



CHAPTER - II
FINANCE (TAXATION)
DEPARTMENT

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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), Assam 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 clarifications under the Assam Value Added Tax (AVAT) Act, 2003. He is assisted by Additional Commissioners of Taxes, Joint Commissioners of Taxes (JCT), Deputy Commissioners of Taxes (DCT), Assistant Commissioner of Taxes (AsCT), Superintendents of Taxes, Inspectors of Taxes both at the Headquarters and zonal/unit levels. The Commissionerate of Taxes had 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.* 1 May 2005); the Central Sales Tax (CST) Act, 1956; the Assam Entry Tax (AET) Act, 2008 (*w.e.f.* 1 June 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; the Assam Health Infrastructure and Services Development Fund Act (*w.e.f.* 1 July 2015) 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 the '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 although an internal audit wing was created by the Government in May 1988 with staff strength of eight internal auditors in the office of the CT, Assam, no personnel was posted in the wing during 2016-17. This situation defeated the very purpose for which the internal audit wing was created.

2.3 Results of audit

In 2016-17, test check of records of 22 offices (out of total 83 offices) relating to VAT/Sales tax assessments and other records showed turnover escaping assessment of tax and other irregularities involving ₹ 342.49 crore in 303 cases. The details are given in **Table 2.1**.

Table 2.1
Results of Audit

Sl. No.	Categories	Number of cases	Amount (₹ in crore)
Assam Value Added Tax/Central Sales Tax			
1.	Turnover escaping assessment	04	2.88
2.	Irregular grant of Input Tax Credit (ITC)	17	20.22
3.	Concealment of turnover	41	71.23
4.	Short levy of tax and interest	33	22.06
5.	Non-levy of tax and interest	29	6.60
6.	Irregular allowance of concessional rate of tax	18	16.66
7.	Other irregularities	119	181.53
Total		261	321.18
Other Taxes			
1.	Short/non-levy of Entry Tax	15	18.60
2.	Short/non-payment of interest	03	0.12
3.	Short/non-levy of Professional Tax	16	0.36
4.	Other irregularities	08	2.23
Total		42	21.31
Grand Total		303	342.49

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 2.72 crore in 37 cases which were pointed out in audit during 2016-17 and earlier years. An amount of ₹ 0.24 crore was recovered in 13 cases during the year 2016-17 pertaining to earlier years.

A few cases involving ₹ 14.34 crore are discussed in the succeeding paragraphs.

2.4 Compliance Audit observations

Scrutiny of records relating to value added tax (VAT)/central sales tax/entry tax in the Finance (Taxation) Department revealed several cases of provisions of Acts/Rules/departmental orders not being observed and other cases as brought out in the following 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 Secretary 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 : A
VALUE ADDED TAX/CENTRAL SALES TAX

ASSAM VALUE ADDED TAX (AVAT) ACT

Section 40 of the AVAT Act, 2003, provides that where after a dealer is assessed under Section 34, 35, 36 or 37 of this Act for any year or part thereof, the prescribed authority has reason to believe that whole or any part of the turnover of the dealer in respect of any period has (a) escaped assessment; or (b) been under assessed; or (c) been assessed at a rate lower than the rate at which it is assessable; or (d) been wrongly allowed any deduction therefrom; or (e) been wrongly allowed any credit therein, the prescribed authority may, after giving the dealer a reasonable opportunity of being heard and after making such enquiries as he considers necessary, proceed to assess to the best of his judgment, the amount of tax due from the dealer in respect of such turnover, and the provisions of this Act shall, so far as may be, apply accordingly within a period of eight years. Further, Section 30 of the Act *ibid* provides that if any dealer fails to pay the amount of tax due within the time prescribed for its payment, such dealer shall, in addition to the tax, be liable to pay simple interest, at the rate of 1.5 *per cent*, per month on the amount of tax not so paid or on any less amount thereof remaining unpaid during such period.

2.5 Taxable turnover declared as exempted sales

A dealer declared a portion of the taxable turnover as exempted sales resulting in non-levy of tax of ₹ 28.46 lakh on which interest of ₹ 14.70 lakh was additionally leviable

[ACT, Tezpur; November - December 2013]

The item 'De-oiled Rice Bran' was taxable at four *per cent* under Schedule II of the AVAT Act, 2003 upto 30 October 2009 and five *per cent* thereafter.

Audit observed that M/s Sonitpur Solvex Ltd. disclosed total intra-State sales turnover during 2008-09 to 2011-12 as ₹ 16.33 crore out of which the dealer declared ₹ 11.90 crore as exempted sales. Audit noticed that out of ₹ 11.90 crore declared as exempted sales, ₹ 6.29 crore was sales of 'De-oiled Rice Bran' which

was a taxable item. The dealer, thus, misclassified taxable sales aggregating ₹ 6.29 crore as exempted sales which was not detected by the AO during assessment under Section 36 of the AVAT Act, 2003. This resulted in short levy of tax by ₹ 28.46 lakh⁴ and on which interest of ₹ 14.70 lakh (calculated upto November 2013) under Section 30 of the AVAT Act, 2003 was also leviable.

The JCT, Assam stated (September 2017) that the ACT, Tezpur has since assessed the dealer accordingly and issued demand notices for the above mentioned periods. In response, the dealer had filed an appeal before the DCT (Appeal), Nagaon. The petition was turned down and revised petition filed before the CT, Assam was also turned down. The dealer, thereafter, filed an appeal before the Assam Board of Revenue, Guwahati which was also turned down on 11 February 2016. The dealer then filed a revision petition before the Hon'ble Gauhati High Court against the judgement of the Assam Board of Revenue. Further developments in the case was awaited (February 2018).

2.6 Short levy of tax due to misclassification of goods

Failure of the AO to assess the dealers at correct rate of tax resulted in short levy of tax of ₹ 59.52 lakh including interest of ₹ 30.98 lakh

[ACT, Guwahati Unit –A; September - December 2015]

The item 'Chocolate and Bournvita' was taxable at 12.5 per cent upto 30 October 2009 and 13.5 per cent with effect from 31 October 2009 as the item falls under Schedule V⁵ and not under Schedule II⁶ of the AVAT Act, 2003.

