

CHAPTER-II
TAXES/VAT ON SALES, TRADE

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2.1 Tax administration

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

2.2 Results of audit

In 2018-19, test check of the records of 39 (Revenue 37 + expenditure 02) units (58,653 assessment cases were audited out of total 2,02,773 assessment cases) out of 45 units relating to VAT/Sales tax assessments and other records revealed under assessment/evasion of tax and other irregularities involving ₹ 1,730.24 crore in 1,442 cases, falling under the following categories as depicted in the **Table 2.1**.

Table-2.1 – Result of Audit

Revenue			
Sr. No.	Categories	Number of cases	Amount (₹ in crore)
1.	Under assessment of Tax	312	392.70
2.	Acceptance of defective statutory 'Forms'	361	231.93
3.	Evasion of taxes due to suppression of sales/purchases	75	345.28
4.	Irregular/Incorrect/Excess allowance of ITC	277	497.62
5.	Other irregularities	339	152.08
	Total (I)	1,364	1,619.61
Expenditure			
1.	Non receipt of utilisation certificates	1	106.39
2.	Other irregularities	77	4.24
	Total (II)	78	110.63
	Grand Total (I+II)	1,442	1,730.24

Chart 2.1

(₹ in crore)

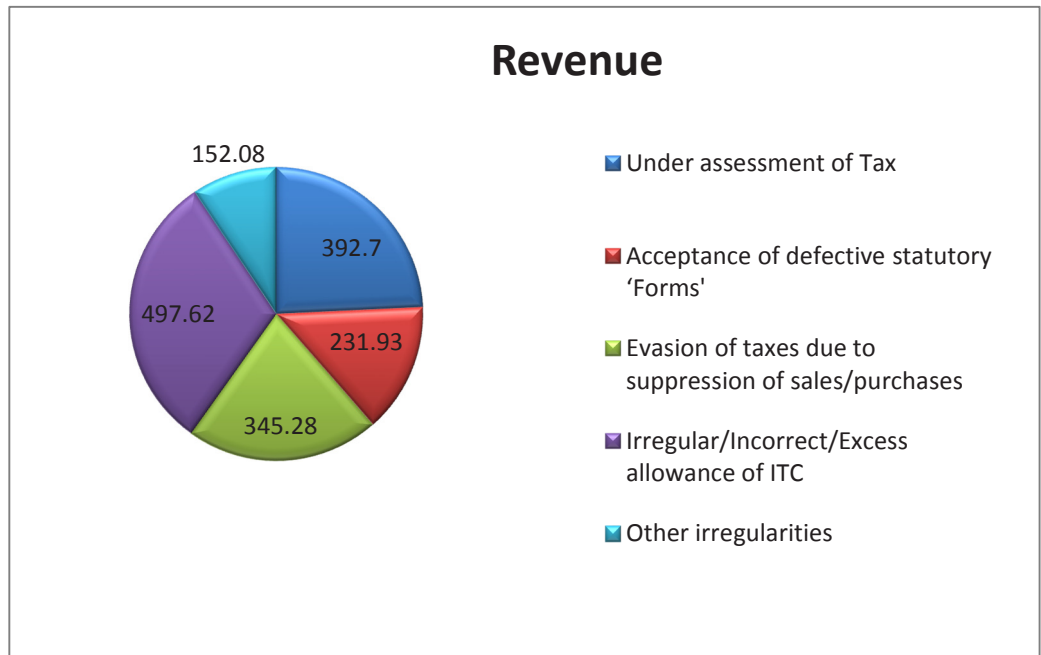
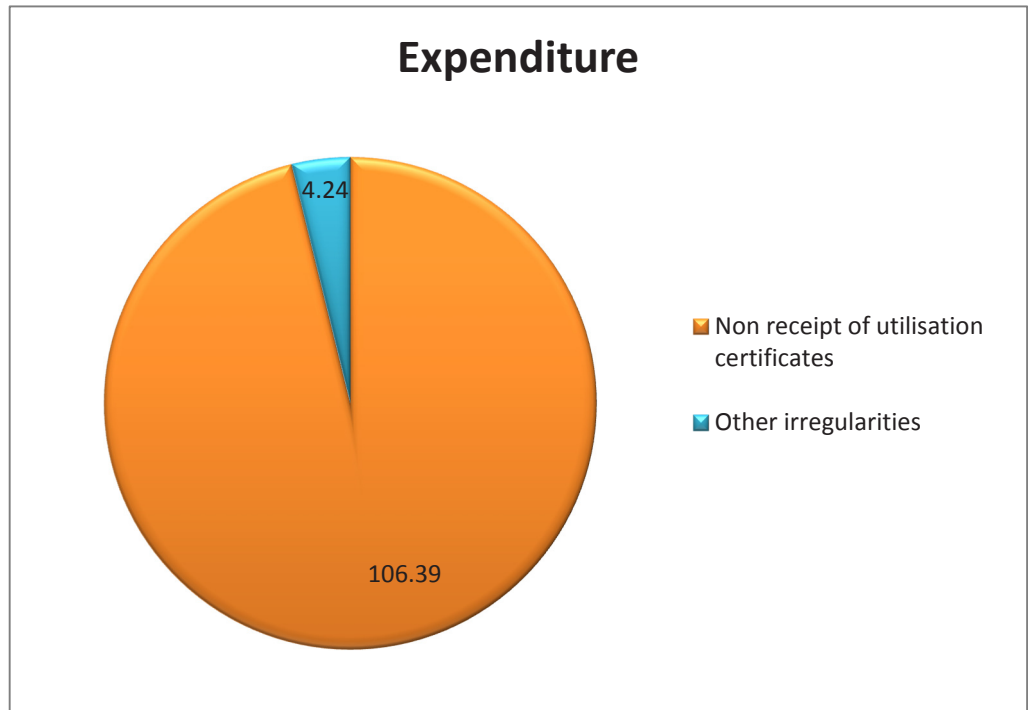


