

CHAPTER-II

GOODS AND SERVICES TAX/ VALUE ADDED TAX/ SALES TAX

2.1 Tax Administration

Value Added Tax (VAT)/ State Goods and Services Tax (SGST) laws and rules framed thereunder are administered at the Government level by the Additional Chief Secretary (Finance). The Chief Commissioner of State Tax (CCST) is the head of the State Tax and Commercial Tax Department (STCTD), who is assisted by one Special CST, four Additional CSTs, 11 Joint CSTs, 23 Deputy CSTs, 103 Assistant CSTs and State Tax Officers (STOs). They are assisted by State Tax Inspectors and other allied staff for administering the relevant Tax laws and rules.

2.2 Results of Audit

There are 158 auditable units in the State Tax and Commercial Tax Department wherein 1,20,611 assessments were finalised. Out of these, audit selected 56 units for test check wherein 63,893 assessments were finalised. Out of these, audit test checked 18,093 assessments (approx. 28 per cent) during the year 2017-18 and noticed irregularities in 536 cases (2.96 per cent of audited sample). Further, subject specific compliance audit of 'Transition from VAT to GST' was also undertaken. Thus, there was under assessment of ₹ 138.89 crore in 537 cases. These cases are illustrative only as these are based on test check of records. Audit pointed out some of the similar omissions in earlier years also, not only these irregularities persist; but also remain undetected till next audit is conducted. There is a need for the Government to improve the internal control system including strengthening of internal audit so that recurrence of such cases can be avoided. Irregularities noticed broadly fall under the following categories:

Table 01: Results of Audit-2017-18

| Sl. No. | Category | No. of cases | Money Value (₹ in crore) |
|---------|--|--------------|-----------------------------|
| 1 | Audit of 'Transition from VAT to GST' | 1 | 27.90 |
| 2 | Incorrect rate of tax and mistake of computation | 52 | 33.23 |
| 3 | Incorrect concession/exemption | 2 | 0.23 |
| 4 | Non/short levy of interest and penalty | 80 | 27.36 |
| 5 | Irregular/excess grant of Input Tax Credit | 203 | 21.86 |
| 6 | Non/short levy of tax | 131 | 21.14 |
| 7 | Other regularities | 61 | 7.14 |
| 8 | Expenditure Audit | 7 | 0.03 |
| | Total | 537 | 138.89 |

During the course of the year, the Department accepted under-assessment of tax and other irregularities of ₹ 63.96 crore in 196 cases and recovered

₹ 3.51 crore in 70 cases, which were pointed out in audit during 2017-18 and earlier years.

A few illustrative cases involving ₹ 101.89 crore have been mentioned in the succeeding paragraphs.

2.3 Audit of “Transition from VAT to GST”

2.3.1 Introduction

The Goods and Services Tax (GST) came into effect from 01 July 2017 in the State of Gujarat under the provisions of the Central Goods and Services Tax (CGST) Act, the Integrated Goods and Services Tax (IGST) Act, the Goods and Services Tax (Compensation to States) Act and the Gujarat Goods and Services Tax (GGST) Act and the Rules made under the respective Act. GST is a single unified Destination Based consumption tax leviable on supply of goods and services (*except alcohol for human consumption and five specified Petroleum Products i.e. crude, high speed diesel, petrol, aviation turbine fuel and natural gas*) in which input tax credit is admissible to the taxpayer. It has subsumed Value Added Tax (VAT), Purchase Tax, Central Sales Tax, Octroi, Entry Tax, Entertainment Tax¹, Luxury Tax, Taxes on advertisement and Excise Duty on medicinal and toilet preparations and the supplier is allowed credit for the GST paid on purchases. The GST (Compensation to States) Act provides for payment of compensation² by the Union to the States in case of loss of revenue, if any, on implementation of the GST for first five years.

Goods and Services Tax Network (GSTN) has been set up (28 March 2013) to facilitate and provide IT infrastructure and services to various stake holders including the Centre and the States. GSTN provides front-end modules to the taxpayers namely registration, payment of tax and filing of returns. GSTN is to develop back-end modules for Model-II³ States wherein modules regarding assessment, audit and enforcement, refunds, adjudication and appeals, etc. and various MIS reports are provided. Gujarat has opted for Model-II of GSTN. Thus, both front-end and back-end modules have been developed by GSTN for the State of Gujarat. Registration of the Pre-GST regime dealers is done by migration to the Post-GST regime governed under Section 139 of the GGST Act while the transitional arrangements for input tax credit, job work and other miscellaneous items are governed by Section 140 to 142 of the GGST Act. The erstwhile Commercial Tax Department has been renamed as State Tax and Commercial Tax Department. However, there is no change in the organizational set-up of the Department.

The division of existing dealers is done as per the turnover of the dealers as under:

¹ Other than the tax levied by the local bodies.

² The compensation is calculated by considering projected annual growth rate of 14 per cent of revenue subsumed for a State for the base year 2015-16.

³ GSTN to develop back-end modules for States and host the same at central data centre location. Access to the States is provided over a secured network.

- Dealers having turnover less than or equal to ₹ 1.5 crore were allocated between Central GST Department and the State Tax Department in the ratio of 10:90 and
- The Dealers having turnover more than ₹ 1.5 crore were allocated between the Central and State GST Departments in the ratio of 50:50.

2.3.2 Scope and Methodology

The Audit of the records of the State Tax Department was conducted between February and June 2018 with a view to determine efficiency and efficacy of the Department in transition to GST regime with special emphasis to ascertain:

- the adequacy and compliance of rules, notifications, circulars, etc. issued in GST regime by the tax authorities;
- the strategies of the Department in handling the issues relating to migration of dealers, filing of returns and carry forward of input tax credit from VAT regime to GST regime.
- whether effective internal control and monitoring mechanism exists in dealing with the matters relating to the GST and legacy issues of the pre-GST regime.

2.3.3 Trend of Revenue

The trend of revenue during the last five years is mentioned in the following table:

Table 02: Trend of revenue

| (₹ in crore) | | | | | | |
|--------------|------------------------|--|-----------|----------------------------------|---|---|
| Year | Budget Estimate (RE) | Receipts under pre-GST laws ⁴ | SGST* | Entertainment tax and Luxury tax | Total receipts under pre-GST laws and GST | Increase/ decrease in per cent over previous year |
| 2013-14 | 45,300.00 | 40,976.06 | 00 | 202.59 | 41,178.65 | |
| 2014-15 | 45,242.59 | 44,145.26 | 00 | 185.06 | 44,330.32 | 7.65 |
| 2015-16 | 44,500.00 | 44,091.05 | 00 | 195.63 | 44,286.68 | (-)0.10 |
| 2016-17 | 45,632.29 | 46,313.78 | 00 | 223.57 | 46,537.35 | 5.08 |
| 2017-18 | 58,241.42 ⁵ | 29,638.88 | 21,250.86 | 85.41 | 50,975.14 | 9.54 |

*Including IGST advance apportionment of ₹1,263.00 crore and apportionment of IGST of ₹615.60 crore by transfer of IGST component to SGST.

Audit noticed that the revenue of the Department had almost remained constant during the last five years. There was increase of revenue by 9.54 per cent in the year 2017-18 as compared to 5.08 per cent in the previous year 2016-17.

⁴ Including Central Sales Tax compensation payable to State Government for revenue loss due to phasing out of CST on inter-state sales (2017-18: ₹ 37.40 crore, 2016-17: ₹ 258.69 crore, 2015-16: ₹ 924.59 crore, 2014-15: ₹ 577.48 crore, 2013-14: NIL).

⁵ Sales Tax/ VAT/ CST: ₹ 31,144.36 crore, SGST: ₹ 25,000 crore, IGST: ₹ 2,097.06 crore.

In addition to above share of net proceeds of taxes on account of Integrated Goods and Services Taxes (IGST) received by the State was ₹ 2,097.06 crore and compensation for loss of revenue arising out of implementation of GST received from Central Government in the form of Grants-in-aid was ₹ 3,687 crore. Thus, total receipts during 2017-18 on account of GST was ₹ 56,759.18 crore. The State had also received compensation of ₹ 590.00 crore in May 2018 for the year ending March 2018 in addition to ₹ 3,687 crore received during 2017-18.

2.3.4 Status of implementation of various modules of GSTN

The Government of India approved the proposal for setting up a Special Purpose Vehicle (SPV) to be called Goods and Services Tax Network on 12th April 2012. The GSTN has been set up primarily to provide IT infrastructure and services to the Central and State Governments, tax payers and other stakeholders for implementation of the GST.

The common GST Portal developed by the GSTN functions as the front-end of the overall GST IT-system. The IT systems of Central Board of Indirect Taxes and Customs (CBIC) and State Tax Departments function at back-ends that handle the tax administration functions such as registration approval, assessment, audit, adjudication etc. The status of eight modules envisaged in GSTN was as follows:

Table 03: Modules in GSTN

| Name of the Module | Description |
|-----------------------------|---|
| Registration | <ul style="list-style-type: none"> New registration approval/rejection and amendment application of core field approval/ rejection Suo Moto cancellation of registration facility provided to Tax authorities if registered person has contravened provisions of the GGST Act. |
| Return (Back Office) | <ul style="list-style-type: none"> Tax authorities can view Form GSTR-1⁶, GSTR-3B⁷ and GSTR-4⁸ and summary view of Form GSTR-6⁹, GSTR-11¹⁰ and ITC-4¹¹ filed by the taxpayers to their respective jurisdiction. Taxation authorities can view Form GSTR-5¹² in record search section |
| Advance Ruling | Facility to accept/reject Applications for Advance Ruling by the concerned authorities after being assigned role by the respective State Admin Authorities |
| Payment | Taxation authorities have been given facility to make payment demands towards an outstanding demand appearing in electronic liability register Said payment is of non-return related liabilities created through generation of Demand ID (Form GST DRC 07 ¹³) appearing in the electronic liability register (Part II) |
| Refund | 'Refund processing', 'Appeal processing' and 'Assessment processing' are still to be incorporated in the respective module. |
| Appeal | |
| Assessment and Adjudication | |
| MIS | In operation |

⁶ Details of outward supplies of goods and services.

⁷ Summary monthly return.

⁸ Quarterly return for registered person opting for composition levy.

⁹ Return for Input Service Distributor.