2.6.1 Audit observed that M/s Cadbury India Ltd. while submitting the return for the year 2009-10 classified 'Chocolate and Bournvita' under two different Schedules *i.e.* Schedule II and Schedule V and calculated tax at four/five per cent on turnover of ₹ 1.95 crore and at 12.5/13.5 per cent on turnover of ₹ 24.78 crore out of total turnover of ₹ 26.73 crore. This is a case of misclassification of goods. The AO also while assessing the dealer under Section 36 of the AVAT Act, 2003 in January 2011 for the year 2009-10 accepted the application of lower rate of tax. The failure of the AO to assess the dealer at correct rate of tax resulted in short levy of tax of

	(Amount in ₹)				
	2008-09 (@4%)	2009-10 (@4% minimum)	2010-11 (@5%)	2011-12 (@5%)	Total
Turnover of 'De-oiled Rice Bran' declared as exempted sales	97,46,145	2,00,32,100	1,78,18,447	1,52,77,328	6,28,74,020
Tax leviable @ 4 per cent / 5 per cent	3,89,846	8,01,284	8,90,922	7,63,866	28,45,918
Interest leviable @ 1.5 per cent per month upto November 2013	3,21,623 (55 months)	5,16,828 (43 months)	4,14,279 (31 months)	2,17,702 (19 months)	14,70,432

⁵ List of goods taxable at 12.5 per cent upto 30 October 2009 and 13.5 per cent from 31 October 2009 onwards and not covered by any other Schedules as per the AVAT Act, 2003

⁶ List of essential commodities taxable at four per cent upto 30 October 2009 and five per cent from 31 October 2009 onwards.

₹ 16.60 lakh⁷ and on which interest of ₹ 17.83 lakh (calculated upto December 2015) under Section 30 of the AVAT Act, 2003 was also leviable.

The JCT, Assam stated (September 2017) that lower rate of four/five *per cent* were rightly applied on turnover against CSD sales and accordingly, assessment for the year 2009-10 was completed under Section 40 of the AVAT Act, 2003 raising demand of ₹ 57.52 lakh including interest of ₹ 32.56 lakh. However, against claim of CSD sales no documentary evidence has been furnished by the Department. Moreover, turnover on which tax of ₹ 57.52 lakh was levied during assessment under Section 40 was neither mentioned nor furnished by the Department. Thus, in absence of such vital information, it was not clear to Audit how the tax and interest was calculated by the AO as the same had not been matched with the figures mentioned in the Annual Return furnished by the dealer and which was accepted and found correct by the AO during assessment. The status of recovery of tax and interest was awaited (February 2018).

[ACT, Tezpur; November - December 2013]

2.6.2 The item ‘Rusk’ was an unspecified item and taxable at 12.5 *per cent* from 1 May 2005 under Schedule V of the AVAT Act, 2003. The CT, Assam also clarified⁸ in April 2008 that the item ‘Rusk’ was taxable at 12.5 *per cent* under Schedule V.

Audit observed that M/s Shree Krishna Food Products while submitting the returns classified ‘Rusk’ under Schedule II and calculated tax at four *per cent* for the years 2006-07 and 2007-08 on a turnover of ₹ 75.73 lakh and ₹ 64.69 lakh respectively. The AO also while assessing the dealer under Section 36 of the AVAT Act, 2003 in September 2009 and June 2011 for the above mentioned years accepted the application of lower rate of tax at four *per cent* instead of 12.5 *per cent*. Failure of the AO to assess the dealer at correct rate of tax thus resulted in short levy of tax of ₹ 11.94 lakh⁹ and on which interest of ₹ 13.15 lakh (calculated upto November 2013) under Section 30 of the AVAT Act, 2003 was also leviable.

(Amount in ₹)			
	2009-10		Total
	Upto 30 October 2009	From 31 October 2009	
Taxable turnover determined at lower rate	1,40,60,571	54,67,360	1,95,27,931
Tax determinable @ 12.5/13.5 <i>per cent</i>	17,57,571	7,38,094	24,95,665
Tax determined @ 4/5 <i>per cent</i>	5,62,422	2,73,368	8,35,790
Short levy of tax	11,95,149	4,64,726	16,59,875
Interest leviable @ 1.5 <i>per cent</i> per month upto December 2015	13,08,688 (73 m)	4,74,021 (68 m)	17,82,709

⁷ No. CTS-76/2007/32 dated 29 April 2008

(Amount in ₹)			
	2006-07	2007-08 (upto 3 February 2008)	Total
Sale of ‘Rusk’	75,73,240	64,68,954	
Tax determinable @ 12.5 <i>per cent</i>	9,46,655	8,08,619	
Tax determined @ 4 <i>per cent</i>	3,02,930	2,58,758	
Tax short determined	6,43,725	5,49,861	11,93,586
Interest leviable @ 1.5 <i>per cent</i> per month upto November 2013	7,62,814 (79 m)	5,52,610 (67 m)	13,15,424

The JCT, Assam stated (September 2017) that the dealer had deposited tax at four *per cent* by considering the item ‘Rusk’ as ‘a light dry Biscuits’ and there was no short levy of tax. The reply of the Department is not tenable as the CT, Assam had unequivocally clarified in April 2008 that ‘sliced bread’ undergoes a manufacturing process i.e. baking, to produce a new commodity ‘Rusk’ which was taxable at 12.5 *per cent* as it falls under Schedule V of the AVAT Act, 2003.

2.7 Escapement of turnover

Failure of the AO to take into account all available information at the time of assessment resulted in non-detection of escapement of turnover with evasion of tax of ₹ 28.41 lakh

[*ST, Hailakandi; June 2013*]

2.7.1 The item ‘paper’ was taxable at four *per cent* under Schedule II of the AVAT Act, 2003 with effect from 1 May 2005.

M/s Hindustan Paper Corporation Ltd., dealing in manufacture and trading of ‘paper’, disclosed a turnover of ₹ 276.09 crore in its annual return for 2008-09. The AO accordingly completed the assessment in December 2011. Audit however, noticed that the dealer had an actual turnover of ₹ 278.17 crore during 2008-09 as per the audited accounts/Manufacturing Accounts (Annexure-III) attached with the annual return.

Failure of the AO to take into account all available information at the time of assessment under Section 36 of the AVAT Act, 2003 resulted in escapement of turnover of ₹ 2.08 crore which led to short determination of tax of ₹ 8.31 lakh and on which interest of ₹ 6.11 lakh (calculated upto May 2013) under Section 30 of the AVAT Act, 2003 was also leviable.

The JCT, Assam stated (September 2017) that difference between annual return and manufacturing account was due to stock transfer which is not a sale. The reply of the Department is not tenable as the sale of finished goods in manufacturing accounts was declared as ₹ 278.17 crore during 2008-09.

[*ST, Mangaldoi; July 2013*]

2.7.2 The items ‘sauce, jam, pickles, papad’ were taxable at four *per cent* with effect from 8 August 2005 and five *per cent* from 31 October 2009 onwards under Schedule II of the AVAT Act, 2003.

