

CHAPTER - II
FINANCE (TAXATION)
DEPARTMENT

CHAPTER – II: FINANCE (TAXATION) DEPARTMENT

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 who is 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 Commissioners of Taxes (ACT), Superintendents of Taxes (ST) and 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 (abolished with effect from mid night of 31 July 2017 after introduction of Goods and Services Tax Act).

The functioning of the Department is governed by the provisions of the AVAT Act, 2003 (*w.e.f.* 1 May 2005); the Assam Goods and Services Tax Act, 2017, 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.

Implementation of Goods & Services Tax (GST):

GST in Assam was implemented on 1 July 2017 along with the rest of the country. It is also a tax on goods and services with value addition at each stage having comprehensive and continuous chain of set-off mechanisms from the producer's/service provider's point to the retailer's level where only the final consumer should bear the tax.

The six indirect taxes which were subsumed under GST are (a) Value Added Tax (except five petroleum products *i.e.* petrol, diesel, aviation turbine fuel (ATF), natural gas & petroleum crude) and liquor for human consumption; (b) Central Sales Tax (except five petroleum products *i.e.* petrol, diesel, ATF, natural gas & petroleum crude) and liquor for human consumption; (c) Entertainment Tax including taxes on lottery, betting and gambling; (d) Entry Tax/Octroi; (e) Luxury

Tax (Hotels and Lodgings Houses) and (f) State cesses and surcharges in so as they relate to supply of goods and services like cess under the Assam Health Infrastructure and Services Development Fund Act, 2009.

2.2 Working of internal audit wing

Internal audit, a vital component of internal control mechanism, functions as the internal oversight 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 2017-18. This situation defeated the very purpose for which the internal audit wing was created.

Recommendation: Internal Audit Wing should be made functional in the Department immediately to ensure compliance with Acts/Rules and Government Regulations.

2.3 Results of audit

In 2017-18, test check of records of 26 offices (out of total 85 offices) relating to VAT/Sales tax assessments and other records showed turnover escaping assessment of tax and other irregularities involving ₹ 234.41 crore in 375 cases. A Performance Audit on 'Collection of arrears of revenue in Finance (Taxation) Department' was also conducted during the year. The results of PA involved revenue implication of ₹ 631.86 crore. The details are given in **Table 2.1**.

Table 2.1
Results of Audit

Sl. No.	Category	Number of cases	Amount (₹ in crore)
Assam General Sales Tax/Assam Value Added Tax/Central Sales Tax and other Taxation Acts			
1.	Performance Audit on 'Collection of arrears of revenue in Finance (Taxation) Department'	1	631.86
Assam Value Added Tax/ Central Sales Tax			
2.	Turnover escaping assessment	6	12.02
3.	Irregular grant of Input Tax Credit (ITC)	68	73.95
4.	Concealment of turnover	92	31.78
5.	Short levy of tax and interest	36	43.71
6.	Non-levy of tax and interest	14	6.56
7.	Irregular allowance of concessional rate of tax	29	33.39
8.	Other irregularities	103	32.48
Total		349	865.75
Other Taxes			
1.	Short/Non-levy of Entry Tax	1	0.07
2.	Short/Non-levy of Professional Tax	18	0.17
3.	Short levy of tax and interest	4	0.21
4.	Non-levy of interest	3	0.03
5.	Other irregularities	1	0.04
Total		27	0.52
Grand Total		376	866.27

During the course of the year, the Department accepted underassessment and other deficiencies involving ₹ 1.58 crore in 28 cases which were pointed out in audit during 2017-18. An amount of ₹ 1.45 crore was recovered in 22 cases during the year 2017-18 pertaining to earlier years.

Audit findings of Performance Audit on ‘Collection of arrears of revenue in Finance (Taxation) Department’ involving revenue implication of ₹ 631.86 crore and a few illustrative cases involving ₹ 2.37 crore are discussed in the following paragraphs.

SECTION – A

2.4 Performance Audit on ‘Collection of arrears of revenue in Finance (Taxation) Department’

Highlights

- The amount of arrear increased from ₹ 2,027.08 crore as on 1 April 2012 to ₹ 5,079.35 crore as on 31 March 2017, registering an increase of 151 per cent.

(Paragraph 2.4.6)

- Out of selected 142 cases pending in Hon’ble High Court/Assam Board of Revenue (ABR), in 35 cases amounting to ₹ 129.72 crore the Department continued reporting of arrear even though the Hon’ble High Court/ABR disposed of those cases.

(Paragraph 2.4.9)

- Out of selected 136 cases pending with Revision Authority/Appellate Authority, audit observed that in 18 cases involving ₹ 29.83 crore, the Revision Authority/Appellate Authority has disposed of the cases with direction to re-assess or set aside the assessment order. However, Department continued to report those cases as arrear pending with Revision Authority/Appellate Authority.

(Paragraphs 2.4.10.1 & 2.4.11)

- Demands of ₹ 1,700.27 crore in respect of M/s. OIL and M/s. ONGC for the assessment year 2009-10 to 2012-13 were pending with the Revision Authority since August 2015 as no timeframe was fixed for disposal of revision petition by the Department.

(Paragraph 2.4.10.2)

- Inaction in pursuing the cases with the Assam Industrial Development Corporation resulted in non-realisation of arrear dues of ₹ 25.21 crore against closed Government Companies/ Corporations.

(Paragraphs 2.4.12.1 & 2.4.12.2)

- Arrear of ₹ 252.17 crore was locked up as either the warrant of arrest were not executed or the police authorities did not send any action taken report and Recovery Officers (RO) also failed to take up the matter with the higher authority of the Police Department despite instruction of the CT, Assam.

(Paragraph 2.4.14)

- An arrear of ₹ 16.81 crore remained un-realised from a dealer due to non-initiation of action as per provision of the Bengal Public Demands Recovery (BPDR) Act, 1913.

(Paragraph 2.4.15.2)

- Certificate proceedings were closed in respect of five assesseees without levy of interest of ₹ 38.64 lakh under the provisions of the BPDR Act, 1913.

(Paragraph 2.4.15.3)

- Loss of revenue of ₹ 12.95 crore due to dropping of 15 certificate cases.

(Paragraph 2.4.15.4)

- Delay in issue of requisition of arrear certificate by Assessing Officers (AOs) in 82 cases resulted in non-realisation of arrear amounting to ₹ 74.66 crore.

(Paragraph 2.4.16.1)

- Non-renewal of bank guarantee on time resulted in loss of government revenue of ₹ 1.38 crore.

(Paragraph 2.4.17)

- There was no system for monitoring progress of recovery of arrears due to non-maintenance of Instalment Register, Demand Collection and Balance Register and Bank Guarantee Register.

(Paragraph 2.4.19)

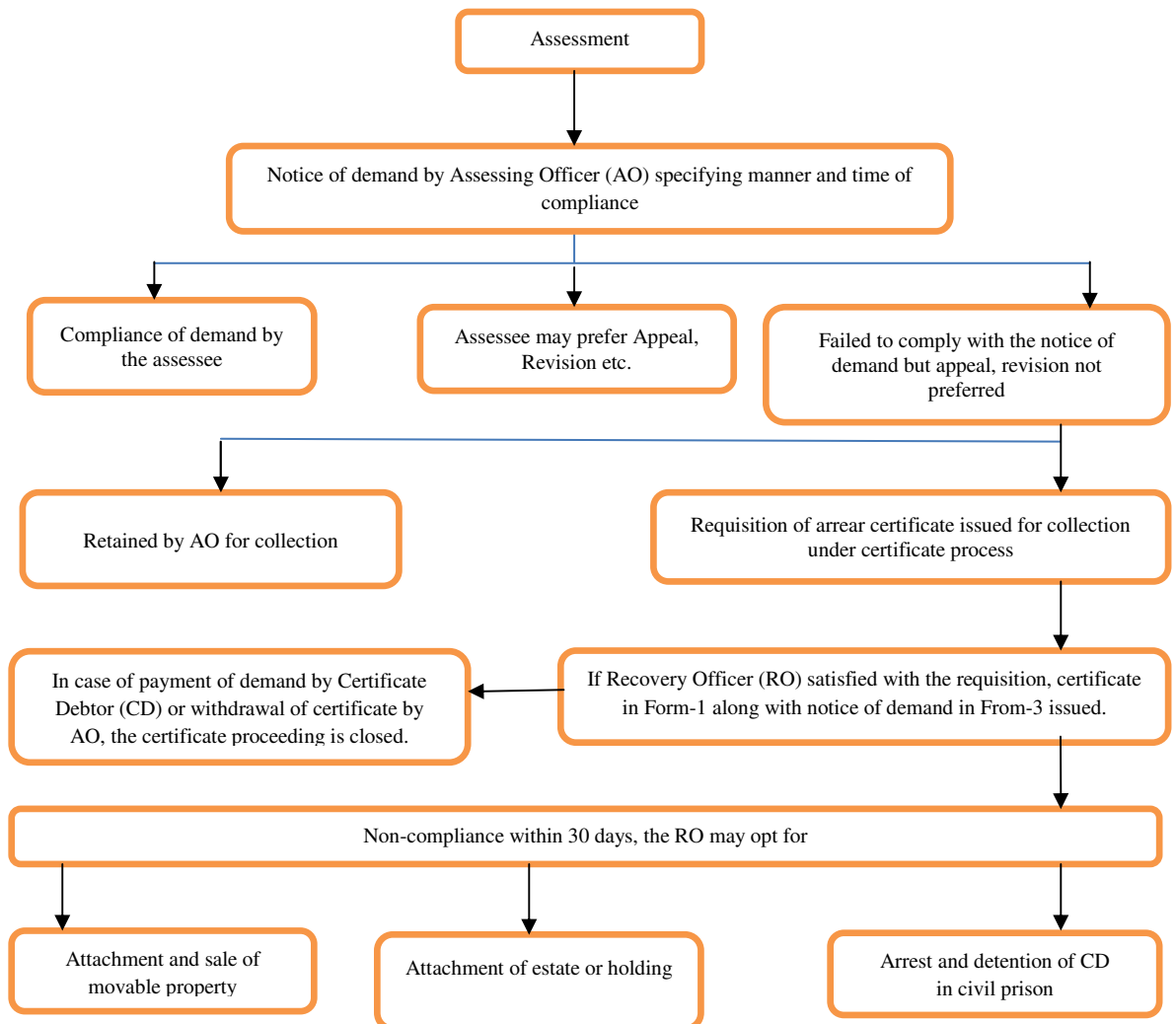
2.4.1 Introduction

The Finance (Taxation) Department, Government of Assam (GoA) is primarily responsible for administration of taxes on trade and commerce in the State. Such taxes contributed 84 *per cent* to 87 *per cent* of tax revenue of the State during 2012-13 to 2016-17. The Commissioner of Taxes (CT) is responsible for supervision of proper implementation of tax laws as well as assessment, levy and collection of taxes pertaining to different statutes⁹ and Rules framed thereunder. Assessment is the process to determine the turnover of a dealer to ascertain the tax liability and includes provisional assessment, self-assessment, audit assessment and re-assessment. Under Section 39 of the AVAT Act (being the mother Act is applicable *mutatis mutandis* in respect of other taxes), assessments are required to

⁹ The Assam General Sales Tax (AGST) Act, 1993, The Assam Value Added Tax (AVAT) Act, 2003. The Central Sales Tax (CST) Act, 1956, The Assam Entry Tax (AET) Act, 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 Land) Act, 1990 and The Assam Agricultural Income Tax Act, 1939.

be initiated and completed before expiry of five years from the year to which the assessment relates. As per Section 43 & 46 of the Act *ibid*, the amount of tax, interest or penalty that remains unpaid even after due date of payment *i.e.* 30 days from the date of issue of demand notice, the same shall be recoverable as arrear of land revenue under the provisions of the Assam Land and Revenue Regulation, 1886 (ALRR) and the Bengal Public Demands Recovery Act, 1913 (BPDR Act) (as adopted by the GoA).

