



**CHAPTER - II**  
**TAXES ON SALES,**  
**TRADE ETC.**





## CHAPTER – II: Taxes on sales, trade etc.

### 2.1 Tax Administration

The Finance (Taxation) Department is responsible for the administration of taxes on sales, trade etc., in the State. The Commissioner of Taxes (CT) is the Head of the Department and responsible for administration of all taxation measures and for general control and supervision over the zonal and unit offices and the staff engaged in collection of taxes and to guard against evasion of taxes. He is also the authority for disposing of revision petitions under all taxation acts and laws besides providing clarification under Assam Value Added Tax (AVAT) Act, 2003. He is assisted by Additional Commissioner of Taxes, Joint Commissioners of Taxes, Deputy Commissioners of Taxes, Assistant Commissioner of Taxes (AsCT), Superintendents of Taxes, Inspectors of Taxes both at the Headquarters and regional/unit levels. The Commissionerate of Taxes has one Head Office/Commissioner's Office, 10 Zonal Offices, five Appellate Offices, 34 unit Offices, 23 recovery Offices and 10 check posts.

The functioning of the Department is governed by the provisions of the AVAT Act, 2003 (*w.e.f.* 01.05.2005); the Central Sales Tax (CST) Act, 1956; the Assam Entry Tax Act, 2008 (*w.e.f.* 01.06.2008); the Assam Professions, Trades, Callings and Employments Taxation Act, 1947; the Assam Tax on Luxuries (Hotels and Lodgings Houses) Act, 1989; the Assam Amusement and Betting Taxation Act, 1939; the Assam Electricity Duty Act, 1964; the Assam Taxation (on Specified Lands) Act, 1990; the Assam Agricultural Income Tax Act, 1939 and various administrative orders issued from time to time.

### 2.2 Working of internal audit wing

Internal audit, a vital component of internal control mechanism, functions as 'eyes and ears' of the Department and is a vital tool which enables the management to assure itself that prescribed systems are functioning reasonably well.

It was observed that an Internal Audit Wing (IAW) was created by the Government in May 1988 with staff strength of eight internal auditors in the office of the CT, Assam. There was only one Senior Auditor in the IAW who has retired from service and, at present, there is no personnel in the Wing.

### 2.3 Results of audit

In 2015-16, test check of the records of 20 units relating to VAT/Sales tax assessments and other records showed turnover escaping assessment of tax and other irregularities involving ₹ 113.90 crore in 177 cases. Besides a Compliance Audit on ‘Impact of Tax Exemptions to Industrial Units of Assam’ was also conducted during the year involving revenue implication of ₹ 251.12 crore. These are mentioned in **Table – 2.1**.

**Table 2.1**  
**Results of Audit**

Sl. No.	Categories	Number of cases	Amount (₹ in crore)
<b>Sales Tax</b>			
1.	<b>A Compliance Audit on – ‘Impact of Tax Exemptions to Industrial Units of Assam’</b>	<b>01</b>	<b>251.12</b>
2.	Turnover escaping assessment	03	19.47
3.	Irregular grant of Input Tax Credit (ITC)	14	14.88
4.	Concealment of turnover	12	10.65
5.	Short levy of tax and interest	36	28.09
6.	Non-levy of tax and interest	20	2.09
7.	Irregular allowance of concessional rate of tax	16	4.56
8.	Other irregularities	48	26.00
<b>Total</b>		<b>150</b>	<b>356.86</b>
<b>Other Taxes</b>			
1.	Short/non-levy of Entry Tax	08	3.26
2.	Short/non-payment of interest	03	0.04
3.	Short/non-levy of Professional Tax	07	0.10
4.	Other irregularities	10	4.76
<b>Total</b>		<b>28</b>	<b>8.16</b>
<b>Grand Total</b>		<b>178</b>	<b>365.02</b>

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 30.02 crore in 73 cases which were pointed out in audit during 2015-16 and earlier years. An amount of ₹ 36.60 lakh was recovered in 18 cases during the year 2015-16 pertaining to earlier years.

A Compliance Audit on ‘**Impact of Tax Exemptions to Industrial Units of Assam**’ involving revenue implication of ₹ 251.12 crore and a few illustrative cases involving ₹ 34.32 crore are discussed in the following paragraphs.

**SECTION : A**

**2.4 A Compliance Audit on ‘Impact of Tax Exemptions to Industrial Units of Assam’**

**2.4.1 Introduction**

**2.4.1.1** With the introduction of the North East Industrial and Investment Promotion Policy (NEIIPP), 2007, the Government of India (GoI) approved a package of fiscal incentives and other concessions for the North Eastern Region. In synergy with the NEIIPP, the Government of Assam (GoA) rolled out special industrial incentives, comprising of various subsidies and exemptions, through the Industrial Policies (IPs), 2008<sup>1</sup> and 2014 (*hereinafter referred to as ‘Industrial Policies’, unless the specific year is mentioned*), both of which were rolled out for five-year periods<sup>2</sup>, with the primary purposes of creation of income and generation of employment in the State.

**2.4.1.2** The main aims and objectives of these IPs included *interalia*:

- *generating economic development by accelerating the process of industrialisation;*
- *generating employment and increasing income by encouraging the establishment of micro enterprises;*
- *increasing the share of the industrial sector in the State Domestic Product;*
- *to make nature-economics centric development; and*
- *creating avenues for sustained growth and development of small scale and micro industries*

**2.4.1.3** This audit covers the period from 2010-11 to 2014-15, during which the IP, 2008 was in currency until 31 March 2014, while the IP, 2014 became applicable from 1 April 2014 onwards. It lays focus on these policies, as well as the cases finalised in terms of these policies.

**2.4.1.4** The admissible quantum of tax exemptions under the AVAT/CST Acts and the system of granting tax exemptions, to various categories of industrial units<sup>3</sup> engaged in the manufacture or production of goods in the State of Assam, is shown in **Appendix I(A) and I(B)**.

**2.4.1.5** In regard to eligibility of units for such tax exemptions, the IPs, unless otherwise specified, specify that:

<sup>1</sup> Preceded by five IPs, introduced in the years 1982, 1986, 1991, 1997 and 2003.

<sup>2</sup> IP, 2008 *w.e.f.* 1 October 2008 to 31 March 2014 (*this period includes an extension of six months*) and IP, 2014 *w.e.f.* 1 April 2014 to 31 March 2019.

<sup>3</sup> Industries specified in the First Schedule to the Industries (Development and Regulation) Act, 1951.

- A unit that is engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 is eligible.
- New Units set up on or after 1 October 2008 as well as existing units undergoing substantial expansion at the same place in the State of Assam on or after 1 October 2008 shall be eligible for incentives under IP, 2008 provided that for the units undergoing substantial expansion, the fiscal incentives will be only against the additional investments made on Plant and Machinery (P&M).
- A unit shall have employment of 80 *per cent* people of Assam in the managerial cadre and 90 *per cent* people of Assam in the non-managerial cadre and that over a period of five years from the commencement of commercial production, such unit would take all effective steps to ensure 100 *per cent* employment of people of Assam in non-managerial cadre and at least 90 *per cent* in managerial post.
- A unit availing grants/incentives from a Department/an Agency under the State/Central Government/foreign agencies shall not be eligible for similar type of incentives under this policy.
- Incentives/subsidies/concessions/financial support under this policy shall be applicable to units in the private sector, joint sector, co-operatives as well as units set up by State Government only.
- The non-eligible industries mentioned in the IP will not be eligible for any incentives under the IP.
- In case a new unit is promoted in the premises of an existing unit, it should be distinctly identifiable and be located in the open spaces available in the premises. The earlier unit in the premise should not be closed nor any P&M be dislodged from the earlier unit.
- Mega Projects with a minimum capital investment of ₹ 100 crore or generating a minimum of regular employment of 1,000 persons and having potential for development of ancillary industries based on their products.

**2.4.1.6** An interim study to assess and evaluate the impact of the NEIIPP was conducted by the North Eastern Development Finance Corporation Limited (NEDFi) in September 2010. The study discussed a number of issues and suggested some remedial measures in this regard.

**Out of the various subsidies and exemptions allowed by the GoA to the industrial units set up within the State, exemption of Sales Tax/VAT constitutes a major component, impacting the State exchequer in a substantive manner. Accordingly, a Compliance Audit was conducted, in order to examine the efficacy and effectiveness of the ‘Tax Exemptions granted to the Industrial Units of Assam’ and its impact on the State. The audit so conducted considered a number of issues, which are discussed in the succeeding paragraphs.**

## 2.4.2 Scope and Methodology of Audit

**2.4.2.1** The records pertaining to the period covered by the financial years 2010-11 to 2014-15, pertaining to IPs and grant of tax exemptions to the industrial units maintained in the office of the Commissioner & Secretary, Finance Department, GoA; Commissioner & Secretary, Industries & Commerce Department, GoA; Commissioner of Industries, Assam; the Managing Director (MD), Assam Industrial Development Corporation (AIDC); and the CT, Assam, were test checked between May and June 2016. In addition, audit team visited selected industries to ascertain the status regarding employment of local people and setting up of ancillary units, which both were major conditions for allowing tax exemptions.

**2.4.2.2** Audit observations made during the course of regular audit, as well as those appearing in the previous year's Audit Report, have been included at appropriate places in this study, to present a holistic picture of the tax exemptions granted to industrial units, covered under the IPs of Assam.

## 2.4.3 Audit objectives

This audit was conducted with a view to ascertain whether the benefits accrued through tax exemption had been reviewed periodically and Rules and guidelines under the IPs and system of granting tax exemption were adequate and effective.

## 2.4.4 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation of the Finance Department and the Industries & Commerce Department at the Government level and also the Commissioner of Industries, Assam, the MD, AIDC and the CT, Assam.

## 2.4.5 VAT collections vis-à-vis Exemptions

The year-wise position of tax exemptions granted, vis-a-vis VAT and CST collections during 2010-11 to 2014-15, was as mentioned in the following Table - 2.2.