M/s Sanskar Recipes Pvt. Ltd. dealing in manufacture and trading of ‘sauce, jam, pickle, papad’ disclosed in its annual returns a turnover of ₹ 7.30 crore and ₹ 9.83 crore for 2009-10 and 2010-11 respectively. The AO completed the assessment under Section 36 of the AVAT Act, 2003 in August 2011 and April 2013 respectively. Audit observed from the audited accounts that the dealer had an actual turnover of ₹ 8.68 crore and ₹ 10.60 crore in 2009-10 and 2010-11 respectively. Failure of the AO to take into account all available information at the time of assessment resulted in escapement of turnover of ₹ 2.15 crore which led to short determination of tax of ₹ 9.35 lakh¹⁰ on which interest of ₹ 4.64 lakh (calculated upto June 2013) under Section 30 of the AVAT Act, 2003 was also leviable.

The JCT, Assam stated (September 2017) that the audited accounts meant for income tax authorities include the sales of its branch offices outside the State and the audited accounts in forms 47 and 48 under AVAT Act, 2003 reflect the sale of the firm in Assam only. The reply is not tenable as it was silent about the cross-checking of transactions and inspections of accounts, documents of the dealer with its branches outside the State as per Sections 73 and 74 of the AVAT Act, 2003 since the dealer’s principal place of business was registered under the ST, Mangaldoi, Assam.

2.8 Short determination of tax

Assessment done at incorrect rate of tax resulted in short determination of remission amount by ₹ 6.46 crore to an industrial unit

[ST, Mangaldoi; December 2015]

The CT, Assam clarified (March 2007¹¹) that a drink that contains apart from fruit juice, many other ingredients such as sugar, herbs and citric acid cannot be treated as fruit juice and is taxable as unspecified item under Schedule V of the AVAT Act, 2003.

M/s Trinity Fructa Pvt. Ltd. manufactures RTS¹² drinks with product names ‘ORS-L Apple Drink, ORS-L Lemon Drink, ORS-L Plus Orange Drink’.

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(Amount in ₹)

Period	As per Annual Return				Total Sales	Actual Turnover as per Audited Accounts	Suppression of turnover	Short levy of tax	Interest leviable (upto June 2013)
	Manufacturing Unit		Trading						
	Sales turnover under AVAT	Sales turnover under CST	Sales turnover under AVAT	Sales turnover under CST					
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8=7-6)	(9)	(10)
2009-10	4,71,70,929	1,90,95,718	49,22,918	18,44,984	7,30,34,549	8,67,84,695	1,37,50,146	5,50,006	3,13,503 (38 m)
2010-11	7,57,17,281	1,96,15,480	29,36,825	Nil	9,82,69,586	10,59,79,209	77,09,623	3,85,481	1,50,337 (26 m)
Total							2,14,59,769	9,35,487	4,63,840

¹¹ No. CTS-53/2006/44 date 23 March 2007

¹² RTS – Ready to Serve.

The AO assessed the unit under Section 36 of the AVAT act, 2003 for the years 2012-13 to 2014-15 where the dealer had claimed and classified the above drinks as 'Fruit Juice' under Schedule II of the AVAT Act, 2003 and determined tax of ₹ 3.68 crore and granted remission of ₹ 2.91 crore after adjustment of ITC of ₹ 74.78 lakh.

Further, the industrial unit was granted a tax exemption of ₹ 13.60 crore by the Taxation Department under the Assam Industries (Tax Exemption) Scheme, 2009¹³, for the period June 2012 to May 2019 for its finished products. However, as verified by audit from the packaging of the product, the drinks contain purified water, sugar, dextrose, citric acid, potassium chloride, added flavour and synthetic fruit flavour apart from fruit juice (only 10 per cent). Hence, the 'ORS-L' drinks cannot be considered as fruit juices for the purposes of assessment under Schedule II of AVAT Act, 2003. Failure of the AO to verify the veracity of the dealer's claim had resulted in short determination of remission amount to the extent of ₹ 6.46 crore¹⁴.

Thus, due to incorrect determination of tax rate, there has been short determination of the commensurate remission amount to be granted which would lead to M/s Trinity Fructa Pvt. Ltd. availing remission for more number of years than is rightfully due to the unit. This would also lead to loss of state revenue as the State would not be able to collect the full tax amount till the tax exemption limit of ₹ 13.60 crore is exhausted.

The AO admitted (February 2017) that it was wrong to accept the lower rate of tax of 'ORS-L' under Schedule II in the original assessment. In light of the audit observation, the unit was re-assessed and issued (February 2017) demand notice for ₹ 6.52 crore for the years 2012-13 to 2014-15 against sales of 'ORS-L'. The JCT, Assam informed (September 2017) that the dealer preferred a revision petition for the years 2012-13 to 2014-15 before the Revisional Authority. Further development in the matter was awaited (February 2018).

¹³ As per the Assam Industries (Tax Exemption) Scheme, 2009, the industrial unit is entitled to avail remission of 99 per cent of the tax payable in accordance with tax return and the balance one per cent of the tax payable be deposited into the government account.

¹⁴

(Amount in ₹)								
Year	Turnover on which tax levied at lower rate	Tax levied @ 5 %	Adjustment of Input Tax Credit	Remission granted on @ 5% tax rate	Tax Actually leviable @ 13.5%/ 14.5 %	Adjustment of Input Tax Credit	Actual Remission to be granted on @ 13.5%/ 14.5% tax rate	Short determination of remission amount (Col. 8 - Col.5)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
2012-13	19,24,60,546	96,23,027	31,02,220	64,55,599	2,59,82,174	31,02,220	2,26,51,154	1,61,95,555
2013-14	28,11,23,739	1,40,56,187	28,51,918	1,10,92,226	3,79,51,705	28,51,918	3,47,48,789	2,36,56,563
2014-15	26,30,87,030	1,31,54,352	15,23,926	1,15,14,121	3,81,47,619	15,23,926	3,62,57,456	2,47,43,335
Total	73,66,71,315	3,68,33,566	74,78,064	2,90,61,947	10,20,81,498	74,78,064	9,36,57,399	6,45,95,453

2.9 Excess remission of tax

Excess allowance of remission of tax of ₹ 12.99 lakh to an industrial unit and unrealised interest of ₹ 3.90 lakh

[ST, Mangaldoi; December 2015]

The Assam Industries Sales (Tax Exemption for Pipe Line Unit) Orders, 2005 provides that an industrial unit will enjoy benefit of tax remission of 99 *per cent* for a period of nine years subject to a maximum limit of 100 *per cent* of the fixed capital investment. To avail such exemption, the intending industrial unit shall have to obtain an entitlement certificate from the concerned Sales Tax office on the basis of an eligibility certificate issued by the Industries Department.

The CT, Assam in his circular of July 2008 intimated that in a number of cases, the AO irregularly and irresponsibly had allowed more time or financial limit than mentioned in the eligibility certificate issued by the Industries Department. The CT, Assam further directed that in case of units which have exhausted the financial limit or the time period, the due taxes should be realised immediately.

