Management Information System (MIS) to monitor printing, issue, stock and utilisation of forms on real time basis. In addition, such database can be used for cross verification of exemptions/concessions given and to monitor commodity-wise revenue forgone. The state Government can also use such database for framing revenue policy of the State.

#### ***2.3.16 Monitoring***

For administration and implementation of the Acts, effective monitoring mechanism is required in the department. Effective monitoring can be done through maintaining an online database of dubious dealers, listing the cases of fraud, periodical reports, compliance of departmental instructions and

directions of higher authorities, follow up action and inspection of field offices to prevent evasion of tax.

Scrutiny of records revealed that department had not prescribed periodical reports of receipt and issue of declaration forms by field offices. Even though process of cross verification of declaration forms, compliance of instructions/directions issued from time to time was not monitored by the higher authorities as discussed below:-

***(a) Absence of a system for declaring dubious dealers utilising fake/invalid declarations***

To prevent evasion of tax, the Department would maintain a database of dubious dealers based on their past history, listing the cases of fraud, misuse of forms, use of invalid forms by these dealers in order to avail exemptions or concessions of tax in inter-State trade and commerce. This database, if made, be uploaded online on the departmental website, would not only facilitate the department in keeping a watch on dealers having dubious track records but would also alert other States about such dealers and ensure effective monitoring of such cases. Further, existence of such a mechanism could also serve as a deterrent for dealers who indulge in such malpractices.

Scrutiny of records of DETC (ST) Faridabad (West) and Jhajjar offices revealed that two dealers were repeatedly submitting invalid declaration forms during the year 2010-11 and 2011-12 but department failed to declare them as dubious dealers.

During exit conference, the Department admitted the facts and assured to prepare the list of dubious dealers who indulge in use of fake declaration forms.

**(b) Non-compliance of directions of Higher Authorities**

The JETC (Range) Gurugram, issued instructions to DETC (Gurugram) in April 2016 regarding verification of sales/purchases and required action under the provision of HVAT Act in the interest of Government revenue.

(i) Scrutiny of records of DETC (ST) Gurugram (West) and Jind revealed that two dealers were allowed ITC of ₹ 2.13 crore against production of form VAT C-4. As per reports of verification of purchases, the selling dealer had not shown any sale to purchasing dealer and the Registration Certificate of selling dealer was cancelled prior to the transaction of sales/purchases. Despite written instructions issued by Joint ETC (Range), Gurugram to levy tax and penalty, no action was taken by the AA, allowing ITC against invalid form VAT C-4 which resulted in under-assessment of tax of ₹ 2.13 crore. In addition, penalty of ₹ 6.38 crore was also leviable.

During exit conference, the Department admitted the facts and assured that corrective action will be taken.

(ii) Scrutiny of records of DETC (ST) Gurugram (West) revealed that a dealer was allowed ITC of ₹ 0.60 crore against production of form VAT C-4. As per reports of verification of purchases, the selling dealers had not paid tax on the sale made to this dealer. Accordingly, the AA disallowed the ITC of ₹ 0.60 crore. On appeal the Joint ETC (Appeal) Faridabad remanded back (October 2013) the case to the AA for fresh decision on disallowance of ITC and charging of interest and imposition of penalty. While deciding remand case in October 2015, the AA disallowed the ITC of ₹ 0.60 crore but failed to levy penalty. Non-levy of penalty resulted in under-assessment of tax of ₹ 1.80 crore.

During exit conference, the Department admitted the facts and assured that penalty would be levied after the decision of Hon'ble Tribunal.

#### ***(c) Non-compliance of departmental instructions***

As per the instructions issued in March 2006 and July 2013, the AAs were required to confirm genuineness of the transactions through cross verification of records of other dealers within and outside the State before finalisation of assessment.

Scrutiny of records of six<sup>25</sup> DETC (ST) revealed that in 176 cases the Assessing Authorities had allowed concessional rate of tax against C forms and exemption of tax against F forms valuing ₹ 1,347.54 crore without verifying the transactions of inter-State sale/transfer of goods involving tax of ₹ 43.80 crore. In view of non compliance of above instructions genuineness of exemptions/concession of tax could not be verified in audit.

The Department stated that guidelines for verification of transactions/forms were for scrutiny cases only. Reply of department was not correct because the dealers were exempt from producing local declaration forms and were required to be produce all necessary documents/declarations forms under CST Act to get the concessions/exemption of tax.

#### ***(d) Benefit of ITC against invalid VAT C4 forms***

As per provisions contained in Rule 20 of HVAT Rules, 2003, form VAT C-4 will bear printed serial number in ascending order, year and particulars of payment of tax by selling dealers.

---

<sup>25</sup> Gurugram (East), Jhajjar at Bahadurgarh, Jind, Palwal, Panipat and Sonapat.

Audit noticed (between February and May 2017) that four<sup>26</sup> DETC (ST) offices allowed ITC of ₹ 53.68 crore to 92 dealers against submission of VAT C4 on purchases valuing ₹ 1078.04 crore during the years 2010-11 to 2014-15. Scrutiny of Form VAT C4 revealed that these forms were not bearing printed serial number, year and particulars of payment of tax by selling dealers. Due to non compliance of the provisions, genuineness of ITC of ₹ 53.68 crore could not be verified in audit.

During exit conference, the Department admitted the audit observations and assured to verify these cases.

***(e) Acceptance of F forms containing transactions of more than a month***

As per Section 6A of CST Act 1956 read with Rule 12 (5) of CST Rules 1957, the registered dealer is required to prove movement of goods and receipt by the consignee/ head office/ branch office by submitting declaration in forms F. Further, one F form may cover transfer of goods effected during one calendar month only.