**Table- 2.2**  
**Tax Exemptions vis-a-vis VAT and CST collections over last five years**

(₹in crore)

Year	Total VAT and CST collections	Exemptions granted	Percentage of exemptions on total VAT and CST collections	Percentage of growth of overall VAT and CST collections w.r.t previous year	Percentage of growth in exemptions w.r.t previous year
(1)	(2)	(3)	(4)	(5)	(6)
2010-11	4,318.60	160.83	3.72	--	--
2011-12	5,693.95	164.35	2.89	31.85	2.19
2012-13	6,223.13	182.97	2.94	9.29	11.33
2013-14	6,848.01	238.38	3.48	10.04	30.28
2014-15	7,351.25	263.55	3.59	7.35	10.56

Source: Information furnished by the CT, Assam

In reply to audit query regarding the total VAT and CST exemptions allowed year-wise, the Department stated that such information was not readily available and would have to be collected from the respective districts. This points towards the absence of MIS data at the headquarters of the Taxation Department and indicates that the Department was not monitoring the impact of tax exemptions *vis-a-vis* the total VAT and CST collections at the apex level.

Information collected from the CT, Assam indicated that the tax exemptions allowed during the period 2010-11 to 2014-15 registered a steady increase from ₹ 160.83 crore in 2010-11 to ₹ 263.55 crore in 2014-15. The amount may be expected to increase substantially when all the Mega Projects start commercial production. However, the percentage of tax exemptions allowed year-to-year, as a percentage of the total VAT and CST collections, remained within four *per cent*.

### **Audit findings**

#### **2.4.6 Meeting of Task Force (Working Group) on Incentives Schemes formed by the GoI**

In order to deliberate and come to some joint conclusions on incentives to industries, a meeting of the Task Force<sup>4</sup> of the Empowered Committee on Incentive Schemes was held on 3 July 2012 at the office of CT, Chennai. The following decisions were taken in the meeting:

- There is a need to curb the unhealthy competition in industrial incentives.
- In no State, should any tax-side incentives be given. If any incentive is given, it should be from the expenditure side, so that the actual expenditure on the incentive passes through the process of legislative scrutiny.
- The unhealthy competition is mainly in the area of Mega Projects and not in small scale industries. Such projects should be attracted by giving improved infrastructural support, such as interest free/concessional interest bearing loans, rather than by giving financial incentives.
- In no case should the industrial incentive exceed the amount of total capital investment made by the industry and further, 100 *per cent* incentive should be granted in rarest of rare cases and generally the incentives should not exceed 25–50 *per cent*.

There is nothing on record to show that any action was taken on the decisions taken by the Empowered Committee. Consequently, industries continued to reap the benefits of tax exemptions without any check.

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<sup>4</sup> Members – CTs and Addl. CTs of - Andhra Pradesh, Assam, Gujarat, Karnataka, Maharashtra, Odisha and Tamil Nadu; Secretaries of Governments of Tamil Nadu, Gujrat and Odisha.



#### 2.4.7 Absence of mid-term review/ ‘Outcome Budget’ of Policies

NEDFi, in its study (*para 2.4.1.7*) conducted in September 2010, had suggested setting of criteria/benchmarks to prevent misuse of policy benefits. Major findings of study are:

- There are many units that are not benefitting the economy of the region but are still operational and are getting benefits. Thus, criteria or benchmarks are necessary to prevent the misuse of IP.
- IP should support activities that have clear potential to attract other complimentary investment.
- Labour productivity needs to be measured for evaluation purposes.
- Maximising the likelihood of its contributing to economic growth.
- To ensure mistakes are not repeated and bad projects are automatically phased out .

Though there was grant of substantial financial incentives, the IPs had been laid down for mid term review of the achievement of the conditions attached to the industrial exemption.

In reply, the Commissioner of Industries and Commerce (CI&C) stated (December 2016) that the NEDFi study relates to implementation of NEIIPP, 2007 declared by GoI. Moreover, the policy is periodically reviewed by the District Level Committee (DLC) and the State Level Committee (SLC) and in every meeting, the committee takes some vital decisions in connection with the implementation of the policy and accrued benefits to the State, in terms of investment, industrialisation and employment generation.

Further, while replying to an audit query regarding maintenance of a database on tax exemptions, the Industries Department, as well as Commissioner of Industries, stated that no database of units closed down after availing the tax exemption benefits, was being maintained by the Department. It is noteworthy that absence of such a database automatically forecloses the possibility of any meaningful outcome budgeting.

The fact, however, remains that no record was furnished to audit to show that there was any system to monitor that the purpose for which tax exemptions were given was being achieved. Further, the database of the units closed down after exhaustion of tax benefits and unit-wise exemptions availed was not available with the Department, which indicated the absence of proper periodical reviews.

The Department may, therefore, consider taking steps to ensure periodical review, in order to prevent misuse of policy benefits by industries.

**2.4.8** In order to give effect to the IP, 2008, the Industries and Commerce Department had brought out operational guidelines specifying the procedures to be observed for obtaining Eligibility Certificate (EC) for availing the incentives provided in the Policy. As depicted in **Appendix-I (B)**, EC, pertaining to different categories of industries, falling under the Mega, Large, Medium, Small and Micro categories, are dealt by different agencies.

Test check of the system of grant of ECs to various categories of industries by the AIDC and the CI&C revealed the use of significantly different criteria for this purpose by both agencies, as mentioned in the following **Table - 2.3**.

**Table - 2.3**

Definition of 'fixed capital investment' (FCI)			FCI considered by	
As per NEIIPP	As per Policy of 2008	As per Policy of 2014	AIDC	CI&C
Value of P&M like the cost of industrial P&M as erected at site, including productive equipments such as tools, jigs, dies and moulds.	Investment in P&M or additional investment in P&M and building connected directly with manufacturing process.	Investment in P&M or additional investment in P&M and factory building.	P&M, buildings connected to manufacture, office buildings and staff quarters, equipment, accessories, components & fittings, electrical installations, utility installations, miscellaneous fixed assets (though the cases were finalised under Policy of 2008).	P&M and factory building directly connected to manufacture as per the Policy of 2008 ( <i>almost all the cases finalised were under the Policy of 2008</i> ).  <i>It was observed during test check of records that the CI&amp;C had instituted a mechanism for examining P&amp;M and also excluded a number of items, while allowing eligible amounts, such as for equipment, accessories, components and fittings, electrical installations, utility installations etc.</i>

It was observed that even though the NEIIPP took 'fixed capital investment' to mean 'plant and machinery', as erected at site, the Policies of 2008 and 2014 included factory buildings connected directly with the manufacturing process. Thus, inclusion of building without any linkage either with the production capacity or value of P&M led to undue aid to industries in the form of tax exemptions.

It was observed that there were variations in the methodology adopted by the AIDC and CI&C in calculating the amount of FCI, while issuing ECs. While CI&C generally examined cases as per the Policy of 2008, AIDC deviated from the Policy and included a number of elements, such as office buildings and staff quarters, equipment, accessories, components and fittings, electrical installations, utility installations, miscellaneous fixed assets etc., which were specifically excluded by the CI&C while calculating the FCI. However, the Industries and Commerce

Department, as well as the SLC, cleared the proposals despite the disparity in consideration of eligible elements between these two agencies.

Scrutiny of the ECs of the 63 units issued by the AIDC revealed that in 24 out of 63 cases (*i.e.* 38 *per cent* cases), elements inadmissible under the Policy of 2008, as stated above, were included while calculating the FCI, resulting in allowance of excess and irregular tax exemption of ₹ 27.50 crore. A detailed list of these cases is appended as **Appendix - II**.

The fact of irregular inclusion of inadmissible elements by the AIDC while calculating FCI, was also discussed by the SLC in its meeting of May 2010 and it was decided that the “*Operational Guidelines cannot supersede the Industrial Policy 2008*”. Accordingly, the SLC recommended amendment of the operational guidelines by issue of a corrigendum on eligible and non-eligible items under P&M for consideration of FCI to the Industrial Units and the CI&C forwarded the recommendation of SLC to the Government for amendment. The amendment was, however, not processed further for the Government approval till December 2014, by which time the Policy of 2014 was almost ready to be operational. Thus, failure of the Government to timely issue the corrigendum, resulted in irregular issue of ECs, leading to excess outgo of Government revenue to the tune of ₹ 27.50 crore.

In reply, AIDC stated (December 2016) that it was following the Rules and criteria as described in the operational guidelines of IPs approved by GoA. In some cases, items which are eligible as P&M and had been claimed by the unit under the category of miscellaneous fixed assets, were considered.

The reply is not tenable as none of the components pertaining to the objected amount of ₹ 27.50 crore falls under the category of P&M which is eligible for Industrial Tax Exemptions. Moreover, misclassification of items by units should have been corrected by AIDC while issuing ECs to avoid loss of revenue to the State exchequer.

**2.4.9** The Supreme Court, with regard to classification of industries for the purpose of availing exemption, from time to time termed a number of activities as not falling under the terminology of ‘manufacture’ for e.g. withering, crushing and roasting of tea leaves, conversion of wire rod to wire etc. Further, GoA, also issued a notification<sup>5</sup> (3 November 2009) stating some activities including Tea Industry and conversion of plain rod to tor rod, shall not be treated as manufacture for the purpose of the Act retrospectively *w.e.f.* October 2008.

It was, however, noticed that such activities were generally not incorporated in the ‘*negative list*’<sup>6</sup> under the IPs<sup>7</sup>. As a result, those industries were continuing to avail the benefits of tax exemptions and no steps were taken to cancel those ECs. Details

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<sup>5</sup> Notification no. FTX.55/2005/Pt-VI/41.

<sup>6</sup> List of non-eligible activities.

<sup>7</sup> Of 2003, 2008 and 2014.

of some major instances are given in the following **Table - 2.4**, while the full table is enclosed as **Appendix - III**.

**Table - 2.4**

Activity	Apex Court verdict and details of verdict	No. of cases wherein Tax Exemptions allowed by the SLC	Tax Exemptions allowed (₹ in crore)
Conversion of green tea leaves into black tea leaves	Tea leaves are not marketable fresh from the garden and are only fit after a minimal process; yet tea leaves do not change their character and are sold in the market as such ( <i>Commissioner of Sales Tax Vs D S Bisht – [1979] 44 STC 392</i> )	42	75.27
Conversion of Wire Rod to Wire	Conversion of Wire Rod to Wire is only reduction in gauge and the product continues to be 'wire' ( <i>CCE Vs Technoweld Industries</i> )	03	3.21
<b>Total</b>		<b>45</b>	<b>78.48</b>

Thus, irregular issue of ECs in the above cases led to loss of revenue of ₹ 78.48 crore.