The process of recovery of arrears of revenue, also known as certificate process, is depicted in the following flow chart:



For recovery of arrears, the Assessing Officer (AO) is required to issue requisition of Arrear Certificate (AC) to the Recovery Officer (RO)¹⁰ (enjoys same power as Certificate-Officer under the BPDR Act, 1913) of the Taxation Department who are appointed by the GoA under Section 46 of the AVAT Act, 2003 to assist the CT, Assam. The RO is the main functionary responsible for recovery of arrears after the

¹⁰ The GoA empowered the CT, Assam or any person appointed to assist the CT, Assam not below the rank of Superintendent of Taxes for the purpose of recovery of arrears under Section 46 of the AVAT Act, 2003.

details of arrears demand are communicated to him by the AO, the amount in arrear can be recovered as public demand (certificate process).

The position of collection and pendency of arrears due to different reasons is to be reported to the CT by ROs as well as AOs.

2.4.2 Organisational set up

The CT, Assam administers all tax measures and supervision of assessment, levy and collection of taxes under the overall monitoring and control of the Secretary, Finance (Taxation) Department, GoA. The State is divided into ten zones comprising of 37¹¹ assessment units. Assessment, levy and collection of taxes is done by Assessing Officers (AOs). There are 23 Recovery Offices with the primary function of recovery of arrears of taxes.

2.4.3 Audit objectives

The Performance Audit (PA) was conducted with a view to ascertain:

- the extent and nature of accumulated arrears and reasons thereof;
- whether the provisions of the Acts, Rules and Departmental instructions /guidelines issued for recovery of arrears of revenue are being followed scrupulously; and
- adequacy and effectiveness of the internal control and monitoring mechanism in the Department in collection of arrears of revenue.

2.4.4 Scope and Methodology of Performance Audit

The audit was conducted between April and July 2018 covering the period 2012-17. Records of the Secretary, Finance (Taxation) Department, CT, Assam and 12¹² (out of 23) Recovery Offices were examined. Cross-verification of records were carried out in five¹³ Assessing units (out of 37 Assessing units) where there was the largest pendency of recovery cases (₹ 182.39 crore). Out of 15401 arrear cases pending under different stages, audit selected 2957 cases (19.20 *per cent*) for scrutiny under the selected units.

An Entry Conference was held on 20 April 2018 with the Joint Secretary, Finance (Taxation) Department and the CT wherein scope, methodology and objectives of the PA were explained. The draft report of the PA was forwarded to the Government and the CT, Assam on 20 August 2018. An Exit Conference was held on 12 November 2018 with the Principal Secretary, Finance Department, GoA and the CT, Assam wherein the audit findings, conclusions and recommendations of the PA were discussed. The replies of the Government/Department received on draft

¹¹ Includes Agricultural Income Tax Officer and two Check posts *viz.* Jalukbari CP and Kabaitory CP as assigned with assessment power (abolished after implementation of GST).

¹² Recovery Offices – Guwahati, Jorhat, Golaghat, Tinsukia, Dibrugarh, Sivasagar, Mangaldoi, Morigaon, Nagaon, Dhubri, Kokrajhar and Silchar were selected through statistical sampling method of Probability Proportional to Size Without Replacement (PPSWOR).

¹³ Guwahati Unit-A, Guwahati Unit-B and Guwahati Unit-C, Sivasagar and Naharkatia.

report and during the Exit Conference have been incorporated in the relevant paragraphs wherever applicable.

2.4.5 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation extended by the Finance (Taxation) Department, its officers and staff in providing necessary information and records to Audit. However, at unit level, records related to demands raised on TDS cases mostly pertaining to the Assam General Sales Tax Act, 1993 were not produced to Audit for verification due to which Audit could not ascertain the actions taken on those cases by the Department and reasons for accumulation.

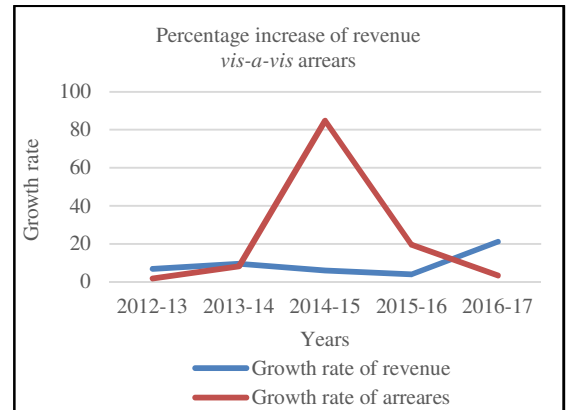
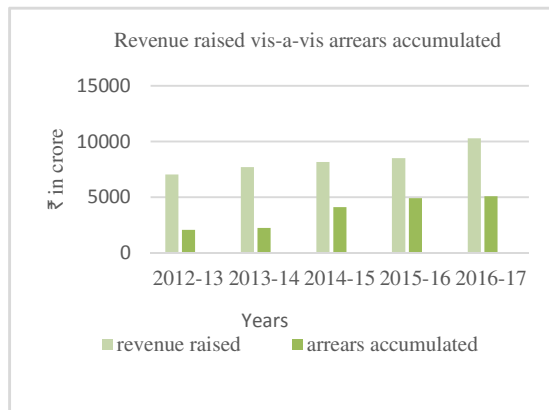
2.4.6 Trend of revenue and arrears

The amount of arrear increased from ₹ 2,027.08 crore as on 1 April 2012 to ₹ 5,079.35 crore as on 31 March 2017, registering an increase of 151 per cent. During the same period, revenue of the State increased from ₹ 7,050.56 crore to ₹ 10,293.75 crore, which was 46 per cent.

Table 2.2
Revenue raised vis-a-vis arrear accumulated

Year	Total revenue raised	Accumulated arrears at the end of the year ¹⁴	Growth rate of revenue in per cent	Growth rate of arrears in per cent
2012-13	7050.56	2062.54	6.76 ¹⁵	1.75 ¹⁶
2013-14	7719.62	2230.22	9.49	8.13
2014-15	8177.16	4120.85	5.93	84.77
2015-16	8504.57	4921.65	4.00	19.43
2016-17	10293.75	5079.35	21.04	3.21

Source: Information furnished by the CT, Assam



During 2012-13 to 2016-17, Audit observed that the year-wise growth rate of arrear ranged from 1.75 per cent to 84.77 per cent, while growth rate of revenue during the same period ranged from four per cent to 21.04 per cent. The steep increase in

¹⁴ The department did not include outstanding dues under the Assam Electricity Duty Act, 1964 as the dues are being adjusted through book transfer and not considered as arrears recoverable under the ALRR and BPDR Act.

¹⁵ Revenue collection during 2011-12 was ₹ 6,604.31 crore.

¹⁶ Closing balance of arrears of revenue during 2011-12 was ₹ 2,027.08 crore.

arrears by 85 per cent during 2014-15 was mainly due to demand of tax and interest amounting to ₹ 1700.27 crore raised under the AVAT Act, 2003 in respect of M/s. Oil India Ltd. (OIL), Naharkatia and M/s. Oil and Natural Gas Corporation Ltd. (ONGC), Sivasagar which remained unrealised within the demand period and requisition of arrear certificates were issued by the respective AOs for realisation under BPDR Act, 1913.

Table 2.3
Year wise accumulation of arrear vis-a-vis disposal of arrears

Year	Arrears at the beginning of the year	Addition during the year	Total	Amount disposed of			Closing balance	Arrears pending at AOs level	Arrears under certificate process
				Realised	Set aside by Appellate Authority	Total			
2012-13	2027.08	181.04	2208.12	122.88	22.70	145.58	2062.54	184.21	515.39
2013-14	2062.54	301.25	2363.79	86.22	47.35	133.57	2230.22	515.28	529.51
2014-15	2230.22	2030.99	4261.21	78.29	62.07	140.36	4120.85	438.94	1971.83
2015-16	4120.85	935.53	5056.38	70.26	64.47	134.73	4921.65	340.22	2124.75
2016-17	4921.65	407.60	5330.54	226.33	23.57	249.90	5079.35	243.57	2123.88
Total		3856.41		583.98	220.16	804.14			

Source: Information furnished by the CT, Assam

From **Table 2.3**, Audit observed that during the period 2012-13 to 2016-17, there was an addition of arrear of ₹ 3,856.41 crore, whereas the total disposal of arrear was only ₹ 804.14 crore. Thus, accumulation of arrear was almost five times compared to disposal of arrears. The increase in realisation of arrears during 2016-17 was largely due to introduction of the Assam Taxation (Liquidation of Arrear Dues) (Amendment) Act, 2016¹⁷, which was applicable from 26 August 2016 to 21 March 2017. Of the total disposal of ₹ 804.14 crore, ₹ 583.98 crore was actually realised and ₹ 220.16 crore was set aside or reduced under Liquidation Scheme/Courts/ Revision/Appellate orders. Moreover, out of the total arrears ₹ 5079.35 crore, the amount pending with courts of law was ₹ 2,550.97 crore. If the amount of arrears locked up in judicial proceedings is excluded, the remaining arrears comes to ₹ 2,528.38 crore. The average rate of disposal of arrears during 2012-17 was ₹ 160.83 crore per year vis-a-vis average rate of collection of arrears was ₹ 116.80 crore per year. The details of settlement of cases and collection of arrears are discussed in the succeeding paragraphs.

The Department stated (November 2018) that maximum arrears are related to Oil and other Public Sector Undertakings and matters were pending at different stage of court proceeding/redressal forum.

2.4.7 Impact of GST on accumulated arrears and audit recommendations

The period covered under this PA is from 1 April 2012 to 31 March 2017. However, it is pertinent to mention here that introduction of the Goods and Services Tax (GST) from July 2017, would have no impact on the arrears pending under various

¹⁷ Notification No. LGL.36/2005/55 dated 26 August 2016. Scheme offers reduction of interest and penalty on payment of arrears within the specified period.