¹⁰ Statement of inward supplies by persons having unique identification number (UIN).

¹¹ Details of goods/ capital goods sent to job worker and received back.

¹² Return for non-resident taxable person.

¹³ Summary of the order.

Department informed (May/ September 2018) that GSTN established intranet connectivity to the Department and gave URL¹⁴ for officers' work related to approval of registration, amendment in registration, cancellation of registration etc. and see the reports available on Portal. GSTN is pushing amended data to Secured File Transfer Protocol (SFTP) server periodically regarding registration, return, payment and refund application in Code Verification Certificate (CVC) format.

Audit noticed that frequent changes were made in the rules and regulations since 01 July 2017 on the recommendations of the GST Council, by the Government which have resulted in non-implementation of many procedures laid down in GGST Act. A few are mentioned as follows:

Table 04: Changes made in the Rules and Regulations

| No and date of the amendment | Nature of amendment | Reasons of the amendment | Results of the amendment |
|--|--|--|---|
| Order No.03/ 2018-Central Tax dated 31 December 2018 | Extension of time limit for filing of Annual return from 31 December 2018 to 31 June 2019 | Electronic system development at the advanced stage | Delay in self-assessment |
| Notification 48/ 2018-Central Tax dated 10 September 2018 | Extension in the date for submitting the declaration in Form TRAN-1 for claiming credit to 31 March 2019 | Technical difficulties in common portal | The State Government could not ascertain its liability in the form of transitional credit |
| Notification No. 55/2017- Central Tax dated 15 November 2017 | Manual filing of documents for refund processing | 'Refund processing' module not functioning and GSTR-2 and GSTR-3 were to be notified | Refund process involved manual intervention |

The above amendments were made as a result of non-development of the requisite modules and difficulties faced by the taxpayers. As a result of these amendments due to technical issues with the GSTN, the Government of Gujarat was hamstrung in implementing the provisions of the GGST Act as it had limited role in matters related to GSTN.

2.3.5 Migration of taxpayers to GST

As per Section 139 of the GGST Act read with Rule 24 of the GGST Rules, every person registered under the GVAT Act and having a Permanent Account Number (PAN) shall enrol under GGST Act by validating his email address and mobile number. Upon enrolment a provisional certificate of registration (PCR) is required to be issued to such persons. The persons so enrolled are required to apply for final Registration Certificate (RC) by furnishing required information within three months from the date of implementation of the GST. The persons whose applications are found complete in all respect shall be granted final registration otherwise the applicant shall be informed about the deficiencies. The persons registered provisionally may ask for cancellation of

¹⁴ <https://boweb.internal.gst.gov.in/boservices>.

such registration if they are not liable to be registered under the provisions of the GGST Act.

2.3.5.1 Audit had requested the Department to provide the number of registered dealers under the GVAT Act as on 30 June 2017 to know the number for migration (of taxpayers required). The Department did not furnish the figures available in the VATis instead it obtained the figures from GSTN and furnished the same. However, there was inconsistency in number of registered dealers furnished by the Department. It furnished different set of data at different dates as detailed in the following table:

Table 05: Number of registered dealers as on 30 June 2017

| Particulars | Information provided in | | | | |
|--------------------------------------|-------------------------|----------|-----------|-----------|-------------|
| | April 2018 | May 2018 | June 2018 | June 2018 | August 2018 |
| Registered dealers under GVAT regime | 5,00,026 | 4,99,268 | 5,28,481 | 5,15,738 | 5,15,926 |

On this being pointed out, the Department accepted the fact and stated (September 2018) that the information provided to audit was received/compiled from (i) GSTN through *e-mail*, (ii) SFTP server by Comma-Separated Values (CSV) file and (iii) MIS report generated for departmental use from the portal. Thus, there were three sources of information with different formats. Hence, there was difference in the information provided from time to time. The Department further stated that the matter had been taken up with the GSTN. The Department furnished a different set of figures in September 2018. This set of figures being the latest is analysed in the following paragraph:

2.3.5.2 The status of migration (to GST) of persons registered under GVAT Act is as follows:

Table 06: Details of migration of existing registered persons to GST as on September 2018

| No. of persons registered under GVAT Act as on 30 June 2017 | No. of persons enrolled for PCR | No. of persons who had been granted PCR | No. of persons who had not been granted PCR | No. of persons who had been granted final RC | No. of persons who were not issued with RC |
|---|---------------------------------|---|---|--|--|
| 5,15,948 | 5,15,948 | 5,02,635 | 13,313 | 4,61,156 | 41,479 |

(Source: Information furnished by the Department)

Thus, 54,792 (13,313+41,479) of existing dealers could not be finally migrated under GST regime. For non-issuance of provisional certificate of registration (13,313), the Department stated (September 2018) that the dealers might have migrated to other tax authority i.e. Central Goods and Services Tax Department. Further, in case of dealers where final RCs were not issued, the Department stated (September 2018) that State Nodal Officer had been directed to verify the manual application/ details of the dealers and take up the matter with GSTN authorities in case final RCs could not be issued due to technical glitches.

The Department needs to take up the matter with GSTN and make efforts in co-ordination with the Central GST authority to ensure that all existing dealers eligible for registration in GST regime, are brought under tax net.

2.3.6 Claim and admittance of ITC of closing stock

As per Section 140 of the GGST Act a registered person is entitled to carry forward the credit of value added tax and entry tax available to him as on 30 June 2017. Such tax credit can be claimed by the registered person by filing a declaration in Form TRAN-1 prescribed under Rule 117 of the GGST Rules. The last date¹⁵ of filing this declaration was 27 December 2017. Thereafter taxation authority was required to verify the correctness of the amount of ITC as claimed in TRAN-1 filed by the taxpayer.

2.3.6.1 Scrutiny of TRAN-1

The Central Board of Excise and Customs¹⁶ (CBEC) vide its letter dated 14 March 2018 issued a detailed Guidance Note on CGST transitional credit. This inter-alia prescribed the procedure and manner for verification and reporting of credit, entries in TRAN 1 table and time frame within which transitional credit scrutiny should be carried out. A report thereof was also required to be submitted to the CBEC. The State Tax Department from time to time had issued instructions for ensuring that transitional credit is claimed in accordance with the provisions of the GGST Act. However, the instructions issued by the State Tax Department were not time bound and no mechanism for follow up of the instructions was prescribed. Audit noticed number of discrepancies in the carried forward transitional credit as detailed in the following paragraphs.

Verification of Input Tax Credit

- The Department vide its Circular dated 29 September 2017 instructed the jurisdictional Joint Commissioners to verify TRAN-1 with reference to closing balance of ITC as per VAT returns/ provisions of the GGST Act in case of the taxpayers who had claimed credit in excess of ₹ one crore (553 taxpayers), as per list forwarded to the divisions through e-mail. Further, the Department identified 685 cases where taxpayers had claimed excess ITC in TRAN-1 as compared to VAT returns. Thus, overall 1,238 cases were required to be scrutinized to ascertain the correctness of the credit claimed in TRAN-1. Of these, as per information furnished in September 2018, the Department required some clarification/ information from the taxpayers in 1,057 cases, of these, the Department issued notices in 10 cases. Further, the Department noticed discrepancies in 35 cases. However, no further action taken was found on record. Thus, the departmental authorities

¹⁵ Initially prescribed as 90 days from 01 July 2017 in the GGST Rules, which could be extended by a further period not exceeding 90 days. The last date extended to 27 December 2017 vide Notification dated 15 November 2017.

¹⁶ Now renamed as Central Board of Indirect Taxes and Customs (CBIC) w.e.f. 29 March 2018.

could not finalize (November 2018) the verification in 1,092 cases (out of 1,238 cases) even after lapse of over one year since the instructions were issued.

- The Commissioner of State Tax in the monthly review meeting for December 2017 instructed all the 11 divisions to scrutinize returns (including TRAN-1) of the top 300 taxpayers of the respective division and submit report thereof.
- The Department vide its Circular¹⁷ dated 03 February 2018 had instructed the Joint Commissioners to verify the correctness of the ITC claimed by the taxpayers in their TRAN-1. In case of excess claim by the taxpayers, demand and recovery proceedings were to be initiated as per provisions of the GGST Act/ Rules. The JCs were instructed to consider eligibility of ITC as per provisions of the GGST Act and ensure that the returns under GVAT Act for the six months immediately preceding 01 July 2017 had been filed and the required forms under the CST Act had been submitted by the taxpayers.

However, Department did not furnish (January 2019) the status of scrutiny of returns of these taxpayers. Though the instructions were issued, no monitoring or follow up of the action was done to ensure correctness of the ITC availed.

2.3.6.2 Data regarding credit as per TRAN-1

Department furnished two sets of data of transitional credit. Audit found variance in two sets of the data of transactional credit claimed on the closing stock as on 30 June 2017 as briefly discussed below:

- The State Tax and Commercial Tax Department had circulated (February 2018) the data regarding details of claims of credit in TRAN -1 to all divisional offices. As per this data; 1,32,512 taxpayers had claimed a credit of ₹ 2,619.62 crore. This included 23 taxpayers who had claimed negative credit of ₹ 8.60 crore.
- Another set of the data furnished (August 2018) to audit by the Department indicated that 1,25,261 taxpayers had claimed credit of ₹ 2,497.46 crore on the closing stock as on 30 June 2017. This includes 22 taxpayers who had claimed negative credit of ₹ 8.10 crore.

The negative credit in TRAN-1 indicated that the data was not correct. The variance between the two set of data i.e. taxpayers 7,251 with transitional credit of ₹ 122.16¹⁸ crore is as follows:

¹⁷ No. Ravek/ E-Gov/ GST-data/ 2017-18/ Ow No. 1386-96 dated 03 February 2018.

¹⁸ The data base received from the Department has negative credit which was incorrect. This resulted in generation of wrong reports.