Chart 2.2

(₹ in crore)



During the year, the Department accepted under assessment and other deficiencies of ₹ 547.10 crore involved in 219 cases which were pointed out during the year. The Department recovered ₹ 0.75 crore in 61 cases pertained to the year.

Significant cases involving ₹ 331.13 crore are discussed in the following paragraphs.

2.3 Evasion of tax due to suppression of sales

17 dealers had suppressed sales worth ₹ 1,151 crore. Assessing Authorities did not verify sales/purchases, which resulted in evasion of tax of ₹ 60.06 crore. In addition, penalty of ₹ 180.17 crore was not levied.

Under Section 38 of Haryana Value Added Tax Act, 2003 (HVAT Act), if a dealer has maintained false or incorrect accounts, returns or documents with a view to suppressing his sales, purchases, imports into State or stocks of goods, or has concealed any particulars or has furnished to or produced before any authority any account, return, document or information which is false or incorrect, such authority may direct him to pay by way of penalty, in addition to the tax to which he is assessed or is liable to be assessed, a sum thrice the amount of tax which would have been avoided had such account, return, document or information, as the case may be, been accepted as true and correct.

In order to prevent the tax evasion by issuing forged tax invoices or fictitious accounting of goods, the ETC, Haryana had issued instructions (March 2006) for verification of all sale/purchase transactions totaling more than ₹ one lakh from a single VAT dealer in a year.

Scrutiny of the records (January and December 2018) revealed that 17 dealers in 19 cases in the office of eight¹ DETC (ST) had not shown the sales of ₹ 1,151 crore in their quarterly/annually returns for the year 2013-14 to 2015-16, even though the purchasing dealers had claimed input tax credit (ITC) on purchases made from these dealers. The sale/purchase transactions were not uploaded on the website by the Department and AAs, while finalising the assessment did not verify details of suppression of sale with reference to records of the purchaser resulting in suppression of sale of ₹ 1,151 crore involving tax of ₹ 60.06 crore. This resulted in evasion of tax of ₹ 60.06 crore. In addition, penalty of ₹ 180.17 crore was also leviable.

¹ Ambala, Faridabad (East), Faridabad (South), Gurugram (North), Gurugram (South), Karnal, Mewat and Panipat.

On this being pointed out, the AAs of Gurugram (North) and Panipat stated that demand of ₹ 2.35 crore had been raised in four cases. In one case, AA Ambala intimated that the case had been sent to Revisional Authority for *suo motu* action. Four AAs stated that (June 2018 and March 2019) notice for re-assessment had been issued to the dealers in 10 cases. AA, Faridabad (East) stated that *Denovo* assessment had been initiated in one case. The ETO-cum-AA of Karnal stated that two cases had been assessed and penal action had been taken for levy of tax and penalty of ₹ 157.40 crore and notice had been served upon the dealer in one case.

The matter was reported to the Excise and Taxation Department in July 2018 and January 2019 and to the Government in July 2019; their replies were awaited.