Scrutiny of records of DETC (ST) Fatehabad, Palwal and Panipat offices revealed that five dealers claimed benefit of stock transfer valuing ₹ 8.94 crore and the same was allowed by the AAs while finalising assessments between November 2013 and March 2016. Further scrutiny of F forms revealed that these forms contained transactions effected for more than one month.

The Department admitted the audit observations and assured to follow the departmental instructions.

***(f) Incorrect exemption of tax against H forms***

As provided under Rule-12 (10) of the CST Rules, 1957 form H can be submitted to the AAs up to the time of first assessment. Further, vide instructions issued in November 2012 AAs were directed not to allow time for submission of forms H/VAT D-2.

Scrutiny of records of DETC Gurugram (East), Jhajjar and Panipat revealed that the AAs at the time of assessment of 16 dealers assessed the cases at full rate of tax on account of non submission of form H valuing ₹ 25.66 crore and allowed the benefit of exemption on submission of H forms after assessments. The AAs were required to accept these forms up to the date of assessments. This resulted in incorrect exemption of tax of ₹ 3.31 crore.

The Department admitted the audit observations and assured to follow the departmental instructions.

---

<sup>26</sup> Jhajjar, Panipat, Rewari and Sirsa.

### ***(g) Incorrect issuance of C forms manually***

Every registered dealer, who in the course of inter-State trade or commerce sells to a registered dealer, shall be liable to pay tax under CST Act at concessional rate of two *per cent* against declaration forms C.

The department introduced a new system of issue of C forms online with effect from June 2015 but the old system of issue of 'C' forms continued even after introduction of issue of 'C' forms online. 69,967 C forms were issued manually by ten selected districts even after introduction of issue of C forms online. Further, 1,15,966 'C' forms were lying in stock of ten DETC (ST) offices. The department introduced issue of only C forms online but the other central declaration forms were still being issued manually.

During exit conference, the Department admitted the audit observations and assured that all manual C forms will be called back in headquarter office.

### ***2.3.17 Conclusion***

The department did not ensure printing of the central forms with security features and also to maintain proper accounts thereof. Cases of non compliance of departmental instructions in verifying the central declaration forms/transactions and allowing exemptions/concessions against invalid forms and exemptions/ concessions of tax on transfer/sale of goods to non-existent dealers were noticed. Cases for non-levy of additional tax and penalty for misuse of declaration forms were noticed. Misclassification of sale, deductions allowed against invalid documents and cases of non/short levy of tax on sale without declaration forms were noticed which resulted in loss of revenue.

### ***2.3.18 Recommendations***

It is recommended that the Government may consider :-

- (i) issuing instructions to the Department to recover taxes due including interest and penalty applicable, as pointed out by audit;
- (ii) taking suitable action as per provisions of HVAT Act/CST Act against dealers submitting fake certificates;
- (iii) maintaining database of dubious dealers for Tax Intelligence purposes; and
- (iv) ensuring enhanced level of monitoring under GST to prevent further leakage of State revenues in view of the lapses in internal control and monitoring mechanism.

### ***Other Compliance observations***

## **2.4 Evasion of taxes due to suppression of sales/purchases**

**108 unregistered works contractors and 28 dealers had suppressed sale of ₹ 247.25 crore resulting in evasion of tax and penalty of ₹ 49.78 crore. Action to levy penalty of ₹ 11.43 crore was not initiated even after a lapse of 14 to 19 months in five cases by the department. Stock of ₹ 83.72 crore was suppressed in 19 cases resulting in evasion of tax and penalty of ₹ 24.28 crore. The dealers had suppressed purchase of ₹ 5.08 crore in three cases resulting in evasion of tax and penalty of ₹ 1.09 crore.**

### **2.4.1 Introduction**

Under Section 38 of the HVAT Act, if a dealer has maintained false or incorrect accounts, returns or documents with a view to suppressing his sales, purchases, imports into State or stock of goods, or has concealed any particulars or has furnished to or produced before any authority any account, return, document or information which is false or incorrect in any material particular, such authority may direct him to pay by way of penalty, in addition to the tax to which he is assessed or is liable to be assessed, a sum thrice the amount of tax which would have been avoided had such account, return, document or information, as the case may be, been accepted as true and correct.

The records relating to assessment framed during the year 2013-14 to 2015-16 of fifteen<sup>27</sup> DETC (ST) offices were test checked during regular audit between March 2015 and June 2017 to ascertain whether all sales/purchases were taken into account properly and compliance of rules and instructions was made to avoid evasion of tax by the dealers. Information was also collected from Haryana State Agriculture Marketing Board (HSAMB) and Municipal Corporations (MC) to examine the extent of evasion of tax by unregistered work contractors.

### **2.4.2 Evasion of tax due to suppression of sales by unregistered dealers/ contractors**

Section 48 of the HVAT Act stipulates that the Assessing Authority (AA) may call for information/database from other Departments/Corporations/persons relevant to any proceedings or useful for tax administration. Section 16 provides for levy of tax and penalty equivalent to tax determined during assessment of unregistered dealer. Further Rule 10 (2) of the HVAT Rules provides that a dealer in whose case taxable quantum as specified in Section 3(2) of the HVAT Act is ₹ five lakh, shall be liable to pay tax on and

---

<sup>27</sup> Ambala, Bhiwani, Faridabad (East), Faridabad (West), Gurugram (East), Gurugram (West), Hisar, Jagadhri, Jind, Kaithal, Panchkula, Panipat, Rewari, Sirsa and Sonapat.

from the day following the day his gross turnover in any year first exceeds the taxable quantum and registration is required under Section 11 (2) of the HVAT Act.