Acts. GST was implemented in the Country from 1 July 2017 replacing many indirect taxes under one tax and Assam is the first State to ratify the GST bill. Accordingly, Assam Goods and Services Tax (AGST) Act has been enacted by the State Legislature for levy and collection of State tax on supply of goods and services, which subsumed Assam Value Added Tax Act, Assam Entry Tax Act, Assam (Amusement & Betting) Tax Act and Assam Tax on Luxuries (Hotels and Lodging Houses and Hospitals) Act besides Central Sales Tax Act¹⁸. The AGST Act, 2017, includes legal provisions relating to the recovery of arrears arising out of proceedings under the existing law. The position of arrears of revenue as on 31 March 2017 under various Acts, subsumed in GST as detailed in **Table 2.4**:

Table 2.4
Act-wise position of arrear subsumed in GST and remained out of GST

(₹ in crore)			
Name of the Act	Total amount of arrear as on 31 March 2017	Amount pending disposal under judicial Courts and Revisional and Appellate Authorities.	Recovery of arrear pending with the ROs and AOs
Acts subsumed under GST			
Assam General Sales Tax Act, 1993	374.92	56.91	318.01
Assam Value Added Tax, 2003	2231.89	454.18	1777.71
Assam Entry Tax Act, 2008	93.50	10.53	82.97
Assam (Amusement & Betting) Tax Act, 1939	0.21	0.00	0.21
Assam Tax on Luxuries (Hotels and Lodging Houses and Hospitals) Act, 1989	5.11	0.27	4.84
Central Sales Tax Act, 1956	238.18	84.10	154.08
Total	2943.81	605.99	2337.82
Acts not subsumed under GST			
The Assam Professions, Trades, Callings and Employments Taxation Act, 1947	2.03	0.01	2.02
The Assam Electricity Duty Act, 1964	0.00	0.00	0.00
The Assam Taxation (on Specified Land) Act, 1990	2080.89	2056.87	24.02
The Assam Agricultural Income Tax Act, 1939	52.62	50.33	2.29
Total	2135.54	2107.21	28.33
Grand total	5079.35	2713.20	2366.15

Some of the legal provisions under AGST Act, 2017 relating to the recovery of arrears arising out of the proceedings under the existing law as clarified¹⁹ by the CT, Assam in May 2018 are highlighted below:

a. Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under the AGST Act [Section 142(8) of the AGST Act].

b. If due to any proceedings of appeal, review or reference relating to output tax liability initiated, whether before, on or after the appointed day, under the existing

¹⁸ Was levied by Central Government but retained by State Government.

¹⁹ Circular No.08/2018-GST dated 2 May 2018

law, any amount of output tax becomes recoverable, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under the AGST Act [Section 142(7) (a) of the AGST Act].

Further,

- i. Clause (b) of sub-section 10 of Section 54 of the AGST Act, 2017 provides that, the proper officer (Assessing Officer) may deduct from the refund due any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law. The refund amount can be reduced by the arrear dues under subsumed Act while sanctioning the refund amount.*
- ii. A liability can be raised under Section 142 of the AGST Act, 2017 in Liability Register of taxpayer and he shall discharge this liability before discharging the current liability. (such provision is available in the GSTN system).*

The Department in their replies (November 2018) stated that most of the taxpayers, who have arrears dues, have already migrated to GST as such the Department shall be in a position to recover a good portion of the arrears through the mechanism enshrined under GST. Further, the Department also stated that under Section 49 of the AGST Act, the Input Tax Credit (ITC) can be blocked, if any taxpayer violates the provisions of the GST Act for which the Government revenue suffers.

Under Section 39 of the AVAT Act, 2003 no assessment shall be made after the expiry of five years from the end of the year to which the assessment relates. However, in cases where specific information is available, re-assessment can be made under Section 40 of AVAT Act, 2003 within a period of eight years after allowing the dealer an opportunity of being heard.

Actions required to be taken by the State Government

- Government should ensure realisation of arrears under the existing law which have been subsumed in GST Act by application of provision of AGST Act.***
- Government should link all the outstanding demands under the existing law with GSTN to ensure that no defaulters continue their business without relinquishing previous demands prior to registration under GST Act.***
- AGST Act, 2017 has given special powers to the Prescribed Authority to initiate recovery proceeding. Therefore, the Department may consider creating a separate recovery cell under the Commissioner of Taxes abolishing existing Recovery Offices considering number of arrear cases involved under the Acts which have not been subsumed under GST.***

2.4.8 Accumulation of arrears

2.4.8.1 Pendency of arrear at different stages

The detailed break-up of number of cases and arrears pending at different stages as on 31 March 2017 were as detailed in **Table 2.5**:

Table 2.5
Position of pendency of arrears at different stages

Stages at which pending	No. of cases	Amount involved (₹ in crore)	Percentage to total arrear
Pending in Appellate Tribunal (ABR ²⁰)/ Courts	385	2,550.97	50.22
Pending with Revision Authority	215	58.12	1.14
Pending with the Appellate Authority	342	104.11	2.05
Recoverable arrear pending with ROs	12,730	2,122.58	41.79
Recoverable arrear pending with AOs	1,729	243.57	4.80
Total	15,401	5,079.35	

Source: Information furnished by the CT, Assam

On analysis of pending cases at various level audit found that 381 and 223 cases were pending in Appellate Tribunal/courts and Revision Authority against 385 and 215 cases respectively as shown by the Department.

It appears from the above table that 942 cases (6.12 per cent) of arrears amounting to ₹ 2713.20 crore were pending with Appellate Tribunal (ABR)/ Courts/ Revision Authority and Appellate Authority and therefore could not be categorised as arrears. It was observed that out of recoverable arrear of ₹ 2,122.58 crore pending with the ROs, ₹ 1,349.71 crore in respect of M/s. OIL, under the AVAT Act, was actually pending with the Revision Authority since August 2015 and therefore, was not recoverable under the certificate process. Further, out of ₹ 2,550.97 crore pending with Appellate Tribunal (ABR)/ Courts, ₹ 350.55 crore in respect of M/s. ONGC was actually pending with the Revision Authority since August 2015. Thus, the position of pending cases under revision process as reported by the Department/CT did not match with records furnished by ROs. The Position of arrears pending at different stages as furnished by the Department/CT required reconciliation with the figures maintained by the Legal Cell of CT and ROs. On analysis of realisable arrears of ₹ 243.57 crore with AO, Audit observed that 70 per cent of the arrear amounting to ₹ 169 crore was pending with AO, Guwahati Unit-A.

The Department accepted (November 2018) audit observation and agreed to take follow up action in the above cases.

The amount of arrears accumulated at various stages highlighted the need for strengthening the system of management of arrears, as discussed in the succeeding paragraphs.

²⁰ The Assam Board of Revenue

Recommendation: Government should reconcile the realisable arrears and non-realisable arrears at different stages and focus on realisable arrears for recovery.

2.4.8.2 Age wise position of arrears

Age-wise pendency of cases and amount of arrears are as detailed in **Table 2.6**.

Table 2.6
Age wise pendency of arrears

Age	No. of cases	Amount (₹ in crore)	Percentage to arrears to total arrears
Demand less than one year old	291	272.36	5.36
Demand less than three years old but more than one year old	811	2,560.28	50.41
Demand less than five years old but more than three year old	931	239.92	4.72
Demand more than five year old	13,368	2,006.79	39.51
Total	15,401	5,079.35	

Source: Information furnished by the CT, Assam

It is evident from the above **Table 2.6** that out of 15,401 cases involving ₹ 5,079.35 crore in entire State, ₹ 2,006.79 crore (39.51 per cent) in respect of 13,368 cases remained unrealised for more than five years. As the Department did not prescribe any norms/target for disposal of arrear cases, recovery of such arrears would become difficult, as they grow older.

The Department stated (November 2018) that they were going to issue appropriate instruction to all concerned. Further development on this issue was awaited (December 2018).

Recommendation: Government/Department may prescribe norms/targets for collection of arrears considering realisable arrears and monitor the progress at all levels, with special emphasis on those cases which are more than five years old to avoid pendency of arrears for long time.

Audit observations

2.4.9 Cases pending in Hon'ble Supreme Court/ High Court/ABR

Under the provision of Section 80 and 81 of the AVAT Act, 2003, any person who is aggrieved by an order passed by the Appellate/Revision Authority or a taxing authority not below the rank of Deputy Commissioner of Taxes may appeal to the Appellate Tribunal and High Court within sixty days from the date of receipt of order.

As per information furnished by the CT, there were 385 cases involving ₹ 2,550.97 crore pending disposal in Hon'ble Supreme Court/High Court/Assam Board of Revenue (ABR) as on 31 March 2017, which was 50.22 per cent of the total arrear revenue.

Audit test checked 142 cases (36.88 *per cent*) out of 385 cases involving ₹ 321.07 crore. Instances of lack of follow up action /non-compliance of verdict of the Appellate Tribunal/ Courts resulted in non-realisation or accumulation of arrear cases are discussed below:

2.4.9.1 Audit test checked 109 cases (42.74 *per cent*) out of 255 cases pending in Hon'ble Supreme Court/ High Court. It was noticed that 29 cases (26.61 *per cent*) (**Appendix – III**) involving an arrear of ₹ 112.35 crore pending as per departmental records were disposed of by the Hon'ble Gauhati High Court (between June 2011 to September 2016). Due to lack of co-ordination between the departmental authorities, an arrear of ₹ 112.35 crore remained unadjusted and the Department continued reporting of arrear in those cases even though the Hon'ble Gauhati High Court had quashed the assessment order or directed to file appeal with the departmental authorities.

2.4.9.2 Audit test checked 33 cases (25.38 *per cent*) out of 130 cases pending in ABR. It was noticed that in six cases (**Appendix - IV**) an arrear of ₹ 17.37 crore was pending before the ABR as per departmental records. However, audit cross-verified these cases with the records of the ABR and found that the cases were disposed of but no follow-up action was initiated by the Department. Thus, due to lack of co-ordination between the departmental authorities, arrear of ₹ 17.37 crore remained unadjusted and the Department continued reporting the same as arrears.

During the exit conference (November 2018), the CT while accepting the audit observations stated that such cases could not be struck off from the accumulated arrears due to non-availability of judgement/ orders with the Department. The justification furnished by the CT, Assam was not tenable as Court orders were available in the official website of Hon'ble Gauhati High Court. However, in reply the Department stated (November 2018) that they were going to instruct all concerned to take necessary action as per Hon'ble High Court/ ABR orders. Further development on this issue was awaited (December 2018).

Recommendation: The legal cell of the Department may establish a liaison with Courts/Tribunal/Appellate authorities to ensure timely and appropriate action where cases have been disposed of.

2.4.10 Cases pending under revision process with CT

Under the AVAT Act, 2003, no time limit was fixed for disposal of revision petition by the CT and the Department did not fix any time limit for disposal of cases in the interest of State revenue.

As per Section 82 of the AVAT Act, 2003, the CT may on his own motion or on the application made in prescribed manner by the dealer or person affected by an order passed by a person appointed to assist the CT under sub-section 1 of Section 3, call for record of any proceeding under this Act in which any such order has been passed

and may make such enquiry or cause such enquiry to be made and subject to provision of the said Act, pass such order thereon, not being an order prejudicial to the dealer or person to whom the order relates as he thinks fit.

Some of the major cases where no action was initiated or action initiated with delay by the ROs/AOs resulted in accumulation of arrear of revenue are discussed as under:

2.4.10.1 Out of 215 cases, 58 cases (26.97 per cent) were selected in course of audit, it was observed that in nine cases involving ₹ 14.86 crore (**Appendix - V**), the revision authority had disposed of the cases with direction to recover, re-assess or set aside the assessment orders. However, the ROs did not take steps to strike off the arrear cases where revision authority had already decided but continued to report as arrear pending with revision authority.

The Department stated (November 2018) that these cases have now been struck off from the records of *Bakijai* cases except in case of M/s. Hills Trade Agencies, as disposal order was not available in the record of AO/RO.

2.4.10.2 Audit observed that demand of ₹ 1,700.27²¹ crore was raised under the AVAT Act, 2003 in respect of M/s. OIL and M/s. ONGC for the assessment year 2009-10 to 2012-13 due to disallowance of discount claimed by the assessee and inclusion of transportation cost in the sales price by the AO while completing assessments. The certificate cases were initiated in September 2014 and November 2014. The revision petitions filed by the assessee on the demand were admitted without pre-deposit²² in August 2015. Further, Audit observed that these petitions were yet to be heard. However, it was noticed that M/s. OIL has deposited part of demanded tax of ₹ 19.08²³ crore (in June 2016) pertaining to transportation cost as levied by the AO. This resulted in blockade of revenue to that extent for a considerable period due to delay in finalisation of revision petitions.

