

***CHAPTER-II***  
***TAXES/VAT ON SALES AND TRADE***



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### **TAXES/VAT ON SALES AND TRADE**

#### **2.1 Tax administration**

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

#### **2.2 Results of Audit**

During 2015-16, test check of records of 15 units relating to VAT/Sales tax assessments and other records revealed under-assessment of tax and other irregularities involving ₹140.82 crore in 381 cases which fall under the following categories as given in **Table-2.1** below.

**Table-2.1: Results of Audit**

Sr. No.	Categories	₹ in crore	
		Number of cases	Amount
1.	Under-assessment of tax	20	2.23
2.	Acceptance of defective statutory C&F forms	36	1.79
3.	Evasion of tax due to suppression of sales/ purchases	34	8.45
4.	Irregular/incorrect/excess allowance of ITC	141	8.26
5.	Application of incorrect rate of tax	27	1.01
6.	Other irregularities	123	119.08
<b>Total</b>		<b>381</b>	<b>140.82</b>

During the year 2015-16, the Department accepted under-assessment and other deficiencies of ₹82.13 crore in 123 cases out of which an amount of ₹13.19 crore was realised in 101 cases of which ₹8.65 crore in 93 cases relate to earlier years and ₹4.54 crore in eight cases relate to the year 2015-16.

Significant cases involving ₹56.76 crore are discussed in the following paragraphs.

### 2.3 Non recovery of the lease money from the lessees

***The Department took no action to recover lease money from lessees of toll barriers amounting to ₹51.40 crore.***

The Himachal Pradesh Tolls Act, 1975, provides for levy and payment of toll on every mechanical vehicle specified in Schedule I to the Act for the use of road infrastructure. Section 3A of the Act stipulates that the State Government may lease to any person the right to collect toll by auction or tender or combination of both or any other mode on such terms and conditions as the Commissioner may determine subject to approval of the State Government.

Under clause 2.3.13 of the lease agreement, the highest bidder of any toll unit shall deposit by way of security an amount equal to 20 *per cent* of the bid amount in the following manner:

- I. 5 *per cent* as bid money or the amount directed to be deposited by the presiding officer as cash down payment at the time of bidding, whichever is higher at the fall of hammer;
- II. 10 *per cent* of bid money within 10 days of the auction or 31<sup>st</sup> March whichever is earlier; and
- III. 5 *per cent* of the bid money/annual lease money within 10 days of the auction or 31<sup>st</sup> March whichever is earlier, in the shape of a revenue deposit or unconditional bank guarantee or FDR as may be directed by the Assistant Excise and Taxation Commissioner (AETC) of the District concerned.

Under clause 2.3.17, the remaining amount i.e. 85 *per cent* of lease money shall be paid by the lessee in 10 equal instalments in case the lease is for a financial year or in such number of instalments as the Excise and Taxation Commissioner may fix. As per clause 2.3.19 in the event of failure to pay an instalment or part thereof by the due date, the lessee shall pay interest on the unpaid amount at the rate of 15 *per cent* per annum for the period of delay up to one month from the date of default and at the rate of 20 *per cent* per annum till the default continues. If the lessee fails to deposit the instalment or instalments plus interest, the Additional/Deputy Excise and Taxation Commissioner will unless he compounds the delay by imposing penalty as provided in terms and conditions, suspend or cancel the lease and the AETC shall initiate recovery proceedings of lease money due including interest and penalty as an arrear of land revenue.

Scrutiny of the records relating to 55 toll barriers under six AETCs revealed that the Department was yet to recover lease money of ₹51.40 crore as per details given in **Table-2.2**.