In reply, the CI&C stated (December 2016) that these industries were given tax exemptions under the IP, 2003 and no such cases were cleared by the SLC under the IPs, 2008 and 2014.

The fact, however, remains that failure to consider the Supreme Court's guidelines and not cancelling the tax exemptions of the said industries as per the notification of 2009 resulted in undue grant of tax exemptions.

#### Working of the High Power Committee (HPC)

**2.4.10** To encourage the establishment of Mega Projects, the IP, 2008 provided for constitution of HPC, with the powers to relax all incentives, including priority land allotment, the ceiling amount of subsidy and/or the period of validity of tax concession under the Policy.

The GoA notified (July 2009 and January–February 2010) the HPC<sup>8</sup> and following the constitution of the HPC, six meetings were held, between February 2010 and February 2016, in which 18 industries were granted the status of Mega Projects. However, major tax incentives granted to 16 out of 18 industries and the conditions attached to such incentives were as summarised as follows:

#### **Tax incentives**

- *VAT exemption of 99 per cent for seven/10 years or 100 per cent of FCI/200 per cent of value of P&M directly related to manufacturing process, whichever is earlier.*

<sup>8</sup> With the Chief Minister as the Chairman and the Minister of Industries and Commerce; Chief Secretary, Assam; Additional Chief Secretary, Industries & Commerce; Principal Secretaries- Revenue & Disaster Management, Finance, Environment & Forests and Chairman, ASEB, as members.

- Entry Tax exemption on P&M and DG set for three years.
- Entry Tax exemption on raw materials for seven years.

### Conditions

- The installed capacity of the unit shall not be lower than 90 per cent of the proposed capacity.
- The unit shall start commercial production within three years from the date of issue of letter assuring the tax concessions.
- In case the commercial production does not start within the stipulated time, the unit shall deposit the entry tax amount payable on P&M and DG set imported.
- The project will be implemented in one go i.e. it should not be staggered implementation.
- The final project cost shall not be exceeded by more than 15 per cent of proposed project cost.
- The actual amount of VAT exemptions will be calculated after commissioning of the project through physical and documentary verification of cost of P&M connected directly with manufacturing process by Industries and Taxation Departments.

A detailed list of the 16 industries receiving Mega Status as well as VAT exemptions, amount of capital investment and the incentives granted, are enclosed in **Appendix - IV**.

**2.4.10.1** A scrutiny of the tax incentives and conditions attached to such incentives revealed that:

- The HPC was vested with the discretion to relax all incentives, including priority land allotment, ceiling amount of subsidy and/or the validity period of tax concessions under the IP, 2008 on a case-to-case basis.

The Policy of 2008 did not provide for any incentive covering the exemption of 'Entry Tax'. However, the IP, 2014 incorporated exemption from payment of Entry Tax on P&M brought from outside the state but not on raw materials.

However, the HPC granted Entry Tax benefits on P&M, as well as raw materials, going beyond the discretionary powers available to it under the ambit of the IP. This was, *prima facie*, in contradiction to the objective regarding growth of ancillary industries, based upon the operation of Mega Projects, incorporated under the Policy, as grant of Entry Tax exemption on raw materials was likely to create an incentive for the units to import the base materials from outside the State.

- It was observed that as on March 2016, only two Mega Projects and one project<sup>9</sup> under special project had started functioning in the State. It was

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<sup>9</sup> M/s Calcom Cement India Ltd. - Government has allowed tax exemptions of 200 per cent as a special package.

observed that the value of the Entry Tax exemptions availed by these units was ₹ 34.80 crore, as mentioned in the following **Table - 2.5**.

**Table - 2.5**

Name of the industries and date of commencement of commercial production	Value of P&M imported as shown in the Entry Tax Return/EC	Entry Tax exemption (two per cent)	Raw materials imported, as shown in the Entry Tax Return	Entry Tax exemption (two per cent)	Total Entry Tax exemption
M/s Topcem India 25 November 2011	11.78	0.24	532.17	10.64	10.88
M/s Cement Manufacturing Company Ltd. (Star Cement) 31 January 2013	183.99	3.68	895.73	17.91	21.59
M/s Calcom Cement India Ltd. 18 August 2010	116.81	2.33	(exemption not granted)		2.33
<b>Total</b>		<b>6.25</b>	<b>1,427.90</b>	<b>28.55</b>	<b>34.80</b>

*(Figures of raw materials for the period of commencement of production till March 2015 have been considered)*

With most of the Mega Projects being in the construction stage, the figure is likely to rise with the commencement of commercial production by these units.

**2.4.10.2** An analysis of the VAT exemptions granted to the units by the HPC revealed that in eight out of 16 units, VAT exemption of 200 per cent of the P&M was allowed, while in the remaining cases, VAT exemption of 100 per cent of the FCI was granted. It was, however, observed that the maximum benefit, in terms of VAT exemption, allowable to large industries, under the IP, 2008 is limited to 100 per cent of the FCI. Further, as per the decision of the Task Force of the Empowered Committee of GoI, the maximum benefit of VAT exemptions that could be granted was to be limited to 100 per cent, with 100 per cent exemptions being granted only in the 'rarest of rare' cases. In respect of seven cases<sup>10</sup> alone, against which figures were readily available in records, tax exemptions of ₹ 811.11

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(₹ in crore)

Sl. no.	Name of the industry	Value of P&M	Tax Exemptions granted (200 per cent)	Tax Exemptions granted in excess (200 per cent minus 100 per cent)
1.	Cement Manufacturing Company Ltd (Star Cement)	183.99 (EC)	367.98	183.99
2.	Topcem India	62.51 (EC)	125.02	62.51
3.	Adhunik Cement	197.68 (Project Cost)	395.36	197.68
4.	Sturdy Industries	48.95 (Project cost)	97.90	48.95
5.	JVL Agro Industries	136.17 (as per minutes of HPC)	272.34	136.17
6.	Britannia Industries	65.00 (Project Cost)	130.00	65.00
7.	Calcom Cement India Ltd.	116.81 (EC)	233.62	116.81
	<b>Total</b>		<b>1,622.22</b>	<b>811.11</b>

crore were granted over and above the maximum ceiling provided under the IP and prescribed by the Task Force of the Empowered Committee.

It was also observed that out of 16 applicants, tax exemption of 100/200 *per cent* was granted to eight/six applicants, as sought for by them. However, in the case of M/s Topcem India, tax exemption of 200 *per cent* was granted against applied tax exemption of 150 *per cent*, whereas in case of M/s Britannia Industries, 200 *per cent* tax exemption was granted against applied exemption of 100 *per cent*.

**2.4.10.3** It was further observed that while deliberating upon the applications for Mega Projects, the HPC failed to consider aims and objectives, as well as the thrust areas specified under the IP. A few such instances are mentioned in the following paragraphs:

- One of the aims and objectives, specified under para 4.1 (4) of IP, 2008 was to ensure ‘Nature – Economics Centric Development’<sup>11</sup>. It was, however, seen that industries namely M/s Topcem India and M/s Cement Manufacturing Company Ltd. (Star Cement) which were granted Mega Status and were functional as on March 2016, fell under the ‘Red Category’<sup>12</sup>. It was also observed that in the case of one of the applicants, *i.e.* M/s Cement Manufacturing Company Ltd., public complaints were received against setting up of cement units on the grounds that cement units are highly polluting units, despite which tax exemptions was granted to the unit at the rate of 200 *per cent*.
- The proposals of three grain based distilleries, namely M/s Terai Tea Company Ltd, M/s N V Distillery and M/s Brahmaputra Biochem Pvt. Ltd., which had applied for manufacturing Extra Neutral Alcohol required for production of India Made Foreign Liquor, were considered by the HPC, without obtaining the views of the Excise Department.
- The IP emphasised major factors like employment generation, development of rural areas and growth of ancillary industries. However, these objectives did not find adequate reflection in the pre-conditions imposed by the HPC while granting Mega status to various units. The ECs issued by the Industries and Commerce Department also did not indicate these core objectives as pre-conditions. Further, in absence of any system of reviewing the progress of benefits accrued through industrialisation, as well as the non-preparation of an outcome budget, there was no mechanism to ensure that the industries were adhering to the employment generation guaranteed or the development of the rural areas, as assured by them while applying for Mega status. Audit findings related to these issues have been incorporated separately under the para titled ‘*Functional Mega Projects*’.

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<sup>11</sup> Means economic development, while keeping focus on the intrinsic value of nature.

<sup>12</sup> Heavy Polluting Industries, as categorised by the Central Pollution Control Board (Annexure VI of IP of Assam, 2008).

- Though substantial revenue was at stake because of grant of tax exemptions and such exemptions were granted for a definite period, **no condition was incorporated to ensure continuation of the industries after availing of the tax exemptions.** Replying to an audit query as to whether the Industries Department was maintaining any database of industries that had closed down after availing tax benefits, the Department stated that no such database was being maintained.

#### **Good practice in other States**

Rajasthan has introduced a condition that if the unit closes down after enjoying the tax exemptions, the entire amount of exemptions would be reversed and collected from the unit along with interest.

#### **Functional Mega Projects**

**2.4.11** It was observed that out of the 18 industries declared as Mega Projects, only two industries had commenced commercial production (as on March 2016), namely M/s Topcem India and M/s Cement Manufacturing Company Ltd (Star Cement). In addition, another unit named M/s Calcom Cement India Ltd was granted tax exemptions of 200 *per cent* of value of P&M aggregating ₹ 233.62 crore. Verification of the records and physical visits to the industrial units revealed the following:

##### **2.4.11.1 M/s Topcem India**

A perusal of the project report submitted by the unit, at the time of applying for Mega Status, indicated that unit had projected direct employment of 500 persons and indirect employment of 150 persons.

However, information on actual manpower, collected during the course of physical verification, revealed that the unit had employed only 99 persons, thereby showing a deficit in the projected direct employment of 401 persons *i.e.* 80 *per cent* shortfall.

The Finance Department issued notification granting tax exemptions of 200 *per cent* of investment in P&M connected directly with the manufacturing process, as approved by the HPC. The AIDC worked out the admissible amount as ₹ 62.51 crore.