During the exit conference (November 2018), the CT stated that the revision petitions of M/s. OIL and M/s. ONGC would be disposed of shortly. Further development in this regard was awaited (December 2018).

Recommendation: Government/ Department may consider to prescribe a time frame for disposal of cases under revision by CT in the interest of State revenue. The Department should fix responsibility for non-disposal of two cases involving arrears of demand of ₹1700.27 crore, for more than three years.

²¹ Tax and interest of ₹ 1349.71 crore and ₹ 350.58 crore in respect of M/s. OIL and M/s. ONGC respectively. These amounts also include further interest totalling to ₹ 36.87 crore levied at the time of issue of requisition of arrear certificate.

²² As per direction received from Hon'ble Gauhati High Court and ABR to accept the petitions without any pre-deposit.

²³ Including interest up to 31 March 2016.

2.4.11 Demand locked up under Appeal

Under Section 79 of the AVAT Act, 2003 any person aggrieved by an order passed under the Act by a tax authority lower in rank than a Deputy Commissioner of Taxes, may appeal to the Appellate Authority in a prescribed manner, within sixty days from the date of receipt of such order.

As per information furnished by the CT, there was 342 cases involving ₹ 104.11 crore pending under appeal, which was 2.05 per cent of the total arrear. Out of 342 cases, 78 cases (22.81 per cent) were selected in course of audit. Audit observed that in nine cases involving arrear of ₹ 14.97 crore (**Appendix - VI**), either the Appellate Authority had disposed of or the cases were settled under the Assam Taxation (Liquidation of Arrear Dues) (Amendment) Act, 2016. However, the ROs continued to report these cases as arrear pending with Appellate Authority.

The Department stated (November 2018) that these cases have now been struck off from the records of *Bakijai* cases except in cases of M/s. Bajrang Tea Trading Co. and M/s. Procter and Gamble Home Products Ltd., as disposal orders were not available in the record of AOs/ROs.

Recommendation: Government/Department may consider timely disposal of appeal cases which are pending under the existing law to initiate process of recovery to accelerate collection of arrears of revenue. Further, pending cases be reviewed periodically so that proper action may be initiated against the disposed of cases without delay.

2.4.12 Demand locked up with Government Department

As per information obtained from the selected 12 ROs (out of 23), there were 75 cases involving ₹ 45.96 crore pending against the Government Departments/Corporations etc.

2.4.12.1 Audit noticed that in selected 11 cases ²⁴ (14.67 per cent), out of 75 cases arrear of ₹ 21.57 crore was pending as on 31 March 2017. A perusal of records of individual cases revealed that though the certificate process was initiated against the defaulters between May 1990 and March 2005 by the RO, Guwahati, arrears remained pending without any further action. As it is evident from notification²⁵ issued by GoA, these companies had declared closure of their business and an Asset Management Cell (AMC) was created to sell out the assets of the companies. However, it was observed that the ROs/CT did not take any initiative to claim arrear dues pending against the companies through AMC. Thus, inaction on the part of the Department to claim its arrear dues before the AMC resulted in non-realisation of arrear revenue to the tune of ₹ 21.57 crore.

²⁴ M/s. Assam Government Construction Corp. Ltd. (₹ 1.65 crore), M/s. Assam Conductor and Tubes Ltd. (₹ 0.11 crore) and M/s. Assam State Co-operative Marketing & Consumer's federation Ltd. (₹ 19.81 crore).

²⁵ No. PE/111/2004/422 dated 11/12/2006

Recommendation: Department may take appropriate and timely action to claim and realise dues against the Companies which had already been declared closure of their business.

2.4.12.2 Audit observed that M/s. Assam Syntax Ltd., a subsidiary of the Assam Industrial Development Corporation (AIDC) was liable to pay arrear of assessed tax of ₹ 3.64²⁶ crore. The certificate process was initiated in March 1993 followed by several notices till August 1996. After a gap of 15 years, the RO, Guwahati took up the issue of (in March 2012) non-payment of arrear with the Managing Director (MD), AIDC. In response, the MD, AIDC informed that the company has closed down its business from April 2008. Thus, delay in initiative by the Department and unawareness of the closure of business resulted in non-realisation of arrear of ₹ 3.64 crore.

2.4.12.3 Audit observed that demand of ₹ 38.31²⁷ lakh was pending against the Deputy Director, Tourism, Kaziranga. However, the certificate process was initiated in November 2015 for demand of ₹ 21.68²⁸ lakh under Assam Tax on Luxuries (Hotels and Lodgings Houses) Act, 1989 pertaining to the period 1995 to 2004. It was noticed that neither any further action was initiated to realise the arrear under certificate process nor was the matter taken up with higher authority of Tourism Department, GoA. Further, the AO did not issue requisition of arrear certificate for the remaining period²⁹ amounting to ₹ 16.63 lakh pertaining to period 2004-05 to 2014-15.

The Department stated (November 2018) that they were exploring the possibility of engaging AIDC for proper appropriation towards recovery of arrears where there is a disposal of assets. Further, the Department was also exploring possibility for writing off those cases which were very old and chances of recovery was remote. During exit conference (November 2018), the CT also stated that instruction would be issued to AO, Golaghat to take immediate steps to realise all outstanding dues against the Deputy Director, Tourism, Kaziranga. Further development was awaited (December 2018).

Recommendation: Department may consider a practical yet a time bound monitoring system to claim and realise dues from the Government Companies and Department.

2.4.13 Demand locked up with the Collector of other State (inter-State arrear Certificate)

As per Section 12 of the BPDR Act, 1913 in a case where a defaulter has shifted his business/residence out of the State/District, an Arrear Certificate is required to be sent to the District Collector of the State/District concerned for arranging recovery of Government dues.

²⁶ For the assessment period 1987 to 1993 under Assam Finance (Sales Tax) & CST Acts.

²⁷ The Assam Tax on Luxuries Act, 1989 pertaining to the assessment years 1995-96 to 2003-04

²⁸ For the period 1995-96 to 2003-04

²⁹ Period 2004-05 to 2014-15

2.4.13.1 Audit observed from the records of the ROs³⁰, that 107 cases involving ₹ 50.63 crore was pending with the various District Collectors (DC) (including inter-State) as on 31 March 2017. These cases were sent to DCs of State/District concerned (between 1978 and 2016) for realisation of dues as the defaulter had shifted their business to other States/Districts.

Scrutiny of case records of 107 cases sent to DCs, revealed that no pursuance was made in 94 cases (87.85 per cent) by the ROs after 2012. Thus, due to lack of pursuance with the DCs, arrear dues of ₹ 50.63 crore remained unrealised.

Recommendation: Department may issue necessary instruction to ROs to follow up inter-State arrear certificate cases and initiate action under the GST laws/ existing laws.

2.4.13.2 Audit observed that requisition of arrear certificate for ₹ 42.60³¹ lakh against M/s. Bajrang Trading Company was issued in July 2000. The RO, Guwahati, requested the AO concerned (in October 2001) to furnish the whereabouts of the dealer as the defaulter had closed down his business in Guwahati. The AO (in November 2001) furnished the permanent address of the defaulter located in other State³². However, the RO failed to issue an inter-State arrear certificate even though dealer's permanent address in the other State was available. Thus, due to non-issue of inter-State arrear certificate, an amount of ₹ 42.60 lakh remained unrealised.

The Department stated (November 2018) that the instructions would be issued to ROs to closely monitor the present status of inter-State arrear certificate issued. Further, during the exit conference (November 2018), the Principal Secretary, Finance Department, Assam directed the CT to investigate the reasons for non-issue of inter-State arrear certificates and take appropriate action wherever necessary.

Recommendation: Department may fix responsibility for non-issue of inter-State arrear certificate which resulted in accumulation of arrears.

2.4.14 Demand locked up due to non-execution of arrest warrant

As per Section 14 of the BPDR Act, 1913, RO may order execution of a certificate by arresting the Certificate Debtor and detaining him in civil prison. The CT, Assam in May 2007 instructed the ROs to take up the matter regarding non-execution of warrant of arrest by police with the Superintendent of Police and Deputy Commissioner of the District concerned.

Audit scrutiny of certificate cases in selected ROs, revealed that during 2012-17, warrants of arrest in 1910 cases involving ₹ 401.29 crore were sent to different police stations specifying the dates within which such warrant was to be executed. Out of the 1910 cases, in 373 cases (19.53 per cent), the warrants were executed and

³⁰ Guwahati, Nagaon & Tinsukia

³¹ under the AGST Act for the period ending 1995, 1996 & 1997

³² as disclosed by the dealer in the AGST application form

an amount of ₹ 5.63 crore was realised. Further, it was also observed that in 40 cases (2.09 per cent) involving ₹ 143.49 crore, the police reported that the Certificate Debtors were either not traceable or had closed down the business. In remaining 1497 cases (78.38 per cent), either the warrant of arrest were not executed or the police authorities did not send any action taken report. The matter of non-execution of warrants of arrest by the police authorities was not taken up by ROs with the SPs/DCs despite CT's instruction in May 2007. Thus, the failure of the ROs/ Department to take up the matter of non-execution of warrants of arrest with the higher authorities of the Police Department, an arrear involving ₹ 252.17 crore remained un-realised.

A case study:

Certificate proceedings in 15 cases³³, involving ₹ 121.70 crore were initiated against M/s. Ghosh Brothers Electronics Pvt. Ltd. While initiating the proceedings, the RO, Guwahati issued several arrest warrants on different dates (between 2013-14 to 2016-17) against the defaulter. However, on all the occasions, the police failed to execute the warrants and returned it with remarks saying that the dealer had closed down his business or was not traceable. The AO³⁴ also informed (in March 2016) the RO that the defaulter was involved in another business (M/s. Ghosh Brothers Motors) in Guwahati but no action was initiated by the RO to realise arrears by attachment of movable/immovable property as per provisions of the BPDR, Act.

During the exit conference (November 2018), the Principal Secretary, Finance Department, Assam instructed the CT to take up the issue with the Director General of Police, Assam. Further, the Principal Secretary also assured that all possible efforts would be made to realise outstanding dues against M/s. Ghosh Brothers Electronics Pvt. Ltd.

Recommendation: Department should take up the matter with the higher authorities of the Police Department and ensure all possible action under the existing/ GST laws to realise dues from the defaulter. Action may also be initiated against the officials for failure to take up the matter with the highest authorities of the Police Department for execution of arrest warrants.

2.4.15 Recoverable arrear pending realisation with ROs under certificate process

2.4.15.1 Non-furnishing of requisite information by the AOs

As per Section 44 of the AVAT Act, 2003 in respect of any amount that remains unpaid after the due date of payment, the AO is required to send requisition for a certificate in the prescribed form to the RO, giving full particulars of the defaulter such as name, address of the Certificate Debtors (including branch office and head office address), bank account number, PAN etc.

³³ Under the AVAT & CST Acts for the periods 2005-06 to 2013-14

³⁴ Guwahati Unit-C

- Audit scrutiny of certificate register in 12 selected ROs (out of 23), revealed that in 2318 cases requisition of certificates involving ₹ 2,328.71 crore was issued by the AOs during 2012-17. Test check of 370 cases (15.96 per cent) revealed that in 130 cases (35.14 per cent) involving ₹ 247.27 crore, AOs did not mention the requisite information³⁵.
- Further, it was observed that in nine cases involving ₹ 4.22 crore, the ROs called for details of particulars of the Certificate Debtors from AO. Out of these, in five cases involving ₹ 2.67 crore, the ROs already had the required information. In remaining four cases, action was still pending for want of information.