Scrutiny of records of the DETC (ST) Hisar, Ambala and Panchkula revealed that the department had not established any system for cross verification of information available with other departments, which would facilitate the process of identifying, registering and assessing unregistered dealers to detect evasion of tax. Audit cross verified the information collected from offices of Executive Engineer, HSAMB and MC Ambala, Panchkula and Hisar with registration records of DETCs and it was noticed that 108 dealers (work contractors) had exceeded the threshold limit of taxable turnover of ₹ five lakh for registration. They had received payments of ₹ 87.42 crore for execution of work contracts during 2013-14 and 2014-15. But these contractors did not get themselves registered under HVAT Act and suppressed the sale of ₹ 87.42 crore. Failure on the part of department to put in place a system for collection and cross verification of information with other departments resulted in non-realisation of tax of ₹ 4.65 crore from these unregistered dealers. In addition, penalty of ₹ 4.65 crore was also leviable under Section 16 of HVAT Act.

On this being pointed out, AA Hisar replied (May 2017) that action would be initiated to register the unregistered dealers/contractors as per HVAT Act. No reply was received from AAs Ambala and Panchkula.

### ***2.4.3 Evasion of tax due to suppression of sale***

In order to prevent the tax evasion by issuing forged tax invoices or fictitious accounting of goods, the ETC, Haryana had issued instructions (March 2006) for verification of all sale/purchase transactions totalling more than one lakh from a single VAT dealer in a year. Further, introduction of VAT envisaged computerisation of tax records for better tax administration. All sales/purchases transactions should be uploaded on departmental website to verify the sale/purchase transactions.

**2.4.3.1** Scrutiny of records of the eleven<sup>28</sup> DETC (ST) for the year 2011-12 to 2014-15 and assessed by AAs during 2013-14 to 2015-16 revealed that 19 dealers had not shown the sales of ₹ 124.68 crore in their quarterly/annual returns, even though the purchasing dealer had claimed Input Tax Credit (ITC) on purchases made from these dealers. The sale/purchase transactions were not uploaded on the website by the department and AA while finalising the assessment did not verify details of suppression of sale with reference to records of the purchaser resulting into suppression of sale of ₹ 124.68 crore.

---

<sup>28</sup> Ambala, Bhiwani, Faridabad (East and West), Gurugram (East and West), Jind, Kaithal, Panchkula, Panipat and Sirsa.

This resulted in evasion of tax of ₹ 7.86 crore. In addition, penalty of ₹ 23.58 crore was also leviable.

On this being pointed out, AAs Kaithal, Faridabad (East) and Sirsa stated (May and June 2017) that in three cases demand of ₹ 5.59 crore had been created. Three<sup>29</sup> AAs stated that five cases had been sent to Revisional Authority (RA) for taking suo-motu action. AA, Faridabad (West) stated that in two cases, notices had been issued for re-assessment. AA, Faridabad (East) stated that in one case matter was under examination. AA Bhiwani stated that a dealer had submitted an affidavit regarding non sale of goods to purchasing dealer of Panipat. Reply of AA was not correct as the facts of affidavit could not be admitted without proper enquiry regarding sale/purchase transactions between the selling/purchasing dealers, as purchasing dealer had claimed benefit of input tax credit on the basis of purchases made from selling dealer. AA Jind stated that in one case the matter would be inquired from DETC Karnal to verify the facts of suppression of sale (May 2017). No reply was received in five cases from AAs Gurugram (East), Gurugram (West) and Bhiwani.

**2.4.3.2** Scrutiny of records of four<sup>30</sup> DETC (ST) for the years 2010-11 to 2013-14, revealed that the selling dealers had not filed their quarterly/annual returns in four cases in violation of provision of Section 14 of HVAT Act, and the selling dealers had not shown their sale to purchasing dealers in six cases in their quarterly returns and no assessment was made by the AA in these cases.

On verification made by audit, it was noticed that the purchasing dealers had claimed the benefit of ITC on the basis of purchases of ₹ 35.15 crore made from these dealers and the selling dealers had not paid tax on the sales made to purchasing dealers. Thus, suppression of sale of ₹ 35.15 crore resulted into evasion of tax of ₹ 2.26 crore. In addition, penalty of ₹ 6.78 crore was also leviable.

On this being pointed out, AAs Faridabad (East) and Faridabad (West) stated in four cases, that demand of ₹ 2.40 crore had been created between March 2016 and March 2017. AAs Panipat and Gurugram (West) stated in two cases that these had been sent to RA for taking suo-motu action. AA Faridabad (East) stated that notices had been issued in three cases to the dealers. AA Faridabad (West) stated that the Registration Certificate (RC) of firm was cancelled on 24 February 2011 as the dealer had not filed returns since 2009. The reply of AA was not correct as AA had to assess the case as per provision of section 15(5) of Act, whereby if a dealer failed to furnish return(s), the AA

---

<sup>29</sup> Ambala, Panchkula and Panipat .

<sup>30</sup> Faridabad (E), Faridabad (W), Gurugram (W) and Panipat.

---



has to assess the case before the expiry of three years. Moreover, the dealer had made sales during the year 2010-11, as the purchasing dealer had claimed benefit of ITC against these sales. No reply was received in one case from AA Panipat.

#### **2.4.4 Non levy of penalty**

Scrutiny of records of the DETC (ST) Faridabad (West) and Gurugram (West) revealed that three dealers, for the year 2012-13 to 2014-15 had suppressed sale of ₹ 73.56 crore in five cases. The AAs while finalising the assessments (between June 2015 and August 2015) levied tax of ₹ 3.81 crore but failed to levy penalty of ₹ 11.43 crore. Out of these cases, in three cases of DETC offices Gurugram (West) and Faridabad (West) it was mentioned in assessment order that penal action under section 38 would be taken separately but no action was taken by AAs even after expiry of 14 to 19 months. Thus, inaction on the part of AA resulted in non-levy of penalty of ₹ 11.43 crore.