It was, however, observed that even though the HPC, in its meeting dated 17 August 2009, had approved 150 *per cent* (as initially applied by the unit) tax exemption amounting to ₹ 93.77 crore, the same was irregularly enhanced to 200 *per cent* amounting to ₹ 125.03 crore citing the fact of keeping the incentives at par with the incentive granted to M/s Calcom Cement India Ltd.

It was further observed in audit that while working out the value of P&M, the AIDC included ineligible items like power distribution system<sup>13</sup>, amounting to

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<sup>13</sup> Operational Guidelines framed under the IP, 2014.



₹ 6.29 crore. This resulted in extension of irregular and undue benefits of ₹ 12.58 crore to the unit.

Thus, though the HPC was vested with the power to decide the special incentives to be made applicable to Mega Industries on a case-to-case basis, the increase of 50 *per cent* exemption on P&M and inclusion of ineligible elements resulted in an extra benefit of ₹ 40.70 crore to the unit. It was further revealed that as of March 2015, the unit had already consumed ₹ 97.15 crore, out of the total benefit of ₹ 125.03 crore.

In reply, AIDC stated (December 2016) that granting of 200 *per cent* VAT exemption on P&M, instead of 150 *per cent*, was as per powers vested with the various appropriate levels of the Government. It was further stated that the power distribution system was directly mounted to the P&M for efficient control of operation of machines.

The fact, however, remains that the unit had applied for 150 *per cent* VAT exemption, which was approved in the first meeting of HPC. Hence, the allowance of 200 *per cent*, at a later stage, merely on the basis of the grounds cited by the HPC, *i.e.* to keep it with in par with similar industry, was irregular. In so far as allowance of power distribution system is concerned, the item was placed under the non-eligible list in the operational guidelines only in IP, 2014.

#### **2.4.11.2 M/s Cement Manufacturing Company Ltd. (Star Cement)**

A perusal of the EC along with project report of the unit revealed that while working out the amount for tax exemptions, the AIDC considered amounts relating to power distribution, electrical and instrumentation, miscellaneous and railway siding etc, which was included with the value of P&M. Inclusion of other elements with P&M was irregular, as the HPC had specifically mentioned ‘exemption of 200 *per cent* of investment in P&M’. The irregular inclusion of these items valuing ₹ 34.82 crore, resulted in excess grant of tax exemption amounting to ₹ 69.64 crore. It was further revealed that as of March 2015, the unit had already consumed ₹ 96.98 crore, out of the total benefits of ₹ 367.98 crore.

In reply, AIDC stated (December 2016) that the electrical items were considered as per operational guidelines of IP, 2008 and no items like miscellaneous and railway siding were considered.

The fact, however, remains that list of items considered in P&M by the AIDC was not made available to audit.

#### **2.4.11.3 M/s Calcom Cement India Ltd.**

A perusal of the EC issued to the unit revealed that the unit has a production capacity of seven lakh MT<sup>14</sup> cement. It was observed that, though the GoA had allowed the unit tax exemptions of 200 *per cent* of the value of P&M, as a special

<sup>14</sup> Metric Ton (Tonne).

package, prior to commencement of the IP, 2008 the SLC allowed (January 2013) tax exemptions of only 100 *per cent*, as the production of the unit was very low<sup>15</sup>. However, in its subsequent meeting (October 2014), the SLC proceeded to grant tax exemptions of 200 *per cent*, as had been allowed by the Government. As per information collected during audit, the percentage utilisation by the unit during 2013-14 was raised only to 44.68 *per cent*, from 24.34 *per cent* in 2012-13. It was observed that SLC took the decision to allow the above mentioned tax exemptions of an additional 100 *per cent* of the value of P&M, despite the shortfall in production, led to extra benefit of ₹ 116.81 crore (being the cost of P&M), reasons for which were not available on record.

It was further revealed that as on March 2016, against tax exemption of ₹ 233.62 crore, the unit had given employment to only 55 persons. Thus, employment generation was insignificant in comparison with the parameter suggested by the Study conducted by the Taxation Department.

In reply, AIDC stated (December 2016) that the proposed capacity of the unit was 14 lakh MT per annum (two cement mills having capacity of seven lakh MT each), but the unit commenced its commercial production (August 2010) based on one cement mill. The EC was issued (January 2013) based on the installed capacity of one commissioned cement mill at seven lakh MT per annum. The second mill was, however, commissioned in March 2014. As on September 2014, the unit was operating at a steady rate of production of 50 *per cent*.

AIDC's reply needs to be viewed in the light that while raising tax exemption limit from 100 *per cent* to 200 *per cent* of P&M, the production of the unit was far below the desired level, even after commissioning of the second mill. Moreover, while furnishing its reply, AIDC failed to mention the production rate of the unit during 2014-15 and 2015-16.

**2.4.12** The core objectives of the IP, 2008, *inter alia* included generation of economic development, by accelerating the process of industrialisation; generation of employment; and increasing the share of the industrial sector in the Gross State Domestic Product (GSDP).

During the course of audit, an attempt was made to ascertain whether the objectives of IP had been met.

#### **2.4.12.1 Contribution of Industry sector in overall GSDP**

A perusal of the Economic Survey of Assam, for the year 2014-15, brought out by the Directorate of Economics and Statistics, indicated the following:

- Although the manufacturing and processing industries have ruled the Industry sector in the State, the contribution of these industries to the State economy was not as impressive as was expected.

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<sup>15</sup> Percentage utilisation - 2010-11 – 22.50 *per cent* (for seven months); 2011-12 – 15.98 *per cent*; 2012-13 – 24.34 *per cent*.

- The percentage contribution of the Industry Sector (*comprising of the mining and quarrying, manufacturing, electricity, gas and water supply and construction sectors*) to the State Economy has shown a decreasing trend, with the contribution of the sector declining from 27.54 *per cent* in 2004-05 to 23 *per cent* in 2014-15, as may be seen from the following **Table-2.6**.

**Table - 2.6**

	(in per cent)										
Year	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
Contribution of Industry Sector to GSDP	27.54	25.7	24.5	23.6	23.8	23.8	23.0	22.8	23.2	22.8	23.0

- The contribution of manufacturing sector to the State's GDP remains low, at about 10 *per cent*, compared to the all India figure of about 19 *per cent*.

Accordingly, it is seen that there has been no significant growth in the GSDP, despite the grant of tax exemptions amounting to ₹ 1,010.08<sup>16</sup> crore during the financial years 2010-11 to 2014-2015.

The CI&C, in its reply, while accepting the slow growth rate, stated (December 2016) that the major reasons include poor infrastructure, shortage of power, difficulty in conversion of land and fear amongst the investors regarding law and order.

#### 2.4.12.2 Analysis of employment in Mega Projects *vis-à-vis* Medium/Large industries

As per information collected from the AIDC and the Industries Department, tax exemptions of ₹ 1,662.95 crore was granted to 63 industries, under the Mega/Large and Medium categories, under the IP, 2008. In addition, tax exemptions were also granted by the HPC to other 14 units, which were yet to commence commercial production, as on March 2016. For the purpose of this analysis, tax exemptions granted to the units which had started production had been considered. The employment generated, *vis-à-vis* the tax exemptions, was as mentioned in the following **Table-2.7**.

**Table - 2.7**

No of industries granted EC under IP, 2008	Tax exemptions granted (₹ in crore)	Employment generated (as on March 2016)
<b>Small Scale Industries – 150 per cent tax exemptions</b>		
300	799.24	5,102
<b>Medium and Large Industries – 100 per cent tax exemptions</b>		
60	936.32	3,962
<b>Mega Projects – 200 per cent tax exemptions</b>		
3 <sup>17</sup>	726.63	288

Source: Data furnished by the CI&C and as per ECs obtained from AIDC.

<sup>16</sup> Para 2.4.5, Table – 2.3, Column – (3).

<sup>17</sup> Including M/s Calcom Cement India Ltd. – being a Large Industry, which was granted special incentive of VAT exemption upto 200 *per cent* of value of P&M.

From the above data, it may be seen that the 300/60 Small/Medium and Large projects, with tax exemptions of ₹ 799.24 crore and ₹ 936.32 crore, generated employment of 5,102 and 3,962 persons respectively. The two Mega Projects and one Large Project with Mega Status, having revenue impact of ₹ 726.63 crore, generated only 288 jobs. Thus, though 200 *per cent* tax exemptions was granted to the Projects with Mega status, the employment generated was far below that generated by Small and Medium/Large units which consumed comparatively lesser revenue.

AIDC, in its reply, stated (December 2016) that with the development of modern technology, the requirement of man-power in industry sector has been reduced substantially, resulting in lesser absorption of employees in the unit set up recently. AIDC's reply needs to be viewed in the light that employment generation is one of the main objectives of the IP.

#### **2.4.12.3 Passing of benefits accruing through tax exemptions**

A study conducted by the Taxation Department, in the State of Assam between August 2012 and June 2013, revealed the following:

- *Overall contribution of manufacturing sector to the net State Domestic Product (SDP) in Assam was just seven per cent, while its contribution to the SDP in the past five years showed stagnation;*
- *Employment intensity in the organised industrial sector of the State showed a decline, compared to improvement in the national context;*
- *The Mega Projects are not only causing higher revenue loss but are also generating insignificant employment;*
- *Growth of ancillary industries is found to be absent; and*
- *There is no price advantage to the consumers of the State of Assam in respect of goods manufactured by the local cement industries.*

For the purpose of further analysis, the two Mega Projects which were already functioning in the State were selected.

Analysis of information on the Maximum Retail Price (MRP) of cement per bag, as gathered from M/s Topcem India and M/s Cement Manufacturing Company Ltd (Star Cement), *vis-à-vis* the market price of cement of all brands collected from the Directorate of Economics and Statistics indicated that during the period 2012-13 to 2014-15, MRP of the cement bags meant for sale in Assam manufactured by the Mega Projects, was the same as the prevalent MRP of cement manufactured in other States and brought to Assam, as shown in the following **Table - 2.8**.

