

Chapter - II
Taxes/VAT on Sales and Trade

Chapter-II

Taxes/VAT on Sales and Trade

2.1 Tax administration

The Financial Commissioner Taxation and Principal Secretary to the Government of Punjab is overall in-charge of the Department of State Taxes. The Department administers Goods and Services Tax as well as Punjab Value Added Tax Act (PVAT Act)/Central Sales Tax Act (CST Act) in the State subject to overall control and superintendence of the Commissioner of State Tax (CST) with the help of Additional Commissioners of State Tax (Addl. CSTs), Joint Commissioners of State Tax (JCSTs) at the Headquarters, Deputy Commissioners of State Tax (DCSTs) at the divisional level and Assistant Commissioners of State Tax (ACSTs), State Tax Officers (STOs) and other allied staff at the district level. The authorities performing duties within jurisdictions as specified by the Government under the PVAT Act are called Designated Officers (DOs).

2.2 Results of audit

There were 57 auditable units in the Department consisting of 26 district offices of ACSTs, 14 mobile wings and 17 Information Collection Centre (ICC) barriers. Out of these, audit selected 46¹ units for test check during the year 2018-19. Test check of 14,531 cases out of the total 37,957 cases of assessment and refund showed under-assessment of tax, excess allowance of input tax credit and other irregularities of ₹ 130.40 crore in 3,910 cases (1.17 per cent of receipt of ₹ 11,160.30 crore under VAT for the year 2017-18 audited in 2018-19) which fell under the following categories:

Table 2.1: Results of Audit

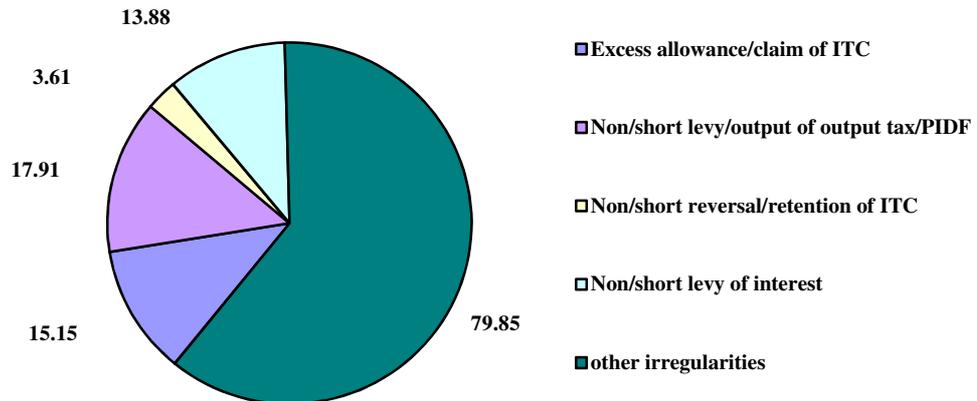
Sl. No.	Categories	No. of cases	Amount (₹ in crore)
1.	Excess allowance/claim of ITC	2,437	15.15
2.	Non/short levy /output tax/PIDF	53	17.91
3.	Non/Short reversal of ITC/Short retention of ITC	52	3.61
4.	Non/Short levy of interest	111	13.88
5.	Other irregularities	1,257	79.85
Total		3,910	130.40

Category-wise audit findings noticed under Taxes/VAT on Sales and Trade are depicted in **Chart 2.1**.

¹ 26 district office, 3 mobile wings and 17 ICC barriers.

Chart-2.1

(₹ in crore)



Audit had pointed out similar omissions in the earlier years also. However, these irregularities were again noticed during 2018-19. The Department accepted and recovered ₹ 4.08 lakh in three cases which were pointed out during 2018-19.

Significant cases (eight) having a financial implication of ₹ 17.81 crore are discussed in the following Paragraphs 2.3 to 2.10.

2.3 Irregular concession/exemption from tax

In four Assistant Commissioner of State Taxes, the Designated Officers allowed irregular exemption/concession of ₹ 0.61 crore on the basis of 19 non-genuine ‘C’ forms which were not obtained from prescribed authority of the concerned State.