Table 07: Amount wise categorization of claims of credit in TRAN-1

| Range of Tax credit claimed | February 2018 | | August 2018 | |
|-------------------------------------|----------------------------|---|------------------|---|
| | No. of taxpayers | Total amount of tax credit claimed (₹ in crore) | No. of taxpayers | Total amount of tax credit claimed (₹ in crore) |
| ₹ 50 lakh and above | 660 | 1,049.41 | 628 | 985.91 |
| Above ₹ 20 lakh and below ₹ 50 lakh | 1,175 | 359.01 | 1,146 | 350.23 |
| Above ₹ 10 lakh and below ₹ 20 lakh | 2,045 | 283.45 | 1,954 | 271.01 |
| Below ₹ 10 lakh | 1,28,632 | 927.75 | 1,21,533 | 890.31 |
| Total¹⁹ | 1,32,512 | 2,619.62 | 1,25,261 | 2,497.46 |
| Variation | Tax payers | | | 7,251 |
| | Transitional credit | | | ₹ 122.16 crore |

(Source: Information furnished by the Department)

The Department needs to take up the matter with GSTN and get the data reconciled so as to ensure that the data put to use by the Department is reliable.

2.3.6.3 Irregularities in the claim of credit in TRAN-1

A registered person is entitled to the credit of VAT/ Entry Tax paid on the closing stock as on 30 June 2017 provided he has furnished all the returns under GVAT Act for the six months immediately preceding 01 July 2017. Further, as per Section 140 (6) of the GGST Act a dealer paying lump sum tax under GVAT Act is entitled to claim credit of tax paid on the closing stock as on 30 June 2017 provided the taxpayer is in possession of tax invoices and these invoices are not older than one year at the time of implementation of the GST.

During test check of 195 cases²⁰ of five ACST offices wherein credit of ₹ 133.68 crore had been claimed in TRAN-1, Audit noticed a few irregularities in 53 cases involving tax credit of ₹ 27.90 crore as follows:

Table 08: Irregularities in the claim of credit in TRAN-I

| (₹ in crore) | | | |
|---|------------------------------|--|-----------------------------------|
| Name of the office (No. of taxpayers) | Credit claimed as per TRAN-I | Credit carry forward as per VAT return | Excess/ irregular claim of credit |
| ACST: 05 Ahmedabad (02), 24 Gandhinagar (03), 45 Vadodara (02), 68 Surat (05) | 3.59 | Not applicable | 3.59 |

¹⁹ This includes 23/22 taxpayers where negative credit of ₹ 8.60 crore/ ₹ 8.10 crore in TRAN-1 has been shown in the data. The negative credit has not been taken into account while working out the total input tax credit claimed.

²⁰ ACST: 5 Ahmedabad, 24 Gandhinagar, 63 and 68 Surat, 45 Vadodara. There were 9,648 cases involving ₹ 225.31 crore out of which 195 cases were selected. The selection was based on ITC of above ₹ 10 lakh/ ₹ 15 lakh/ ₹ 20 lakh claimed by each dealer in the units.

| | | | |
|--|-------|----------------|------|
| <p>Nature of audit observation: Twelve taxpayers had filed returns up to September 2016/ March 2017 between December 2016 and September 2017 under the GVAT Act at the time of filing of TRAN-1. Since, the returns for all the six months preceding the implementation of GST had not been filed by the dealers at the time of filing of TRAN-1, the claim of credit of VAT/ Entry Tax on the closing stock was not admissible. Out of these 12 taxpayers, three taxpayers involving tax credit of ₹ 0.52 crore, filed returns up to June 2017 in March and May 2018 after the irregularity was pointed out by audit in February/ March 2018.</p> <p>On this being pointed out, the Department stated (November 2018) that notices had been issued to seven taxpayers, two cases fall under the jurisdiction of Central GST Department while three taxpayers filed their VAT returns up to 30 June 2017 in August/ October/ November 2018. In respect of the cases falling under jurisdiction of Central GST Department, the Department may ascertain the factual position and take up the matter with concerned Department.</p> | | | |
| ACST: 24 Gandhinagar (01), 63 Surat(01) | 1.51 | 00 | 1.51 |
| <p>Nature of audit observation: Two taxpayers had not claimed any carry forward of ITC in their VAT return for the month of June 2017 but claimed tax credit in TRAN-1 which was irregular.</p> <p>On this being pointed out, the Department stated (November 2018) that notice had been issued to one taxpayer involving ITC of ₹ 1.05 crore while in case of the other taxpayer the Department allowed provisional refund of ₹ 1.40 crore out of the total claim of refund of ₹ 1.86 crore as per VAT return for the month of June 2017. The provisional refund of ₹ 0.46 crore, not allowed, was claimed as credit in TRAN-1 by the taxpayer. As per provision of Section 142 (6) of the GGST Act, the refund claim under VAT regime should be paid in cash and any claim of refund rejected/ disallowed shall not be admissible as credit under GST regime. Thus, the claim of ₹ 0.46 crore by the taxpayer stands irregular.</p> | | | |
| ACST: 05 Ahmedabad (01), 24 Gandhinagar (01) | 0.93 | Not Applicable | 0.93 |
| <p>Nature of audit observation: As per provisions of the GVAT Act, the dealers paying lump sum tax were not eligible for ITC. In the instant case, the two taxpayers were paying lump sum tax under GVAT Act. Thus, there was no scope for carry forward any ITC. The dealers were eligible for the ITC of ₹ 21.57 lakh admissible on the Closing stock as on 30 June 2017 only. However the dealers in addition to this, claimed ₹ 92.58 lakh in their TRAN -1 returns as carry forward ITC. On this being pointed out, the Department stated (November 2018) that notices had been issued to the taxpayers.</p> | | | |
| ACST-05, Ahmedabad (1) | 3.21 | Not Applicable | 3.21 |
| <p>Nature of audit observation: The taxpayer engaged in the business of reselling of motor vehicles had claimed ITC of Entry Tax payable on the closing stock of motor vehicles imported from other States. However, as per tax payment details available in the VAT Information System (VATis), the dealer had not paid any entry tax during the period April to June 2017. As such no ITC was admissible to the dealer.</p> <p>On this being pointed out, the Department stated (November 2018) that the goods on which credit was claimed by the taxpayer had been received within 30 days of the implementation of the GST Act. Thus, the taxpayer was entitled for credit under the GST regime. The reply of the Department is not sustainable as there was no documentary evidence in support of the payment of entry tax on the goods so received by the taxpayer.</p> | | | |
| ACST: 05 Ahmedabad (03), 24 Gandhinagar (01), 45 Vadodara (01), 63 (02) and 68 Surat (06), | 29.01 | 20.46 | 8.55 |
| <p>Nature of audit observation: Thirteen taxpayers had claimed excess credit of ₹ 8.55 crore in TRAN-1 as compared to the ITC carry forward in their VAT return.</p> <p>On this being pointed out, the Department stated (November 2018) that notices had been issued to eight taxpayers, four cases fall under the jurisdiction of Central GST Department while in one case the taxpayer had incorrectly claimed the credit twice which had been reversed in GSTR-3B filed for the month of December 2017. In the four cases falling under the jurisdiction of Central GST Department, the State Tax and Commercial Tax Department is</p> | | | |

| | | | |
|--|-------|----------------|-------|
| required to ascertain the correctness of the credit of VAT claimed in TRAN-1 and take up the matter with the Central GST Department. | | | |
| ACST: 05 Ahmedabad (08), 24 Gandhinagar (08), 63 (02) and 68 Surat (05) | 10.33 | Not Applicable | 10.11 |
| Nature of audit observation: Twenty three Taxpayers were paying lump sum tax under GVAT Act and claimed credit of tax in TRAN-1. As per GGST Act such taxpayers are eligible for credit of purchases supported by invoices not older than one year before the implementation of GST. However, details of stock/ purchases made by these persons were not made available to audit. Hence claim could not be substantiated by audit. On this being pointed out, the Department stated (November 2018) that notices had been issued to 22 taxpayers while one case fall under the jurisdiction of Central GST Department. In the case falling under Central GST Department, the State Tax and Commercial Tax Department is required to ascertain the correctness of the credit of VAT claimed in TRAN-1. | | | |

The Government confirmed (January 2019) replies of the Department.

The possibility of similar irregularities in other cases not test checked in audit cannot be ruled out. Thus, there is necessity of scrutinizing TRAN-1 in a timely manner and ascertain the correctness of the tax credit claimed by the taxpayers in all offices to safeguard the Government revenue, considering the high incidence of error (27 per cent) noticed in cases test checked in audit. The Department may also investigate the reasons of high error rate.

The Department may ensure that TRAN-1 returns are scrutinized in a time bound manner by the jurisdictional Assessing Authorities with reference to the provisions of the GGST Act/ GVAT Act and the figures furnished by the dealers in the returns filed under the GVAT Act to safeguard the Government revenue

2.3.7 Filing and Return Scrutiny under GST

2.3.7.1 Filing of returns

As per Rule 59 to 61 of the Gujarat GST Rules, 2017, taxpayers other than composition taxpayers were required to furnish details of outward supplies of goods or services in Form GSTR-1²¹, details of inward supplies of goods or services in Form GSTR-2²² and a return in Form GSTR-3 (electronically generated by system on the basis of information furnished through GSTR-1 and GSTR-2) monthly, whereas composition taxpayers were required to file a quarterly return GSTR-4 under Rule 62 of the GGST Rules.

²¹ GSTR-1: (a) Invoice wise details of all inter-State and intra-State supplies made to the registered persons and inter-State supplies with invoice value more than ₹ 2.50 lakh made to the unregistered persons, (b) consolidated details of all intra-State supplies made to unregistered persons and State wise inter-State supplies with invoice value up to ₹ 2.50 lakh made to the unregistered persons and (c) debit and credit notes, if any, issued during the month.

²² GSTR-2: (a) Invoice wise details of all inter-State and intra-State supplies received from the registered persons or unregistered persons, (b) Import of goods and services made and (c) Debit and credit notes, if any, received from supplier. The GSTR-2 filed by a registered dealer is used by the Government to check with the sellers' GSTR-1 for buyer-seller reconciliation.

The prescribed process of return filing has been amended to address the difficulties faced by the taxpayers in the initial period of the new tax regime. The filing of GSTR-2 and GSTR-3 was postponed and all taxpayers were mandated to submit a simple monthly return in Form GSTR-3B²³ by 20th of the succeeding month. Further, taxpayers having turnover below ₹ 1.5 crore were to file GSTR-1 on quarterly basis.