The Department may verify all sales transactions totaling more than ₹ one lakh from a single VAT dealer in a year as per instructions issued by the Government.

2.4 Evasion of tax due to suppression of purchase

A dealer had suppressed his purchase of ₹ 3.81 crore resulting in evasion of tax of ₹ 0.50 crore. In addition, penalty of ₹ 1.50 crore was also leviable.

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

Scrutiny of the records (August 2017) revealed that a dealer in the office of DETC (ST) Panchkula for the year 2012-13 made purchases of Batteries worth ₹ 9.70 crore but accounted for purchases of ₹ 5.89 crore only in the trading accounts. Thus, the dealer suppressed his purchases of ₹ 3.81 crore which resulted in evasion of tax of ₹ 0.50 crore². In addition, penalty of ₹ 1.50 crore was also leviable.

² Amount of suppression = ₹ 3,80,64,236 taxable @ 12.5 % plus surcharge @ 5 % of tax amount = ₹ 49,95,931.

On this being pointed out, the AA intimated (January 2020) that the case has been sent to Revisional Authority for taking *suo motu* action.

The matter was reported to the Excise and Taxation Department in November 2017 and to the Government in June 2019; their replies were awaited.

The Department may verify all purchase transactions totaling more than ₹ one lakh from a single VAT dealer in a year as per instructions issued by the Government.

2.5 Input Tax Credit incorrectly allowed on Capital Goods and Petroleum Products

Assessing Authority, allowed excess input tax credit of ₹ 5 crore. In addition, interest of ₹ 0.18 crore was also leviable.

Under Section 8 of the HVAT Act, input tax in respect of any goods purchased by a VAT dealer shall be the amount of tax paid to the State on the sale of such goods to him. No ITC on goods which are disposed of otherwise than by way of sale is admissible. Surcharge at the rate of five *per cent* is payable on the tax leviable, under Section 7 (A) of HVAT Act w.e.f 2 April 2010.

2.5.1 Scrutiny of the records (May 2017) of the office of DETC (ST) Panipat revealed that a dealer who was a manufacturer of synthetic rubber products awarded contract of construction of building to a contractor. The contractor supplied building material worth ₹ 60.11 crore to the dealer during 2011-12 and 2012-13. The dealer claimed ITC of ₹ 4.79 crore on purchases of building material. The AA, while finalising the assessments in August 2013 and August 2014 allowed the benefit of ITC without verifying the admissibility of input tax as per provision contained in Section 8 of HVAT Act 2003. This resulted in allowing inadmissible benefit of ITC on capital goods of ₹ 4.79 crore.

On this being pointed out, the AA intimated (March 2019) that the cases have been sent to Revisional Authority for taking *suo motu* action.

2.5.2 As mentioned in Schedule E of HVAT Act, no ITC on petroleum products and natural gas is admissible when used as fuel. The Excise and Taxation Commissioner, Haryana, Panchkula had also issued instructions in 2011 that if the petroleum products and natural gas are used as fuel, ITC in respect of VAT paid on purchases of such goods shall be 'nil'. Surcharge at the rate of five *per cent* is payable on the tax leviable, under Section 7 (A) of

HVAT Act w.e.f 2 April 2010. Further, interest was also leviable under Section 14 (6) of the HVAT Act.

Scrutiny of the records (February and September 2018) revealed that a dealer in the office of DETC (ST) Ambala purchased Pet Coke of ₹ 4.25 crore during 2013-14 and 2014-15 and used the same as fuel and claimed ITC of ₹ 0.21 crore. While finalising assessments in these cases between March 2017 and March 2018, the AAs allowed ITC. This resulted in excess grant of ITC of ₹ 0.21 crore. In addition, interest of ₹ 0.18 crore³ was also leviable.

On this being pointed out, AAs intimated (February and September 2018) that these cases had been sent to the Revisional Authority for *suo motu* action.

The matter was reported to the Excise and Taxation Department in February 2019 and to the Government in March and May 2019; their replies were awaited.

The Department may verify the admissibility of input tax credit on capital goods and petroleum products as per provisions of the Act.

2.6 Incorrect benefit of Input Tax Credit on goods not sold

Assessing Authority, while finalising the assessment allowed inadmissible input tax credit claim for purchase of Duty Entitlement Pass Book which was not sold by the dealer resulting in incorrect grant of input tax credit of ₹ 0.93 crore. In addition, interest of ₹ 0.75 crore was also leviable.