Scrutiny of records of four² Assistant Commissioners of State Tax (ACSTs) relating to VAT showed that the Designated Officers allowed exemption/concession from Central Sales Tax (CST) without ensuring genuineness of ‘C’ forms as detailed in the following paragraphs:

a) Exemption from Central Sales Tax

Section 6(2) of the CST Act 1956 read with the Rules 12(1) and 12(4) of the CST (Registration and Turnover) Rules, 1957, provides that during movement of goods occasioned due to an inter-state sale, any subsequent sale (sale-in-transit) effected by transfer of documents of title to such goods to a registered dealer shall not be exempt from tax unless the dealer making such subsequent sale furnishes to the prescribed authority (a) Form E-I obtained from the person from whom the goods were purchased inter-state and (b) Form ‘C’ from the registered person to whom subsequent sale was made during the movement of the goods.

Scrutiny of records in Assistant Commissioner of State Tax (ACST) Ludhiana-II, revealed that the Designated Officer, while assessing (November 2017) a dealer for the year 2010-11, allowed exemption from CST

² Kapurthala, Ludhiana-I, Ludhiana-II and Ludhiana-III.

on transit sale of ₹ 7.61 crore on the basis of 3 'E-I' and 3 'C' forms. The E-I forms were issued by the dealer of Jammu and Kashmir and the 'C' forms were issued by the dealer of UT of Chandigarh. Scrutiny of the forms showed that the name of the dealer mentioned in these forms was partly different from the name of the assessee. Audit got these 'C' forms verified from issuing authority (UT of Chandigarh) to ascertain the genuineness of the forms. On cross verification from the issuing authority, it was found that these 'C' forms were not issued to the dealer who supplied the forms to the assessee. Thus, the DO allowed the exemption without ensuring the genuineness of the forms. The irregular exemption resulted in short levy of tax of ₹ 0.42 crore³ at the rate of 5.50 per cent.

b) Concession of Central Sales Tax

Section 8(4) of the CST Act 1956 read with Rule 12(1) of CST (Registration and Turnover) Rules, 1957, provides that the concessional rate of tax of two per cent shall not be admissible unless the selling dealer furnishes a declaration in Form 'C' duly filled in and signed by the registered dealer to whom the goods are sold, in a prescribed form obtained from the prescribed authority.

Scrutiny of the records in four⁴ ACST, revealed that the Designated Officers (DOs) while assessing the case of four dealers allowed concessional rate of CST of two per cent on 16 'C' forms who sold goods worth ₹ 5.41 crore to dealers of Chandigarh, Haryana and Uttar Pradesh. On cross verification from the issuing States, it was found that these 'C' forms were not genuine and were not issued by the prescribed authority. The DOs allowed the concession without ensuring that the forms were valid. CST of ₹ 30.05 lakh was leviable on these goods at normal rate of tax whereas CST of ₹ 10.83 lakh was levied. This irregular allowance of concessional rate of tax, resulted in short levy of tax of ₹ 0.19 crore as detailed below:

No. of C Forms objected	Value of goods (₹)	Rate of CST leviable	CST Leviable	Rate of CST levied	CST Levied	Short levy of tax
4	1,01,09,177	4.50	4,54,913	2	2,02,184	2,52,729
7	2,06,66,133	5.50	11,36,637	2	4,13,323	7,23,314
5	2,33,69,799	6.05	14,13,873	2	4,67,396	9,46,477
16	5,41,45,109		30,05,423		10,82,903	19,22,520

The matter was reported to the Department/ Government in January 2019, April 2019, July 2019 and April 2020; their replies were awaited (December 2020).

The Government may direct the Department to recover ₹ 0.61 crore from the assesseees in the cases referred to in this paragraph. Additionally, the Government should evolve a system (preferably IT based), where the forms

³ ₹ 7,60,52,388 x 5.5 per cent = ₹ 41,82,881.

⁴ Kapurthala, Ludhiana-I, Ludhiana-II and Ludhiana-III.

based on which concessions are availed, are invariably cross checked for their genuineness from State/dealers issuing these forms.

2.4 Short reversal of input tax credit on tax free sale

In ACST Ludhiana-II, input tax credit of ₹ 0.57 crore was reversed on account of tax free sale against the reversible ITC of ₹ 1.02 crore, resulting in short levy of tax of ₹ 0.45 crore.

Section 13 of the PVAT Act provides that VAT paid on local purchase of goods is available as input tax credit. Section 13-A of the Act provides that the entry tax⁵ paid would be admissible as ITC subject to the provisions of the Act. Section 13(5)(h) of the Act provides that a taxable person shall not qualify for ITC on goods used in manufacture, processing or packing of tax free goods and proportionate input tax is required to be reversed.