Table - 2.8

Period	Market price of Cement as collected from Directorate of Economics and Statistics	MRP of Topcem India	MRP of Cement Manufacturing Company Ltd. (Star Cement)
	(₹ per bag)		
2012-13	Between 344 and 378	Between 350 and 410	NA
2013-14	Between 348 and 378	Between 350 and 390	Minimum 380
2014-15	Between 360 and 390	Between 380 and 400	Minimum 360

Thus, despite huge sacrifice of State revenue in way of tax exemptions to these Mega industries, there was no price advantage to the consumers of the State.

### 2.4.13 Internal controls and monitoring

#### 2.4.13.1 Absence of checklist for working out the eligible amount

Scrutiny of the records relating to issue of ECs indicated that the Industries and Commerce Department had put in place a system of obtaining the views of the Taxation Department before finalising the eligible amount, with the least of the amounts worked out by these two Departments being allowed as the eligible amount.

It was, however, observed that, neither the Industries and Commerce Department nor the Taxation Department, had put in place a check list in regard of the elements which would be eligible for inclusion in the final amount. As a result, there were wide variations between the figures worked out by both the Departments. Some cases of major variations are mentioned in **Appendix - V**.

It was observed that there were variations ranging between ₹ 4.05 crore and ₹ 26.21 crore, which indicated the absence of clear guidelines for working out the eligible amount. Further, even though the eligible amounts worked out by the Taxation Department, would generally be expected to be on the conservative side, because of tax revenue being at stake, it was noticed that the amounts worked out by the Taxation Department were higher than the eligible amounts worked out by the Industries and Commerce Department, in almost all the cases.

### Conclusion

Audit of the impact of tax exemptions granted to industrial units *inter alia* indicated the following:

- Tax exemptions of 200 *per cent* were allowed to Mega Projects, despite the decision taken by the Task Force of the Empowered Committee of Finance Ministers constituted by the GoI that incentives should generally be in the range of 25-50 *per cent* and that, only in the rarest of rare cases, should 100 *per cent* incentive should be granted.

(Paragraphs 2.4.6 & 2.4.10.2)

- Though substantial tax incentives (200 *per cent*) were granted to Mega Projects, the employment generated by them was far below that generated by Small/Medium/Large scale industries receiving lesser tax incentives.  
*(Paragraph 2.4.12.2)*
- There was loss of revenue of ₹ 34.80 crore on account of irregular grant of Entry Tax exemptions not provided for under the IP, 2008 while tax exemptions of ₹ 110.34<sup>18</sup> crore were granted irregularly to two Mega Projects.  
*(Paragraphs 2.4.10.1 & 2.4.11)*
- Despite the judgment of Supreme Court prohibiting the coverage of certain activities under the term ‘manufacture’, tax exemptions, aggregating ₹ 78.48 crore, were irregularly granted to 45 ineligible industries.  
*(Paragraph 2.4.9)*
- No mid-course corrections were initiated in regard to tax incentives.  
*(Paragraph 2.4.7)*

### **Recommendations**

In order to streamline the system of allowing tax exemptions, the GoA may consider the following recommendations:

- A review of the system of allowing tax exemptions may be conducted, in order to bring it in line with the decisions of the Task Force of Empowered Committee of GoI.
- Tax exemptions, over and above the maximum ceiling provided under the IPs should be discontinued and tax exemptions may be allowed to industrial units, only after removing the ineligible elements from P&M.
- Tax exemptions may be permitted on a staggered basis, following periodical performance reviews, based upon achievement of conditions such as employment generation; passing on of exemptions benefits to consumers; and development of ancillary industries etc., by the concerned industrial units.
- Conditions of recovery of the tax exemptions granted, along with penal interest, may be imposed; in case of the unit closing down the functioning after consumption of the tax exemptions, moreover a database should be maintained in regard to units which have been granted tax exemptions.

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<sup>18</sup> M/s Topcem India= ₹ 40.70 crore and M/s Cement Manufacturing Company Ltd. (Star Cement) = ₹ 69.64 crore.

## 2.5 Compliance Audit observations

*Scrutiny of records relating to sales/value added tax (VAT)/entry tax in the Taxation Department revealed several cases of provisions of Acts/Rules/departmental orders not being observed and other cases as mentioned in the succeeding paragraphs. These cases are illustrative and are based on a test check carried out by Audit. Some of the omissions on the part of assessing officers (AOs) are pointed out in audit each year, but not only do the irregularities persist; these remain undetected till next audit is conducted. It is a matter of concern as these observations are also sent to the higher authorities including the Secretaries each time these are detected. Government and the Department need to strengthen measures to effectively monitor the cases, arrest recurrence of the irregularities and improve the internal control system including internal audit so that such mistakes and omissions are detected, corrected and avoided.*

### SECTION : B VALUE ADDED TAX

#### 2.6 Acceptance of purchase price of coal at rates lower than that applicable at the source of coal in Meghalaya led to short levy of tax by ₹ 14.67 crore on which interest of ₹ 8.57 crore was additionally leviable

*[AsCT, Unit – B and Unit - C, Guwahati; October - December 2014 and June - August 2014]*

As per Section 40 of the Assam Value Added Tax (AVAT) Act, 2003, if the prescribed authority has reason to believe that any part of the turnover had been under-assessed, he may proceed to assess the amount of tax due from the dealer in respect of such turnover within a period of eight years. Interest at 1.5 *per cent* is leviable for delayed payment of tax. During the relevant periods ‘coal’ was taxable at four *per cent*.

The coal based industries and the resellers of coal in Assam depend largely on coal mined from various parts of Meghalaya while a limited volume pertains to the coalfields located at Margherita in Assam. As per information collected, the pithead price of coal in Meghalaya ranged between ₹ 1,400 - ₹ 1,500 per MT<sup>19</sup> during 2002. Thereafter, the Government of Meghalaya (GoM) during their survey<sup>20</sup> in 2009 found the prices of coal at the source (coal fields) as ₹ 3,200 per MT and accordingly fixed the royalty on coal as ₹ 290 per MT<sup>21</sup>.

<sup>19</sup> As ascertained by the Taxation Department, GoM.

<sup>20</sup> Carried out in view of GoI, Ministry of Coals orders that the royalty on coal would be ₹ 130 + five *per cent* of the pithead price of coal excluding taxes, levies and other charges by GoM from August 2009.

<sup>21</sup> ₹ 130 plus five *per cent* of ₹ 3,200 per MT (pithead price of coal).

During test check of records in the above Offices it was noticed that nine dealers disclosed purchase price of Meghalaya based coal aggregating 18.43 lakh MT as ₹ 101.84 crore during the years 2008-09 to 2011-12. Thus, purchase price of coal worked out to ₹ 500 - ₹ 1,620 per MT. The AOs accepted the purchase value and assessed the dealers accordingly under the AVAT Act. However, the purchase price of coal as disclosed by the dealers were far below the minimum rate prevalent during the respective years *i.e.* ₹ 1,400 per MT during 2009-10 and ₹ 3,200 per MT during 2010-11 and 2011-12 and the short determination of purchase turnover resulted in short determination of sales turnover by at least ₹ 366.90 crore and consequent short levy of tax by ₹ 14.67 crore. Interest of ₹ 8.57 crore was additionally leviable<sup>22</sup> on tax remaining unpaid. Details are in the following **Table - 2.9**.

**Table - 2.9**

Name of dealer	Year	Coal imported (in lakh MT)	Total value shown to have been paid	Value determined as per pithead price	Turnover short determined	Short determination of tax	Interest leviable
M/s Jai Coke Industries	2009-10 to 2011-12	2.63	13.13	67.83	54.70	2.19	1.25
M/s Raj Coke Industries	2009-10 to 2011-12	2.60	13.00	66.18	53.18	2.13	1.22
M/s Sheo Shakti Coke Industries	2009-10 to 2011-12	2.08	10.40	58.00	47.60	1.90	1.04
M/s Sethi Coke Industries	2008-09 to 2011-12	3.46	17.33	76.67	59.34	2.37	1.56
M/s Shiva Coke Industries	2009-10 to 2011-12	2.57	12.87	66.46	53.59	2.14	1.22
M/s Sri Balaji Coke Industries	2009-10 to 2011-12	2.30	11.51	58.64	47.13	1.89	1.07
M/s Ganesh Met Coke Industries	2009-10 to 2011-12	2.19	14.16	55.92	41.76	1.67	0.93
M/s Jagati Coke Industries	2009-10 (November 2009 only) and 2010-11	0.17	2.48	5.29	2.81	0.11	0.07
M/s Global Coke Products	2009-10 (14 September 2009 to 31 March 2010)	0.43	6.96	13.75	6.79	0.27	0.21
<b>Total</b>		<b>18.43</b>	<b>101.84</b>	<b>468.74</b>	<b>366.90</b>	<b>14.67</b>	<b>8.57</b>

It may be mentioned that in five similar cases incorporated in previous years' Audit Report<sup>23</sup>, the Department had accepted the minimum price of coal as the pithead price of coal in Meghalaya and intimated (October 2015) that the assessments had been revised and demand notice issued.

<sup>22</sup> Calculated at 1.5 per cent till the date of Audit.

<sup>23</sup> Report of the Comptroller and Auditor General of India for the year ended 31 March 2015 (Revenue Sector), Government of Assam.



The cases were reported to the Department/Government between November 2014 - March 2015 and followed up in June 2016; their replies have not been received (January 2017).

**2.7 Two dealers declared a portion of the turnover as exempted sales/applied with lower rate of tax resulting in short levy of tax by ₹ 1.88 crore on which interest of ₹ 88.41 lakh was additionally leviable**

As per Section 40 of the AVAT Act, 2003, if the prescribed authority has reason to believe that any part of the turnover had been under-assessed, he may proceed to assess the amount of tax due from the dealer in respect of such turnover within a period of eight years. Interest at 1.5 per cent is leviable for delayed payment of tax. During the relevant periods, 'air filter' being 'other goods'<sup>24</sup> was taxable at 12.5 per cent upto 30 October 2009 and 13.5 per cent thereafter.