Thus, in absence of requisite information such as permanent address, movable/immovable properties of the Certificate Debtors, the ROs were handicapped to take proper action on those cases resulted in ₹ 1.55 crore remained un-realised.

During the exit conference (November 2018), the CT stated that prior to GST furnishing of PAN, Bank account number was not mandatory at the time of registration under various Acts. However, in those cases where information was available but not furnished to ROs, such negligence of duty would be viewed seriously. Further, in reply (November 2018) the Department stated that necessary instructions would be issued over and above instructions already issued for closer co-operation and co-ordination between AOs and ROs.

Recommendation: Department should fix responsibility to AOs for non-cooperation with the ROs in furnishing information. All old cases of registration should be reviewed to obtain important information (PAN, Bank Account Numbers) as required under Goods and Services Tax Act.

2.4.15.2 Non-initiation of action as per provisions of the BPDR Act

The dealer M/s. Megha Assam (P) Ltd., was in default for payment of arrear in four cases involving ₹ 18.00 crore³⁶ and certificate cases were initiated between March 2012 and June 2016. Out of the total dues, the Certificate Debtors deposited ₹ 1.19 crore in instalments and stopped payment after June 2015. However, while initiating action under the BPDR Act, 1913 the RO issued several arrest warrants and the police reported that the dealer was not traceable (June 2015). On failure of the police to execute the arrest warrant, the RO requested (in August 2016) the Superintendent of Excise, Kamrup to restrict delivery of India Made Foreign Liquor (IMFL) from the dealer's Bonded Warehouse until realisation of arrear of ₹ 16.81 crore. The State Excise Department was reluctant to restrict delivery of IMFL to the dealer as same would affect earning excise revenue. Further, the CT directed

³⁵ Such as whereabouts, bank account number, PAN, source of realisation of dues and particulars of movable/immovable properties etc., of the Certificate Debtor.

³⁶ Under the AVAT and CST Acts for the year 2006-07 to 2009-10

(October 2016) the RO to adopt other modes of execution of arrear certificate, so that the excise revenue was not affected. Audit viewed that this is the unwarranted interference of the CT on the duties of the RO. As per case records, it was noticed that the RO did not take any further initiative to realise the arrears, which resulted in non-realisation of ₹ 16.81 crore.

During the exit conference (November 2018), the Government/ Department assured necessary action would be taken to realise outstanding dues on priority basis. Further development in this issue was still awaited (December 2018).

Recommendation: Department should realise the outstanding dues against the defaulter within a limited time period, otherwise, attachment of movable and immovable property may be initiated.

2.4.15.3 Non-levy of interest on the dues realised under certificate cases

Section 16 of the BPDR Act, 1913 provides for recovery of interest at the rate of 6.25 per cent per annum of the demands payable by CDs, charged from the date of filing of the case upto the date of realisation of dues.

On test check of records of the selected ROs, Audit observed that certificate proceedings in five assesseees out of 17 test checked assesseees involving dues of ₹ 1.78 crore had been closed on realisation of entire dues without realising interest, though interest of ₹ 38.64 lakh (**Appendix - VII**) was leviable as per the provision of the BPDR Act, 1913. The reasons for non-levy of interest was not on record.

The Department accepted (November 2018) the audit observations and in compliance to the provision of the Act and Rules in force, the notices have been issued to defaulters.

Recommendation: Department should realise interest within a specific time period under the existing laws otherwise, recovery procedure under GST Act may be applied.

2.4.15.4 Loss of revenue due to dropping of certificate cases

There is no provision in the BPDR Act, 1913 to drop the certificate proceedings once initiated. During the test check of certificate case register in ROs³⁷, Audit observed that out of 3221 cases the ROs dropped the certificate proceedings (between August 2013 to March 2015) in 15 cases (0.47 per cent) involving ₹ 12.95 crore under various Acts pertaining to the assessment year 1997-98 to 2008-09 and returned the cases to the concerned AOs as the tax defaulters were not traceable or sufficient information was not provided by AOs. Thus, dropping of the cases without realising arrears resulted in loss of revenue of ₹ 12.95 crore.

³⁷ Guwahati and Tinsukia

The Department accepted (November 2018) the audit observations and stated that the required instruction would be issued to all concerned to verify the case diligently and to move for write off under Section 104 of the AVAT Act, 2003 read with Rule 56 of the AVAT Rules, 2005 if apparently there was no scope for realisation of dues following due procedures of law.

Recommendation: Department should diligently explore all possible means to recover the dues else move for write off as last resort.

2.4.16 Recoverable arrear pending realisation with the AOs

2.4.16.1 Non-issuance or delay in issue of arrear certificate

Under the provision of Section 43 (6) of the AVAT Act, 2003, the amount that remains unpaid after the due date of payment in pursuance of the notice issued by AO shall be recoverable as arrear of land revenue.

It was noticed that there were cases of non-issue/delay in issue of requisition of arrear certificate by AOs which resulted in non-realisation of arrear of ₹ 74.66 crore as shown in **Table 2.7**.

Table 2.7

Non-issue/ delay issue of arrear certificate

No. of cases	Amount involved (₹ in crore)	Delay/inaction	Reason
77	57.19	1-119 months	Delay in issue of requisition (Appendix - VIII)
5	17.47	Inaction	Non-issue of requisition (Appendix - IX)
82	74.66		

Audit also noticed that an arrears of ₹ 185.61 crore was lying with three AOs³⁸ under various Acts from 2001-17. However, the AO, Guwahati Unit-A, stated that case details of arrears particularly pertaining to the Assam General Sales Tax Act, 1993 would be difficult to locate as the Act was repealed and replaced by AVAT Act, 2003 from May 2005. In absence of detailed particular of dealers/cases, audit could not ascertain the action taken by AOs to realise the outstanding dues and reasons for accumulating huge arrears at AOs level without referring the cases to ROs for initiation of action under the BPDR Act, 1913. Thus, non-issue of requisition of arrear certificate in those cases resulted in non-realisation and accumulation of arrears at AOs level.

³⁸ Guwahati Unit-A, Naharkatia and Sivasagar

The Department stated (November 2018) that there was unintentional delay, however, instruction would be issued to ensure timely issue of requisition of arrear certificate. Further development in this issue was still awaited (December 2018).

Recommendation: Department may issue instruction to the AOs for instituting a system to monitor demand and collection register/ arrear register and exhibit promptness to recover the dues as arrear of land revenue.

2.4.16.2 Demand locked up due to non-verification of TDS certificate

As per Rule 28 (d) of the AVAT Rules, 2005, the person who deducts or deposits the amount deducted from any payment made to a dealer has to issue to the dealer concerned, a certificate of tax deducted at source (TDS) supported by attested photocopy of challans.

As per information furnished by the three AOs³⁹, ₹ 14.08 crore pertaining to the period 1997-98 to 2013-14 was outstanding (number of cases were not readily available with AOs as records were not maintained case-wise or dealer-wise), which was not allowed by the AOs during assessment for want of TDS certificate from the Government departments/ non furnishing of copies of challans in support of TDS claimed by the dealers. Thus, non-verification of deposit of TDS in government account, the amount was considered as arrears by the Department. Such verification should have been done immediately before or after the assessment but delay in verification resulted in avoidable arrear of revenue.

The Department stated (November 2018) that instruction was issued to all concerned to follow guidelines circulated (May 2018) to eliminate demands locked up for TDS verification.

Recommendation: The Government/ Department should ensure time bound verification of old TDS cases and take action accordingly. In GST regime, such verification would be carried out automatically through Goods and Service Tax Network (GSTN).

2.4.16.3 Issue of tax clearance certificate without realising arrear demand

As per Rule 44 made under the AVAT Rules, 2005 if the prescribed authority is satisfied that the dealer's declaration regarding position of submission of returns, payment of due taxes, payment of demanded taxes, interest and penalty under the Act, position of litigation cases, are in order, he may issue a tax clearance certificate to the dealer in Form-63 within seven days from the date of receipt of such request.

Audit observed that in respect of AOs, Guwahati Unit-C and Silchar the tax clearance certificate was granted to two⁴⁰ dealers in April 2013 & March 2017,

³⁹ AOs, Guwahati Unit-B & Guwahati Unit C did not furnished information though called for.

⁴⁰ M/s. Berial Engineering Ltd and M/s. Craigpark Tea Estate

though admitted tax of ₹ 2.59 crore (demand issued in December 2012 and March 2016) was not paid by the dealers prior to issue of tax clearance certificate. Thus, tax clearance certificate was granted without ensuring upto date payment of tax and arrears.

The Department stated (November 2018) that it was not desirable to hamper continuance of business in the interest of state revenue, hence tax clearance certificate issued. However, the reply of the Department was not tenable as the rule provision does not allow such relaxation when dues were pending against the dealer. Further, the Department stated (December 2018) that instructions would be issued to AOs, to be judicious so as to make balance in collection between both arrear and current revenue. Further development in this issue was still awaited (December 2018).

2.4.17 Non-renewal of Bank guarantee

- Audit observed in RO, Jorhat, that in five cases,⁴¹ a demand of ₹ 2.30 crore including interest ₹ 1.48 crore was pending against M/s. Canaro Resources Ltd., Jorhat and M/s. Assam Company India Ltd., Kolkata. The dealers got stay order against the assessment orders from the Hon'ble Gauhati High Court in September 2010, on the condition that they would furnish bank guarantee equivalent to demanded tax amount. Accordingly, M/s. Canaro Resources Ltd. and M/s. Assam Company India Ltd. had furnished bank guarantees amounting to ₹ 1.38 crore and ₹ 92.14 lakh respectively on annual renewal basis. The Hon'ble Gauhati High Court had dismissed the writ petition in January 2017 as the petition was not being pressed. Audit scrutiny revealed that bank guarantee for ₹ 1.38 crore furnished by the M/s. Canaro Resources Ltd. was not renewed on expiry of validity period i.e. after March 2012. However, the AO made correspondences with the Bank authorities for renewal of bank guarantee between the periods October 2012 to February 2016. In reply, the Bank authorities (November 2012 and March 2015) stated that the bank guarantee was cancelled in their records in March 2012. The matter related to non-renewal/ cancellation of bank guarantee was not placed by the Department before the Hon'ble Gauhati High Court which resulted in non-realisation of arrear amounting to ₹ 1.38 crore. The possibility of recovery of demanded tax was remote since company has closed down its business in India. Further, bank guarantee of ₹ 92.14 lakh furnished by the Assam Company India Ltd., was also not renewed on expiry in March 2016 and the tax demand was not realised till completion of this audit (July 2018). Thus, due to non-renewal of bank guarantee, the demanded tax of ₹ 2.30 crore remained un-realised even though the case was dismissed by the Hon'ble Gauhati High Court.

⁴¹ For the periods ending 2005 to 2009 under the ATSL Act, 1990

- Audit also observed in RO, Guwahati, that fourteen cases⁴² involving ₹ 15.44 crore against seven Coke Industries were pending with the CT (Revision Authority) since admission in February 2013. While admitting the revision petitions, the CT directed the dealers to deposit 15 *per cent* of the disputed amount in the form of bank guarantees. Accordingly, all the dealers furnished 14 bank guarantees (detailed in **Appendix - X**) involving total of ₹ 2.32 crore, which were valid upto April 2013. Further, on scrutiny of records in legal cell, it was noticed that the Additional CT directed (September 2014) the AO concerned (Guwahati Unit-B) to take up the matter of renewal of bank guarantee with the bank authority as the cases could not be disposed of due to repeated adjournments sought by the dealers. However, bank guarantees were not renewed. As the petitions were still pending with the Revision Authority, non-renewal of bank guarantee may lead to risk of loss of government revenue if the Revision Authority decides in favour of the assessment orders.