Table 2.2: District wise details of "Non recovery of the lease money from the lessees"

Sr. No	Name of the District	Period	Amount (₹ in crore)
1.	Solan	2009-10	2.34
		2011-12 to 2012-13	1.90
		2013-14 to 2014-15	9.10
2.	Baddi	2011-12 to 2012-13	5.25
		2013-14 to 2014-15	12.59
3.	Una	2002-03 to 2010-2011	1.48
		2012-13	0.92
4.	Bilaspur	2012-13 to 2015-16	7.16
5.	Nahan	2011-12 to 2014-15	9.94
6.	Nurpur	2010-11 to 2012-13	0.72
<b>Total</b>			<b>₹51.40</b>

Audit observed that the Department not only failed to recover the lease money as per the time schedule prescribed in the Act but even did not maintain the status of recoverable amount on different accounts i.e. interest, penalty, amounts recoverable in respect of other toll barriers, amount recoverable on account of State Excise etc. were clubbed together. As a result, the status of exact recoverable amount from different lessees on different accounts in respect of each toll barriers/group of toll barriers allotted was not ascertainable. Even though the recovery of amount was got approved as arrears of land revenue since long, no concrete action had been initiated either at Departmental level or at the District level to enforce the recovery particularly when the same lessees were having lease rights at other barriers/undertaking other activities with the Department from time to time. This had resulted in accumulation of arrears of lease money amounting to ₹51.40 crore.

On being pointed out, the Department stated (November 2016) that ₹4.42 crore. had been recovered on account of arrears of license fee by AETC Solan and action were being taken to recover the balance amount under the Land Revenue Act.

The matter was reported to the Government in August 2016; its reply was awaited (November 2016).

#### 2.4 Application of incorrect rate of tax

*The Assessing Authority applied incorrect rate of tax of four to 11 per cent instead of applicable rates of five to 30 per cent while finalising assessment of nine dealers during the years 2005-06 to 2013-14 resulting in short realisation of tax amounting to ₹0.54 crore. In addition, interest of ₹0.41 crore was also leviable.*

Schedule A of Section 6 of the HPVAT Act, 2005 provides that tax is leviable on sales made by a dealer. Further, Section 19 of the Act *ibid* provides that if a dealer fails to pay the tax due by the prescribed date, he becomes liable to pay interest at the rate of one *per cent* on the tax due for a period of one month and at the rate of one and a half *per cent* per month thereafter till the default continues.

Scrutiny of records of five AETCs<sup>1</sup> between July 2015 and June 2016 revealed that nine dealers had made intra and inter-state sales amounting to ₹6.54 crore during the years 2005-06 to 2013-14 which was taxable at different rates<sup>2</sup>. The Assessing Authorities (AAs) while finalising the assessments between April 2014 and March 2015 had levied lower rates of four to 11 *per cent* instead of applicable higher rates. Application of incorrect rates resulted in short realisation of tax of ₹0.54 crore<sup>3</sup>. In addition, interest of ₹41.17 lakh was also leviable.

The Department intimated in October 2016 that an additional demand of ₹7.45 lakh had been recovered in two cases and the remaining cases were under process.

The matter was reported to the Government in July 2016; its reply was awaited (November 2016).

## **2.5 Acceptance of invalid, duplicate and defective statutory forms**

*Acceptance of invalid, duplicate and defective statutory forms by Assessing Authorities and allowing concessional rate of tax on inter-state sales resulted in short levy of tax of ₹47.90 lakh in 15 cases. In addition, interest of ₹41.83 lakh was also leviable.*

Form 'C' is issued by a purchasing dealer in two copies marked as 'Original' and 'duplicate'. The copy marked 'original' is enclosed by the selling dealer with his return and the copy marked 'duplicate' is retained by selling dealer in his records. As per Section 12(7) of CST Rules, 1957, the original copy should be used for claiming concessional rate of tax.

Scrutiny of the records of six AETCs (between July 2015 and June 2016) revealed that while finalising the assessments of 15 dealers between April 2014 and March 2015 for the tax periods 2006-07 to 2012-13, the AAs irregularly allowed concessional rate of tax on inter-state sales valued at ₹10.82 crore on Forms 'C' which were either duplicate/incorrectly addressed as detailed in **Appendix-I**. These forms were liable to be rejected at the time of assessments of dealers. Thus, allowance of concession on invalid, duplicate and defective statutory forms resulted in short levy of tax of ₹47.90 lakh. In addition, interest of ₹41.83 lakh was also leviable.