Under Section 8 of the HVAT Act, Input Tax Credit (ITC) on purchase of goods is admissible against tax liability on sale of goods as such or the goods manufactured therefrom in the State or interstate trade and commerce. The Government had also clarified (22 April 2013) that ITC is admissible only if the Duty Credit Scrips are purchased for re-sale as such and no ITC would be admissible if these were used for adjustment of custom duty. Further, interest was also leviable under Section 14 (6) of the HVAT Act.

Scrutiny of the records (February 2018) revealed that a dealer in the office of DETC (ST) Rewari purchased Duty Entitlement Pass Book (DEPB) worth ₹ 17.78 crore after payment of VAT ₹ 0.93 crore during 2013-14. The dealer used the same for adjustment of custom duty payable by him. As the goods (DEPB) were not sold by the dealer, no ITC was admissible. However, while

³ ₹ 13,73,304 X 2 X 1,239/(30X100) = ₹ 11,34,349
₹ 7,51,770 X 2 X 1,231/(30X100) = ₹ 6,16,952
Total = ₹ 17,51,301

finalising assessment in March 2017, AA allowed the ITC resulting in incorrect grant of ITC of ₹ 0.93 crore. In addition, interest of ₹ 0.75 crore⁴ was also leviable.

On this being pointed out, AA Rewari intimated (January 2019) that the case had been sent to Revisional Authority for taking *suo motu* action.

The matter was reported to the Excise and Taxation Department in May 2018 and to the Government in April 2019; their replies were awaited.

The Department should verify the purchase of duty credit scrips for re-sale not the adjustment of custom duty so that correct ITC may be granted.

2.7 Under assessment of tax due to mistake in calculation

Assessing Authorities, underassessed tax of ₹ 26.23 crore due to calculation mistake. In addition, interest of ₹ 18.63 crore was to be levied.

Under Section 19 of HVAT Act, any taxing authority or appellate authority, may, at any time, within a period of two years from the date of supply of copy of the order passed by it in any case, rectify any clerical or arithmetical mistake apparent from the record of the case after giving the person adversely affected thereby a reasonable opportunity of being heard. Further, under Section 14 (6) of HVAT Act, *inter alia* lays down that if any dealer fails to make payment of tax in accordance with the provisions of the Act and Rules made thereunder, he shall be liable to pay, in addition to the tax payable by him, simple interest at one *per cent* per month if the payment is made within ninety days, and at two *per cent* per month if the default continues beyond ninety days for the whole period, from the last date specified for the payment of tax to the date he makes the payment.

2.7.1 Scrutiny of the records (July and September 2018) revealed that four dealers in the office of DETC (ST), Rohtak and Sonapat had made sales valued at ₹ 14.48 crore during 2014-15. The AAs, while finalising the assessments between January and March 2018 assessed the tax of ₹ 0.72 crore

⁴ Interest @ 2% (1/11/2013 to 03/03/2017) = ₹ $\frac{93,34,383 \times 2 \times 1213}{100 \times 30}$ = ₹ 75,48,404.

instead of correct amount of ₹ 0.84 crore resulting in under assessment of tax of ₹ 0.12 crore⁵. In addition, interest of ₹ 0.10 crore was also leviable.

On this being pointed out, AA Rohtak and Sonapat stated between July and October 2018 that these cases had been re assessed and additional demand of ₹ 0.24 crore had been raised.

The matter was reported to the Excise and Taxation Department in February 2018 and to the Government in March 2019; their replies were awaited.

2.7.2 Scrutiny of the records (January 2019) revealed that a dealer in the office of DETC (ST) Gurugram (West) had made sales valued at ₹ 221.04 crore during 2014-15. The AA, while finalising assessment (March 2018) assessed the tax of ₹ 2.90 crore instead of the correct amount of ₹ 29.01 crore due to calculation mistake and levied interest thereon of ₹ 2.41 crore instead of ₹ 20.94 crore. This resulted in under assessment of tax of ₹ 26.11 crore and interest of ₹ 18.53 crore⁶.

On this being pointed out, AA Gurugram (West) in April 2019 had raised demand of ₹ 44.64 crore.

The matter was reported to the Excise and Taxation Department in April 2019 and to the Government in June 2019; their replies were awaited.

The Department may ensure to check all the calculations so that mistakes may be avoided.