M/s Sunandaram Foods Pvt. Ltd. a manufacturer of ‘cakes’, was granted an eligibility certificate by Industries Department for a period of nine years from May 2007 to May 2016 subject to a maximum capital investment of ₹ 14.75 crore. Taxation Department, on the basis of the eligibility certificate, issued entitlement certificates for granting exemption from tax *w.e.f.* 10 May 2007 to 9 May 2016. Scrutiny of records revealed that the industrial unit enjoyed remission/exemption of ₹ 14.88 crore¹⁵ (upto March 2014) instead of the ceiling of ₹ 14.75 crore resulting in excess remission/non-realisation of tax of ₹ 12.99 lakh and on which interest of ₹ 3.90 lakh (calculated upto December 2015), under Section 30 of the AVAT Act, 2003 was leviable.

The AO while accepting the audit observation stated (February 2017) that the industrial unit was re-assessed under Section 40 of the AVAT Act, 2003 on the basis of which it was determined that the excess remission actually availed by the

¹⁵

Period	(Amount in ₹) Remission availed/allowed
10.05.2007 to 31.03.2008	62,16,509
01.04.2008 to 31.03.2009	93,25,878
01.04.2009 to 31.03.2010	1,47,61,180
01.04.2010 to 31.03.2011	2,19,25,882
01.04.2011 to 31.03.2012	2,80,93,679
01.04.2012 to 31.03.2013	3,04,48,128
01.04.2013 to 31.03.2014	3,80,19,908
Total Remission availed/allowed	14,87,91,164
Less: Maximum ceiling of remission available	14,74,92,083
Excess remission availed	12,99,081
Interest leviable upto December 2015 for 20 months	3,89,724

unit was ₹ 14.16 lakh, on which interest of ₹ 4.25 lakh was charged and accordingly demand notice was issued.

The JCT, Assam, further stated (September 2017) that the dealer filed a revision petition before the Revisional Authority who admitted the petition and stayed (April 2017) the further payment of tax and interest. Further development was awaited (February 2018).

CENTRAL SALES TAX (CST) ACT

As per Section 8 of the CST Act, 1956, as it stood during the relevant years, inter-State sales of goods, to registered dealers supported by valid and duly filled in 'C' form 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. Further, as per Rule 12 of the CST (Registration and Turnover) Rules, 1957 (Amended), 'C' form is to be submitted on quarterly basis from 1 October 2005 onwards. Section 9 of the CST Act, 1956 read with Section 30 of the AVAT Act, 2003 provides that if a dealer fails to pay tax in time he is liable to pay interest at the rate of 1.5 *per cent* per month on the amount of tax not so paid or any less amount thereof remaining unpaid during such period.

The CT, Assam instructed (May and September 1999)¹⁶ all the Assessing Authorities (AAs) to examine very carefully the claims of inter-State sales and to cross verify CST declaration forms submitted by dealers to ensure that no false claim of such inter-State sales is accepted.

Further, the CT, Assam vide circular of August 2014¹⁷ instructed that the AOs should not only rely upon 'C' forms but also verify the actual movement of goods in order to confirm the genuineness of such transactions. In such cases the officers concerned must verify the financial transactions, movement of goods from concerned check-post, relevant excise and other statutory documents and authentication of vehicle numbers.

¹⁶ CT, Assam vide Circular Nos. 14/99 and 5/99 issued on 6 May and 22 September 1999 respectively instructed the AAs to examine very carefully the claims of inter-State sale to neighbouring North Eastern States, while making the assessment and ensure that no false claim of such inter-States sale is accepted. For this purpose, the particulars of the 'C' forms submitted by the dealer have to be cross-verified with concerned transporters and also with records of the nearest check gate.

¹⁷ No. CTS-81/2007/382 dated 8 August 2014

2.10 Incorrect assessment of tax at concessional rate

Grant of concessional rate of tax against fraudulent ‘C’ forms resulted in short levy of tax of ₹ 1.03 crore and on which interest of ₹ 85.13 lakh was leviable

[ST, Mangaldoi; December 2015]

The CT, Assam apprehended¹⁸ (August 2010) that many bonded warehouses were showing local sale of India Made Foreign Liquor (IMFL) as inter-State sale thereby evading tax at 27 per cent over and above the excise duty payable. The CT, Assam hence instructed the AOs not to rely only upon ‘C’ forms produced by the dealer but to insist on proof of receipt of payment of goods, proof of dispatch, proof of payment of freight to transporter, proof of movement through concerned check post, relevant document of importing State, etc.

Under the provision of the AVAT Act, 2003, ‘IMFL, Wine and Beer’ is taxable at 27 per cent under Sl. No. 1 of Schedule V from 1 April 2008.

M/s P. B. Bonded Warehouse dealing in ‘IMFL, Wine and Beer’ was assessed in July 2013 for the year 2010-11 and allowed concessional rate of tax at two per cent on turnover of ₹ 7.14 crore. Audit scrutiny of five ‘C’ forms submitted by the dealer showed that three forms involving turnover of ₹ 4.12 crore were defective/irregular in nature. The purchasing dealer M/s Royal Bonded Ware House, Bordumsa, Changlang¹⁹ though registered under Superintendent of Tax & Excise (STE), Changlang District, Arunachal Pradesh (AP) submitted ‘C’ forms to the selling dealer issued by the STE, Naharlagun, Papum Pare District, AP. Verification through Tax Information Exchange System (TINXSYS) revealed that the purchasing dealer used the CST registration No. 12120079268 of M/s Rankah Enterprise, Injan, Kharsang, Changlang District, AP. The AO failed to detect fraudulent use of declaration forms during his assessment which resulted in short levy of tax of ₹ 1.03 crore²⁰ and on which interest of ₹ 85.13 lakh (calculated upto November 2015) was also leviable.

¹⁸ No. 15/2010 dated 23 August 2010

¹⁹ ‘C’ form Nos. GG 269733, GG 269734 and GG 269735 involving ₹ 57.27 lakh, ₹ 155.85 lakh and ₹ 198.99 lakh respectively issued by the purchasing dealer M/s Royal Bonded Ware House, Bordumsa, Changlang District, AP.

²⁰

	(Amount in ₹)
Irregular allowance of concessional rate on turnover against defective/ irregular ‘C’ forms	4,12,11,715
Tax leviable @ 27 per cent	1,11,27,163
Tax already levied @ 2 per cent	8,08,073
Short levy of tax	1,03,19,090
Interest leviable @ 1.5 per cent per month upto November 2015 for 55 months	85,13,249
Total short levy of tax & interest	1,88,32,339

The AO stated (February 2017) that the dealer was re-assessed in January 2017 consequent on which, total transactions of inter-State sales of ₹ 7.14 crore against five 'C' forms of both the dealers²¹ of AP was rejected as the AO noticed during cross-check with exit checkgate that goods had not crossed the checkgate of Assam. The AO accordingly levied tax of ₹ 1.17 crore and interest of ₹ 84.95 lakh.