On this being pointed out, AA Gurugram (West) stated that in one case notice had been issued to the dealer. AAs Faridabad (W) stated (February 2017) in four cases that notices would be issued to the dealers.

#### **2.4.5 Evasion of tax due to suppression of stock**

Scrutiny of records of eight<sup>31</sup> DETC (ST) for the years 2011-12 to 2014-15 and assessed by AAs during the year 2013-14 to 2015-16, revealed that in 11 cases closing stock as per sale/purchase of the dealers was to be taken ₹ 31.54 crore but as per trading account it was ₹ 8.48 crore. In five cases, the dealers had purchased goods of ₹ 53.68 crore but as per trading account these goods were neither sold nor taken in closing stock. In one case of DETC Panipat, the closing stock of dealer for the year 2011-12 was ₹ 0.96 crore, however, opening stock for the year 2012-13 was taken as ₹ 0.06 crore. In two cases, closing stock was to be taken ₹ 6.48 crore but was taken ₹ 0.40 crore in trading account and remaining stock value was taken in profit and loss account under the Head 'Other Income'. Thus, stock of ₹ 83.72 crore was suppressed by the dealers which resulted into evasion of tax of ₹ 6.07 crore. In addition, penalty of ₹ 18.21 crore was also leviable.

On this being pointed out, AAs Jagadhri, Sirsa and Panipat stated that 12 cases had been sent to RA for suo-motu action. AA, Gohana stated in one case that matter was under examination. AA Gurugram (East) and Gurugram (W) stated that notices had been issued to dealers in three cases. AA Faridabad (west) stated that a dealer had sold time bar stock. Reply of AA was not correct as receipt was shown under the head 'Other Income' instead of taking in sale of

<sup>31</sup> Faridabad (W), Gurugram (E), Gurugram (W), Jagadhri, Jind, Panipat, Sirsa and ETO Gohana (Sonapat).

goods. AA Jind replied in one case, that all the sales were taken in annual return (VAT R-2). The reply of AA was not correct as the sale shown by the dealer was of ₹ 0.57 crore against the purchases of ₹ 1.03 crore in third and fourth quarters and remaining goods of ₹ 0.46 crore was not taken in closing stock. AA, Jagadhri stated in one case that goods had been taken in stock. The reply of AA was not correct as the dealer had taken the value of stock in Profit and Loss Account under the Head “Other Income” which was not assessed to tax.

#### **2.4.6 Non-levy of tax and penalty on suppression of purchases**

Scrutiny of records of the three<sup>32</sup> DETC (ST), for the year 2011-12 to 2013-14 revealed that in three cases, assessed during the year 2014-15 to 2015-16, purchases of ₹ 5.08 crore were understated. In one case of DETC Gurugram (East), the selling dealer had made sale of ₹ 10.68 crore but the purchasing dealer had taken the purchases of ₹ 10.06 crore. In one case of DETC Ambala, stock of ₹ 3.28 crore was received from out of the State but stock taken in account was ₹ 3.04 crore. In one case of DETC Rewari the dealer had made inter-State purchase of ₹ 4.22 crore but these purchases were not taken into account. Thus, suppression of purchases of ₹ 5.08 crore resulted into evasion of tax ₹ 0.27 crore. In addition, penalty of ₹ 0.82 crore was also leviable.

On this being pointed out, AA Ambala stated (May 2017) that case had been sent to RA for suo motu action. AA Gurugram (East) stated (August 2015) that notice had been issued to the dealer. AA Rewari stated (May 2017) that re-assessment proceeding had been initiated.

#### **Conclusion**

Audit was undertaken with the objective of ascertaining whether all sales/purchases were taken into account properly and compliance of rules/instructions were made to avoid evasion of tax by the dealers. Audit established that the rules/instructions regarding accountal of sales/purchases and collection of data from other departments were not followed, resulting in evasion of tax and penalty of ₹ 86.58 crore.

The above points were reported to the Excise and Taxation Department and to the Government in June 2017; their replies were awaited (October 2017).

---

<sup>32</sup> Ambala, Gurugram (East) and Rewari.

## 2.5 Non/short levy of tax due to incorrect classification

**Incorrect classifications of goods by Assessing Authorities resulted in non/short levy of tax of ₹ 6.63 crore as well as interest of ₹ 3.00 crore.**

Section 7 (1) (a) (iii) and (iv) of the HVAT Act, stipulates that tax is leviable at rates specified in Schedules 'A' to 'G' of the Act depending upon the classification of goods. Items not classified in the above schedules are taxable at the general rate of tax of 12.5 *per cent* with effect from 1 July 2005.

**2.5.1** The Principal Secretary to Government of Haryana, Excise and Taxation Department has clarified on 25 March 2013 that all varieties of textiles on which any value addition work like knitting, embroidery work has been done are liable to VAT as unclassified goods. Further, surcharge at the rate of five *per cent* of the tax was also leviable with effect from 02 April 2010. In addition, in case of default of payment of tax, interest was also leviable under Section 14 (6) of the HVAT Act.

Scrutiny of records of the DETC (ST) Gurugram (East), Gurugram (West) and Sonapat revealed that three dealers sold embroidered fabrics of ₹ 44.33 crore between 2011-12 and 2013-14 and claimed the goods as tax free. The AAs, while finalising the assessments between November 2013 and November 2015, allowed the deductions treating it as sale of fabric under Schedule 'B' of the HVAT Act. However, embroidered fabric being non specified was taxable at the rate of 13.125 *per cent*. This resulted in non levy of tax amounting to ₹ 5.82 crore. In addition, interest of ₹ 2.79 crore was also leviable.