⁵

TIN	Tax to be leviable	Tax levied	Tax short levied	Amount of interest (Amount in ₹)
06702818009	29,20,144	20,20,143	9,00,001	$9,00,001 \times 2 \times 1236/30 \times 100 = 7,41,600$
06813006752	43,86,785	42,80,989	1,05,796	$1,05,796 \times 2 \times 1229/30 \times 100 = 86,682$
06313013526	5,27,443	4,27,442	1,00,001	$1,00,001 \times 2 \times 1169/30 \times 100 = 77,934$
06143006878	5,45,143	4,54,143	91,000	$91,000 \times 2 \times 1232/30 \times 100 = 74,741$
Total	83,79,515	71,82,717	11,96,798	9,80,957

⁶ Interest leviable ₹ 20,94,04,495- ₹ 2,41,41,138 (interest levied) = ₹ 18,52,63,357.

2.8 Under assessment of tax due to application of incorrect rate of tax

Assessing Authorities, allowed incorrect rate of tax to nine dealers, which resulted in under assessment of tax of ₹ 4.82 crore. In addition, interest of ₹ 3.91 crore was also leviable.

The rates under HVAT Act have been prescribed as per Schedules A to G. However, under Section 7 (1) (a) (iv) of the HVAT Act, any commodity other than commodities classified in any of the schedules is taxable at the rate of 12.5 per cent with effect from 1 July 2005. Surcharge at the rate of five per cent on the tax is leviable under Section 7 (A) of HVAT Act w.e.f 2 April 2010. Further, interest was also leviable under Section 14 (6) of the HVAT Act.

Scrutiny of the records (July 2017 and September 2018) revealed that AAs, while finalising the assessments (March 2017 to March 2018) in 10 cases of nine dealers in the office of five DETC (ST)⁷ for the years 2013-14 to 2015-16 applied lower tax rates than applicable rate of tax on sale of goods as detailed below:-

(Amount in ₹)

Sr. No	DETC	Assessment year/ disposal	Commodity	Amount	Tax leviable	Tax levied	Short levy of tax	Interest	Departmental reply
1	Faridabad (North)	528 dt. 31.10.17 2015-16	Haryana Tourism Corporation Work	97,88,176	12,84,698	5,13,879	7,70,819	3,75,132	Suo motu action (March 2019)
2	Gurugram (North)	474 dt. 22.03.18 2014-15	Auto parts	2,80,31,087	36,79,080	14,71,632	22,07,448	18,20,409	Demand of ₹ 32,13,065 raised (July 2019).
3	Karnal	1208 dt. 21.03.17 2013-14	Barley malt and malt extracts	4,35,49,422	57,15,862	22,86,345	34,29,517	28,25,922	Suo motu action (April 2018).
4	Gurugram (North)	1179 dt. 14.03.17 2013-14	Biscuit, cakes, toffee, chocolates & cosmetic items	1,31,16,326	17,21,518	6,01,746	11,19,772	10,54,825	Suo motu action (August 2019)

⁷ Faridabad (North), Gurugram (North), Karnal, Jind and Panchkula.

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Sr. No	DETC	Assessment year/ disposal	Commodity	Amount	Tax leviable	Tax levied	Short levy of tax	Interest	Departmental reply
5	Gurugram (North)	42 dt. 16.03.17 2013-14	Filters	2,96,13,996	38,86,837	15,54,735	23,32,102	13,46,400	Suo motu action (August 2019)
6	Karnal	1207 dt. 21.03.17 2013-14	Liquid glucose, malto dextrine powder, nondairy cream and noodles	16,06,69,374	2,10,87,855	84,35,142	1,26,52,713	1,04,25,836	Suo motu action (April 2018).
7	Gurugram (North)	70 dt. 29.03.17 2013.14	Paneer	1,63,35,986	21,44,098	8,57,639	12,86,459	10,66,903	Notice has been issued to the dealer (December 2018).
	Gurugram (North)	496 dt. 27.03.18 2014-15	Paneer	2,44,86,490	32,13,852	12,85,541	19,28,311	15,96,642	-do-
8	Jind	770 dt. 30.03.18 2014-15	Paneer	3,65,11,488	47,92,133	19,16,853	28,75,280	23,86,482	Case sent to RA (I) Rohtak (August 2019)
9	Panchkula	1387 dt. 28.03.17 2013-14	Security systems	24,85,05,160	3,26,16,302	1,30,46,521	1,95,69,781	1,62,16,825	Revisonal Authority has decided the case raising an additional demand of ₹ 1,95,69,781 Haryana Tax Tribunal also dismissed the appeal of the dealer.
Total				61,06,07,505	8,01,42,235	3,19,70,033	4,81,72,202	3,91,15,376	

The application of incorrect rate of tax has resulted in under assessment of tax of ₹ 4.82 crore. In addition, interest of ₹ 3.91 crore was also leviable.