During the exit conference (November 2018) the Department while accepting the audit observation stated that the realisation of arrear against M/s. Canaro Resource Ltd., is remote as the Company has closed down its business in India. Thus, due to failure of the Department to take timely action resulted in loss of revenue ₹ 1.38 crore. However, the CT, Assam informed that all possible effort would be taken to realise dues against M/s. Assam Company India Ltd. Further, the Department stated (November 2018) that instruction would be issued to all AOs/ROs to make sure that bank guarantee do not expire and ensure its timely renewal.

Recommendation: Department may issue instruction to all AOs to monitor bank guarantee(s) furnished by the assesseees and non-renewal of bank guarantee should be immediately taken up with the authority on whose direction bank guarantee was obtained.

2.4.18 Penalty not levied on arrear of assessed tax

Under Section 43 (5) of the AVAT Act, 2003, where a dealer fails to make payment of the tax assessed or interest levied or penalty imposed on him or any other amount due from him within 30 days from the date of service of the notice of demand, the prescribed authority shall direct the dealer to pay in addition to amount due, by way of penalty, a sum equal to two *per cent* of such amount of tax, interest and penalty or any other amount due every month for the period for which payment has been delayed after the date on which such amount was due to be paid.

Out of 2318 cases audit selected 240 cases (10.35 *per cent*) for test check under ROs, in 37 cases⁴³ (15.41 *per cent*) the AO had issued requisition of arrear certificate (between April 2012 to January 2017) involving tax, interest and penalty

⁴² Under the CST Act for the period 2010-11 and 2011-12

⁴³ In respect of 21 dealers

of ₹ 36.11 crore on expiry of due date of payment. The AO while sending the cases to the RO did not levy additional penalty of ₹ 18.43 crore (**Appendix - XI**) for non-payment of tax within 30 days, which was leviable as per provision of the Act.

The Department stated (November 2018) that though imposition of penalty is discretionary, however, in such cases it was to be effected as deterrence measure.

Recommendation: Department may ensure levy of penalty as per the provision of the AVAT Act, 2003, where dealer failed to make payment of demand (s) under the notice period.

2.4.19 Internal control mechanism

Internal controls are intended to provide reasonable assurance of proper enforcement of law, rules and departmental instructions besides prevention and detection of frauds and other irregularities. The internal controls also help in creation of reliable financial as well as management information system for prompt and effective measures and for adequate safeguard against loss of government revenue. It is, therefore, the responsibility of the Department to ensure that a proper internal control structure is instituted, reviewed and updated from time to time to keep it effective.

2.4.19.1 Internal Audit

Audit noticed that no internal audit wing exists in the Department since 2011-12 as no person was posted in this wing, though internal audit was created in May 1988. In absence of internal audit, Audit noticed deficiencies in functioning of the Department as discussed in the preceding paragraphs.

2.4.19.2 Reporting

There exists a system of submission of periodic returns by the AOs and ROs to CT in respect of pending arrear cases but without stating the reasons for non-realisation of realisable arrears or list of defaulters against whom arrears were pending. The following irregularities were noticed due to poor reporting mechanism.

Inflated/ overstated reporting

- A demand of ₹ 1.34 crore against M/s. Assam Textile Department pertaining to the period from 1986-87 to 1993-94 was pending recovery with the RO, Guwahati. Scrutiny revealed that the government had waived all outstanding dues including local sales tax/central sales tax liabilities.
- A demand of ₹ 42.61 lakh was pending against M/s. Assam State Minor Irrigation Development Corporation for the period ending 1981 to 1989 under the Assam Financial (Sales Tax) Act. Audit noticed that the Certificate Debtor intimated the RO about the deposit of arrear tax of ₹ 42.61 lakh

supported by challan. The RO, Guwahati continued reporting of arrear dues of ₹ 42.61 lakh as recoverable.

- Scrutiny of certificate register in RO, Guwahati revealed that there was a duplication in entry of arrear certificate cases in respect of M/s. Amtron Informatics Ltd. amounting to ₹ 1.81 crore for the period 2003-04.

Wrong reporting

- There was discrepancy between arrears reported by the Department with annual returns furnished by the ROs for the year ending March 2017. The Department reported ₹ 2,550.97 crore pending in Courts and other judicial authorities in State, whereas as per ROs' report, the same was reflected as ₹ 2,827.21 crore. It indicated that there was lack of co-ordination between different wings of the Department.
- There was wrong reporting of pendency of arrears under Revision Authority as referred to in the preceding paragraph (2.4.8.1).

The Department stated (November 2018) that necessary instructions would be issued to the AOs/ROs concerned to rectify the defects. Further development in this issue was awaited (December 2018).

2.4.19.3 Controls register not maintained/improperly maintained

- Under provision of Rule 80 of Schedule II of the BPDR Act, 1913, payment of the amount due under any certificate may be made by instalments, if the Certificate Officer (CO) decides so. Audit noticed that no instalment register was maintained to monitor the receipts of the instalments. In absence of such a register, actual number of certificate cases where the payment of certificate dues in instalments were allowed by the CO, dues under each instalments and payment received there against could not be ascertained. Perusal of register of certificate revealed that in some cases where instalment payments were allowed, after partial payment, the Certificate Debtors stopped payments. The certificate officer did not take action such as attachment of their properties except issuing arrest warrant.
- The Department had not prescribed any separate control register such as 'Demand, Collection and Balance' (DCB) register for monitoring the progress of recovery of arrears effectively, stay order register, register of movable and immovable properties of Certificate Debtors, register of companies under liquidation. In absence of these separate registers, the correctness of the arrears pending, monitoring of recovery and availability of options for attachment of movable and immovable properties in case of non-payment of demands could not be determined.
- The Department had also not prescribed any register of Bank Guarantee to record bank guarantee furnished by the assessee as directed by Judicial,

Revision and Appellate authority. In absence of such register, the Department was not in a position to monitor timely renewal /encashment of bank guarantees as discussed in the preceding paragraph.

The Department stated (November 2018) that necessary instructions would be issued to all AOs/ROs to properly maintain control registers. Further development in this issue was awaited (December 2018).

2.4.19.4 Absence of database in the Department to monitor recovery of arrears

Though the position of recoveries is reflected in monthly/annual reports furnished by the ROs and AOs, there is no prescribed mechanism exclusively for arrear compilation. Adequacy of the system, application and procedural controls, availability of Management Information System (MIS) reports for management and sharing of information etc. cannot be ensured, in the absence of such Information Technology system/software in the Department.

Audit noticed that in selected ROs, the Department was not having computerised system to monitor the extent of arrears of revenue, compliance of prescribed rules and regulations of execution of arrear certificate ensuring recovery of arrears by the Department in an efficient and effective manner. Thus, lack of computer enabled system in the Department resulted in poor monitoring of recovery process.

The Department stated (November 2018) that they were exploring the feasibility on installation of Standard Operating Procedures (SOP) for monitoring the performance of collection and accumulation of arrears. Further development in this issue was awaited (December 2018).

2.4.19.5 Non-review of arrear cases

Audit observed that the ROs had been maintaining register of certificates cases as prescribed under the BPDR Act⁴⁴. The Assessing unit offices are maintaining demand register but not arrear cases separately to monitor prompt realisation of arrears. Neither the BPDR Act nor the AVAT Act provides for carrying out periodic review of arrear cases. Further, no rules have been framed in this regard. Moreover, no periodic meetings were taken place to access the reasons for piling up of arrears and to evolve a strategy to gear up the disposal of revision/appeal cases within a specific period to enable disposal of arrears cases.

In response to audit questionnaire, the Secretary, Finance (Taxation) Department stated that the Department reviews the progress of collection of arrears from time to time at different levels. However, no documentary evidence was produced to Audit in support of the claim.

⁴⁴ Clause 79 of Schedule-II attached to BPDR Act.

Recommendation: Government/Department may consider strengthening of control mechanism and follow up and persuasion of cases, where the Acts are still in force.

2.4.20 Follow up on previous recommendations

The following recommendations were made in the previous Performance Audit (Audit Report (Revenue Sector) for the year ended 31 March 2012) on “Working of Recovery Offices in Sales Tax Department in Assam” for the period covering 2006-07 to 2010-11:

- *Taking prompt action by laying down norms/target for clearance of arrear certificates and monitor the progress at all levels, particularly in respect of cases which were more than five years old;*
- *Evolving a practical yet time bound monitoring system for issuing inter-State arrear certificates without delay and regularly co-ordinating with their counterparts in other States;*
- *Requesting the appellate authorities to expedite disposal of the cases pending with them with special emphasis on cases against which arrear certificate were issued;*
- *Devising a system for regular and periodic liaison with the ABR, Official Liquidators and BIFR to obtain information about disposal of cases for early settlement of arrear dues;*
- *Reviewing the rate of interest leviable on collection of arrear dues and enhance it to be at par with those applicable to Government borrowings/ public lending rates prevailing in various banks/ financial institutions to act as a deterrent/disincentive to habitual and wilful defaulters; and*
- *Streamlining and strengthening the internal control mechanism including the internal audit system and supervision by the senior officers to effectively guide the recovery officers against leakage of Government revenue.*

In course of the current PA, we observed that none of the above recommendations were adopted by the Finance (Taxation) Department nor corrective measures taken to avoid recurrence of similar deficiencies pointed out by earlier audit. It is evident from the facts that in a number of cases shortcomings/ lapses pointed out in the previous Performance Audit were still persisting which had been commented in preceding paragraphs. This action of the Department/ Government shows a pathetic attitude to take effective measures in the interest of the State revenue for maximising revenue collection and minimising arrears of tax dues.

2.4.21 Conclusion

Audit observed that the processes followed by the Department for realising arrears of revenue suffered due to lack of coordination and time bound actions at different levels. At the level of Assessing Officers (AOs), there were delays in referring cases

and sending cases without essential details to the Recovery Officers (ROs). Further, once the cases reached the ROs, there were lapses such as non-pursuance of cases pending with different Appellate authorities and courts, and with the liquidator/asset management cell. ROs were not prompt in pursuing Certificate cases referred to other States. There were cases pending as the RO could not timely ascertain about closure of business/whereabout of defaulters. Audit observed cases where the Bank Guarantees lapsed for want of timely action from the Department and warrants returning unexecuted due to lack of appropriate coordination between the Department and the Police. Huge amount of revenue was locked in court cases for number of years without appropriate pursuance by the Department. Further, no time frame was prescribed for disposal of petition in revision cases keeping it an open ended process and consequences related to this. The internal control and monitoring mechanism of the Department was weak as evidenced by non-existence of internal audit, absence of computerised database of arrear cases and non-maintenance of separate register for instalment payment and bank guarantee registers. The Department did not take corrective measures on the past audit recommendations to avoid recurrence of similar deficiencies already pointed out.