2.3.7.2 Scrutiny of returns

As per Section 37 and Section 39 of the GGST Act read with Notification dated 29 December 2017 every registered person is required to file a monthly/quarterly return electronically on or before 10th of the succeeding month/within 18 days from the end of the quarter giving details of outward supplies of goods and/ or services. Further, Section 61 of the GGST Act empowers the Departmental authorities to scrutinize the returns filed by the taxpayers to verify the correctness of such returns and ascertain deficiencies, if any. Moreover, as per provisions of the GGST Act, if the GST Return (s) are not filed within stipulated time, interest²⁴ at the rate of 18 *per cent* per annum and penalty²⁵ at the rate of ₹ 100 per day is leviable (subject to Maximum of ₹ 5,000).

The status of return filed by the taxpayers for the months July 2017 to June 2018 is detailed in the following table:

Table 09: Status of returns filed (as on 19 September 2018)

| Name of Return | Whether Monthly/Quarterly | Returns filed during the period up to | Total number of returns | | | Overall shortfall in percentage |
|-----------------------|---------------------------|---------------------------------------|-------------------------|-----------|------------------|---------------------------------|
| | | | Required to be filed | Filed | Difference (4-5) | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| GSTR-1 ²⁶ | Monthly/Quarterly | July 2017-March 2018 | 37,56,397 | 32,88,269 | 4,68,128 | 12.46 |
| | | April-June 2018 | 14,44,708 | 9,90,182 | 4,54,526 | 31.46 |
| GSTR-3B ²⁷ | Monthly | July 2017-March 2018 | 62,43,883 | 57,20,053 | 5,23,830 | 8.39 |
| | | April-June 2018 | 23,55,475 | 20,21,483 | 3,33,992 | 14.18 |
| GSTR-4 ²⁸ | Quarterly | July 2017-March 2018 | 3,31,712 | 2,72,225 | 59,487 | 17.93 |
| | | April-June 2018 | 1,14,888 | 93,309 | 21,579 | 18.78 |

(Source: Information furnished by the Department)

²³ GSTR-3B: A monthly return required to be filed by all taxpayers other than composition taxpayers.

²⁴ On the amount of outstanding tax (to be calculated from the next day of the date prescribed for filing the return to the date of payment of tax).

²⁵ Penalty reduced to ₹ 25/ 10 (for nil outward supply/ tax) per day for GSTR-1/ GSTR-3B/ GSTR-4 vide notification dated 23 January 2018/ 15 November 2017/ 29 December 2017.

²⁶ Details of outward supplies of taxable goods and/or services effected.

²⁷ Provisional return for the months of July 2017 to June 2018.

²⁸ Return for compounding taxable person.

The reasons for shortfall in filing the returns by the taxpayers ranging between 8.39 per cent and 31.46 per cent need to be investigated. Similarly, there was laxity in the scrutiny of the returns as discussed in the following paragraphs.

Follow up of the instructions issued by the Department:

- The Commissioner of State Tax in the monthly review meeting for December 2017 had instructed all the 11 divisions to scrutinize returns (including TRAN-1) of the top 300 taxpayers of the respective division and submit report thereof. However, the follow up of these instructions, was not found on record.
- The Department intimated (September 2018) that it had selected 35,301 taxpayers for verification of details of outward supplies of taxable goods and/or services mentioned in GSTR-1 with those mentioned in the GSTR-3B. This would *inter-alia* verify the correctness of the ITC claimed in the monthly returns for the period from July 2017 to June 2018. The Department issued notices to 33,781 taxpayers, of these, 6,341 taxpayers were scrutinised and detailed verification was pending in case of 27,440 taxpayers. Notices were not issued to the remaining 1,520 taxpayers. Out of the 6,341 cases scrutinised, the Department noticed irregularities amounting to ₹ 1.95 crore in 102 cases and recovered tax/ reversed credit of ₹ 1.30 crore in 100 cases.

Thus, it would be seen that the departmental scrutiny of returns had augmented the revenue of the State. The Department needs to make extra efforts for scrutiny of the remaining returns selected for test check by it. Further in the software if GSTR-2, had been put to use by the GSTN in addition to GSTR-1, it would have automatically generated GSTR-3 and such irregularities could have been avoided.

2.3.8 Advance Ruling

Section 97 of the GGST Act provides for Advance Ruling regarding classification of goods/ services, applicability of any notification, admissibility of ITC, determination of the liability to pay tax etc. Accordingly, as per provisions of Section 96, the Government of Gujarat vide its Notification dated 12 July 2017 constituted the Gujarat Authority for Advance Ruling (as a judicial authority) consisting of two members; nominated by the Central Government and State Government one each. As per Section 98 (6), the Authority is required to pronounce its advance ruling within 90 days of receipt of application where the applications had been admitted by it.

The details regarding advance rulings pronounced in 2017-18 have been shown in the following table:

Table 10: Status of applications for Advance Rulings during 2017-18

(As on 18 July 2018)

| Number of applications received for advance ruling in 2017-18 | Number of applications admitted | Number of applications where decision to admit/reject was pending | Number of applications where advance ruling was pronounced | | Number of admitted applications where pronouncement was pending |
|---|---------------------------------|---|--|---|---|
| | | | Within 90 days of receipt of application | After 90 days of receipt of application | |
| 49 | 46 | 03 | 03 | 15 | 28 |

(Source: Information furnished by the Department)

Audit observed that out of 49 applications received between 01 August 2017 and 31 March 2018 for advance ruling, in three applications the Authority had not arrived at a decision regarding admittance/ rejection of the applications even after lapse of 109 to 218 days from the date of applications. In three cases advance ruling was pronounced within the stipulated time period of 90 days whereas in 15 cases pronouncements were delayed by 16 days to 111 days over and above the stipulated 90 days. Further, in 28 applications final pronouncements were awaited (18 July 2018) even after lapse of 114 days to 344 days from the date of applications. Thus, the Advance Ruling authority failed to adhere to the time period prescribed in the GGST Act for pronouncement of advance ruling.

Timely finalization of advance rulings by the Advance Ruling Authority provides certainty/ clarity in determining the tax liability, transparency and also helps in avoiding litigation at a later stage. Thus, there is a need to pronounce the advance ruling within prescribed time limit.

2.3.9 Legacy Issues

2.3.9.1 Arrears in assessment

Section 34 of the GVAT Act provided for a detailed scrutiny²⁹ of the assessments selected by the commissioner. The task generated i.e. the cases required for detailed audit scrutiny by the Commissioner for a particular year are assigned to the Assessing Authorities. The assessments shall not be made after the expiry of four years from the end of the year in respect of which the tax is assessable. The number of registered dealers required to file the returns during the period from 2013-14 to 2017-18 ranged between 3.98 lakh to 5.07 lakh.

The details of task generated for audit assessments under GVAT Act and disposal thereof for the period 2013-14 to 2017-18 are as under:

²⁹ Cases are selected in accordance with the parameters which *inter-alia* include the turnover (exceeding ₹ 10 crore) of the dealer, annual tax payable (exceeding ₹ 25 lakhs), cases of a particular trade, dealers granted exemption under sales tax incentive schemes etc.

Table 11: Audit assessments under GVAT Act

| Year | Number of registered dealers as on 01 April | Opening Balance of tasks pending | Tasks generated for assessment during the year | Total | Tasks disposed of during the year | Tasks pending at the end of the year | Percentage of disposal (Col 6 to 5) |
|---------|---|----------------------------------|--|----------|-----------------------------------|--------------------------------------|-------------------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 2013-14 | 4,26,641 | 1,00,054 | 1,21,215 | 2,21,269 | 69,936 | 1,51,333 | 31.61 |
| 2014-15 | 3,98,980 | 1,51,333 | 92,317 | 2,43,650 | 31,678 | 2,11,972 | 13.00 |
| 2015-16 | 4,68,819 | 2,11,972 | 1,14,850 | 3,26,822 | 1,26,084 | 2,00,738 | 38.58 |
| 2016-17 | 4,87,316 | 2,00,738 | 1,41,061 | 3,41,799 | 1,01,987 | 2,39,812 | 29.84 |
| 2017-18 | 5,07,969 | 2,39,812 | 2,49,753 | 4,89,565 | 1,20,611 | 3,68,954 | 24.64 |

(Source: Department's Statistical Profile/ Information furnished by the Department)

Thus, the percentage of disposal of cases ranged between 13 *per cent* and 38.58 *per cent* between 2013-14 and 2017-18. The matter regarding the slow pace of the disposal was taken up with the Department.

After being pointed out, the Department intimated the position of pending tasks as on 5 September 2018, it had completed 24,718 cases from 1 April 2018 to 5 September 2018. The breakup of the remaining task was as under.

Table 12: Year wise breakup of pending assessments

| Assessment period (Accounting Year) | Generated task pending for assessment |
|-------------------------------------|---------------------------------------|
| 2014-15 | 69,794 |
| 2015-16 | 2,02,142 |
| 2016-17 | 55,344 |
| 2017-18 | 16,956 |
| Total | 3,44,236 |

As can be seen from Table 11 above, the average of number of cases disposed by the Department during the last three years (2015-18) was 1,16,227. Considering this pace of disposal, the Department would not be able to dispose of all the 2,71,936 assessment cases (pending as on 05 September 2018) pertaining to 2014-15 and 2015-16 within the limitation period of four years. Apart from these assessments, the Departmental authorities are also required to take up the tasks of 72,300 assessments of 2016-17 and 2017-18. In addition the Department will have also to assess the assessments under GST Act. It needs to formulate a plan to ensure timely assessment of task generated under GVAT Act.

2.3.9.2 Arrears of revenue

The year wise details of Pre-GST arrears for the period from 2013-14 to 2017-18 is indicated in the following table:

Table 13: Arrears of revenue of GVAT/ Sales Tax

(₹ in crore)

| Year | Opening Balance | Recovery due during the year | Total | Recovered during the year | Closing Balance | Percentage of recovery |
|---------|-----------------|------------------------------|-----------|---------------------------|-----------------|------------------------|
| 2013-14 | 18,117.02 | 4,285.83 | 22,402.85 | 3,892.68 | 18,510.17 | 17.38 |
| 2014-15 | 18,510.17 | 4,266.9527 | 22,777.12 | 2,012.36 | 20,764.76 | 8.84 |
| 2015-16 | 20,764.76 | 12,087.37 | 32,852.13 | 1,982.90 | 30,869.23 | 6.04 |
| 2016-17 | 30,869.23 | 7,068.33 | 37,937.56 | 5,259.92 | 32,677.64 | 13.86 |
| 2017-18 | 32,677.64 | 9,520.67 | 42,198.31 | 1,976.57 | 40,221.74 | 4.68 |

(Source: Department's statistical profile/ Information provided by the Department)

The above table indicates that the percentage of recovery of arrears to the total arrears ranged between 4.68 per cent and 17.38 per cent. As a result of slow pace of recovery, the arrears continued to rise from 2013-14 to 2017-18. It indicates that there is a need for strengthening the recovery mechanism in the Department.