**[ACT, Unit - B, Guwahati; October - December 2014]**

**2.7.1** During test check of records in the above Office it was noticed that a dealer M/s Fleet Guard Filters Pvt Ltd registered as reseller of 'other goods' only, disclosed sale turnover of 'air filters' during the years 2009-10 to 2012-13 as ₹ 23.22 crore<sup>25</sup>. The dealer however, instead of classifying the entire turnover of 'air filters' as taxable at 12.5/13.5 per cent as other goods, classified a portion of the turnover pertaining to all the four years<sup>26</sup> aggregating ₹ 20.70 crore as taxable at four/five per cent while the balance turnover of ₹ 2.52 crore was correctly classified as 'other goods' under 12.5/13.5 per cent. It was further observed that the misclassification of turnover relating to 'air filters' at lower rate of tax could not be detected by the AO during scrutiny of the returns conducted between April 2011 and June 2014, which resulted in short levy of tax by ₹ 1.76 crore<sup>27</sup> on which interest of ₹ 83.54 lakh was additionally leviable.

The case was reported to the Department/Government in March 2015 and followed up in June 2016; their replies have not been received (January 2017).

<sup>24</sup> As per the AVAT Act, 2003, goods not classified in any of the schedules are termed as 'other goods' taxable at 12.5/13.5 per cent being the highest rate of tax under VAT system.

<sup>25</sup> 2009-10 = ₹ 3.83 crore, 2010-11 = ₹ 5.20 crore, 2011-12 = ₹ 6.46 crore and 2012-13 = ₹ 7.73 crore.

<sup>26</sup> 2009-10 = ₹ 1.84 crore, 2010-11 = ₹ 5.04 crore, 2011-12 = ₹ 6.25 crore and 2012-13 = ₹ 7.57 crore.

Particulars	(Amount in ₹)				Total
	2009-10	2010-11	2011-12	2012-13	
Turnover of 'Air Filter' by charging lower rate of tax	1,83,71,616	5,03,67,099	6,25,01,907	7,57,16,652	
Tax leviable @ 13.5 per cent	24,80,168	67,99,558	84,37,757	1,02,21,748	
Tax already levied @ 5 per cent	9,18,581	25,18,355	31,25,095	37,85,833	
Short levy of tax	15,61,587	42,81,203	53,12,662	64,35,915	1,75,91,367
Interest leviable upto November 2014	12,88,309	27,61,375	24,70,388	18,34,235	83,54,307

**[ACT, Unit – A, Guwahati; July - September 2014]**

**2.7.2** Similarly, another dealer M/s Progressive Enterprise, who dealt in ‘books and textile’, disclosed sales turnover during the year 2011-12 as ₹ 5.94 crore. The dealer however, classified turnover of ₹ 5.43 crore as exempted sales while the remaining amount of ₹ 50.64 lakh was disclosed as taxable sales. Further scrutiny of the case records however, revealed that as per the copy of ledger on exempted sales available in the case records, the actual exempted sales was found to be ₹ 3.23 crore. Thus, the dealer had misclassified taxable sales aggregating ₹ 2.20 crore as exempted sales which could not be detected by the AO during scrutiny of the return. This resulted in short levy of tax by ₹ 11.60 lakh<sup>28</sup> (at minimum rate of five *per cent*) on which interest of ₹ 4.87 lakh was additionally leviable.

In reply the Department stated (August 2016) that while scrutinising the bills of the dealer, it was found to be sale of ₹ 5.43 crore of goods exempted under the AVAT Act.

However, reply of the Department is not tenable, as scrutiny of the reply along with list of sales of exempted goods (2011-12) revealed that the Department had also considered sale of exempted goods of ₹ 2.20 crore related to the year 2012-13.

The cases were reported to the Department/Government between December 2014 - March 2015 and followed up in June 2016; their replies have not been received (January 2017).

**2.8 Concealment of turnover by a dealer and failure of the AO to detect the same resulted in tax of ₹ 54.73 lakh remaining unrealised on which interest of ₹ 22.99 lakh was additionally leviable**

**[ACT, Unit - A, Guwahati; July - September 2014]**

As per Section 40 of the AVAT Act, 2003, if the prescribed authority has reason to believe that any part of the turnover had been under-assessed, he may proceed to assess the amount of tax due from the dealer in respect of such turnover within a period of eight years. Interest at 1.5 *per cent* is leviable for delayed payment of tax.

During test check of records in the above Office it was noticed that two dealers, M/s Gupta’s and M/s Ever Growing Iron & Finvest Ltd. disclosed inter-State purchases in the Annual Return/Audited Accounts as ₹ 3.79 crore and ₹ 113.16 crore respectively during 2011-12. Scrutiny of returns/audit assessments were

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Particulars	Amount in ₹
Exempted sales as disclosed by the dealer	5,43,15,242
Less-exempted sale as per ledger account	3,11,15,070
Misclassification of taxable sale as exempted	2,32,00,172
Tax leviable @ 5 <i>per cent</i> (Minimum rate)	11,60,009
Interest @ 1.5 <i>per cent</i> up to August 2014 (28 months)	4,87,204

carried out on different dates by the concerned AOs between May 2013 and October 2013 in respect of both the dealers. Further scrutiny, however, revealed that as per the utilisation statements available in the case records, the dealers had purchased taxable goods valuing ₹ 121.34 crore. Thus, the dealers had concealed the purchase turnover by ₹ 4.39 crore and consequently there was concealment of sales turnover to that extent. Though the cases were scrutinised as well as picked up for audit assessment, the concealment of turnover could not be detected at any level which resulted in tax of ₹ 54.73 lakh<sup>29</sup> remaining unrealised. Besides, interest of ₹ 22.99 lakh (calculated at 1.5 per cent per month up to the month of audit) was additionally leviable on the unpaid tax.

On being pointed out, the Department stated (August 2016) that in respect of M/s Gupta's the case had been sent for reassessment on the basis of audit observation and was under process. No further development had been received (January 2017).

As regards the other dealer, the AO stated (August 2016) that there was no concealment of turnover though while finalising the assessment, the AO found that there was discrepancy between the figures shown as outside purchase in Annual Return/Audit Report with that of utilisation statement of delivery notes as the dealer stated that there was some omission and commission due to oversight. The reply of the Department is not tenable as further scrutiny of utilisation statement revealed that the AO determined the value of outside purchases leaving many purchases against delivery notes to determine the actual outside purchases made by the dealer during 2011-12.

The cases were reported to the Department/Government in March 2015 and followed up in June 2016; their replies have not been received (January 2017).

**2.9 Irregular allowance of concessional rate of tax against declaration forms issued by an unregistered dealer resulted in short levy of tax of ₹ 31.78 lakh on which interest of ₹ 19.07 lakh was additionally leviable**

[ACT, Unit – A, Guwahati; July -September 2014]

As per the CST Act, 1956 as it stood during 2010-11, inter-State sale of goods, to the registered dealers if supported by valid declaration in form 'C' were taxable at

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Particulars	(Amount in ₹)		
	M/s Gupta's (Tobacco taxable @ 20 per cent)	M/s Ever Growing Iron & Finvest Ltd (Iron & Steel taxable @ 4 per cent)	Total
Turnover suppressed	2,32,38,601	2,06,37,677	4,38,76,278
Tax leviable	46,47,720	8,25,507	54,73,227
Interest leviable @ 1.5 per cent per month up to August 2014 (28 months)	19,52,042	3,46,713	22,98,755

the concessional rate of two *per cent*. Otherwise, tax was leviable at the rate of tax applicable to sale of such goods within the State. During 2010-11, tobacco products were taxable at the rate of 13.5 *per cent*.

During test check of records in the above Office it was noticed that a dealer M/s VST Industries Ltd., Guwahati disclosed inter-State sales turnover as ₹ 11.45 crore (including tax) for the year 2010-11 and paid tax at two *per cent*. The AO while assessing the dealer in May 2012 accepted the turnover and assessed the dealer accordingly. Scrutiny of the declaration forms submitted by the dealer in support of the inter-State sales revealed that two forms issued by M/s L.P. Electricals, Mizoram covering transactions of ₹ 2.82 crore (including tax of two *per cent*) between 6 April 2010 and 22 July 2010 were invalid as the purchasing dealer based in Mizoram was registered from 30 July 2010. Thus, failure of the AO to detect the invalid declaration forms and levy tax on the transaction at 13.5 *per cent* instead of two *per cent* resulted in short levy of tax by ₹ 31.78 lakh<sup>30</sup>. Interest of ₹ 19.07 lakh calculated upto the period of audit (August 2014) was additionally leviable on taxes paid short.

On being pointed out, the Department stated (August 2016) that the dealer M/s L.P. Electricals was registered under the CST Act since 30 September 2002. Verification of certificate of registration under the CST Act revealed that the dealer was actually registered since 30 September 2002 for “electrical goods” and amended the certificate on 23 November 2012 by including the item “Tobacco” etc. As such for the purpose of “Tobacco” the dealer was registered *w.e.f.* 23 November 2012. Hence, reply is not acceptable.

The case was reported to the Department/Government in December 2014 and followed up in June 2016; their replies have not been received (January 2017).

**2.10 Incorrect grant of concession against invalid declaration form led to revenue of ₹ 28.39 lakh including interest remaining unrealised**

[ACT, Unit – A, Guwahati; July – September 2014]

Under the CST Act, 1956 as it stood during the relevant years, inter-State sales of goods, to registered dealers if supported by valid declaration in form ‘C’ were taxable at the concessional rate of two *per cent*. Otherwise, tax was leviable at the rate of tax applicable to sale of such goods within the State. During the relevant period, computer parts, accessories, uninterrupted power services etc were taxable at five *per cent*. The CT, Nagaland, declared a series<sup>31</sup> of declaration forms ‘C’ as

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<sup>30</sup> ₹ 2.82 crore - ₹ 5.53 lakh (tax element) = ₹ 2.76 crore (taxable turnover) x 13.5 *per cent* = ₹ 37.30 lakh - ₹ 5.53 lakh (tax levied at two *per cent*) = ₹ 31.78 lakh.

<sup>31</sup> NL 076126 to NL 076225, NL 079651 to NL 079675, NL 095001 to NL 095250 and NL 098251 to NL 099250 = total 1,375 forms.

obsolete and invalid with effect from October 2011 as the forms were lost from its custody.