Scrutiny of records of ACST Ludhiana-II, showed that a dealer had shown gross sale of ₹ 49.72 crore for the year 2010-11, out of which there was tax free sale of ₹ 34.80 crore⁶ (70 per cent). Gross purchase of the dealer was ₹ 42.53 crore, out of which ₹ 3.17 crore was tax free purchase and ₹ 4.92 crore was purchased from person other than taxable person. While assessing the case (October 2017), the DO reversed ITC of ₹ 0.57 crore only from the available ITC of ₹ 1.58 crore, against the reversible ITC of ₹ 1.02 crore⁷ on account of manufacturing of tax free goods. This short reversal of ITC of ₹ 0.45 crore, resulted in short levy of tax of ₹ 0.45 crore.

The matter was reported to the Department/Government in February 2020 and April 2020; their replies were awaited (December 2020).

The Government may direct the Department to recover ₹ 0.45 crore in this case.

2.5 Non-recovery of interest on delayed deposit of TDS

ACST, Faridkot did not recover interest of ₹ 20.29 lakh from a contractee for delayed deposit of TDS of ₹ 1.44 crore.

Section 27(1) of the PVAT Act, authorises a contractee to deduct an amount equal to six per cent of sum payable to a contractor for discharge of any liability under works contract exceeding ₹ 5 lakh. Section 27(7) of the PVAT Act 2005 read with Rule 46(3) of PVAT Rules, 2005 provides that if any contractee after deducting the amount, fails to deposit the same into the Government Treasury within 15 days of close of the month, he shall be liable to pay simple interest at the rate of one and half per cent per month on the amount deducted from the actual date of deduction to the date on which such amount is actually deposited.

⁵ Entry tax is tax paid to the State of Punjab on interstate purchase of goods.

⁶ Local tax free sale ₹ 7.87 crore + interstate tax free sale of ₹ 26.93 crore.

⁷ Audit calculated the ITC availed on local and interstate purchases used in manufacture of tax free goods on proportionate basis.

Audit noticed from three assessment cases of a contractor for the years 2013-14 to 2015-16, finalised in July 2017 under Assistant Commissioner of State Tax (ACST) Faridkot, that a contractee had deducted TDS of ₹ 1.95 crore from the bills of the contractor, between May 2013 and February 2016. The TDS of ₹ 1.95 crore was required to be deposited by the contractee within 15 days of close of the respective months. However, the contractee deposited ₹ 1.44 crore out of TDS of ₹ 1.95 crore with delay ranging between 2 and 22 months (*Appendix 2.1*). Interest of ₹ 20.29 lakh was recoverable from the contractee for delayed deposit of TDS. The Department did not recover the interest of ₹ 20.29 lakh.

ACST Faridkot replied (March 2019) that the contractee had started following system of e-payment (CMP system) and no other means of payment was being followed. The contractee had no information regarding any bank account number of the Department in which it could deposit the TDS using system of e-payment. The Department opened a bank account in the name of ETO Faridkot in State Bank of Patiala, Faridkot and intimated the contractee in August 2015. The contractee deposited the TDS in the bank account in September 2015 and the amount was subsequently deposited by the Department in Government Treasury. In view of the above facts, no case was made out of it.

However, audit noticed that intimation regarding inability to deposit the TDS using conventional method was made by the contractee to the Department on 25 March 2015 only whereas TDS from May 2013 onwards was pending with the contractee for deposit in the Government Account. The contractee neither deposited the TDS in time nor intimated the Department well in time about its inability to deposit the TDS using conventional method for prompt disposal of the case. The delay in deposit of TDS is attributable to the contractee but the Department did not recover interest of ₹ 20.29 lakh.

The matter was reported to the Department/ Government in July 2019 and April 2020; their replies were awaited (December 2020).

The Government may direct the Department to recover interest of ₹ 20.29 lakh from the contractee in this case.

2.6 Non-creation of tax demand

In ACST Mohali, the DO, instead of creating additional tax demand, reduced the amount of unutilised ITC for the year 2010-11 from ₹ 4.58 crore to ₹ 3.67 crore, whereas ITC of ₹ 4.58 crore was already utilised by the dealer in 2011-12, resulting in short levy of tax of ₹ 0.91 crore.