The categorization of the above arrears is as follows:

Table 14: Categorization of the arrears of GVAT/ Sales Tax

(₹ in crore)

| Year | Stay granted by the Supreme Court/ High Court/ Tribunal/ Departmental Appellate Authorities | Amount not Recoverable ³⁰ | Other recoverable ³¹ amount | Total | Amount pending for more than five years | Amount pending for less than five years |
|---------|---|--------------------------------------|--|-----------|---|---|
| 2013-14 | 9,181.97 | 5,379.80 | 3,948.40 | 18,510.17 | 11,639.11 | 6,871.06 |
| 2014-15 | 10,228.45 | 6,544.91 | 3,991.40 | 20,764.76 | 8,531.85 | 12,232.91 |
| 2015-16 | 15,995.57 | 7,705.90 | 7,167.76 | 30,869.23 | 10,140.24 | 20,728.99 |
| 2016-17 | 13,761.42 | 10,173.57 | 8,742.65 | 32,677.64 | 11,221.66 | 21,455.98 |
| 2017-18 | 14,990.81 | 14,461.56 | 10,769.37 | 40,221.74 | 12,436.26 | 27,785.48 |

(Source: Department's statistical profile/ Information provided by the Department)

Thus, it can be seen from the table above that increase in arrears (over the respective previous year) under the head 'Amount not recoverable' ranged between 17.73 per cent and 42.15 per cent during 2013-14 to 2017-18. The increase was more during the last two years. (32.02 per cent in 2016-17 and 42.15 per cent in 2017-18).

The arrears older than five years had increased from ₹ 11,639.11 crore in 2013-14 to ₹ 12,436.26 crore in 2017-18 i.e. increase of 6.85 per cent.

³⁰ Closure of business/ Insolvency/ Liquidation/ Dealers not traceable/ Property not available.

³¹ Ex-parte assessments/ RRC cases etc.

The Department has attributed unrecoverable amount to closure of business/ dealers not traceable/ property not available. In such cases, the Department needs to take necessary steps to recover the dues by strictly enforcing the provisions of the Gujarat Land Revenue Code.

The Department may ensure proper watch on the business profile/ activity of the dealers especially in the case of dealers who did not file the return or have defaulted in payment of tax for a considerable period and keep up-to-date information regarding residential addresses/ property (s) of the dealers.

2.3.9.3 Recovery of GGST under Land Revenue Code

As per provisions of the GVAT Act the departmental authorities had been assigned powers of revenue authorities for the purpose of effecting recovery of the amount of tax/ penalty/ interest due from any dealer under the GVAT Act and earlier laws, as arrears of land revenue. However, in the GGST Act no such powers have been assigned to the Departmental authority. Thus, the departmental authorities are required to approach revenue authorities to initiate proceedings to recover the dues as arrears of land revenue, which would delay the process of recovery.

2.3.9.4 Departmental Appellate Authorities (DAAs)

Table 15: Trend of disposal of appeals by the DAAs

| Year | Number of appeal cases pending in the beginning of year | Number of new cases admitted during year | Total number of cases due for disposal during the year | Number of cases disposed of during the year | Number of cases pending at the end of the year | Pendency percentage (Col.6/Col.4 x100) | Amount involved in the pending appeal cases (₹ in Crore) |
|---------|---|--|--|---|--|--|--|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 2014-15 | 13,072 | 6,108 | 19,180 | 7,252 | 11,928 | 62.19 | 9,951.06 |
| 2015-16 | 11,928 | 8,079 | 20,007 | 7,008 | 12,999 | 64.97 | 15,506.29 |
| 2016-17 | 12,999 | 9,036 | 22,035 | 6,803 | 15,232 | 69.13 | 14,543.35 |

(Source: Information furnished by the Department)

Thus, 15,232 cases involving ₹ 14,543.35 crore which constituted 31.40 *per cent* of the total VAT/ CST receipts (₹ 46,314 crore) of the State for 2016-17, were pending for disposal by the DAAs.

2.3.9.5 Refunds

As per proviso below Section 142 (3) of the GGST Act, no refund shall be allowed of any amount of ITC of VAT regime where the balance of the said amount as on 30 June 2017 has been carried forward under the GGST Act. Audit observed that module for refund processing was not operational in GSTN. The Department had not established any mechanism for not allowing the refunds processed manually/ VATis where balances of the tax credit of the said amount had been carried forward from VAT to the GST regime.

As per information furnished by the Department, 664 refund claims (involving amount of ₹ 1,906.50 crore) under GVAT Act were pending as on 30 June 2017. Since, the refund claims under the GVAT Act are processed through VATis and there is no synchronization between GSTN and VATis, the Departmental authorities processing refund applications cannot ascertain whether the applicant had claimed credit of the amount (claimed as refund) under the GGST Act. Moreover, the Department had not scrutinized all the TRAN-1 forms (amount of input tax credits claims from pre GST regime). Thus, there is risk of undue dual benefit to the taxpayers in the form of tax credit under GGST Act and refund of the same amount of ITC under the GVAT Act.

Audit observed that there are no provisions in the GGST Act/ Rules for time bound disposal of the above legacy issues. In view of above, the Department is required to formulate a mechanism for speedy disposal of assessment/appeal/recovery/ refund cases pertaining to the VAT regime, to be able to concentrate on implementation and compliance of provisions under the GST regime. The provisions for payment of compensation under the GST Compensation Act are available for only five years, thus delay in disposal of the Refund applications beyond this period would result in less realisation of the compensation from the Central Government.

2.3.10 Conclusion and Recommendations

The Audit of 'Transition from VAT to GST' revealed that the Department was prompt in its preparedness for implementation of GST. However, frequent changes were made in the Rules and Regulations since 01 July 2017 on the recommendations of the GST Council by the State Government which has resulted in non-implementation of many procedures laid down in the GGST Act/ Rules. Further, GSTN was not able to provide complete IT solutions and the problems regarding the filing of returns GSTR-2 and GSTR-3 have not been resolved. The Government of Gujarat was hamstrung in implementation of provisions of GGST Act as it had limited role in the matters. Further, the Department needs to sort out legacy issues like assessment of pre-GST cases, recovery of arrears and grant of refund of the tax relating to pre-GST regime expeditiously.

The module for refund processing was not operational in GSTN and the Department had been processing the refunds manually or through VATis. The Department needs to ensure that the amount carried forward to the GST regime are not allowed as refunds under the VAT regime. The Department may consider planning for scrutiny of all TRAN-1 forms and ensure that such forms are scrutinized at the earliest as per provisions of the GGST/ GVAT Act. Further, the Government/ Department may ensure that applications for advance ruling are disposed of in the stipulated time frame.

The Department may pursue the matter with GSTN to ensure that data is transferred from GSTN in a time bound manner and all the modules under GSTN are functional.

2.4 Non/ short levy of tax due to misclassification and application of incorrect rate of tax

Section 7 of the GVAT Act, 2003 provides for levy of tax on turnover of sales of goods specified in the Schedule II or Schedule III of the Act at the rate set out against each of them. Additional tax at the rate of 2.5/1 *per cent* is also leviable from 1 April 2008. Further, as per residuary entry No. 87 of Schedule II, all goods other than those specified in Schedule I or Schedule III and in the preceding entries of Schedule II attract tax at the rate of 15 *per cent* including additional tax at the rate of 2.5 *per cent*. Additional tax of one *per cent* was leviable³² on declared goods, as specified under Section 14 (iv) of the Central Sales Tax (CST) Act 1956, with effect from 11 April 2011. Up to 10 April 2011, declared goods did not attract additional tax.

During test check of the assessment records of 23³³ offices, audit found³⁴ misclassification of commodities and levy of lesser rate of taxes in 82 assessments³⁵ of 42 dealers. This resulted in short levy of tax (VAT/ CST) of ₹ 65.25 crore. Besides, interest and penalty were also leviable. These were pointed out to the Department between March 2016 and April 2018. Of these, a few cases are discussed in the following paragraphs:

| | | (₹ in lakh) |
|---------|--|---------------|
| Sl. No. | Nature of observation | Amount of tax |
| 2.4.1 | <p>Rice husk (rice bran) treated as Cattle feed</p> <p>Notification³⁶ dated 29 April 2006 provides that husk of all types excluding ‘groundnut husk’ and ‘rice husk’ were exempted from the levy of tax. The ‘rice husk’ was taxable at the rate of five <i>per cent</i> including additional tax at the rate of one <i>per cent</i> as per entry 37 of Schedule II. Audit observed in assessments of nine dealers of two offices³⁷ that the Assessing Authorities (AAs), had treated rice husk (rice bran) worth ₹ 7.31 crore as exempted goods by classifying it as cattle feed under entry 11 of Schedule I and incorrectly did not levy the tax of ₹ 34.81 lakh, excluding interest and penalty. This resulted in short realisation of tax to that extent. After this being pointed out, the Department accepted the audit observations in all the cases and stated (October/ November 2018) that reassessment orders had been passed. The tax so levied was remitted as per remission letter dated 06 February 2017 of the Commissioner of Commercial Tax issued under Section 41 of the GVAT Act. The Government confirmed (November 2018) the reply of the Department.</p> | 34.81 |
| 2.4.2 | <p>Food colours treated as dyes</p> <p>Dyes are taxable at the rate of five <i>per cent</i> under entry 29 of Schedule II</p> | 8.68 |

³² Vide Notification (GHN-08) VAT-2011-S5(2) (31)-TH dated 11 April 2011.