2.4.22 Summary of Recommendations

Implementation of GST would have an impact on the methods used to realise arrears of revenue. Keeping in view the legal provisions under the AGST Act, 2017 for recovery of accumulated arrears, the following steps are recommended:

- *Government may ensure realisation of arrears under the existing law which have been subsumed in GST Act by application of provision of AGST Act.*
- *Government may link all the outstanding demands under the existing law with GSTN to ensure that no defaulters continue their business without relinquishing previous demands prior to registration under GST Act.*
- *AGST Act, 2017 has given special powers to the Prescribed Authority to initiate recovery proceeding. Therefore, the Department may consider creating a separate recovery cell under the Commissioner of Taxes abolishing existing Recovery Offices considering number of arrear cases involved under the Acts which have not been subsumed under GST.*
- *Government may segregate realisable arrears and non-realisable arrears and focus on realisable arrears for recovery.*
- *Government/Department may fix norms/targets for collection of arrears considering realisable arrears and monitor the progress at all levels, with special emphasis on those cases which are more than five years old to avoid pendency of arrears for long time.*

- *Department should realise the outstanding dues against the defaulter within a limited time period, otherwise, attachment of movable and immovable property may be initiated.*
- *Government/Department may consider strengthening of control mechanism and follow up and persuasion of cases, where the Acts are still in force.*
- *Department should develop essential Standard Operating Procedure (SOP) for monitoring the performance of collection and accumulation of arrears. The whole procedure should be computerized and monitor through effective and reliable Management Information System (MIS).*

SECTION – B: COMPLIANCE AUDIT

2.5 Compliance Audit observations

Scrutiny of records relating to Sales/Value Added Tax (VAT) in the Finance (Taxation) Department revealed several cases of provisions of Acts/Rules/Departmental orders not being complied with and other cases as mentioned in the succeeding paragraphs. These cases are illustrative and are based on a test check carried out by Audit. Some of the omissions on the part of Assessing Officers (AOs) are pointed out in audit each year while such irregularities not only persist; these remain undetected till next audit is conducted. It is a matter of concern as these observations are also sent to the higher authorities including the Secretaries each time when these are detected. Government and the Department need to strengthen measures to monitor the cases effectively, 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.

ASSAM VALUE ADDED TAX/CENTRAL SALES TAX

ASSAM VALUE ADDED TAX (AVAT) ACT

2.6 Assistant Commissioner of Taxes (ACT) failed to detect evasion of tax

The failure of the Assistant Commissioner of Taxes (ACT), Bongaigaon to detect the actual turnover of ₹ 54.52 lakh of a dealer resulted in evasion of tax of ₹ 7.36 lakh alongwith interest of ₹ 5.79 lakh which was also additionally leviable

[Assistant Commissioner of Taxes (ACT), Bongaigaon; November 2017]

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

The item 'cement' was taxable at 13.5 per cent upto 12 September 2013 and 14.5 per cent *w.e.f* 13 September 2013 under Schedule V of the AVAT Act, 2003.

Audit observed that M/s. Choudhury Enterprises, dealing in 'cement', disclosed purchases in the annual returns and audited accounts during the years 2012-13 and 2013-14 as ₹ 5.03 crore and ₹ 4.57 crore respectively while the opening and closing stock was declared as 'nil' for both the years. Scrutiny of Trading Account attached with the audited accounts for the years 2012-13 and 2013-14 revealed that the dealer had shown gross profit of ₹ 3.56 lakh and ₹ 2.43 lakh respectively. The Assistant Commissioner of Taxes (ACT), Bongaigaon while finalising assessments in August 2015 raised the turnovers to ₹ 4.82 crore and ₹ 4.30 crore during 2012-13 and

2013-14 from the declared sales turnover of ₹ 4.81 crore and ₹ 4.29 crore respectively. As the dealer had made gross profit of ₹ 3.56 lakh and ₹ 2.43 lakh during 2012-13 and 2013-14 as per the Trading Accounts and there were no closing stock, the turnovers of the dealer should not have been less than ₹ 5.07 crore and ₹ 4.60 crore during the years 2012-13 and 2013-14 respectively. Thus, the ACT, Bongaigaon failed to detect the actual turnover of ₹ 54.52 lakh which resulted in evasion of tax of ₹ 7.36 lakh⁴⁵ on which interest of ₹ 5.79 lakh (calculated upto March 2018) was also additionally leviable.

The case was referred to the Department/Government in July 2018.

The Joint Commissioner of Taxes (JCT), Assam stated (September 2018) that although the dealer had received credit notes⁴⁶ against the relevant years, VAT was not reversed. The reply was not acceptable as the AO in the assessment order had not recorded receipt of credit notes by the dealers. Further, the basis of enhancement of turnovers by the AO during assessment for the years 2012-13 and 2013-14 over the dealer's declared turnovers was also not mentioned in the assessment orders.

During the exit meeting (12 November 2018), Audit stated that credit notes received by the dealer required cross-verification to determine the genuineness of claim and further clarification from the Department. In response, the CT, Assam assured that the credit notes will be cross checked and results thereof intimated to Audit within 30 November 2018. However, the Department had failed to intimate the results of cross verification of credit notes (December 2018).

Audit noticed the evasion of tax on verification of records of one unit office out of 34 unit offices in the State. The Department should internally examine similar errors in other unit offices not covered in audit.

Recommendation: The Government may advise the Department to issue instruction to AOs to record details of credit notes of the dealer during assessment to prevent misuse of credit notes to evade tax.

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(Amount in ₹)

Particulars		2012-13 (@ 13.5%)	2013-14 (@ 13.5% minimum*)	Total
Opening Stock		Nil	Nil	
Add : Purchase	Intra-State purchase	3,91,08,797	3,71,75,481	
	Inter-State purchase	1,11,93,030	85,46,214	
Less : Closing Stock		Nil	Nil	
Total		5,03,01,827	4,57,21,695	
Add : Gross Profit as per audited accounts		3,55,804	2,43,327	
Gross Turnover (minimum) should be		5,06,57,631	4,59,65,022	
Less : Turnover brought to assessment		4,81,71,277	4,29,99,526	
Escapement of turnover		24,86,354	29,65,496	54,51,850
Tax leviable		3,35,658	4,00,342	7,36,000
Interest leviable @ 1.5 per cent per month upto March 2018		2,97,057 (59 months)	2,82,241 (47 months)	5,79,298

* In absence of bifurcation of rates in the trading account, tax has been calculated at the minimum rate of 13.5% as the AO also completed assessment at this rate during 2013-14.

⁴⁶ Credit note is a receipt given by a register dealer to another register dealer who has returned goods, which can be offset against future purchase.

2.7 Excess Input Tax credit (ITC) allowed on schemes/discount/incentive on intra-State purchase

Failure of the Superintendent of Taxes (ST), Silchar to reduce the Input Tax Credit (ITC) availed by a dealer against schemes/discount/incentive claimed by the dealer on intra-State purchase resulted in excess allowance of ITC of ₹ 11.28 lakh on which interest of ₹ 10.77 lakh was also leviable

[ACT, Silchar; July - August 2017]

As per Section 14 of the AVAT Act, 2003, Input Tax Credit (ITC) shall be allowed on the tax paid on purchase of goods within the State. Section 13(1)(c) of the Act *ibid* provides that a dealer has to adjust his output tax by deducting discounts received against the purchases.

The item 'lubricants and grease' were taxable at 13.5 *per cent* upto 12 September 2013 and 14.5 *per cent w.e.f.* 13 September 2013 under Schedule V of the AVAT Act, 2003.

Audit observed that the ST, Silchar while assessing M/s. Barak Lubricants, dealing in 'lubricants and grease', in December 2012 and July 2016 allowed ITC of ₹ 38.37 lakh, ₹ 55.48 lakh, ₹ 63.00 lakh, ₹ 73.35 lakh and ₹ 73.46 lakh for the years 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 respectively against intra-State purchases made by the dealer.

Scrutiny of audited accounts showed that though the dealer had received discount/incentives amounting to ₹ 22.39 lakh, ₹ 21.42 lakh, ₹ 20.53 lakh, ₹ 17.88 lakh and ₹ 13.53 lakh on intra-State purchases during 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 respectively but the ST, Silchar failed to reduce ITC proportionately at the time of assessment which resulted in excess allowance of ITC of ₹ 11.28 lakh⁴⁷. Thus, the dealer was liable to pay excess ITC claimed amounting to ₹ 11.28 lakh and interest of ₹ 10.77 lakh (calculated upto March 2018).

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(Amount in ₹)							
Year	Total intra-State purchase	ITC allowed by the AO as per claim of the dealer	Amount of discount/incentive received on intra-State purchase	Actual intra-State purchase after deduction of discount/incentive	ITC determinable on actual intra-State purchase	Excess allowance of ITC	Interest leviable @ 1.5 <i>per cent</i> per month upto March 2018
(1)	(2)	(3)	(4)	(5) = (2) – (4)	(6)	(7) = (3) - (6)	(7)
2010-11	2,84,21,154	38,36,851	22,38,675	2,61,82,479	35,34,635	3,02,216	3,76,259 (83 months)
2011-12	4,10,98,075	55,48,240	21,42,430	3,89,55,645	52,59,012	2,89,228	3,08,028 (71 months)
2012-13	4,66,69,374	63,00,365	20,52,825	4,46,16,549	60,23,234	2,77,131	2,45,261 (59 months)
2013-14	5,19,40,824	73,35,275 (allowed @ 13.5 <i>per cent</i> and @ 14.5 <i>per cent</i> on purchases)	17,87,610	5,01,53,214	72,72,216 (calculated @ 14.5 <i>per cent</i> as purchase against which incentive received was not mentioned/determinable)	63,059	44,457 (47 months)
2014-15	5,06,59,150	73,45,577	13,52,851	4,93,06,299	71,49,413	1,96,164	1,02,986 (35 months)
Total						11,27,798	10,76,991

The case was referred to the Government/Department in July 2018.

The JCT, Assam stated (September 2018) that the dealer M/s. Barak Lubricants had received additional discount, other than discount received on purchase invoice and received credit note from M/s. IOC Ltd. and no VAT amount was reversed on discount allowed by M/s. IOC Ltd. based on the certificate of the Deputy General Manager, M/s. IOC Ltd. (a registered dealer). The reply was not acceptable as no proof of additional discount received was made available to Audit. Further, ITC is reversible on receipt of credit note.

During the exit meeting (12 November 2018), the CT, Assam assured that the matter will be further cross examined with M/s. IOC Ltd. and results thereof will be intimated to Audit by 30 November 2018. However, the Department failed to intimate the results of cross examination (December 2018).

Audit noticed the irregularities on verification of records of one unit office out of 34 unit offices in the State. The Department should internally examine similar errors in other unit offices not covered in audit.

Recommendation: The Government may advise the Department to introduce a mechanism to cross-verify every purchase details of the dealer with that of selling dealer and results of such cross-verification to be noted in the assessment order.

CENTRAL SALES TAX (CST) ACT

2.8 Irregular exemption allowed on stock transfer

Irregularly permission of exemption on stock transfer by the ST, Central VAT Audit Team resulted in non-levy of tax of ₹ 1.15 crore on which interest of ₹ 60.14 lakh was also leviable

[Superintendent of Taxes (ST), Morigaon, April 2017]

As per Section 6A of Central Sales Tax (CST) Act, 1956, when any dealer claims exemption of tax in respect of any goods by reason of transfer of such goods to any other place of his business out of the State, he may furnish to the AO a valid declaration in Form 'F' duly filled in and signed by the transferee alongwith evidence of despatch of goods failing which tax at the prescribed rate is to be charged. The CST (Registration & Turnover) Rules, 1957, provide that one Form 'F' should cover the transaction of one calendar month. Further, 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 unpaid tax amount.