On this being pointed out, DETC Gurugram (North) intimated in one case that the additional demand of ₹ 32.13 lakh had been created and in two cases notices (October 2019) have been issued to the dealers. DETC Panchkula intimated that demand of ₹ 1.96 crore had been created in one case. Further, it was intimated that matter had been sent to Revisonal Authorities for taking *suo motu* action in remaining six cases.

The matter was reported to the Excise and Taxation Department in October 2018 and to the Government in January 2020; their replies were awaited.

The Department may undertake detailed scrutiny of cases for ensuring that correct tax rates are being levied.

2.9 Under assessment of tax due to non inclusion of excise duty in gross turnover

While finalising the assessment, Assessing Authority assessed Gross Turnover of ₹ 188.39 crore instead of correct amount of ₹ 199.76 crore resulting in under assessment of tax of ₹ 1.49 crore. In addition, interest of ₹ 1.22 crore was also leviable.

Under Section 2 (1) (zg) of the HVAT Act, provides that ‘sale price’ means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed at the time of sale as cash or trade discount according to the practice, normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof would include any sum charged on account of freight, storage demurrage, insurance, handling charges, cess, excise duty, weighment, packing charges, warranty, drawing and designing, service charges and other incidental expenses. Further, interest was also leviable under Section 14 (6) of the HVAT Act.

Scrutiny of the records (November 2018) revealed that the AA while finalising the assessment of a dealer in the office of DETC (ST) Gurugram (East), for the year 2014-15 did not include excise duty of ₹ 11.37 crore in gross turnover (GTO). The AA assessed GTO wrongly as ₹ 188.39 crore instead of correct amount of ₹ 199.76 crore. This resulted in under assessment of tax of ₹ 1.49 crore. In addition, interest of ₹ 1.22 crore was also leviable.

On this being pointed out (November 2018) the AA intimated (June 2019) that the case had been sent to Revisional Authority for taking *suo motu* action.

The matter was reported to the Excise and Taxation Department in March 2019 and to the Government in July 2019; their replies were awaited.

The Department may issue instructions to all the AAs to consider proper GTO at the time of assessment by including all incidental expenditure in gross turnover.

2.10 Under assessment of tax due to non levy of tax on handling charges

Assessing Authorities, while finalising assessments did not levy tax on handling charges resulting in under assessment of tax of ₹ 0.22 crore. In addition, interest of ₹ 0.18 crore was also leviable.

Under Section 2 (1) (zg) of HVAT Act, “Sale price” means the amount payable to a dealer as consideration for sale of any goods, less any sum allowed at the time of sale as cash or trade discount according to the practice, normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof and the expression “purchase price” shall be construed accordingly. The Haryana Tax Tribunal in case of M/s Hisar Automobiles Hisar and Vipul Motors Faridabad v/s State of Haryana held that handling charges received by Automobile dealer are part of sale price and liable to tax (July 2017). Surcharge at the rate of five *per cent* is payable on the tax leviable, under Section 7 (A) of HVAT Act w.e.f 2 April 2010.

Scrutiny of the records (February and August 2018) revealed that an automobile dealer in the office of DETC (ST) Ambala for the year 2013-14 and 2014-15 had shown receipts of handling charges towards the receipts from automobile sale worth ₹ 1.71 crore⁸. Automobile being an unclassified items is taxable at general rate 12.5 *per cent* plus surcharge. However, while finalising assessment (February 2017 and February 2018), the AA did not levy tax on handling charges resulting in under assessment of tax of ₹ 0.22 crore. In addition, interest of ₹ 0.18 crore⁹ was also leviable.

On this being pointed out, the AA replied (February and August 2018) that the cases had been sent to the Revisional Authority for *suo motu* action.

The matter was reported to the Excise and Taxation Department between June and October 2018 and to the Government in February 2019; their replies were awaited.

The Department may instruct all the AAs to consider all the instructions issued by the Department and court judgements at the time of assessment.

⁸ 2013-14 = ₹ 74,73,912.

2014-15 = ₹ 95,87,373.

⁹ ₹ 9,80,951 X 1,190 X 2%/30 = ₹ 7,78,221.