JCT, Assam informed (September 2017) that the dealer failed to deposit the demanded tax and interest following which the AO issued arrear certificate for ₹ 1.88 crore to the Recovery Officer for recovery of arrear dues. The report on recovery of arrear dues was awaited (February 2018).

2.11 Incorrect allowance of concessional rate of tax against invalid declaration forms

Three dealers were incorrectly allowed concessional rate of tax against invalid 'C' forms furnished by the purchasing dealers which resulted in short levy of tax of ₹ 96.28 lakh and on which interest of ₹ 46.21 lakh was leviable

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

The CT, Manipur vide Notification of July 2012²² intimated the CTs of all States that every registered dealer shall make online requisition for declaration forms and all offline issuance of these forms shall be discontinued with effect from 30 September 2012. The CT, Manipur further clarified that the declaration forms issued to the dealers prior to the notification *ibid* shall remain valid for use upto 31 October 2012 and any forms remaining unutilised in the custody of the dealers shall stand obsolete and invalid with effect from 1 November 2012.

The item 'Medicine' was taxable at the rate of five *per cent* and the items 'Furniture', 'Washing Machine' and 'Motor Vehicle' were taxable at the rate of 13.5 *per cent* with effect from 31 October 2009.

2.11.1 M/s Glaxosmithkline Pharmaceuticals Ltd. dealing in 'Medicine' made inter-State sales of ₹ 50.78 crore during 2012-13 and claimed concessional rate of tax by submitting manually issued 'C' forms. The AO while assessing the dealer in August 2015 accepted the inter-State turnover and assessed the dealer accordingly. Audit noticed that transactions of ₹ 8.80 crore against six²³ manually issued 'C' forms furnished by the dealers²⁴ of Manipur were invalid since these transactions took place between 15 November 2012 and 30 March 2013, *i.e.*, after 31 October 2012. The AO failed to detect the transactions against these six obsolete and invalid

²¹ M/s Royal Bonded Warehouse, Bordumsa, Changlang and M/s Dekrom Beverages, Banderdewa of AP

²² Tax/4(31)/CST/2012/113 dated 25 July 2012

²³ 95C 0257120, 95C 0271994, 95C 0262038, 95C 0272177, 95C 0271995 and 95C 0262039

²⁴ M/s International Deptl. Store, Imphal, M/s Jaipur Medical Store, Imphal and M/s Khalsa Medicos, Imphal of Manipur.

manually issued forms. This resulted in short levy of tax of ₹ 26.40 lakh²⁵ and on which interest of ₹ 12.67 lakh (calculated upto December 2015) was also leviable.

The JCT, Assam, stated (September 2017) that M/s Glaxosmithkline Pharmaceuticals Ltd. had replaced the defective forms with fresh electronically issued ‘C’ forms issued by the Taxation Authority, Manipur. The reply was not tenable. As per CT, Assam’s guidelines of August 2014, fresh ‘C’ forms alone do not establish the authenticity of the transaction. The details in ‘C’ forms were also not cross-checked as per CT, Assam’s instruction of May and September 1999, with data of the concerned check-post to establish the actual movement of goods. As the reply was silent on such cross-verification, audit could not vouchsafe the authenticity of the inter-State transactions.

2.11.2 M/s Godrej & Boyce Manufacturing Co. Ltd. dealing in ‘Furniture, Washing Machine’ made inter-State sales of ₹ 63.26 crore during 2012-13 and claimed concessional rate of tax by submitting manually issued ‘C’ forms. The AO while assessing the dealer in May 2015 accepted the inter-State turnover and assessed the dealer accordingly. Audit noticed that transactions of ₹ 3.12 crore against three²⁶ manually issued ‘C’ forms furnished by the dealers²⁷ of Manipur were invalid since these transactions took place between 12 January and 31 March 2013, *i.e.*, after 31 October 2012. The AO failed to detect the transactions against these three invalid manually issued forms. This resulted in short levy of tax of ₹ 35.18 lakh²⁸ on which interest of ₹ 16.89 lakh (calculated upto December 2015) was also leviable.

The JCT, Assam, stated (September 2017) that M/s Godrej & Boyce Manufacturing Co. Ltd. had replaced two out of the three invalid forms with the fresh electronically issued ‘C’ forms which were issued by the Taxation Authority, Manipur and paid tax including interest of ₹ 1.54 lakh for short submission of one electronically issued form for ₹ 8.30 lakh. The reply was not tenable. As per CT, Assam’s guidelines of August 2014, fresh ‘C’ forms alone do not establish the authenticity of the

²⁵

(Amount in ₹)

M/s Glaxosmithkline Pharmaceuticals Ltd.	
Gross Invalid Turnover	8,79,83,731
Less u/s 8A	--
Net Turnover	8,79,83,731
Tax leviable @ 5 per cent	43,99,186
Tax levied @ 2 per cent	17,59,674
Short levy of tax	26,39,512
Interest leviable @ 1.5 per cent per month upto December 2015 for 32 months	12,66,965

²⁶ 95C 0268658, 95C 0256896 and 95C 0253210

²⁷ M/s L. Kulabidhu Singh & Co., Imphal, M/s Jalan Electronics, Imphal and M/s Niranjan Electronics, Imphal of Manipur.

²⁸

(Amount in ₹)

M/s Godrej & Boyce Manufacturing Co. Ltd.	
Gross Invalid Turnover	3,12,03,860
Less u/s 8A	6,11,840
Net Turnover	3,05,92,020
Tax leviable @ 13.5 per cent	41,29,922
Tax levied @ 2 per cent	6,11,840
Short levy of tax	35,18,082
Interest leviable @ 1.5 per cent per month upto December 2015 for 32 months	16,88,679

transaction. The details in 'C' forms were also not cross-checked as per CT, Assam's instruction of May and September 1999, with data of the concerned check-post to establish the actual movement of goods. As the reply was silent on such cross-verification, audit could not vouchsafe the authenticity of the inter-State transactions.

2.11.3 M/s Mahindra & Mahindra Ltd. dealing in 'Motor Vehicles' made inter-State sales of ₹ 174.56 crore during 2012-13. The AO while assessing the dealer in November 2015 accepted the turnover and assessed the dealer accordingly. Audit noticed that transactions of ₹ 3.08 crore against four²⁹ manually issued 'C' forms furnished by M/s Nilo Motors, Imphal, Manipur were invalid since these transactions took place between 8 November 2012 and 29 March 2013, *i.e.*, after 31 October 2012. The AO failed to detect the transactions against these four invalid manually issued 'C' forms. This resulted in short levy of tax of ₹ 34.70 lakh³⁰ on which interest of ₹ 16.65 lakh (calculated upto December 2015) was also leviable.