On this being pointed out, DETC (ST) Sonapat intimated (March 2017) that case had been sent to Revisional Authority for taking suo motu action. AA Gurugram (West) intimated in March 2017 that case would be sent to Revisional Authority. AA Gurugram (East) intimated in July 2017 that case had been sent to Revisional Authority for taking suo motu action.

**2.5.2** The Financial Commissioner and Principal Secretary to Government of Haryana has clarified on 18 November 2011 that High Density Polyethylene Pipes (HDPE) are not tax free items. The Principal Secretary further clarified on 11 March 2013 that pipes of all varieties are taxable and covered under entry 60 of Schedule 'C' of HVAT Act and taxable at the rate of five *per cent*. The surcharge at the rate of five *per cent* on the tax is also leviable with effect from 2<sup>nd</sup> April 2010. Further, interest was also leviable under Section 14 (6) of the HVAT Act in case of default in payment of tax.

Scrutiny of records of the DETC (ST) Faridabad (East), and Rewari revealed that two dealers sold pipes of ₹ 8.56 crore in 2012-13 and claimed the sale of pipes as tax free. The AAs, while finalising the assessments between August and November 2014, allowed the deductions treating it as tax free goods under Schedule 'B' of the HVAT Act. However, pipes are classified in schedule 'C' and taxable at the rate of five *per cent* plus surcharge. This had resulted in non levy of tax amounting to ₹ 44.94 lakh besides interest of ₹ 21.41 lakh was also leviable.

On this being pointed out, AA Faridabad (East) stated (September 2016) that an additional demand of ₹ 36.95 lakh had been created. AA Rewari intimated (March 2017) that notice for reassessment had been served to the dealer.

**2.5.3** The Government had clarified on 23 June 2014 that so far as "Paneer in various packing and cottage cheese" are concerned, it is "cottage cheese" which falls under entry 81 of Schedule C i.e. "skimmed milk powder, ultra high temperature milk, cottage cheese" and hence taxable @ 5 *per cent* but "Paneer" being a different and distinct commodity in common trade parlance will attract VAT @ 12.5 *per cent* being unclassified items. An additional tax, in the nature of surcharge at the rate of five *per cent* on the tax is leviable w.e.f 2<sup>nd</sup> April 2010.

Scrutiny of records of the DETC (ST) Faridabad (East) and Jind revealed that three dealers sold Paneer and Butter valued of ₹ 4.59 crore during the years 2011-12 to 2012-13 and paid tax of ₹ 24.09 lakh at the rate of five *per cent* plus surcharge. The AAs, while finalising the assessments between September 2014 and March 2016, also levied tax at rate of five *per cent* plus surcharge instead of correct rate of tax of 12.5 *per cent* plus surcharge as per clarification of the Government. This resulted in short levy of tax amounting to ₹ 36.13 lakh.

On this being pointed out, the AAs Jind and Faridabad (East) intimated between August 2015 and September 2016 that the cases of two dealers had been sent to the Revisional Authority for suo motu action.

The matter was reported to the Excise and Taxation Department between August 2015 and February 2017 and to the Government in March and April 2017; their replies were awaited (October 2017).

## 2.6 Incorrect benefit of input tax credit on goods not sold

**Input Tax Credit for Purchase of Duty and Entitlement pass book was allowed incorrectly as the same was not used for resale and adjusted against custom duty payable resulting in incorrect grant of input tax credit of ₹ 2.68 crore to a dealer. Further, ITC of ₹ 1.28 crore was allowed incorrectly as the selling dealer had not shown any sale during the year.**

Under Section 8 of the HVAT Act, ITC on purchase of goods is admissible against tax liability on sale of goods as such or the goods manufactured therefrom in the State or interstate trade and commerce. Further, Section 38 of the Act provides for penal action (tax avoided/benefit claimed and three times penalty) for claims on the basis of false information and incorrect accounts or documents etc.

**2.6.1** The Government had clarified (22 April 2013) that ITC is available only if the Duty Credit Scrips are purchased for re-sale as such and no ITC would be admissible if these were used for adjustment of custom duty. Scrutiny of records of DETC (ST), Rewari revealed that a dealer purchased Duty Entitlement Pass Book (DEPB) worth ₹ 51.03 crore after payment of VAT of ₹ 2.68 crore during 2011-12. The dealer used the same for adjustment of custom duty payable by him. As the goods (Scrips) were not sold by the dealer, no ITC was admissible. However, while finalising assessment in March 2015, AA allowed the ITC to the dealer resulting in incorrect grant of ITC of ₹ 2.68 crore besides interest of ₹ 2.68 crore was also leviable.

On this being pointed out, AA Rewari intimated (July 2017) that the RA had created additional demand of ₹ 5.36 crore. However, the dealer filed an appeal in Haryana Tax Tribunal which is still pending.

**2.6.2** The ETC Haryana issued instructions in July 2013 that cent *per cent* verification of input tax credit (ITC) up to the stage of actual payment of tax shall be done. Scrutiny of records of the DETC (ST) Gurugram (East) revealed that the assessment cases of two dealers for the years 2010-11 to 2012-13 were finalised (between June 2013 and October 2014) and benefit of ITC of ₹ 1.28 crore was allowed without verification of payment of tax by selling dealer. On verification, the selling dealers were not found registered/filed nil returns. This resulted in incorrect grant of ITC of ₹ 1.28 crore. In addition, penalty of ₹ 3.84 crore was also leviable.

On this being pointed out, the AA stated that cases were re-assessed and demand of ₹ 2.54 crore including interest of ₹ 1.24 crore was created. The replies of AA were not wholly correct as the AA were required to levy three times penalty under Section 38 on the additional demand instead of interest.