During test check of records in the above Office it was observed that the AO while assessing a dealer (M/s Link Telecom Private Limited, Guwahati) for the years 2009-10 to 2011-12 allowed concessional rate of tax at two *per cent* on turnover of ₹ 26.16 crore, ₹ 60.09 crore and ₹ 41.47 crore respectively. Scrutiny of declaration forms submitted by the dealer revealed that six declaration forms<sup>32</sup> involving turnover of ₹ 6.13 crore (₹ 0.93 crore : 2009-10, ₹ 3.42 crore : 2010-11, ₹ 1.77 crore : 2011-12 ) issued by a dealer of Nagaland (M/s Global Connection, Dimapur) were among the series of forms which were declared invalid by the Government of Nagaland. The AO, however, failed to detect the invalid declaration forms while completing the assessment and irregularly allowed concessional rate on those forms. This resulted in short levy of tax of ₹ 18.02 lakh<sup>33</sup> and interest of ₹ 10.37 lakh (at 1.5 *per cent* till the date of audit) was additionally leviable.

On being pointed out, the Department stated (August 2016) that on the basis of audit observation the assessments have been revised. However, being aggrieved the dealer filed revision petition and the revision authority set aside the re-assessment order and uphold the original assessment on the ground that the dealer obtained the forms well ahead of publication of notification and the dealer could not preempt that these 'C' forms would declare obsolete/invalid. Reply is not acceptable as 'C' forms were not issued to any dealer of Nagaland as these forms were lost from the custody of the taxation authority of Nagaland.

The case was reported to the Department/Government in December 2014 and followed up in June 2016; their replies have not been received (January 2017).

<sup>32</sup> 2009-10: NL 095088, 2010-11: NL 095089, NL 095090, NL 098637 and 2011-12: NL 098638, NL 098639.

<sup>33</sup>

Particulars	(Amount in ₹)			Total
	2009-10	2010-11	2011-12	
Gross Turnover	93,17,348	3,42,13,026	1,77,47,469	
Less under section 8A	1,82,693	6,70,844	3,47,990	
Taxable Turnover	91,34,655	3,35,42,182	1,73,99,479	
Tax leviable @ 5 <i>per cent</i>	4,56,733	16,77,109	8,69,974	
Tax paid @ 2 <i>per cent</i>	1,82,693	6,70,844	3,47,990	
Short levy of Tax	2,74,040	10,06,265	5,21,984	18,02,289
Interest @ 1.5 <i>per cent</i> leviable up to August 2014	2,13,751 (52 months)	6,03,759 (40 months)	2,19,233 (28 months)	10,36,743

**SECTION : C**  
**ENTRY TAX**

**2.11 Assessment of purchase price of coal at lower rates led to short determination of turnover and consequent non-realisation of entry tax of ₹ 2.29 crore on which interest of ₹ 1.58 crore was additionally leviable**

[ACT, Unit – B, C, Guwahati; June -December 2014]

As per Section 9 of the Assam Entry Tax (AET) Act, 2001 and 2008 read with Section 34 and 36 of the AVAT Act, 2003<sup>34</sup>, where the tax return furnished by a dealer appears to the prescribed authority to be incomplete or incorrect and if the dealer fails to furnish evidence of payment of tax, the prescribed authority shall proceed to assess the dealer to the best of his judgment (Section 34 of AVAT Act)/set aside the self assessment and assess<sup>35</sup> the amount of tax due (Section 36 of AVAT Act) on the basis of information received/collected by him and direct the dealer to pay the amount of tax so assessed. Interest<sup>36</sup> at 1.5 *per cent* per month is leviable for delayed payment of tax. As per Section 40 of the AVAT Act, if the prescribed authority has reason to believe that any part of the turnover had been under-assessed, he may proceed to assess the amount of tax due from the dealer in respect of such turnover within a period of eight years.

‘Coal’ was taxable at four *per cent* till 13 September 2009 and two *per cent* thereafter.

The coal based industries and the resellers of coal in Assam depend largely on coal mined from various parts of Meghalaya while a limited volume pertains to the coalfields located at Margherita in Assam. As per information collected, the pithead price of coal in Meghalaya ranged between ₹ 1,400 and ₹ 1,500 per MT<sup>37</sup> during 2002. Thereafter, the GoM during their survey<sup>38</sup> in 2009 found the prices of coal at the source (coal fields) as ₹ 3,200 per MT and accordingly fixed the royalty on coal as ₹ 290 per MT<sup>39</sup>.

<sup>34</sup> Assessments under the AET Act are to be conducted following same provisions as incorporated in the AVAT Act.

<sup>35</sup> After allowing the dealer an opportunity of being heard.

<sup>36</sup> Notified vide Government notification dated 28 February 2011.

<sup>37</sup> As ascertained by the Taxation Department, GoM.

<sup>38</sup> Carried out in view of GoI, Ministry of Coals orders that the royalty on coal would be ₹ 130 + five *per cent* of the pithead price of coal excluding taxes, levies and other charges.

<sup>39</sup> ₹ 130 plus five *per cent* of ₹ 3,200 per MT (pithead price of coal).

During test check of records in the above Office it was noticed that five dealers<sup>40</sup> disclosed purchase price of Meghalaya based coal ranging between ₹ 60.04 lakh and ₹ 7.11 crore during the years 2009-10 to 2011-12 as mentioned in the following **Table - 2.10** while the details is enclosed as **Appendix - VI**.

**Table - 2.10**

Name of dealer	Year	Coal imported (in MT)	Value disclosed	Rate per MT
			(₹ in crore)	(Amount in ₹)
M/s Sheo Shakti Coke Industries	2009-10	47,578.89	2.38	500
	2010-11	61,925.70	3.10	500
	2011-12	98,523.36	4.93	500
M/s Sri Balaji Coke Industries	2009-10	83,379.69	4.17	500
	2010-11	56,665.35	2.83	500
	2011-12	90,104.71	4.51	500
M/s Balaji Coke Industry	2009-10	94,164.00	7.11	755
M/s Global Coke Products	2009-10 <sup>41</sup>	42,959.62	6.96	1,620
M/s Jagati Coke Pvt. Ltd.	2009-10	12,009.37	0.60	500
	2010-11	16,516.00	2.48	1,500

Thus, purchase price of coal per MT worked out to ₹ 500 - ₹ 1,620 during the above years. The AO while assessing the dealer for the above years accepted the purchase turnover and assessed the dealer accordingly. However, the purchase price of coal as disclosed by the dealer was far below the minimum rate prevalent during the respective years *i.e.* ₹ 1,400 per MT during 2009-10 and ₹ 3,200 per MT during 2010-11, 2011-12 and thus there was concealment of purchase turnover totalling ₹ 111.48 crore<sup>42</sup> and consequent short levy of tax of ₹ 2.29 crore. Interest of ₹ 1.58 crore was additionally leviable<sup>43</sup> for non-payment of tax. The AO has the only option to re-open the assessments under Section 40 of the AVAT Act to make good the loss incurred by the State Government.

It may be mentioned that in five similar cases incorporated in previous years' Audit Report<sup>44</sup>, the Department had intimated (October 2015) that the assessments had been revised and demand notice issued.

On this being pointed out, the Department stated (June 2016) that assessments were revised in respect of four<sup>45</sup> dealers in line of objection raised by audit. However, M/s Global Coke Products, being aggrieved preferred appeal petition and the appellate authority set aside the re-assessment order on the ground that the AO

<sup>40</sup> M/s Sheo Shakti Coke Industries, M/s Sri Balaji Coke Industries, M/s Balaji Coke Industry, M/s Global Coke Products and M/s Jagati Coke Pvt Ltd.

<sup>41</sup> During the period 14 September 2009 to 31 March 2010.

<sup>42</sup> M/s Sheo Shakti Coke Industries - ₹ 47.60 crore, M/s Sri Balaji Coke Industries - ₹ 47.13 crore, M/s Balaji Coke Industry - ₹ 6.07 crore, M/s Global Coke Products - ₹ 6.79 crore and M/s Jagati Coke Pvt. Ltd. - ₹ 3.89 crore.

<sup>43</sup> Calculated at 1.5 per cent for 44 months from March 2011 till the date of Audit (October 2014).

<sup>44</sup> Report of the Comptroller and Auditor General of India for the year ended 31 March 2015 (Revenue Sector), Government of Assam.

<sup>45</sup> M/s Sheo Shakti Coke Industries, M/s Sri Balaji Coke Industries, M/s Global Coke Products, M/s Jagati Coke Pvt. Ltd.

while re-assessing the dealer did not confirm whether the pithead price was regulated by the GoM for the coal dealers to be strictly followed. The appellate authority has also opined that the pithead price could not be binding for the common dealers. The fact remains that though the appellate authority set aside the order of the AO in that particular case, the Department levied tax and interest in other cases. Thus, the Department needed to revisit the orders of the appellate authority in the interest of State revenue as the rate fixed by the GoM was the minimum rate at pithead for all coal mines. Besides, the appellate authority did not substantiate the purchase price of the dealer based on invoice of selling dealer of Meghalaya. Report on further developments had not been received (November 2016).

The case was reported to the Department/Government in November 2014 and followed up in May 2016; their replies have not been received (January 2017).

**2.12 Determination of purchase turnover without considering the freight charges resulted in short determination of turnover and consequent short levy of tax of ₹ 1.73 crore**

[ACT, Unit – C, Guwahati; June - August 2014]

As per Section 9 of the AET Act, 2001 and 2008, a registered dealer liable to pay tax is required to submit to the AO his monthly statement of all such purchase along with a copy of the treasury *challan* showing full payment of tax payable on the purchase value of goods disclosed in the statement. The statement is to be furnished before the expiry of the next succeeding month. The Hon'ble Supreme Court in the case of M/s Ponni Sugars (Erode) Limited vs The Deputy Commercial Tax Officer has held<sup>46</sup> (November 2005) that freight charges are components of purchase price of goods. Interest at 1.5 *per cent* per month is leviable for delayed payment of tax.

During test check of records in the above Office it was noticed that while completing the assessments of two dealers M/s Balaji Coke Industry for the years 2005-06 to 2007-08 in October 2009 and M/s G M Coke Industries for the year 2006-07 in November 2009, the AO determined turnover of ₹ 24.93 crore<sup>47</sup> and ₹ 4.44 crore and assessed tax payable as ₹ 1.61 crore and ₹ 17.76 lakh respectively. It was however, observed that while determining the turnover in the above cases the AO did not consider the freight element. Scrutiny of case records of the dealers revealed that during the aforesaid years the total landing cost<sup>48</sup> of goods including freight was ₹ 45.93 crore<sup>49</sup> and ₹ 10.28 crore. Thus, by not considering the freight element, the AO had short determined the turnover by ₹ 21.04 crore and ₹ 5.84

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<sup>46</sup> Appeal (Civil) 4757 - 4758 of 2000.