The JCT, Assam stated (September 2017) that the AO re-assessed the dealer on the basis of anomaly noticed by audit. The dealer in turn filed a revision petition before the Revisional Authority. Report on outcome of the revision petition was awaited (February 2018).

2.12 Incorrect grant of concession against invalid and obsolete 'C' forms

Incorrect grant of concession in respect of two dealers against invalid and obsolete 'C' forms led to revenue of ₹ 24.68 lakh not being realised

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

The CT, Nagaland vide Notification of October 2011³¹ intimated to CTs of all States regarding cancellation of a series of 'C' forms as obsolete and invalid with effect from 23 July 2009 as the forms were lost from the custody of the CT.

The items 'Refrigerator', 'Washing Machine', 'Set Top Box' and 'Dish' were taxable at the rate of 13.5 *per cent* as unspecified items under Schedule V of AVAT Act, 2003.

²⁹ 95C 0272163, 95C 0272161, 95C 0272164 and 95C 0272165

³⁰

(Amount in ₹)	
M/s Mahindra & Mahindra Ltd.	
Gross Invalid Turnover	3,07,73,206
Less u/s 8A	6,03,396
Net Turnover	3,01,69,810
Tax leviable @ 13.5 <i>per cent</i>	40,72,924
Tax levied @ 2 <i>per cent</i>	6,03,396
Short levy of tax	34,69,528
Interest leviable @ 1.5 <i>per cent</i> per month upto December 2015 for 32 months	16,65,373

³¹ Notification No. CT/STS/1/01 dated 31 October 2011

2.12.1 The AO while assessing M/s Whirlpool of India Ltd. for the years 2009-10 and 2010-11 on 18 March 2013 allowed concessional rate of tax at two *per cent* on turnover of ₹ 11.56 crore and ₹ 11.71 crore respectively on inter-State sales. Audit noticed that the dealers³² of Nagaland furnished 18³³ ‘C’ forms involving turnover of ₹ 63.71 lakh³⁴ which were among the series of forms declared invalid by the CT, Nagaland. The AO, however, failed to detect these invalid declaration forms while completing the assessment and incorrectly allowed concessional rate on these forms. This resulted in short levy of tax of ₹ 7.18 lakh³⁵ and on which interest of ₹ 7.06 lakh (calculated upto December 2015) was also leviable.

The JCT, Assam stated (September 2017) that ACT, Guwahati Unit-C re-assessed M/s Whirlpool of India Ltd. for the years 2009-10 and 2010-11. In response, the dealer preferred an appeal petition and the appellate authority accepted the fresh ‘C’ forms submitted by the dealer consequent on which, the appellate authority re-assessed the dealer. Reply was not acceptable as ‘C’ forms furnished by the dealer at the time of original assessments were not issued to any dealer of Nagaland as these forms were lost from the custody of the Taxation authority of Nagaland. Acceptance of ‘C’ forms was irregular as per CT, Assam’s guidelines of August 2014, fresh ‘C’ forms alone do not establish the authenticity of the transaction. The details in ‘C’ forms were also not cross-checked as per CT, Assam’s instruction of May and September 1999, with data of the concerned check-post to establish the actual movement of goods. As the reply was silent on such cross-verification, audit could not vouchsafe the authenticity of the inter-State transactions.

2.12.2 The AO while assessing M/s Dish TV India Ltd. for the year 2010-11 on 24 February 2014 allowed concessional rate of tax at two *per cent* on turnover of ₹ 4.15 crore on inter-State sales. Audit noticed that the dealer³⁶ of Nagaland furnished four³⁷ ‘C’ forms involving turnover of ₹ 50.33 lakh which were among the series of forms declared invalid by the CT, Nagaland. The AO, however, failed to detect these invalid declaration forms while completing the assessment and incorrectly allowed concessional rate on these ‘C’ forms. This resulted in short levy

³² M/s Digital Electronics, Dimapur, M/s Panickers Enterprise, Dimapur and M/s Shree Ganesh Enterprise, Dimapur of Nagaland.

³³ 2009-10 : NL 098336, NL 098339, NL 098340 to NL 098341, NL 098420 to NL 098422 and NL 098580 to NL 098583 = 11 forms and 2010-11 : NL 098342 to NL 098343, NL 098347 to NL 098348, NL 098578 to NL 098579 and NL 098584 = 7 forms.

³⁴ 2009-10 : ₹ 50.57 lakh and 2010-11 : ₹ 13.14 lakh

(Amount in ₹)			
M/s Whirlpool of India Ltd.			
Particulars	2009-10	2010-11	Total
Gross Turnover	50,57,079	13,13,939	
Less under Section 8A	99,158	25,763	
Taxable Turnover	49,57,921	12,88,176	
Tax leviable @ 13.5 <i>per cent</i>	6,69,319	1,73,904	
Tax paid @ 2 <i>per cent</i>	99,158	25,763	
Short levy of Tax	5,70,161	1,48,141	7,18,302
Interest leviable @ 1.5 <i>per cent</i> per month upto December 2015	5,81,564 (68 months)	1,24,438 (56 months)	7,06,002

³⁶ M/s C. K. Enterprise, Dimapur, Nagaland.

³⁷ 2010-11: NL 099180 to NL 099183 = 4 forms.

of tax of ₹ 5.67 lakh³⁸ and on which interest of ₹ 4.77 lakh (calculated upto December 2015) was also leviable.

The JCT, Assam stated (September 2017) that ACT, Guwahati Unit-C accepted fresh 'C' forms in lieu of invalid forms for commensurate amount. The ACT, Guwahati Unit-C also claimed that there was no loss of revenue as fresh 'C' forms were genuine. Reply was not acceptable as 'C' forms furnished by the dealer at the time of original assessments were not issued to any dealer of Nagaland as these forms were lost from the custody of the Taxation authority of Nagaland. Acceptance of 'C' forms was irregular as per CT, Assam's guidelines of August 2014, fresh 'C' forms alone do not establish the authenticity of the transaction. The details in 'C' forms were also not cross-checked as per CT, Assam's instruction of May and September 1999, with data of the concerned check-post to establish the actual movement of goods. As the reply was silent on such cross-verification, audit could not vouchsafe the authenticity of the inter-State transactions.