The matter was reported to the Excise and Taxation Department between May 2015 and July 2016 and to the Government in February and May 2017; their replies were awaited (October 2017).

## **2.7 Non levy of tax on Central Sale**

**Assessing Authorities omitted to levy central sale tax on the inter-State sales of ₹ 30 crore resulting in short levy of tax of ₹ 3.77 crore.**

As per provisions of Section 9 (2) of the Central Sales Tax Act, 1956 (CST Act) and the rules made thereunder, the authorities for the time being empowered to assess, reassess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, reassess, collect and enforce payment of tax, payable by a dealer under this Act as if the tax payable by such a dealer is payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State.

Scrutiny of the records of the DETC (ST), Sirsa and Faridabad (West) revealed that two dealers sold goods worth ₹ 30 crore in the year 2013-14 to the dealers of other State. The AAs while finalising the assessments in November and December 2015, omitted to levy CST on the above sales. This resulted in short levy of tax amounting to ₹ 3.77 crore.

On this being pointed out, AAs Sirsa and Faridabad (West) stated (between May 2016 and January 2017) that additional demand of ₹ 3.77 crore had been created.

The matter was reported to the Excise and Taxation Department between September 2016 and April 2017 and to the Government in April 2017; their replies were awaited (October 2017).

## **2.8 Non/short levy of interest**

**The Assessing Authorities did not levy the interest in five cases and in two cases interest was levied short on delayed payment of tax which resulted in non/short levy of interest of ₹ 2.51 crore.**

Section 14 (6) of the HVAT Act inter alia lays down that if any dealer fails to make payment of tax in accordance with the provisions of the Act and Rules made thereunder, he shall be liable to pay, in addition to the tax payable by him, simple interest at one *per cent* per month if the payment is made within ninety days, and at two *per cent* per month if the default continues beyond ninety days for the whole period, from the last date specified for the payment of tax to the date he makes the payment.

Scrutiny of records of the DETC (ST), Ambala, Gurugram (East) and ETO Tohana revealed that five dealers had not paid tax as per the provisions of the Act and Rules. The AAs finalised the assessments between January 2014 and March 2016 for the year 2010-11 and 2013-14 but did not levy interest of ₹ 1.12 crore in five cases on late/non payment of tax as per return and in two cases, interest of ₹ 1.39 crore was levied short on delayed payment of tax. This resulted in non/short levy of interest of ₹ 2.51 crore.

On this being pointed out, the AA Gurugram (East) intimated (September 2016) that in one case additional demand of interest of ₹ 14.14 lakh had been created and in two cases proceedings had been initiated to levy interest. AAs Ambala, Gurugram (East) and Tohana intimated that the four cases had been sent to the Revisional Authority for taking suo motu action.

The matter was reported to the Excise and Taxation Department between August 2014 and February 2017 and to the Government in March 2017; their replies were awaited (October 2017).

## **2.9 Incorrect deduction of taxable turnover**

**Assessing Authority incorrectly allowed higher deduction of taxable turnover resulting in under-assessment of tax of ₹ 0.76 crore. In addition, interest of ₹ 61.96 lakh was also leviable.**

Rule 49 of HVAT Rules, 2003 provides that a contractor liable to pay tax under the Act may, in respect of a work contract awarded to him for execution in the State, pay in lieu of tax payable by him under the Act on the transfer of property involved in the execution of the contract, a lump sum calculated at four *per cent* of total valuable consideration receivable for the execution of work contract. Further, Section 42 of HVAT Act, 2003 provides that where a works contractor appoints a sub-contractor, the contractor and the sub contractor shall be jointly and severally liable to pay tax in respect of transfer of property in goods.

Scrutiny of records of the DETC (ST) Panchkula revealed that a dealer received a consideration of ₹ 44.33 crore for the work executed during the year 2011-12. The dealer was a sub contractor and opted to pay lump sum in lieu of tax. The AA, while finalising assessment (March 2015) for the year 2011-12 allowed a deduction of ₹ 44.33 crore (entire GTO) on the grounds that tax has been paid by main contractor. However, AA failed to establish that the main contractor had paid tax on total amount of ₹ 44.33 crore. Scrutiny of certificate issued by the main contractor revealed that he had paid tax on work of ₹ 25.44 crore only, on behalf of this sub contractor during the

year 2011-12 by reducing the amount of ₹ 18.89 crore as material supplied by main contractor. This resulted in under-assessment of tax of ₹ 0.76 crore on the amount of material supplied. In addition, interest of ₹ 61.96 lakh was also leviable.

On this being pointed out, the AA Panchkula intimated in September 2017 that the case had been sent to the Revisional Authority for taking suo motu action.

The matter was reported to the Excise and Taxation Department in December 2015 and to the Government in March 2017; their replies were awaited (October 2017).

### **2.10 Under-assessment of tax due to calculation mistake**

**Assessing Authorities while finalising the assessment underassessed the tax of ₹ 1.17 crore due to calculation mistake.**

Under Section 19 of the HVAT Act, any taxing authority or appellate authority, may, at any time, within a period of two years from the date of supply of copy of the order passed by it in any case, rectify any clerical or arithmetical mistake apparent from the record of the case after giving the person adversely affected a reasonable opportunity of being heard.