Section 2(zc) of the PVAT Act, 2005 provides that a return is a true and correct account of business pertaining to the return period in the prescribed form. Further, Rule 48(1) of PVAT Rules 2005 provides that the Designated Officer (DO) after considering the objections and documentary evidence, if any, filed by the person, shall pass an order of assessment in writing, determining the tax liability of such a person.

In Assistant Commissioner of State Tax (ACST), Mohali, scrutiny of a dealer for the year 2010-11, assessed in November 2017, showed that the assessee in his annual return for the year 2010-11 had computed ₹ 4.58 crore as unutilised ITC and had utilised this amount in the annual return for the year 2011-12. It was further noticed that, on the basis of unutilised ITC of VAT regime brought forward from previous years, the dealer had claimed (October 2017) tax credit of ₹ 6.87 crore in Goods and Services Tax (GST) regime.

At the time of assessment, the DO computed additional tax liability of ₹ 0.91 crore⁸. The DO was required to create additional tax demand of ₹ 0.91 crore by matching the ITC carry forward ₹ 4.58 crore with annual return as this amount had already been considered while claiming tax credit in GST regime. However, the DO, instead of creating additional tax demand of ₹ 0.91 crore, reduced the amount of unutilised ITC from ₹ 4.58 crore to ₹ 3.67 crore, which resulted in short levy of tax of ₹ 0.91 crore.

The matter was reported to the Department/ Government in February 2019 and April 2020; their replies were awaited (December 2020).

The Government may direct the Department to realise tax of ₹ 0.91 crore by correcting the omission in this case.

2.7 Inadmissible allowance of ITC

In two cases of ACST Fatehgarh Sahib, the DO allowed ITC of ₹ 30.61 lakh on account of unutilised ITC of previous year instead of admissible ITC of ₹ 12.59 lakh, and did not raise CST demand of ₹ 9.73 lakh, resulting in short levy of tax of ₹ 27.75 lakh.

Section 2(zc) of the PVAT Act, 2005 provides that a return is a true and correct account of business pertaining to the return period in the prescribed form. Further, Rule 48(1) of PVAT Rules, 2005 provides that the DO after considering the objections and documentary evidence, if any, filed by the person, shall pass an order of assessment in writing, determining the tax liability of such a person.

Scrutiny of records of ACST Fatehgarh Sahib, revealed that the DO, while assessing the dealer for the year 2010-11 and 2011-12, allowed ITC of ₹ 30.61 lakh on account of unutilised ITC of previous year, as claimed by the dealer in his annual return, whereas unutilised ITC of ₹ 12.59 lakh was available with the dealer as per the assessment orders for the years i.e. 2009-10 and 2010-11. Thus, excess ITC of ₹ 18.02 lakh (₹ 30.61 lakh - ₹ 12.59 lakh) was allowed as detailed in the following table:

⁸ ITC of ₹ 0.24 crore (₹ 51.97 crore - ₹ 51.73 crore) was disallowed and tax demand of ₹ 0.67 crore was computed which made the total tax implication as ₹ 0.91 crore.

(Amount in ₹)

Year	Month and Year in which assessment was finalised	Unutilised ITC of previous year as per annual return that was allowed in the assessment order	Unutilised ITC available as per assessment order of 2009-10 and 2010-11	Excess ITC allowed
2010-11	4 October 2017	17,00,730	35,270	16,65,460
2011-12	4 December 2017	13,60,137	12,23,516 ⁹	1,36,621
Total		30,60,867	12,58,786	18,02,081

Further, in the assessment order for the year 2011-12, CST demand of ₹ 9.73 lakh was shown as adjusted from ITC in Part-B of the assessment order. However, ITC was not reduced by this amount in Part-A where calculation of ITC was made. The above omissions resulted in short levy of tax of ₹ 27.75 lakh (₹ 18.02 lakh + ₹ 9.73 lakh).

The matter was reported to the Department/ Government in February 2019 and April 2020; their replies were awaited (December 2020).

The Government may direct the Department to realise tax of ₹ 27.75 lakh by correcting the omissions in these two cases.

2.8 Non/Short levy of interest

Application of incorrect provision relating to levy of interest in assessment orders in six ACSTs, resulted in short levy of interest of ₹ 2.51 crore in six cases.