₹ 12,58,343 X 1,193 X 2%/30 = ₹ 10,00,802.

2.11 Tax benefits allowed against invalid forms 'F'

Assessing Authorities, while finalising the assessments allowed incorrect exemption of branch transfers/consignments worth ₹ 43.84 crore to 10 dealers, which resulted into non levy of tax of ₹ 2.30 crore. In addition, penalty of ₹ 6.90 crore was also leviable.

Section 6 (A) (1) of CST Act provides that where any dealer claims that he is not liable to pay tax under this Act on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, for this purpose he may furnish to the AA a declaration in form 'F' signed by the principal officer of the other place of business, or his agent or principal. Further, section 38 of HVAT Act, provides for penal action (three times of tax avoided/benefit claimed) for claims on the basis of false information and incorrect accounts or documents etc. The Government of Haryana had issued instructions on 14 March 2006 and 16 July 2013 for verification of intra-state and inter-State transactions of more than one lakh rupees before allowing the benefit of tax/concession to the dealers.

Scrutiny of the records (August and October 2018) revealed that 10 dealers in the office of DETC (ST) Jind and Kaithal claimed exemption on their branch transfers/consignment sale amounting to ₹ 43.84 crore to two firms situated in Rajasthan and Delhi for the years 2014-15 and 2015-16. In support of the claims, the dealers filed 73 'F' forms obtained from their respective branches/agents located in Rajasthan and Delhi. The concerned AAs finalised the assessments between August 2017 and May 2018 and allowed the exemptions based on the declarations filed without verification as per instructions, *ibid*.

Audit referred these 73 'F' forms to Concerned Authorities of Rajasthan and Delhi for verification. The Department of Trade and Taxes, Government of NCT Delhi intimated in February 2019 that registration of two firms were cancelled (Date of cancellation 23 September 2015 w.e.f. 21 April 2014) and cancellation of 'F' forms issued by one firm was under process (letter has been issued for obtaining cancellation date). Concerned Authorities of Rajasthan intimated that registration of two firms and 'F' forms issued by them were cancelled (Date of cancellation 31 March 2017 w.e.f. 01 August 2013 and Date of cancellation w.e.f. 01 April 2013). Thus, allowing the benefit of consignment sale against invalid 'F' forms by AAs resulted in non levy of tax ₹ 2.30 crore. In addition, penalty of ₹ 6.90 crore was also leviable.

On this being pointed out, DETC Kaithal intimated (August 2019) that demand of ₹ 1.48 crore had been created in 20 invalid forms 'F' and action is under consideration in remaining six forms 'F'. DETC Jind intimated (August 2019) that notice has been issued to the dealer in two forms 'F' and cases under verification in remaining 45 forms 'F'.

The matter was reported to the Excise and Taxation Department in January 2019 and to the Government in December 2019; their replies were awaited.

The Department may ensure stringent enforcement of its instructions for grant of concession on intra-state and inter-state sales after due verification.

2.12 Non levy of interest

While finalising the assessments, Assessing Authorities failed to levy interest on late/non payment of tax. This resulted in non levy of interest of ₹ 1.15 crore.

Under Section 14 (6) of Haryana Value Added Tax Act, 2003 (HVAT Act), inter alia lays down that if any dealer fails to make payment of tax in accordance with the provisions of the Act and Rules made thereunder, he shall be liable to pay, in addition to the tax payable by him, simple interest at one *per cent* per month if the payment is made within ninety days, and at two *per cent* per month if the default continues beyond ninety days for the whole period, from the last date specified for the payment of tax to the date he makes the payment.

Scrutiny of the records (September and October 2018) revealed that two dealers in the office of DETC (ST) Ambala, had paid tax amounting to ₹ 1,21,70,591 instead of payable tax of ₹ 2,21,54,609 in accordance with the provisions of the Act and Rules. While finalising assessments for the year 2014-15 in March 2018 the AAs failed to levy interest on late/non payment of tax. This resulted in non levy of interest of ₹ 1.15 crore¹⁰.

On this being pointed out, AA Ambala Cantt. intimated in one case in September 2018 that the case had been sent to Revisional Authority for taking

¹⁰ Total tax payable = ₹ 2,21,54,609 - ₹ 1,21,70,591 (tax not paid) = ₹ 99,84,018.
Interest calculation is detail below:-

Tax not paid	Late deposit of tax in days	Interest leviable
₹ 99,84,018	415 to 1369 days	₹ 99,84,018X2%X1369/30 = ₹ 88,12,476
₹ 91,34,012	367 to 548 days	₹ 91,34,012X2%X548/30 = ₹ 27,12,651
Total		₹ 1,15,25,127

suo motu action and in other case AA Ambala City intimated that notice had been issued to the dealer.