³³ ACCT: Unit 5,6,9,11,21,22 and 23 Ahmedabad, 51 Anand, 56 Ankleshwar, 56 (New 55) Bharuch, 76 Bhavnagar, 71 Billimora, 24 Gandhinagar, 94 Gondal, 85 Junagadh, 93 Rajkot, 59 (New 58) and 64 Surat; DCCT: Range 2 Ahmedabad, Range 7 Gandhinagar, Corporate 6 and Range 11 Vadodara, Corporate 1 and 2 of Division 1, Ahmedabad.

³⁴ Between March 2016 and April 2018.

³⁵ For the year 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14; assessed between 2012-13 and 2017-18.

³⁶ No. (GHN-44)VAT-2006- S.5(2)(3)-TH.

³⁷ ACCT: Unit-5 and 21 Ahmedabad.

| | | |
|-------|--|--------|
| | <p>to the GVAT. However Food colours (Synthetic Organic colouring matter) were classified³⁸ as industrial inputs from 15 February 2010 and are leviable to tax at the rate of five <i>per cent</i>. Prior to this ‘food colours’ were required to be taxed at the rate of 15 <i>per cent</i> under residuary entry 87 of the GVAT Act.</p> <p>Audit observed in ACCT, Unit-76, Bhavnagar that a dealer had sold ‘food colours’ valued at ₹ 8.49 crore during 2009-10. The AA incorrectly treated³⁹ the Food colours as dyes and levied tax at the rate of five <i>per cent</i> instead of 15 <i>per cent</i> resulting in short levy of tax of ₹ 8.68 lakhs excluding interest and penalty.</p> <p>The Department stated that the dealer sold dyes and not the Food colours and as such was taxed correctly. The reply of the Department was not correct as audited accounts/ sales invoices and notes to the accounts indicated that the dealer had sold Food colours and not the dyes. Thus, the fact indicates that the AA had finalised the assessment without taking the audited accounts into consideration.</p> | |
| 2.4.3 | <p>Non/ short levy of tax on motor vehicles</p> <p>Road Pavers, excavators, earth movers are motor vehicles and attract tax at the rate of 15 <i>per cent</i> as per residuary entry 87 of the Schedule II of the GVAT Act. As per Notification No. (GHN-21) dated 01 April 2008, motor vehicles and parts thereof are not eligible for zero rated sales to SEZs</p> <ul style="list-style-type: none"> • Audit observed in ACCT, Unit 51, Anand and DCCT: Corporate 1 and 2 of Division 1, Ahmedabad that while finalizing the assessment between October 2012 and January 2017 for the years from 2009-10 to 2012-13, the AA in one case had levied tax at the rate of five <i>per cent</i> on sale of spare parts of Road Pavers while in the other case sale of spare parts of excavator/ earth moving equipment to the SEZ was treated as zero rated sale. This resulted in short levy of tax to the extent of ₹ 1.73 crore excluding interest and penalty. <p>On this being pointed out, the Department intimated (April 2018) that the dealer had been reassessed for 2012-13 and demand had been raised. In the other case, the Department issued notice to the dealer. Further reply is awaited (January 2019).</p> <ul style="list-style-type: none"> • Audit observed in three assessment cases of two dealers that the AA (ACCT, Unit- 64, Surat) while finalising the assessment for the year 2011-2012 and 2012-13, levied tax at the rate of five <i>per cent</i> instead of 15 <i>per cent</i> on spares/ parts of motor vehicles <i>viz.</i> Diesel filter, panel pipes, nut-bolt etc. This resulted in short realisation of tax of ₹ 11.44 lakhs. <p>On this being pointed out, the Department intimated (November 2018) that revision proceedings had been initiated. Further reply is awaited (January 2019).</p> | 184.40 |
| 2.4.4 | <p>Incorrect classification of Gas skids</p> <p>As per entry 58A of Schedule-II, machinery including spare parts used in manufacture of goods attract tax at the rate of five <i>per cent</i>. Gas metering skids that are not directly related to manufacture of goods cannot be classified under entry 58A and attract tax at the rate of 15 <i>per cent</i> under residuary entry 87. However, audit observed in assessment of one dealer that the AA (ACCT, Unit-11, Ahmedabad) levied tax at the rate of five <i>per cent</i> instead of correct rate of 15 <i>per cent</i> on sale of gas metering</p> | 98.21 |

³⁸ Falling under Excise Chapter Heading 3204 as ‘industrial inputs’ under entry 254 of Notification No. (GHN-04) VAT-2010-SCH-II (42A) (17).

³⁹ Assessment period 2009-10, date of assessment 21 March 2014.

| | | |
|-------|--|-------|
| | <p>skids worth ₹ 12.21 crore during 2012-13. This resulted in short levy of VAT to the extent of ₹ 98.21 lakh⁴⁰, excluding interest and penalty, due to misclassification.</p> <p>On this being pointed out, the Department while not accepting the audit observation stated (November 2018) that Gas metering skids fall under entry 58A, i.e. Plant and Machinery used in manufacture of goods, of Schedule II to the GVAT Act. Reply of the Department is not correct as the skids were designed to measure the gas flow and reduce its pressure. It is a part of Gas Network and not a part of manufacturing process.</p> | |
| 2.4.5 | <p>Incorrect classification of battery as renewable energy devices</p> <p>Renewable energy devices and parts thereof fall under entry 61 of Schedule II to the GVAT Act and attract tax at the rate of five per cent. There was no specific entry for Primary cells and battery parts in Schedule (s) to the GVAT Act. Hence, these goods were to be classified under entry 87 of Schedule II and are subject to tax at the rate of 15 per cent.</p> <p>Audit observed in four assessments of one dealer of ACCT, Unit 51, Anand that tax on sale of primary cells and battery parts was levied at the rate of five per cent treating these goods as renewable energy devices. Tax on these transactions was required to be levied at the rate of 15 per cent instead of five per cent. This misclassification resulted in short levy of VAT to the extent of ₹ 33.05 lakh.</p> <p>On this being pointed out, the Department while accepting the audit observation stated (November 2018) that reassessment orders had been passed and demands raised. However, recovery had been stayed by the GVAT Tribunal.</p> | 33.05 |
| 2.4.6 | <p>Non-civil works Contracts incorrectly treated as Civil works contract</p> <p>The Government vide Notification dated 11 October 2006 fixed the rate of lump sum tax for the civil works contract at 0.6 per cent whereas for all types of works contract other than those specified at serial no 2 and 3 of the notification, the rate of lump sum tax was fixed at the rate of two per cent. Works contract of waterproofing, industrial plumbing, water purification and finishing work of the construction; does not fall under the category of civil works contract and attract tax at the rate of two per cent as per provisions of the Notification.</p> <p>Audit observed in four assessments of three dealers that the AAs (ACCT: Unit 9 and 22 Ahmedabad; 56 Ankleshwar) classified (October 2015 to March 2017) works contract of waterproofing, water purification and finishing work of the construction, as civil works contract and levied lump sum tax at the rate of 0.6 per cent instead of two per cent on works contract receipts of ₹ 38.53 crore for the period 2011-12 and 2012-13. This resulted in short levy of VAT of ₹ 66.27 lakh.</p> <p>On this being pointed out, the Department accepted the audit observations in all the cases and stated (July/ November 2018) that rectification order had been passed in one case and recovery proceedings had been initiated while in the other two cases revision proceedings had been initiated. The Government confirmed (August 2018) the replies of the Department. Further report on recovery is awaited (January 2019).</p> | 66.27 |
| 2.4.7 | <p>Building Construction Materials incorrectly treated as industrial inputs</p> <p>The Department vide its determination order (an order issued by the legal cell of the Department to determine the rate of tax on the sale of a particular item) dated 13 September 2011 held that “Building Construction Materials” including Styrene-Butadiene Rubber(SBR) are</p> | 89.00 |

⁴⁰ ₹ 1.59 crore (₹ 2.21 crore X 15/115) - ₹ 61.05 lakh (tax levied).

| | | |
|--------|--|----------|
| | <p>covered under entry 87 of Schedule II. Audit found that the AAs (ACCT: Unit-56 (New 55), Bharuch and 59 (New-58), Surat) while finalizing the assessment for 2009-10 and 2010-11 between 2013-2015 treated construction chemicals (Cement Additives/ SBR) as industrial inputs despite the determination order of the Department. This resulted in short levy of tax of ₹ 89.00 lakh.</p> <p>On this being pointed out, the Department while accepting audit observation in one case stated (November 2018) that revision order had been passed. Since, the dealer is under liquidation, claim had been registered before the official liquidator.</p> <p>In case of the other dealer, the Department stated that SBR is an industrial input. The reply of the Department is not correct as the Department has itself determined the rate at 15 per cent and in one case the Department has accepted the audit observation. The Government may consider issuing directions to all AAs to ensure that the rates are applied uniformly and correctly.</p> | |
| 2.4.8 | <p>Misclassification of ‘stainless steel’ as ‘iron and steel’</p> <p>“Iron and Steel”, falling under Entry 43 of Schedule-II of the GVAT Act, are taxable at the rate of four/ five per cent. However, “Stainless steel wire” does not fall⁴¹ under “Iron and steel” and is covered under Entry 87 of the Schedule-II and taxable at the rate of 15 per cent.</p> <ul style="list-style-type: none"> Audit observed that DCCT, Range-7, Gandhinagar levied tax at the rate of five per cent by incorrectly classifying “Stainless steel wire” under entry number 43 instead of entry 87 of Schedule-II of the GVAT Act. This resulted in short levy of tax of ₹ 2,104.84 lakh on a turnover of ₹ 254.52 crore for the period from 2011-12 to 2014-15, finalised during 2013-14 to 2016-17. <p>On this being pointed out the Department in November 2018 and the Government in January 2019 accepted the audit observation and stated that notices for issue based assessment had been issued to the dealer for the year 2011-12 and 2012-13 against which the dealer had filed appeal before the Gujarat High Court. In respect of assessment period 2013-14 and 2014-15 revision proceedings had been initiated.</p> | 2,104.84 |
| 2.4.9 | <p>Incorrect classification of Stranded wire/ rod</p> <p>Stranded wire/ rod does not fall under Entry 43 of Schedule II to the GVAT Act which prescribes declared goods (Iron and Steel). Audit observed that the AA (ACCT, Unit 5, Ahmedabad) classified stranded wire as Iron and Steel valued at ₹ 7.49 crore and levied tax of ₹ 28.82 lakh under Entry 43 instead of ₹ 97.75 lakh under entry 87. This resulted in short levy of tax of ₹ 68.93 lakh.</p> <p>On this being pointed out the Department while accepting the audit observation stated (October 2018) that revision order had been passed and recovery proceedings had been initiated. The Government confirmed (November 2018) reply of the Department.</p> | 68.93 |
| 2.4.10 | <p>Incorrect classification of Ammonium nitrate</p> <p>Ammonium Nitrate with Central Excise Tariff Heading 31021000 i.e. chemical fertilizer (urea), had been included under “industrial inputs” with effect from 15 February 2010, whereas Prilled Ammonium Nitrate, used in the making of ANFO (Ammonium Nitrate Fuel Oil) falls under Central Excise Tariff Heading 31023000 and not under 31021000. AAs (ACCT: Unit71, Bilimora, 94 Gondal and 85 Junagadh) in case of five dealers (Assessment period 2010-13) considered Prilled Ammonium Nitrate as ‘industrial input’. Thus, failure on the part of the AAs to consider the correct eight-digit code of the commodity as per Central</p> | 661.56 |