Section 32(1) of the PVAT Act, 2005 provides that if a person fails to pay the amount of tax due from him as per provisions of this Act, he shall be liable to pay simple interest on the amount of tax at the rate of half *per cent* per month from the due date of payment till the date he actually pays the tax. Further, Section 32(3) provides that if a person fails to declare the amount of tax in the return, which should have been declared, such a person shall be liable to pay simple interest at the rate of one and half *per cent* per month on such amount of tax from the due date of payment till the date he actually pays such amount of tax. Further, Section 9(2B) of the CST Act, 1956 provides that all the provisions of the sales tax law of each State relating to due date for payment of tax, rate of interest, assessment and collection of interest for delayed payment of tax, shall apply in relation to tax due under the CST Act.

Scrutiny of the assessment cases of six¹⁰ ACSTs, assessed during 2017-18, showed that six dealers did not declare due tax in their annual returns between 2010-11 and 2012-13. While assessing the cases, the DOs raised additional tax demands of ₹ 3.07 crore. However, in two out of six cases pertaining to two ACSTs¹¹, the DOs levied interest of ₹ 0.96 crore at the rate of half *per cent* per

⁹ ₹ 6,21,156 (amount of refund, debited in the assessment order for the year 2010-11, was already debited in the assessment order for the year 2009-10, hence included in unutilised ITC) + ₹ 6,02,360 (unutilised ITC allowed in the assessment order for the year 2010-11)

¹⁰ Jalandhar-II, Ludhiana-I, Mohali, Patiala, Ropar and Sangrur.

¹¹ Jalandhar-II and Mohali.

month instead of ₹ 2.70 crore at applicable rate of 1.50 *per cent* per month. In the remaining four cases, the DOs did not levy any interest, whereas interest of ₹ 0.77 crore¹² was leviable. The above omissions resulted in short levy of interest of ₹ 2.51 crore¹³.

On this being pointed out, ACST Sangrur replied (June 2018) that in different cases decided by the Hon'ble Courts, it has been held that the tax paid as per return does not carry any liability to pay interest, till the assessment is made. However, the ACST could not provide any evidence showing that the provisions of Section 32(3) of the Act were struck down by any Court of law or any amendment giving such relief was made by the Government in the Act. The Provisions of the Act regarding reversal of input tax credit on furnace oil, diesel, branch transfer, tax free sale and requirement of submission of statutory declarations to claim concession/ exemption from tax were clear and the dealers were required to declare their tax liabilities in the returns by complying with the aforesaid provisions. The additional tax demands were raised by the Designating Officers due to non-compliance of the above provisions and it makes it amply clear that correct tax liabilities were not declared by the dealers in the returns. Hence, the Designated Officers should have levied interest at the rate of 1.50 *per cent*.

The matter was reported to the Department/ Government between March 2019 and April 2020; their replies were awaited (December 2020).

The Government may direct the Department to recover interest of ₹ 2.51 crore in these six cases.

2.9 Inadmissible input tax credit on furnace oil

The Designated Officer allowed inadmissible input tax credit of entry tax, paid on interstate purchase of furnace oil in four cases, resulting in short levy of tax of ₹ 46.81 lakh.

Section 13(4) of the PVAT Act, 2005 provides that ITC on furnace oil shall be allowed only to the extent by which the amount of tax paid in the State exceeds a specific rate¹⁴. Further, Section 13-A of the Act provides that entry tax paid on interstate purchases of goods will be available as input tax credit subject to the provisions of the Act.

Scrutiny of the records in ACST, Ludhiana-I, revealed that four assesseees had made inter-state purchases of furnace oil of ₹ 13.59 crore and paid entry tax of ₹ 48.01 lakh on it during 2010-11 and 2011-12. The dealer was eligible for input tax credit on entry tax paid in excess of four *per cent* during that period. Out of ₹ 48.01 lakh, the dealer was eligible for input tax credit of ₹ 1.20 lakh paid in

¹² Interest is calculated by audit from April of the following financial year till the month in which assessment was completed.