<sup>47</sup> ₹ 6.86 crore + ₹ 7.39 crore + ₹ 10.68 crore.

<sup>48</sup> "Landing cost/ import value" means the value of goods ascertained from the original invoice and includes the charges paid or payable for insurance, excise duty, freight charges and all other charges incidentally levied on the purchase of such goods.

<sup>49</sup> ₹ 14.24 crore + ₹ 14.25 crore + ₹ 17.44 crore.



crore respectively leading to short levy of tax of ₹ 1.73 crore<sup>50</sup> inclusive of interest of ₹ 66.03 lakh.

After this was pointed out, the Department stated (June 2016) that in respect of M/s G M Coke Industries, assessment had been completed raising demand of ₹ 1.09 crore (including interest). However, the dealer being aggrieved preferred revision petition and the revisional authority stayed the realisation of disputed dues till final disposal of the case. Report on further developments had not been received (January 2017). In case of other dealer, reply has not been received (January 2017).

The cases were reported to the Department/Government in November 2014 and followed up in May 2016; their replies have not been received (January 2017).

**2.13 Failure of the AO to bring all taxable goods imported under the tax net resulted in entry tax of ₹ 61.63 lakh including interest remaining unrealised**

[ACT, Bongaigaon; June 2014]

As per Section 40 of the AVAT Act, 2003<sup>51</sup>, if the AO is satisfied that whole or any part of the turnover of a dealer in respect of any period has been assessed at a rate lower than the rate at which it was assessable, he may within eight years from the end of the relevant year make a reassessment of the dealer. Besides, for delayed payment of tax, interest at 1.5 per cent per month is leviable for delayed payment of tax.

During test check of records in the above Office it was observed that while completing the assessments of a dealer M/s IOC Ltd for the year 2009-10, the AO determined turnover of ₹ 5,318.91 crore being the purchase price of crude oil, plants and machineries, cements and chemicals. However, scrutiny of the case records revealed that the dealer also imported ‘pipes’ and ‘air coolers’ valuing

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Name of the Dealer	Year	Import value disclosed by the dealer	Landing cost of raw material	Turnover escaped	Tax short levied	Interest leviable (from 28.02.2011)	Total payable
(1)	(2)	(3)	(4)	(5)=(4)-(3)	(6)	(7)	(8)=(6)+(7)
M/s Balaji Coke Industry	2005-06	6,86,03,518	14,24,07,455	7,38,03,937	29,52,157	18,15,576	
	2006-07	7,38,78,860	14,25,19,975	6,89,41,115	27,45,644	16,88,571	
	2007-08	10,68,08,095	17,44,18,396	6,76,10,301	27,04,412	16,63,213	
<b>Sub-total</b>		<b>24,92,90,473</b>	<b>45,93,45,826</b>	<b>21,03,55,353</b>	<b>84,02,213</b>	<b>51,67,360</b>	<b>1,35,69,573</b>
M/s G.M Coke Industries	2006-07	4,44,03,950	10,27,80,012	5,83,76,062	23,35,042	14,36,051	
<b>Sub-total</b>		<b>4,44,03,950</b>	<b>10,27,80,012</b>	<b>5,83,76,062</b>	<b>23,35,042</b>	<b>14,36,051</b>	<b>37,71,093</b>
<b>Grand Total</b>					<b>1,07,37,255</b>	<b>66,03,411</b>	<b>1,73,40,666</b>

<sup>51</sup> Assessments under the AET Act, 2001 are to be conducted following same provisions as incorporated in the AVAT Act.

₹ 17.38 crore<sup>52</sup> on which tax of ₹ 37.03 lakh was leviable, which was not done. This resulted in tax of ₹ 37.03 lakh remaining unrealised on which interest of ₹ 21.66 lakh was additionally leviable.

In respect of another dealer M/s North East Gases Pvt. Ltd., it was observed that the dealer imported 'chemicals' valuing ₹ 92.72 lakh during 2008-09, 2009-10 and 2010-11. It was noticed that the dealer neither paid the taxes due on the aforesaid purchase turnover nor was the case scrutinised by the AO. Meanwhile the case had become barred by limitation of time. This resulted in entry tax of ₹ 2.94 lakh<sup>53</sup> including interest remaining unrealised.

On being pointed out, the Department stated (June 2016) that in respect of M/s IOC Ltd., the dealer was re-assessed on the basis of audit observation by raising the turnover of the dealer and M/s North East Gases Pvt. Ltd. had been re-assessed raising demand of ₹ 2.88 lakh (including interest). Report on recovery had not been received (January 2017).

The cases were reported to the Department/Government in August 2014 and followed up in May 2016; their replies have not been received (January 2017).

**2.14 Failure to register two dealers under the AET Act, 2001 resulted in entry tax of ₹ 29.34 lakh (including interest) remaining unrealised**

[ACT, Unit - C, Guwahati; November 2015 - January 2016]

As per Section 9 of the AET Act, 2001 read with the AVAT Act, 2003, if the prescribed authority is satisfied that a dealer who has been liable to pay tax under this Act, in respect of any period has failed to get himself registered, he shall proceed to assess on best judgment basis the amount of tax due from the dealer for any periods. As per Section 39 of the AVAT Act, no assessment<sup>54</sup> shall be made

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Particulars	2009-10		
	Pipe @ 2 per cent	Air cooler @ 4 per cent	Total
Purchase value	16,25,16,566	1,13,04,867	17,38,21,433
Entry Tax leviable	32,50,331	4,52,194	37,02,525
Interest leviable from March 2011 to May 2014 (39 months) @ 1.5 per cent per month			21,65,977

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Particulars	2008-09	2009-10	2010-11	Total
	Chemicals @ 2 per cent			
Purchase value	32,88,499	32,54,054	27,29,951	92,72,504
Entry Tax leviable	65,770	65,081	54,599	1,85,450
Interest for 39 months (calculated from month of March 2011 to May 2014) @ 1.5 per cent per month				1,08,488

<sup>54</sup> Assessments under the AET Act are to be conducted following same provisions as incorporated in the AVAT Act.

after the expiry of five years from the end of the year to which the assessment relates. However, in cases where specific information is available, assessment can be made on best judgment basis under Section 40 of the AVAT Act as a special case within a period of eight years. Interest at 1.5 *per cent* per month is leviable for delayed payment of tax.

During test check of records in the above Office it was observed that two dealers (M/s Ghosh Brothers Motors Pvt Ltd and M/s Sun Calcimates) imported plant and machinery, DG sets, refrigeration equipments etc. from outside the State valuing ₹ 1.74 crore and ₹ 2.26 crore during the years 2008-09 and 2013-14 and between 2005-06 and 2013-14 respectively as per the utilisation statements of declaration forms 'C'/delivery notes submitted by the dealer. It was, however, noticed that the dealers neither sought registration under the AET Act, 2001 nor paid the tax of ₹ 8.70 lakh and ₹ 7.11 lakh respectively payable on the imported turnover. The AO also did not take up the assessments on best judgment basis despite availability of the utilisation statements of declaration forms/declaration notes in the case records which clearly showed import of goods taxable under the AET Act. This resulted in tax of ₹ 15.81 lakh remaining unrealised. Besides, interest of ₹ 13.53 lakh<sup>55</sup> at 1.5 *per cent* per month (from March 2011 till date of Audit) was also leviable. Scope of recovery of tax pertaining to the years prior to 2008-09 is remote as the cases had become time barred and only option is to open the assessment as a special case under Section 40 of the AVAT Act.

On being pointed out, the Department had stated (June 2016) that in respect of M/s Ghosh Brothers Motors Pvt. Ltd., assessment had been completed raising additional demand of ₹ 19.68 lakh including interest. Report on recovery had not been received (January 2017). In case of the other dealer, reply has not been received (January 2017).

The cases were reported to the Department/Government in March 2016 and followed up in May 2016; their replies have not been received (January 2017).

**2.15 Application of incorrect rate of tax resulted in short payment of entry tax of ₹ 13.91 lakh on which interest of ₹ 9.39 lakh was additionally leviable**

*[ACT, Unit – C, Guwahati; November 2015 - January 2016]*

As per Section 9 of the AET Act, 2001 and 2008, a registered dealer liable to pay tax is required to submit to the AO his monthly statement of all such purchase along with a copy of the treasury *challan* showing full payment of tax payable on the purchase value of goods disclosed in the statement. The statement is to be furnished

<sup>55</sup> ₹ 7.34 lakh plus ₹ 6.19 lakh.

before the expiry of the next succeeding month. Interest at 1.5 *per cent* per month is leviable for delayed payment of tax.

During test check of records in the above Office it was noticed that a dealer M/s Vinayak Cement submitted returns for the years 2009-10 to 2011-12, disclosing turnover of ₹ 10.86 crore and paid tax of ₹ 3.68 lakh. It was observed that the dealer disclosed purchase of plant and machinery valuing ₹ 10.31 crore taxable at 0.25 *per cent* and iron and steel valuing at ₹ 54.91 lakh taxable at two *per cent*. Scrutiny of the case records of the dealer revealed that as per the utilisation statements of declaration form 'C' the dealer imported plant and machinery valuing ₹ 98.75 lakh, iron and steel valuing ₹ 7.89 crore and electrical goods valuing ₹ 39.15 lakh which were taxable at the rate of 0.25 *per cent*, two *per cent* and four *per cent* respectively and the tax payable worked out to ₹ 17.59 lakh. Thus, there was mis-classification of goods imported coupled with application of lower rate of taxes by the dealer which resulted in short payment of tax by ₹ 13.91 lakh. For non-payment of tax, interest of ₹ 9.39 lakh (calculated upto the date of audit) was additionally leviable.. The AO could complete the assessment of 2011-12 only while the assessment for the years 2009-10 and 2010-11 had become time barred. The AO was required to exercise special power under Section 40 of the AVAT Act to assess the years 2009-10 and 2010-11 to make good the loss suffered to the State exchequer.

The cases were reported to the Department/Government in March 2016 and followed up in May 2016; their replies have not been received (January 2017).