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(Amount in ₹)

M/s Dish TV India Ltd.	
Particulars	2010-11
Gross Turnover	50,33,047
Less under Section 8A	98,687
Taxable Turnover	49,34,360
Tax leviable @ 13.5 per cent	6,66,139
Tax paid @ 2 per cent	98,687
Short levy of Tax	5,67,452
Interest leviable @ 1.5 per cent per month upto December 2015	4,76,660 (56 months)

**SECTION : B
OTHER TAXES**

ASSAM ENTRY TAX (AET) ACT

The Assam Entry Tax (AET) Act was enacted on 1 June 2008 and came into force retrospectively from 1 October 2001. Section 2(1)(c) of AET Act, 2008 defines ‘Entry Tax’ as a tax on the entry of goods into Assam for consumption, use or sale. As per Section 2(1)(f) of the AET Act, 2008, ‘import/purchase value’ determined on the basis of the value of goods specified in the Schedule, appended with the Act, as 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. Section 9 of the AET Act, 2008 stipulates that the applicability of certain sections of AVAT Act, 2003 and Rules made thereunder, orders, notifications issued thereunder shall *mutatis mutandis* apply to an importer in respect of Entry Tax levied and payable under this Act.

2.13 Non-realisation of government revenue

Failure of the AO to timely issue arrear certificates for ₹ 2.16 crore in spite of issuance of demand notices allowed the dealers to take the benefit of the Assam Taxation (Liquidation of Arrear Dues) (Amendment) Act, 2016, which resulted in non-realisation of government revenue to the tune of ₹ 67.18 lakh

Section 9 of the AET Act, 2008 read with Section 43 of the AVAT Act, 2003 requires every registered dealer to submit a return of turnover under Section 29 of AVAT Act, 2003 and to pay the admitted tax within the prescribed date. The Acts further provide that if the dealer fails to pay the tax demanded within one month from the date of service of demand notice, the AO would proceed to recover the dues as arrears of land revenue. The AET (Amendment) Act, 2011 further provides that if a dealer fails to pay tax in time, he is liable to pay interest³⁹ at the rate of 1.5 *per cent* per month on the amount of tax not so paid or on any less amount thereof remaining unpaid during such period.

The CT, Assam in August 2009⁴⁰ directed all the AAs to take immediate steps to realise Entry Tax in respect of coke units bringing coal from outside the State (mostly from Meghalaya) to produce coke.

³⁹ Notified vide Government notification No. LGL.3/2007/97 dated 28 February 2011.

⁴⁰ Circular No. 22/2009 dated 1 August 2009.

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

2.13.1 Audit observed that the AO assessed M/s J. D. B. Coke in November 2009 and raised demand of ₹ 1.56 crore as Entry Tax for 2005-06, 2006-07 and 2007-08. After issue of demand notices on 23 November 2009, the dealer made payment of ₹ 78.20 lakh but failed to pay the remaining Entry Tax of ₹ 78.20 lakh. The AO, however, did not initiate any further steps to realise the balance amount as arrears of land revenue through *Bakijai*⁴¹ process.

The non-initiation of action by the AO as per provision of the Acts and CT's instruction resulted in non-realisation of revenue of ₹ 78.20 lakh⁴² on which interest of ₹ 68.04 lakh was also realisable.

The JCT, Assam stated (September 2017) that the dealer had taken recourse under the Assam Taxation (Liquidation of Arrears Dues) (Amendment) Act, 2016⁴³. Under the said Act, the dealer opted to pay the balance arrear of Entry Tax of ₹ 78.20 lakh before 31 December 2016⁴⁴ and paid accordingly. The dealer also paid interest of ₹ 8.31 lakh being 10 *per cent* of up-to-date interest of ₹ 83.09 lakh calculated by the ACT, Guwahati Unit-C and availed relief of 90 *per cent* under the scheme.

Thus, non-initiation of timely action by the ACT paved the way for the dealer to take benefit under the aforementioned Act and resulted in loss of revenue of ₹ 59.73 lakh (as calculated by audit upto December 2015) being interest amount due to the Government exchequer on account of arrear of Entry Tax which otherwise would have been payable.

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

2.13.2 Audit observed that the AO assessed M/s Balaji Coke Industry in October 2009 and raised demand of ₹ 99.72 lakh as Entry Tax for 2005-06, 2006-07 and 2007-08. After issue of demand notices on 13 October 2009, the dealer made payment of ₹ 50 lakh but failed to pay the remaining amount of ₹ 49.72 lakh. The AO, however, did not initiate any further steps to realise the balance dues as arrears of land revenue through *Bakijai* process.

⁴¹ *Bakijai* is a process of realisation of Government revenue as arrears of land revenue through issuance of warrant, arrest, detention, attachment of property etc. of defaulting person by a *Bakijai* Officer

⁴²

	2005-06	2006-07	2007-08	Total
Tax levied as per demand notice	63,08,692	40,76,467	52,55,702	1,56,40,861
Tax already paid for all the periods	31,54,346	20,38,233	26,27,851	78,20,430
Balance Payable	31,54,346	20,38,234	26,27,851	78,20,431
Interest leviable for the balance payable from 28 February 2011 to 31 December 2015 (58 months)	27,44,281	17,73,263	22,86,230	68,03,774

⁴³ The Assam Taxation (Liquidation of Arrears Dues) (Amendment) Act, 2016 came into effect from 26 August 2016.

⁴⁴ The Assam Taxation (Liquidation of Arrears Dues) (Amendment) Act, 2016 specified that if 100 *per cent* of due tax has been paid on or before 31 December 2016 then 10 *per cent* of interest on the amount of due tax is to be paid.

The non-initiation of action by the AO as per provision of the Acts and CT's instruction resulted in non-realisation of revenue of ₹ 49.71 lakh⁴⁵ on which interest of ₹ 20.51 lakh was also realisable (calculated upto June 2013).

The JCT, Assam stated (September 2017) that the dealer had taken recourse under the Assam Taxation (Liquidation of Arrears Dues) (Amendment) Act, 2016. Under the said Act, the dealer opted to pay the balance arrear of Entry Tax of ₹ 49.72 lakh before 21 March 2017⁴⁶ and paid accordingly. The dealer also paid ₹ 13.05 lakh being 25 per cent of up-to-date interest of ₹ 52.20 lakh calculated by the ACT, Guwahati Unit-C and availed relief of 75 per cent under the scheme.

Thus, non-initiation of timely action by the ACT paved the way for the dealer to take benefit under the aforementioned Act and resulted in loss of revenue of ₹ 7.46 lakh (as calculated by audit upto June 2013) being interest amount due to the Government exchequer on account of arrear of Entry Tax which otherwise would have been payable.