¹³ ₹ 2.70 crore - ₹ 0.96 crore + ₹ 0.77 crore = ₹ 2.51 crore

¹⁴ Rates of entry tax

Date	Rate of entry tax on Furnace oil (in <i>per cent</i>)	Maximum rate of reversal of input tax u/s 13(4) of PVAT Act (in <i>per cent</i>)
05 Feb 2010 to 17 Aug 2010	2	4
18 Aug 2010 to 17 Sep 2012	4	4

Rate of reversal of entry tax u/s 13(4) was increased to five *per cent* w.e.f. 4 December 2012.

excess of four *per cent*. The remaining amount of ₹ 46.81 lakh was not available as input tax credit and was required to be reversed¹⁵. However, the Designated Officer, while assessing the cases, did not reverse any amount on this account. The inadmissible allowance of ITC resulted in short levy of tax of ₹ 46.81 lakh.

The matter was reported to the Department/ Government in February 2019, March 2019 and April 2020; their replies were awaited (December 2020).

The Government may direct the Department to recover excess allowance of ITC of ₹ 46.81 lakh.

2.10 Non/short levy of fee under the Punjab Infrastructure (Development and Regulation) Act

In 36 assessment cases under four ACSTs, the Designated Officers did not levy or short levied fee of ₹ 12.38 crore under the Punjab Infrastructure (Development and Regulation) Act.

Section 25(1) of the Punjab Infrastructure (Development and Regulation) Act, 2002 (PIDR Act), provides for levy of fee on sale or purchase of goods specified in Schedule III¹⁶ of the Act. Section 25(3) of the Act provides that the authorities empowered to assess and collect the tax under Punjab Value Added Tax Act 2005 (PVAT Act) will also assess and collect the fee under PIDR Act and the provisions of PVAT Act relating to assessment and collection shall apply accordingly. The rate of fee on the agricultural produces was raised from two *per cent* to three *per cent* w.e.f. 24 September 2008 except for cotton for which the rate remained two *per cent*. Further, the Government, in September and November 2012, exempted fee on purchase of paddy to the extent rice¹⁷ derived out of such paddy is exported, and in February 2014, exempted the fee on purchase of cotton seed, cotton¹⁸ (ginned and un-ginned). The Government ordered (27 July 2017) that fee collected under PIDR Act will be credited¹⁹ to the Consolidated Fund of State.

Scrutiny of 36 assessment cases for the years 2010-11, 2011-12 and 2012-13, assessed in 2017-18 revealed that:

- a) in 27 cases under four²⁰ ACSTs, the Designated Officers did not levy fee of ₹ 10.52 crore on first stage of purchase of cotton worth ₹ 525.91 crore.
- b) in nine cases under ACST Fazilka, the Designated Officers levied fee of ₹ 0.86 crore on first stage of purchase of paddy worth ₹ 90.76 crore by allowing benefit of export of rice derived out of such paddy whereas fee

¹⁵ Reversal means disallowing ITC claims of a dealer under provisions of PVAT Act and Rules at the time of assessment by the Designated Officer.

¹⁶ Petrol, Diesel and all agricultural produces as defined in Punjab Agricultural Produce Markets Act 1961 except fruits, vegetables and pulses. The fee is to be levied at first stage of sale or purchase, as the case may be, in the State of Punjab.

¹⁷ Clause regarding exemption from fee on non-basmati rice was added w.e.f. 25 September 2012 and that on basmati rice was added w.e.f. 07 November 2012.

¹⁸ Clause regarding exemption from fee on cotton seed and cotton was added w.e.f. 03 February 2014.

¹⁹ Before 27 July 2017, the fee was credited to a Development Fund called Punjab Infrastructure Development Fund, created under PIDR Act.

²⁰ Bathinda (1), Faridkot (1), Fazilka (23) and Muktsar (2).

of ₹ 2.72 crore was required to be levied in these cases as the benefit of export was not available during 2010-11 and 2011-12. This resulted in short levy of fee of ₹ 1.86 crore.

The above omissions resulted in non/short levy of fee of ₹ 12.38 crore.

The matter was reported to the Department/ Government in January 2019, July 2019 and April 2020. ACST Bathinda replied (July 2019) that one case was reassessed and raised demand of ₹ 1.24 crore. ACST Fazilka replied (September 2019) that 12 cases were reassessed and demand of ₹ 2.80 crore had been raised. Reply in respect of 23 cases was awaited (December 2020).

The Government may direct the Department to recover applicable fee of ₹ 12.38 crore, under the Punjab Infrastructure (Development and Regulation) Act.