The Department intimated in October 2016 that an additional demand of ₹5.55 lakh was created in two cases out of which ₹4.95 lakh recovered and the action in remaining cases were under process.

The matter was reported to the Government in July 2016; its reply was awaited (November 2016).

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<sup>1</sup> AETCs Baddi, Nahan, Shimla, Solan and Una

<sup>2</sup> Different rates: 5, 12.50, 13.75, 16, 18 and 30 *per cent* (rate of tax 30 *per cent* was applicable upto 20.06.2005 on lime stone)

<sup>3</sup> AETCs Baddi (one dealer: ₹18.89 lakh), Nahan (three dealers: ₹6.79 lakh), Shimla (one dealer: ₹1.67 lakh), Solan (three dealers: ₹14.87 lakh) and Una (one dealer: ₹11.84 lakh)

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## 2.6 Loss of revenue due to non-payment of entry tax

*A dealer had paid entry tax of ₹3.40 crore as against tax payable of ₹6.91 crore resulting in short levy of tax of ₹3.51 crore.*

Section 3(1) of the Himachal Pradesh Tax in Entry of Goods into Local Area Act, 2010 (TEGLA), provides for levy and collection of tax at the rate of one to five *per cent* on entry of the goods in the State. As per Section 12 of TEGLA Act, certain provisions of VAT Act such as filing of returns, levy of penalty, burden of proof and payment of interest are also applicable to TEGLA. Further, Section 13 provides that the authorities empowered under the VAT Act, 2005 shall assess and collect payment of entry tax including interest and penalty.

Scrutiny of the records (March 2016) of Assistant Excise and Taxation Commissioner (AETC) Shimla revealed that AA at the time of finalisation of assessment under HPVAT Act, 2005 did not finalise the assessment for entry tax under TEGLA for the year 2012-13. The assessee had paid entry tax of ₹3.40 crore on purchases of ₹67.58 crore. However, as per details extracted from Himachal Pradesh Tax Administration System (HIMTAS) Software (VAT XXVI-A), total purchases worked out to ₹138.24 crore on which the dealer was liable to pay entry tax of ₹6.91 crore. Thus, not assessing the case under TEGLA for entry tax resulted in short realisation of entry tax of ₹3.51 crore for the year 2012-13. In addition, penalty equal to twice the amount of tax was also leviable.

The matter was reported to the Government in July 2016; its reply was awaited (November 2016).

## 2.7 Incorrect determination of Gross Turnover

*The Assessing Authority during assessment of a dealer for the year 2008-09 excluded the sundry debtors from the Gross Turnover resulting in loss of revenue of ₹0.83 crore. Besides, interest was also leviable.*

Under Section 2 (v) (zd) of the HPVAT Act, 2005 turnover means the aggregate amount of sales, purchases or any part of sales and purchases made by any dealer and includes any sum charged on account of freight, storage, demurrage, insurance and for anything done by the dealer in respect of the goods at the time of or before delivery thereof. Further, under Section 19(1) of the Act *ibid* if any dealer fails to pay the amount of tax due from him, the interest is leviable at the prescribed rates till the default continues.

Scrutiny of assessment records of AETC, Shimla between January and March 2016 revealed that AA had finalised the assessment of a dealer in March 2015 for the assessment year 2008-09 on gross turnover (GTO) of ₹92.36 crore by reducing sundry debtors amounting to ₹6.65 crore which was not permissible for deduction. This short assessment of GTO of ₹6.65 crore resulted in short levy of tax of ₹83.12 lakh<sup>4</sup>. In addition, interest was also leviable on short payment of tax upto 31 March 2016.

<sup>4</sup> 12.5 per cent on ₹6.65 crore

The Department intimated (October 2016) that this amount was not actually received by the dealer and there was only promise of purchase. It occurred due to the fact that the company was following an incorrect method of accounting and now they have dispensed with this accounting method. The reply is not tenable as booking of Sundry Debtors in the accounts was made only on the basis of sales made.

The matter was reported to the Government in April 2016; its reply was awaited (November 2016).