⁴¹ In case of M/s Bansal Wire Industries Ltd and Anr V/s State of Uttar Pradesh and Others dated 26 April 2011.

| | | |
|--------|---|--------|
| | <p>Excise Tariff Heading resulted in short levy of tax.</p> <p>On this being pointed out, the Department while accepting audit observation in all the cases stated (November 2018) that notices for issue based assessment had been issued to three dealers while revision/ reassessment orders had been passed/ proceedings for revision/ reassessment had been initiated in the case of other two dealers.</p> | |
| 2.4.11 | <p>Incorrect classification of Ready Mix Concrete (RMC)</p> <p>The Government vide Notification dated 11 October 2006 fixed the rate of <i>lump sum</i> tax for the civil works contract at 0.6 <i>per cent</i>. It has been held⁴² that the supply of RMC at site along with other incidental activities cannot be termed as works contract. Hence, tax at the rate of 15 <i>per cent</i> (under residuary entry 87 of Schedule II) is leviable on total sales turnover of RMC including pouring/ pumping charges as such charges form part of the sale price.</p> <p>Audit observed in nine assessments (2011-12 to 2013-14) of six dealers that the AAs classified the sale of RMC worth ₹ 109.80 crore as civil works contract and levied (between February 2016 to April 2017) <i>lump sum</i> tax at the rate of 0.6 <i>per cent</i> instead of 15 <i>per cent</i>. This resulted in short levy of VAT to the extent of ₹ 7.71 crore.</p> <p>The Department accepted the audit observation in one case and stated (October 2018) that reassessment order had been passed. In the remaining cases, the Department did not accept (November 2018) the audit observations and stated that the activity of laying RMC falls under works contract. The reply of the Department is not correct as the RMC was supplied at the site and it could not be treated as a part of works contract.</p> | 771.12 |
| 2.4.12 | <p>Short levy of tax due to application of incorrect rate of tax</p> <p>The Government vide Notification dated 1 April 2013 declared rate of tax on used two wheelers at the rate of one <i>per cent</i>, subject to a maximum of five hundred rupees. However, before 1 April 2013, motor vehicles (new as well as old) fall under residuary entry 87 and attract tax at the rate of 15 <i>per cent</i>.</p> <p>Audit observed in two assessment cases (Assessment period 2010-11 and 2011-12) of one dealer that AA levied (in February 2015 and March 2016) tax on sale of used two-wheelers prior to 1 April 2013 at the rate of one <i>per cent</i> instead of 15 <i>per cent</i>. This resulted in short levy of VAT to the extent of ₹ 83.51 lakh.</p> <p>On this being pointed, the Department while accepting the audit observation stated (November 2018) that notice had been issued to the dealer for issue based assessment.</p> | 83.51 |
| 2.4.13 | <p>Levy of incorrect rate of tax on interstate sales</p> <p>As per provisions of the CST Act, a dealer has to furnish Form ‘C’ in original for availing concessional rate of tax of CST of two <i>per cent</i> on inter-State sales. Further, no CST is leviable in case of direct/ indirect export/ sales to SEZs provided the dealer furnishes supporting documents for direct export/ Form ‘H’ (for indirect export)/ Form ‘I’ (for sales to SEZs) in original to the Assessing Authority (AA). In case of non-furnishing of the above statutory forms/ documents, tax prescribed in the State Act is to be levied.</p> <p>Fenders, Frames, Bollards, Buoys and Fixtures used in ‘Marine Fendering System’ are covered under Entry No. 87 of Schedule II of GVAT Act and attract tax at the rate of 15 <i>per cent</i>.</p> | 66.77 |

⁴² The Supreme Court in the case of GMK Concrete Mixing Pvt. Ltd. Vs. Commissioner of Service Tax dated 06 January 2015 held that the supply of Ready Mix Concrete (RMC) at site along with other incidental activities of pouring, pumping etc. amounts to sale and no taxable service is involved in such transaction.

| | | |
|--|--|--|
| | <p>During test check of the assessment records of a dealer of ACCT, Unit-5, Ahmedabad (2009-12: assessed between 2013-16 and 2012-13: Self-assessment) audit noticed that the dealer had failed to produce the requisite forms to avail concessional rate of CST/ exemption from CST. Thus, the AA levied CST as per the GVAT Act. However, the AA levied tax at the rate of five <i>per cent</i> instead of 15 <i>per cent</i> on sale of Fenders, Frames, Bollards, Buoys, and Fixtures as per entry no 43 (Iron and Steel) of the Schedule-II of the GVAT Act. This resulted in short levy of CST of ₹ 66.77 lakh.</p> <p>On this being pointed out, the Department while accepting the audit observation stated (November 2018) that reassessment order had been passed for 2012-13 while proceedings for revision/ issue based assessment had been initiated for the remaining assessment periods. The Government confirmed (January 2019) reply of the Department.</p> | |
|--|--|--|

After being pointed out, the Department accepted audit observations in case of 31 dealers involving 61 assessments involving money value of ₹ 33.96 crore.

2.5 Non/ short reduction/ reversal of tax credit

As per Section 11 of the GVAT Act, a registered dealer who purchased the taxable goods shall be entitled to claim tax credit equal to the amount of tax collected from him by a registered dealer from whom he purchased such goods or tax paid by him as purchase tax under Section 9 of the Act. The tax credit to be so claimed shall be subject to the provisions as provided under the Section.

During the test check of assessment records of 23 offices audit noticed⁴³ in 63 assessments⁴⁴ of 51 dealers that the Assessing Authorities (AAs) had allowed excess tax credit of ₹ 5.49 crore as detailed below:

2.5.1 Short reduction of ITC on branch transferred goods

Under Section 11(3)(b) of the GVAT Act, the amount of tax credit in respect of a dealer shall be reduced by the amount of tax calculated at the rate of four *per cent*, on the taxable turnover of purchases within the State, of the taxable goods consigned or dispatched for branch transfer or to his agent outside the State or of the taxable goods which are used as raw materials in the manufacture, or in the packing of goods which are dispatched outside the State in the course of branch transfer or consignment or to his agent outside the State.

Audit observed in 11 assessment cases of nine dealers of six offices⁴⁵ that the AAs reduced the tax credit of ₹ 3.43 crore instead of ₹ 4.17 crore on the goods worth ₹ 603.79 crore which were consigned or dispatched for branch transfer or to his agent outside the State or used as raw materials in the manufacture, or in the packing of goods which were dispatched for branch transfer or to his agent outside the State.

⁴³ Between December 2015 and November 2017.

⁴⁴ For the year 2010-11, 2011-12, 2012-13 and 2013-14, assessments finalised between August 2013 and March 2017.

⁴⁵ ACCT: 56 Ankleshwar, 24 Gandhinagar and 98 Jamnagar DCCT: 03 Ahmedabad, Enforcement Gandhinagar and Corporate-11 Rajkot.

This resulted in short reduction of tax credit to the extent of ₹ 74.66 lakh, excluding interest and penalty.

An illustrative case is as follows:

- A dealer falling under the jurisdiction of ACCT, Unit 24, Gandhinagar had branch transfer sales worth ₹ 9.29 crore out of net total sales of ₹ 34.58 crore⁴⁶. The assessing authority was required to reduce ITC at the rate of four *per cent* on the purchases used in such branch transfer. However, no ITC was reduced in the assessment order on account of branch transfer. Thus, there was short reduction of ITC of ₹ 16.20 lakh in this case.

On this being pointed out, the Department while accepting the audit observations in all the cases stated (August/ November 2018) that out of 10 assessment cases of eight dealers ITC had been reduced on reassessment in case of one dealer and reassessment/ revision orders had been passed/ proceedings initiated for revision in case of five dealers. Further, applicable amount had been recovered in case of two dealers. The challan in support of the recoveries made were not produced to audit. In the remaining one case the action taken to effect the recovery was not intimated. The Government confirmed (August 2018) the reply of the Department in one case.

2.5.2 Short reduction of tax credit on goods sold in the course of inter-State Trade or Commerce

Under Section 11(6) of the GVAT Act, the Government vide Notification No. GHN-14 dated 29 June 2010 specified reduction of tax credit at the rate of two *per cent* of the purchase turnover of goods, when such goods are sold/ used as input including raw material in the manufacture of goods which are sold in the course of inter-State Trade or Commerce with effect from 01 July 2010. However, vide GHN-35 dated 07 September 2010, Government of Gujarat exempted several goods (including cotton and cotton seeds) from reduction of ITC, as mentioned in the notification cited above, with effect from 01 October 2010. Thus, ITC at the rate of two *per cent* was required to be reduced on Inter - State sales of cotton and cotton seeds effected between 01 July and 30 September 2010.

Audit observed in 40 assessment cases of 33 dealers of 14 offices⁴⁷ that the AAs reduced the tax credit of ₹ 23.02 crore instead of ₹ 25.78 crore on the goods worth ₹ 2,217.38 crore which were resold/ used as raw material in the manufacture of goods sold in the course of inter-State trade or commerce.

- Out of these, in case of 22 dealers, the AAs adopted incorrect arithmetical calculations resulting in short reduction of ITC of ₹ 2.16 crore.

⁴⁶ After giving deduction towards VAT, CST and Labour charges.