The Commissioner of Taxes (CT), Assam had reiterated in March 1999⁴⁸ that every declaration form submitted by dealers to claim exemption in support of the stock

⁴⁸ No. CTS-44/97/169 dated 25 March 1999

transfer of goods from one State to another should be put to the strictest proof under the Central Sales Tax Act, 1956.

The item ‘dry fish’ was taxable at five *per cent* under Schedule II of AVAT Act, 2003 *w.e.f.* 31 October 2009.

Audit observed that the ST, Central VAT Audit Team while assessing the dealer M/s. Pankaj Traders for the year 2014-15 in December 2016, allowed exemption on account of stock transfer of ‘dry fish’. It was observed from the assessment order that during the year 2014-15 the dealer made total stock transfer of goods valued at ₹ 25.93 crore⁴⁹ against 26 ‘F’ Forms out of which the dealer failed to produce details of movement of goods valued at ₹ 22.91 crore⁵⁰. The ST, Central VAT Audit Team while cross-checking with Tax Information Management System (TIMS)⁵¹ during assessment also found that the goods did not cross the exit check-posts of Assam and accordingly rejected the transactions.

Despite the detection of such anomalies, the ST, Central VAT Audit Team did not levy tax of ₹ 1.15 crore⁵² on which interest of ₹ 60.14 lakh (calculated upto March 2018) was also leviable.

The case was referred to the Government/Department in July 2018.

The JCT, Assam stated (September 2018) that the demand notice for ₹ 1.75 crore including additional interest of ₹ 60.14 lakh was issued to the dealer. As the dealer failed to pay the demanded tax and interest, arrear certificate for ₹ 1.75 crore was forwarded to the ST (Recovery), Morigaon by the ST, Morigaon to recover the dues.

During the exit meeting (12 November 2018), the CT, Assam further stated that warrant of arrest was forwarded to the Officer-in-Charge, Jagiroad Police Station on 5 November 2018 for execution. Further development was awaited (December 2018).

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(Amount in ₹)

Sl No.	Name of the dealer	Amount of stock transfer declared by the dealer
1.	M/s. Shiv Shankar Traders, Agartala (Tripura)	4,23,56,500
2.	M/s. Loktak Enterprise, Imphal (Manipur)	4,41,04,630
3.	M/s. Loktak Enterprise, Imphal (Manipur)	17,28,44,785
Total		25,93,05,915

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(Amount in ₹)

Sl No.	Name of the dealer	Amount of stock transfer rejected by AO during assessment after cross-verification
1.	M/s. Shiv Shankar Traders, Agartala (Tripura)	1,21,38,250
2.	M/s. Loktak Enterprise, Imphal (Manipur)	4,41,04,630
3.	M/s. Loktak Enterprise, Imphal (Manipur)	17,28,44,785
Total		22,90,87,665

⁵¹ TIMS is a web based application and its one of the main objective is recording of the movement of goods carrying vehicles through the check gates

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(Amount in ₹)

Irregular stock transfer	22,90,87,665
Tax leviable @ 5 <i>per cent</i>	1,14,54,383
Interest leviable @ 1.5 <i>per cent</i> per month upto March 2018	60,13,551 (35 months)

Audit noticed the irregular exemption on stock transfer on verification of records of one unit office out of 34 unit offices in the State. The Department should internally examine similar errors in other unit offices not covered in audit.

Recommendation: The Department may fix responsibility against the officials for wilful negligence and non-compliance of executive instructions for loss of revenue besides recovering pending dues from the assessee.

2.9 Superintendents of Taxes (STs) failed to detect invalid 'C' Forms submitted by the dealers

STs, Guwahati Unit-D and Guwahati Unit-C failed to detect invalid 'C' Forms submitted by three dealers which resulted in short levy of tax of ₹ 12.89 lakh on which interest of ₹ 14.56 lakh was also leviable against which only tax amount of ₹ 6.79 lakh was recovered from a dealer

[ACT, Guwahati Unit D; July-September 2016 and ACT, Guwahati Unit-C; November 2017 - January 2018]

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 '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.

The Government of Nagaland vide Gazette Notification of November 2011⁵³ had declared a series of 'C' forms as obsolete and invalid as the forms were lost and shall not be valid for the purpose of Section 8(4) of the CST Act, 1956.

The items 'cement' and 'water pump' were taxable at 13.5 *per cent* and the item 'computer hardware and software' was taxable at five *per cent w.e.f.* 31 October 2009.

2.9.1 M/s. Ultratech Cement Ltd, dealing in 'cement', made inter-State sales of ₹ 1.25 crore to registered dealer during 2011-12 and claimed concessional rate of tax by submitting 'C' Form. The ST, Guwahati Unit D, while assessing the dealer in March 2014, accepted the inter-State turnover and assessed the dealer accordingly. Scrutiny of declaration forms submitted by the dealer showed that three 'C' forms⁵⁴ involving turnover of ₹ 44.49 lakh issued by M/s. Nagaland Marble House, Dimapur, Nagaland were among the series of forms declared invalid by the Government of Nagaland. The ST, Guwahati Unit D, however, failed to detect the transactions against these invalid forms while completing the assessment and irregularly allowed concessional rate on those forms. This resulted in short levy of

⁵³ Notification No. 15 Part-II A dated 15 November 2011

⁵⁴ NL 098496- ₹ 13,09,400, NL 098497- ₹ 18,88,012, NL 098498 - ₹ 12,51,203

tax of ₹ 5.01 lakh⁵⁵ on which interest amounting to ₹ 5.34 lakh (calculated upto March 2018) was also leviable.

The case was referred to the Department/Government in July 2018.

The JCT, Assam stated (September 2018) that the assessment has been revised on the basis of anomaly pointed out by Audit by disallowing the concession availed through invalid forms and fresh demand of ₹ 10.64 lakh including interest of ₹ 5.60 lakh was raised.

During the exit meeting (12 November 2018), the CT, Assam stated that arrear certificate had since been issued to ST (Recovery), Guwahati on 1 November 2018. Further development was awaited (December 2018).

2.9.2 M/s. Honda Siel Power Products Ltd., dealing in ‘water pump’, made inter-State sales of ₹ 5.15 crore and ₹ 6.81 crore to registered dealers during 2010-11 and 2011-12 respectively and claimed concessional rate of tax by submitting ‘C’ Form. The ST, Guwahati Unit D, while assessing the dealer for above years in February 2012 and August 2014 accepted the inter-State turnover and assessed the dealer accordingly. Audit noticed that four ‘C’ forms⁵⁶ involving turnover of ₹ 43.16 lakh issued by M/s. Tizu Trade Agency, Dimapur, Nagaland were among the series of forms declared invalid by the Government of Nagaland. The ST, Guwahati Unit D, however, failed to detect the transactions against these invalid forms. This resulted in short levy of tax of ₹ 4.87 lakh⁵⁷ on which interest amounting to ₹ 5.77 lakh (calculated upto March 2018) was also leviable.

The case was referred to the Department/Government in July 2018.

The JCT, Assam stated (September 2018) that the assessment has been revised on the basis of anomaly pointed out by Audit.

During the exit meeting (12 November 2018), the CT, Assam stated that levied tax of ₹ 4.93 lakh and ₹ 1.86 lakh for the years 2010-11 and 2011-12 respectively had been realised and arrear certificate had been issued to the ST (Recovery), Guwahati

M/s. Ultratech Cement Ltd.		(Amount in ₹)
		2011-12
Gross Invalid Turnover		44,48,615
Less u/s 8A		87,227
Net Turnover		43,61,388
Tax leviable @ 13.5 per cent		5,88,787
Less tax levied @ 2 per cent		87,227
Short levy of tax		5,01,560
Interest leviable @ 1.5 per cent per month upto March 2018		5,34,161 (71 months)

⁵⁶ 2010-11: NL 099051 – ₹ 4,71,295, NL 099052- ₹ 14,94,723, NL 099053 - ₹ 9,31,425 and 2011-12: NL 099200 - ₹ 14,18,929

M/s. Honda Siel Power Products Ltd.			(Amount in ₹)
	2010-11	2011-12	Total
Gross Invalid Turnover	28,97,443	14,18,929	
Less u/s 8A	56,813	27,822	
Net Turnover	28,40,630	13,91,107	
Tax leviable @ 13.5 per cent	3,83,485	1,87,799	
Less tax levied @ 2 per cent	56,813	27,822	
Short levy of tax	3,26,672	1,59,977	4,86,649
Interest leviable @ 1.5 per cent per month upto March 2018	4,06,707 (83 months)	1,70,376 (71 months)	5,77,083

on 1 November 2018 for realisation of balance amount of interest of ₹ 6.51 lakh and ₹ 2.12 lakh respectively. Further development was awaited (December 2018).

2.9.3 M/s. Ingram Micro India Ltd., dealing in ‘computer hardware and software’, made inter-State sales of ₹ 7.07 crore and ₹ 5.53 crore to registered dealers during 2010-11 and 2011-12 respectively and claimed concessional rate of tax by submitting ‘C’ Form. The ST, Guwahati Unit C while assessing the dealer in March 2013 and March 2017 accepted the inter-State turnover and assessed the dealer accordingly. Scrutiny of declaration forms submitted by the dealer revealed that five ‘C’ forms⁵⁸ involving turnover of ₹ 1.02 crore issued by two dealers⁵⁹ of Nagaland were among the series of forms declared invalid by the Government of Nagaland. The ST, Guwahati Unit C, however, failed to detect the transactions against these invalid forms while completing the assessment and irregularly allowed concessional rate on those forms. This resulted in short levy of tax of ₹ 3.01 lakh⁶⁰ on which interest of ₹ 3.45 lakh (calculated upto March 2018) was also leviable. The case was referred to the Department/Government in July 2018.

During the exit meeting (12 November 2018), the CT, Assam stated that re-assessments have been completed on 5 November 2018 and a demand of ₹ 12.77 lakh and ₹ 1.93 lakh for the years 2010-11 and 2011-12 respectively have been raised. Further development was awaited (December 2018).

Audit noticed the failure of the ST to verify invalid ‘C’ forms while completing assessment on verification of records of two unit offices out of 34 unit offices in the State. The Department should internally examine similar errors in other unit offices not covered in audit.

Recommendation: *The Government may instruct the department to realise the amount in above cases and action may be initiated against the officials whose negligence led to short realisation of revenue and to mandatorily cross verify the invalid ‘C’ Form declared by the Government of Nagaland while allowing concessional rate of tax to dealers.*

⁵⁸ 2010-11: NL 095091- ₹ 24,42,751, NL 095218- ₹ 21,94,448 and 2011-12: NL 098627- ₹ 25,56,945, NL 098629 - ₹ 14,71,080, NL 098634 - ₹ 15,77,653

⁵⁹ M/s. Space –M and M/s. Voice Commune of Dimapur, Nagaland

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		(Amount in ₹)		
M/s. Ingram Micro India Ltd.		2010-11	2011-12	Total
Gross Invalid Turnover		46,37,199	56,05,678	
Less u/s 8A		90,925	1,09,915	
Net Turnover		45,46,274	54,95,765	
Tax leviable @ 5 per cent		2,27,314	2,74,788	
Less tax levied @ 2 per cent		90,925	1,09,915	
Short levy of tax		1,36,389	1,64,873	3,01,262
Interest leviable @ 1.5 per cent per month upto March 2018		1, 69,804 (83 months)	1,75,590 (71 months)	3,45,394