Scrutiny of the records of ETO (ST), Hansi revealed that a dealer made sales valued at ₹ 15.56 crore during 2012-13. The AA while finalising the assessment in March 2016, created an additional demand of ₹ 7.48 lakh instead of correct amount of ₹ 74.71 lakh. Further, scrutiny of the records of the DETC (ST) Faridabad (West), revealed that AA while finalising the assessment of a dealer for the year 2011-12 during March 2015 disallowed ITC amounting to ₹ 24.76 lakh. However, while calculating the ITC, AA added this disallowed ITC amount instead of deducting the same. This resulted in under-assessment of tax of ₹ 1.17 crore (₹ 67.23 lakh + ₹ 49.53 lakh)

On this being pointed out, AA Hansi stated (April 2017) that the error had been rectified and additional demand of ₹ 67.23 lakh had been created. AA, Faridabad (West) admitted the para and intimated (July 2017) that notice for rectification of clerical mistake has been issued to the dealer.

The matter was reported to the Excise and Taxation Department between September 2016 and April 2017 and to the Government in May 2017; their replies were awaited (October 2017).



### 2.11 Excess brought forward of tax credit

**Assessing Authority allowed adjustment of brought forward input tax of ₹ 42.76 lakh against the actual of ₹ 8.88 lakh resulting in short levy of tax of ₹ 33.88 lakh.**

Section 20 (2) (b) of the HVAT Act, provides that the balance input tax exceeding the tax including the CST on sale of goods on account of difference in rate of tax shall be carried over for adjustment with future tax liability.

Scrutiny of the records of the DETC (ST), Gurugram (West) revealed that the AA allowed the adjustment of input tax brought forward of ₹ 42.76 lakh in one case for the assessment year 2011-12 against the actual of ₹ 8.88 lakh of input tax carried forward from assessment year 2010-11. This resulted in short levy of tax of ₹ 33.88 lakh during 2011-12.

On this being pointed out, DETC Gurugram (West) intimated (September 2016) that additional demand of ₹ 67.75 lakh (including interest) had been created.

The matter was reported to the Excise and Taxation Department in June 2016 and to the Government in April 2017; their replies were awaited (October 2017).

### 2.12 Under-assessment of tax due to application of incorrect rate of tax

**Assessing Authority, while finalising the assessment incorrectly levied tax at the rate of 5.25 per cent instead of correct rate of tax 13.125 per cent resulting in short levy/under-assessment of tax of ₹ 2.09 crore. In addition, penalty and interest of ₹ 3.40 crore was also leviable.**

Under section 7(1) (a) (iii) and (iv) of the HVAT Act, any commodity classified in Schedule C is taxable at the rate of five *per cent* with effect from 15 February 2010 and the unclassified commodities are taxable at the rate of 12.5 *per cent* with effect from 1 July 2005. Surcharge at the rate of five *per cent* is payable on the tax leviable, under section 7(A) of HVAT Act w.e.f 2<sup>nd</sup> April 2010. Further, Section 38 provides for penal action (tax avoided/benefit claimed and three times penalty) for claims on the basis of documents, false information and incorrect accounts. Interest was also leviable under Section 14(6) of the HVAT Act.

**2.12.1** Scrutiny of records of DETC (ST) Faridabad (West), revealed that a dealer had made local sale of ₹ 11.90 crore to 65 dealers and paid tax at the rate of 5.25 *per cent* during 2012-13. The AA while finalising the assessment in November 2014 levied tax of ₹ 62.47 lakh at the rates of 5.25 *per cent*, treating the sale as non ferrous metal. Audit noticed during scrutiny of purchasing dealers file that the said dealer was engaged in sale of Fly Ash during 2012-13. Fly Ash was taxable at the rate of 13.125 *per cent* being an unclassified item. This resulted in short levy of tax of ₹ 93.70 lakh (11,89,87,893 X 7.875 *per cent*) besides three times penalty of ₹ 2.81 crore for furnishing false information.

On this being pointed out, AA admitted the para (February 2017) and intimated that the case had been sent for revision to Revisional Authority.

**2.12.2** Scrutiny of the records of eight<sup>33</sup> DETC/ETO (Sales Tax) revealed that while finalising the assessment for the year 2011-12 to 2013-14, nine dealers were assessed (November 2013 to November 2015) at lower rate of tax than applicable on sale of these goods as detailed below:-

Sr. No.	Name of the DETC/ETO	Period Month of Assessment	Commodity	Tax leviable Tax levied	Short levied	Interest leviable in ₹	Response to audit observations
1	Bahadurgarh	2011-12 to 2012-13 11.03.2014 to 21.11.2014	Air compressor/ Blowers	2732466 1092986	1639480	872442	The Government clarified 22 October 2009 that Air compressor/ Blower is an unclassified item and taxable at the rate of 12.5 <i>per cent</i> plus surcharge. AA intimated (April 2017) that Air compressors/ Blowers are used in the pharmaceutical industry and oil refinery industry as plant and machinery and are parts of machinery. Reply was not correct in view of Government clarification.
2	Bhiwani	2011-12 13.11.2013	Mobile Accessories	1771834 708734	1063100	519502	Mobile Accessories is an unclassified item and taxable at the rate of 12.5 <i>per cent</i> plus surcharge but the AA assessed at the rate of 5.25 <i>per cent</i> . AA replied (March 2017) that mobile accessories is taxable at the rate of 5.25 <i>per cent</i> . Reply was not correct as Hon'ble Supreme Court held in case of M/s Nokia V/s State of Punjab that mobile accessories was taxable at general rate of tax.