2.14 Evasion of Entry Tax

Failure of the AO to co-relate records led to non-detection of concealment of taxable import resulted in short levy of Entry Tax of ₹ 32.55 lakh

[ACT, Guwahati Unit –A; September - December 2015]

Section 9 of the AET Act, 2008 read with Section 40 of the AVAT Act, 2003 provides that if the prescribed authority has reason to believe that any part of the turnover has 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. The AET (Amendment) Act, 2011 further provides that if a dealer fails to pay tax in time, he is liable to pay interest⁴⁷ at the rate of 1.5 per cent per month on the amount of tax not so paid or on any less amount thereof remaining unpaid during such period.

The item 'lime stone' was taxable at four per cent *w.e.f.* 3 December 2005 and 'clinker' was taxable at eight per cent *w.e.f.* 20 December 2005 under the AET Act, 2008.

⁴⁵

(Amount in ₹)

Assessment year	Tax Assessed	Tax Paid	Balance tax payable	Interest for the balance payable from 28 February 2011 to 1 June 2013 (upto the date of issue of reminder by the AO)	Total dues
2005-06	27,44,140	13,75,000	13,69,140	5,64,770	19,33,910
2006-07	29,55,154	14,80,000	14,75,154	6,08,501	20,83,655
2007-08	42,72,324	21,45,000	21,27,324	8,77,521	30,04,845
Total	99,71,618	50,00,000	49,71,618	20,50,792	70,22,410

⁴⁶ The Assam Taxation (Liquidation of Arrears Dues) (Amendment) Act, 2016 specified that if 100 per cent of due tax has been paid on or before 21 March 2017 then 25 per cent of interest on the amount of due tax is to be paid.

⁴⁷ Notified vide Government notification No. LGL.3/2007/97 dated 28 February 2011.

M/s Barak Industries Limited engaged in manufacture of ‘cement’ was assessed in June 2013 for the years 2006-07, 2007-08 and 2008-09. The AO determined taxable import of ‘lime stone’ and ‘clinker’ as ₹ 1.56 crore. Audit scrutiny of the Profit & Loss accounts attached with the audited accounts indicated that the dealer actually imported ‘lime stone’ and ‘clinker’ from outside the State worth ₹ 7.79 crore. The information on import of taxable goods was available in the case records. The AO, however, failed to co-relate the records which resulted in underassessment of taxable import of ₹ 6.23 crore and consequent short collection of Entry Tax of ₹ 32.55 lakh⁴⁸ for which interest of ₹ 27.83 lakh (calculated upto November 2015) was also leviable.

The JCT, Assam stated (September 2017) that the AO re-assessed the dealer in December 2016 under Section 40 of the AVAT Act, following which the dealer paid the demanded tax of ₹ 24.88 lakh under the Assam Taxation (Liquidation of Arrear Dues) (Amendment) Act, 2016⁴⁹ for the year 2007-08 and 2008-09 before 31 December 2016⁵⁰ and paid interest of ₹ 2.39 lakh being 10 per cent of demanded interest of ₹ 23 lakh and availed relief of 90 per cent under the scheme. The Department also stated that assessment was not done for the year 2006-07 as it had become time barred. Non-initiation of timely action by the taxation authority thus resulted in loss of revenue of ₹ 14.23 lakh (including interest) pertaining to the year 2006-07.

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(Amount in ₹)

	2006-07	2007-08		2008-09		Total
	Lime Stone	Lime Stone	Clinker	Lime Stone	Clinker	
	@4%	@4%	@8%	@4%	@8%	
Import value of goods as per Profit & Loss Accounts	2,12,38,375	1,82,34,856	1,13,12,224	1,00,44,010	1,70,82,124	7,79,11,589
Import value brought to assessment	20,62,500	24,50,238	92,91,544	18,30,983	NIL	1,56,35,265
Turnover escaped assessment	1,91,75,875	1,57,84,618	20,20,680	82,13,027	1,70,82,124	6,22,76,324
Tax leviable	7,67,035	6,31,385	1,61,654	3,28,521	13,66,569	32,55,164
Total Tax leviable during the year	7,67,035	7,93,039		16,95,090		
Interest from 28/2/2011 to 11/2015 (57 months)	6,55,815	6,78,048		14,49,302		27,83,165

⁴⁹ The Assam Taxation (Liquidation of Arrears Dues) (Amendment) Act, 2016 came into effect from 26 August 2016.

⁵⁰ The Assam Taxation (Liquidation of Arrears Dues) (Amendment) Act, 2016 specified that if 100 per cent of due tax has been paid on or before 31 December 2016 then 10 per cent of interest on the amount of due tax is to be paid.

2.15 Loss of revenue due to non-levy of Entry Tax

Non-registration of a dealer under the Assam Entry Tax Act resulted in loss of revenue of ₹ 8.60 lakh

[ACT, Guwahati Unit– D; April - June 2014]

As per Section 9 of the AET Act, 2008 read with Section 29 of the AVAT Act, 2003, every registered dealer liable to pay tax under the Act shall submit to the Assessing Officer his monthly statement of such purchase along with the evidence of payment of tax before the expiry of the next succeeding month. As per Rule 5(3) of the AET Rules, 2008, an unregistered dealer liable to pay tax shall submit a statement of purchase along with evidence of payment of tax within ten days of purchase of such goods and the AA shall verify the correctness of the statement soon after its submission. The CT, Assam instructed (January 2007) all the AAs to complete scrutiny of returns within 15 days of filing of such return.

The item ‘chemical’ was taxable at two *per cent* during the relevant periods under the AET Act, 2008.

Audit observed that M/s Excellent Foams Pvt. Ltd, manufacturer of ‘foams’, imported ‘chemicals’ from outside the State valued at ₹ 4.30 crore⁵¹ between 2005-06 and 2008-09. Despite the fact that the item ‘chemicals’ was taxable under the AET Act, 2008, the dealer had not applied for registration under the AET Act, 2008. The dealer had also not paid the due tax of ₹ 8.60 lakh on the turnover of ₹ 4.30 crore on the imported goods. The information on import of taxable goods was available in the Entry Tax case records. The AO, however, did not initiate any action to register the dealer and assess the entry tax payable on best judgment basis as per the extant provisions. The dealer, thus, evaded entry tax of ₹ 8.60 lakh. The dealer intimated on 12 June 2013 to the ACT, Guwahati Unit-D that he had discontinued his business. The AO thus has the only option of resorting to assess the dealer under Section 40 of the AVAT Act, 2003 read with AET Act, 2008 and proceed to recover the tax through recovery proceedings.

The JCT, Assam stated (September 2017) that the ACT, Guwahati Unit-D directed the area Inspector of Taxes to submit report about the existence of the dealer. The Department also directed the area Inspector of Taxes to make efforts to realise the entry tax. Report on recovery of dues was awaited (February 2018).

⁵¹ 2005-06 : ₹ 1,39,94,988; 2006-07 : ₹ 1,26,29,566; 2007-08 : ₹ 1,54,00,348 and 2008-09 : ₹ 9,51,386.