The matter was reported to the Excise and Taxation Department between October 2018 and January 2019 and to the Government in April 2019; their replies were awaited.

The Department may ensure recovery of the interest amount under intimation to Audit.

2.13 Non levy of tax on taxable goods

While finalising the assessments, the Assessing Authority assessed the sale of ₹ 6.03 crore as tax free which included taxable goods of ₹ 1.80 crore, resulting in under assessment of tax of ₹ 0.18 crore. In addition, penalty of ₹ 0.54 crore was also leviable.

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

Scrutiny of the records (July 2018) revealed that for a dealer in the office of DETC (ST) Panchkula, while finalising assessments of the dealer for the year 2013-14 and 2014-15 the AA assessed the sale of ₹ 6.03 crore as tax free. However, cross verification from official website of Excise and Taxation Department of Punjab made by audit revealed that taxable sale of cosmetic goods, mobile etc. worth ₹ 1.80 crore was included in total sale. Thus, sale of taxable goods of ₹ 1.80 crore as tax free resulted in under assessment of tax of ₹ 0.18 crore¹¹. In addition, penalty of ₹ 0.54 crore is also leviable.

On this being pointed out, AA Panchkula intimated in November 2018 that demand of ₹ 3.17 crore was created.

The matter was reported to the Excise and Taxation Department in October 2018 and to the Government in June 2019; their replies were awaited.

¹¹ ₹ 1,10,29,171 taxable @ 12.5 % plus surcharge = ₹ 14,47,579 plus ₹ 69,37,131 taxable @ five *per cent* plus surcharge = ₹ 3,64,199 Grand total of tax = ₹ 18,11,778.

The Department may examine whether there are more such cases where tax exemption have been allowed incorrectly. Early recovery in respect of the cases pointed out by audit may be ensured.

2.14 Non levy of penalty

Assessing Authorities, disallowed inadmissible Input Tax Credit for suppressing stock to 10 dealers but did not levy prescribed penalty of ₹ 14.27 crore.

Under Section 38 of the HVAT Act, if a dealer has maintained false or incorrect accounts or documents with a view to suppressing his sales, purchases, imports into State, export out of State, or stocks of goods, or has furnished to or produced concealed any particulars in respect thereof or has furnished to or produced before any authority under this Act or rules made there under any account, return, document or information which is false or incorrect, such authority may, after affording such dealer reasonable opportunity of being heard, direct him to pay by way of penalty, in addition to the tax to which he is assessed or is liable to be assessed, a sum thrice the amount of tax which would have been avoided had such account, return, document or information as the case may be, been accepted as true and correct.

Scrutiny of the records (May and August 2018) revealed that in 11 cases of 10 dealers in the office of three¹² DETC (ST) assessed during the year 2016-17 and 2017-18, the dealers had understated their purchases/sale/stock of ₹ 45.57 crore and evaded tax of ₹ 4.76 crore by claiming inadmissible ITC, suppressing stock etc. AAs, while finalising assessments disallowed ITC/levied tax but failed to levy penalty under Section 38 of HVAT Act. This resulted in non levy of penalty of ₹ 14.27 crore.

On being pointed out between May and September 2018, in eight cases, the AAs Gurugram (North) and Jind intimated (July 2018 to August 2019) that penalty/demand of ₹ 11.23 crore has been imposed/created and recovery proceedings had been initiated. In one case, the AA Gurugram (North) intimated (January 2019) that the case had been sent to Revisional Authority for taking *suo motu* action and in another case, the dealer had filed an appeal

¹²

Sr. No.	DETC/ETO	Cases assessed	Cases checked by audit
1	Gurugram (North)	8,892	2,361
2	Jind	5,695	1,559
3	Rohtak	6,305	1,580
	Total	20,892	5,500

before JETC (Appeal). The AA (Rohtak) intimated (August 2019) that proceedings had been initiated under Section 17 of the HVAT Act.

The matter was reported to the Excise and Taxation Department in October 2018 and to the Government in December 2019; their replies were awaited.

The Department may ensure recovery of the amount under intimation to Audit.

The instances of deficiencies pointed out by Audit are based on test checked cases. The Department may take appropriate action to review all similar cases.