Sr. No.	Name of the DETC/ETO	Period Month of Assessment	Commodity	Tax leviable Tax levied	Short levied	Interest leviable in ₹	Response to audit observations
3	Gurugram (East)	2011-12 to 2013 -14 between 07.11.2013 and 12.02.2016	Sunglasses and Embroidered sarees	7426838 2970735	4456103	2509864	Sunglasses and Embroidered sarees are taxable at general rate of tax i.e. 13.125 per cent. However, the AA assessed at the rate of 5.25 per cent. On being pointed out, AA intimated that cases had been sent to Revisional Authority for revision (April 2017).
4	Hisar	2013-14 17.11.2015	Roohafza	549142 219657	329485	161667	The Government clarified on 01.03.2013 that Roohafza is an unclassified item and taxable at the rate of 12.5 per cent plus surcharge but the AA assessed the case at the rate of 5.25 per cent. On being pointed out, AA intimated that cases had been sent to Revisional Authority for revision (June 2016).
5	Jind	2012-13 dt 11/8/2014 and 2013-14 dt. 5/5/2015	Roohafza	2379573 951829	1427744	571599	Roohafza is an unclassified item and taxable at the rate of 12.5 per cent plus surcharge but the AA assessed the case at the rate of 5.25 per cent. The AA replied (July 2016) that dealer had purchased goods after payment of tax and the dealer was not liable to pay tax on principal amount. Reply was not correct as the dealer has not paid full tax at the rate of tax applicable on sale of goods as clarified by Government.
6	Jagadhri	2011-12 dt. 19.11.2013 and 2012-13 dt. 21.10.2014	Bio-Fuel	836995 Nil	836995	402818	As per entry 13 of Schedule 'C' Biomass Briquettes is taxable at the rate of 5.25 per cent but the AA assessed tax free. On being pointed out, AA intimated that cases had been sent to Revisional Authority for revision (April 2017).
7	Panchkula	2013-14 14.09.2015	Dryer felt	932017 Nil	932017	418786	As per entry 26 of Schedule 'C' Dryer felt is taxable at the rate of 5.25 per cent but the AA assessed tax free. AA intimated (May 2017) that Dryer felt is tax free as per entry 51 of Schedule 'B'. Reply was not correct as Dryer felt was taxable at the rate of 5.25 per cent as per entry 26 of Schedule 'C'.
8	Tohana	2012-13 and 2013-14 dt. 24.08.2015	G. C. Sheet	1362309 518975	843334	440935	Galvanised Corrugated Sheet is taxable at general rate of tax i.e. 13.125 per cent. AA intimated that the case had been sent for revision (August 2016).
<b>Total</b>					<b>11528258</b>	<b>5897613</b>	

This resulted in under-assessment of tax of ₹ 1.15 crore besides interest of ₹ 58.98 lakh was also leviable.

The matter was pointed out to the Excise and Taxation Department between June 2015 and February 2017 and reported to the Government in June 2017; their replies were still awaited (October 2017).

### **2.13 Short levy of tax on Works contractors**

**Assessing Authorities assessed the tax at the rate of four per cent instead of general rate of tax i.e. 12.5 per cent plus surcharge, treating the non-government organisation as government, resulting in short levy of tax of ₹ 0.69 crore.**

Section 2 (1) (ze) (ii) of the HVAT Act provides that the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, where such transfer is for cash, deferred payment or other valuable consideration, shall be deemed to be a sale of those goods by the person making the transfer. Rule 49 of HVAT Rules provides that work contractor may either pay lump sum in lieu of tax at the rate of four per cent of gross receipts of works contract or pay tax on the value of goods transferred in the execution of work contract. Further Section 7(2) of the Act provides that tax payable by a dealer on his taxable turnover in so far as such turnover or any part thereof relates to goods sold to the Government shall be calculated at four per cent.

Scrutiny of the records of the DETCs (Sales Tax), Bhiwani, Kaithal and ETO Charkhi Dadri revealed that three contractors executed the work of Municipal Corporation (MC), Haryana State Agricultural Marketing Board (HSAMB) and other such organisation between 2010-11 and 2012-13 worth ₹ 7.74 crore and paid tax at the rate of 4.2 per cent. The dealer had not opted to pay lump sum in lieu of tax. The AAs while finalising the assessment (November 2013 to February 2016) assessed the tax at the rate of four per cent plus surcharge treating the non-government organisation as government, instead of general rate of tax i.e. 12.5 per cent plus surcharge. This resulted in short levy of tax of ₹ 0.69 crore.

On this being pointed out, AAs stated that the cases had been sent to the Revisional Authority for taking suo motu action (September 2016 to April 2017).

The matter was pointed out to the Excise and Taxation Department between June 2015 and March 2017 and reported to the Government in May 2017; their replies were awaited (October 2017).

### 2.14 Incorrect grant of Input Tax Credit

**The Assessing Authority had not reversed the ITC in respect of petroleum products and natural gas which were used as fuel resulting in short realisation of tax of ₹ 19.18 lakh.**

Under Section 8 (1) of Haryana Value Added Tax Act, 2003 (HVAT Act) read with Schedule 'E' Sr. 1, when petroleum products and natural gas are used as fuel, admissibility of input tax shall be considered as nil. The Excise and Taxation Commissioner, Haryana, Panchkula had also issued instructions (25 August 2011) that if the petroleum products and natural gas are used as fuel, input tax credit (ITC) in respect of VAT paid on purchases of such goods shall be nil.

Scrutiny of records of the DETC (ST) Jagadhri revealed that a dealer purchased Pet Coke of ₹ 4.23 crore during 2010-11 and 2011-12 and used the same as fuel and claimed ITC of ₹ 19.18 lakh. While finalising assessments between March 2014 and December 2014, the Assessing Authority (AA) had not reversed the ITC which resulted in short realisation of tax of ₹ 19.18 lakh.

On this being pointed out, the AA, Jagadhri intimated (April 2017) that additional demand of ₹ 19.18 lakh had been created. But the dealer had filed an appeal in Haryana Tax Tribunal.

The matter was pointed out to the Excise and Taxation Department between May 2015 and July 2016 and reported to the Government in March 2017; their replies were awaited (October 2017).