⁴⁷ ACCT: 6, 9 and 23, Ahmedabad; 102 Jamkhambhalia, 98, 99 Jamnagar; 80 Surendranagar, 44 Vadodara and 31 Visnagar DCCT: 02 Ahmedabad; Enforcement Gandhinagar, Corporate- 10, 11 Rajkot and 16 Surat.

An illustrative case is as follows:

A dealer falling under the jurisdiction of DCCT, Corporate, Division 10, Rajkot had made inter-State sales worth ₹ 265.77 crore out of total sales of ₹ 718.67 crore⁴⁸. The assessing authority was required to reduce ITC of ₹ 2.30 crore at the rate of two *per cent* of the purchases valued at ₹ 115 crore used in such inter-State sales. However, the AA reduced ITC of ₹ 1.84 crore only on the basis of Annual Return (Form 205) filed by the dealer without working out the correct calculations to arrive at the ratio of inter-State sales to total net sales and portion of purchases used in the inter-State sales. This resulted in short reduction of ITC of ₹ 45.72 lakh in this case.

- In case of 11 dealers of cotton/ cotton seeds, ITC was not reduced for the period of three months from July 2010 to September 2010 for inter-State trade or commerce of cotton/ cotton seeds effected during these three months. This resulted in short reduction of tax credit to the extent of ₹ 59.97 lakh, excluding interest and penalty.

On this being pointed out, the Department while accepting the audit observations in case of 32 dealers stated (November/ December 2018) that reassessment/ revision/ issue based assessment had been passed/ proceedings initiated in case of 29 dealers. Three⁴⁹ dealers had paid the applicable amount, though challans were not produced to audit while in case of one dealer ITC had been reduced on reassessment. The reply in case of remaining one dealer has not been received (January 2019).

2.5.3 Grant of ITC for inadmissible purposes:- Audit noticed a few irregularities in the claim and allowance of ITC as detailed in the following paragraphs:

2.5.3.1. Incorrect allowing of ITC on manufacture of tax free goods

The registered dealer is entitled for the ITC of taxable purchases provided such purchase are intended to be used in the manufacture of taxable goods. Thus, no ITC is available for the purchase of taxable goods used/ intended to be used in the manufacture of tax free goods.

Audit observed in three assessment cases of three dealers of two offices⁵⁰ that the AAs had irregularly allowed tax credit of ₹ 14.91 lakh on purchases of goods worth ₹ 18.14 crore which were used in manufacture of tax free goods such as fabrics, namkeen etc.

On this being pointed out, the Department while accepting the audit observations in all the cases stated (November/ December 2018) that revision order had been passed in two cases while proceedings for issue based assessment had been initiated in the remaining one case.

⁴⁸ After giving deduction towards VAT/ CST, Goods returned and Capital Goods.

⁴⁹ Includes one dealer in whose case rectification proceedings had been initiated for 2013-14.

⁵⁰ ACCT: 63 Surat, DCCT: Corporate -10 Rajkot.

2.5.3.2 Irregular allowance of ITC on purchase of vehicles and capital goods

As per Section 11 (5) (j) of the GVAT Act no ITC is admissible on purchase of vehicles unless such purchases are made for resale. Further, a dealer is entitled to claim ITC on purchase of capital goods. However, as per Section 2(5) of the GVAT Act “Capital Goods” means plant and machinery (other than second hand plant and machinery) meant for use in manufacture of taxable good and accounted as capital assets in the books of accounts. Thus, ITC is not admissible on purchase of vehicles not intended for resale and capital goods not accounted for in the books of accounts.

Audit observed in seven assessment cases of six dealers of four offices⁵¹ that the AAs had irregularly allowed tax credit of ₹ 1.39 crore on purchases of vehicles/ capital goods/ plant and machinery worth ₹ 12.05 crore as detailed below:

- In six assessment cases of five dealers, the dealers had claimed ITC of ₹ 1.12 crore on purchases of trucks/ tipper trucks, hydraulic mobile crane, forklift truck, hydraulic excavator, loader etc. which were used in execution of works contract or for providing services. Since these vehicles were not intended for resale, ITC was required to be disallowed. However, the AAs did not reduce any ITC during audit assessments.

The Department while accepting the audit observations stated (November 2018/ January 2019) that entire amount had been recovered on reassessment in case of two dealers though challan were not produced to audit. Revision proceedings had been initiated against the remaining three dealers.

- In assessment case of an other dealer, the capital goods worth ₹ 43.15 crore were not capitalized in the books of accounts of the dealer which was mandatory as per the definition of capital goods to claim ITC thereof. However, the AA allowed ITC of ₹ 27.06 lakh on such un-capitalized capital goods. The Department intimated (November 2018) that amount had been recovered though challan was not produced to audit.

2.5.3.3 Irregular allowance of ITC on purchase from cancelled dealers

Under Section 11(5)(mmmm), input tax credit shall not be admissible for purchases made from a dealer whose certificate of registration has been suspended or cancelled and the name of such dealer has been published under sub-section (11) of Section 27 or information of dealers disclosed in public interest under Section 97.

Audit observed in three assessment cases of one dealer of ACCT, Unit-98, Jamnagar that the AA had allowed input tax credit on purchases made from the dealers whose registration was cancelled. This resulted in irregular grant of ITC to the extent of ₹ 12.49 lakh.

⁵¹ ACCT: 76 Bhavnagar; DCCT: 06 Ahmedabad, 08 Mehsana and 16 Surat.

On this being pointed out, the Department while accepting the audit observation stated (November 2018) that revision proceedings had been initiated for 2010-11 and 2012-13. No reply was furnished in respect of 2011-12.

2.5.3.4 Excess/ Irregular grant of brought forward ITC

As per Rule 28(8)(b)(vi-a)(3) if the dealer has already claimed the tax credit for the goods held in the stock on the date of effect of permission for payment of *lump sum* tax and such goods are going to be used in the works contract for which permission to pay *lump sum* tax is sought for, he shall reverse such tax credit. Further, if as per assessment order, after all eligible deductions, ITC remains in excess in any financial year, it can be carried forward for the next financial year. Such excess carried forward ITC would be available as brought forward ITC from previous tax period.

Audit observed in two assessment cases of two dealers of two offices⁵² that in one case the AA had granted excess ITC of ₹ 8.28 lakh as brought forward ITC from previous tax period. In the other case the dealer applied for payment of *lump sum* tax for which permission was granted from the year 2011-12. The dealer had ITC of previous years aggregating to ₹ 24.05 lakh. The AA incorrectly carried forward and allowed the ITC to that extent while finalizing the assessment for 2011-12 in August 2015.

On this being pointed out, the Department while accepting the audit observations in both the cases stated (November 2018) that revision proceedings had been initiated.

2.6 Incorrect determination of turnover

Section 7(1) of the GVAT Act, 2003 provides for levy of tax on the turnover of sales of goods specified in Schedule II or Schedule III at the applicable rates.

During test check of the assessment records of four⁵³ offices audit noticed⁵⁴ in four assessments⁵⁵ that there was short levy of tax of ₹ 1.11 crore excluding interest and penalty due to incorrect determination of turnover as detailed below:

2.6.1 As per Section 2(24), 'sale price' means the amount of valuable consideration paid or payable to a dealer or received or receivable by a dealer for any sale of goods made including any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof.

Audit observed in one assessment case of ACCT, Unit-6, Ahmedabad that the AA did not include compensation worth ₹ 9.15 crore, received for timely

⁵² ACCT: 22 Ahmedabad and 65 Surat.

⁵³ ACCT: 6, 22 Ahmedabad, DCCT: Range-25 Gandhidham and Corporate-10 Rajkot.

⁵⁴ Between December 2016 and August 2017.

⁵⁵ For the year 2010-11, 2011-12 and 2012-13; assessments finalised between February 2015 and March 2017.

delivery of goods, in the taxable turnover. This irregular exclusion of other incidental income from taxable turnover resulted in short realisation of VAT to the extent of ₹ 43.56 lakh excluding interest and penalty. The Department while accepting the audit observation stated (November 2018) that proceedings for issue based assessment had been initiated.

2.6.2 Under Section 2(33) of GVAT Act, 2003 turnover of sales means the aggregate of the amount of sale price received or receivable by a dealer in respect of any sale of goods made during a given period after deducting the amount of sale price, if any, refunded by the dealer to a purchaser, in respect of any goods purchased and returned by the purchaser within the prescribed period.

Audit observed in three assessment cases of three offices⁵⁶ that in two cases the AAs did not include sales of fixed assets (plant and machinery, trailers and tankers) of ₹ 4.80 crore in turnover of sales for the levy of tax at the rate of five/ 15 per cent. In the remaining case, the AA assessed the sales turnover (cement, iron and steel) as ₹ 21.09 crore instead of ₹ 26.40 crore shown in the monthly returns. Thus, turnover of ₹ 5.31 crore was computed short without assigning any reason. This resulted in short levy of VAT to the extent of ₹ 67.80 lakh excluding interest and penalty.

On this being pointed out, the Department accepted audit observations and stated (July/ November 2018) that amount had been recovered in one case while in the other two cases rectification/ revision orders had been passed.

The Government confirmed (August 2018) the reply of the Department in one case.

2.7 Non/ short levy of Central Sales Tax (CST)

Under Section 6 of the CST Act, every dealer shall be liable to pay tax under this Act on all sales of goods effected by him in the course of inter-State trade or commerce during any year.

During test check of the assessment records of four⁵⁷ offices audit noticed⁵⁸ in assessments⁵⁹ of four dealers that there was non/ short levy of CST of ₹ 66.71 lakh due to underassessment of taxable turnover, and incorrect application of rate of tax as detailed below.

2.7.1 Tax on job-work not supported by statutory Forms

Section 6A of the CST Act, 1956 read with Rule 12(5) of the CST (Registration and Turnover) Rules, 1957 provides for exemption from levy of CST on transfer of goods from one State to another by the dealer to his principal/ branch/ agent, provided such transfer is supported by declaration in

⁵⁶ ACCT: Unit 22 Ahmedabad, DCCT: Range 25 Gandhidham and Corporate 10 Rajkot.

⁵⁷ ACCT: 5 and 11 Ahmedabad and 64 Surat, DCCT: Corporate 10 Rajkot.

⁵⁸ Between September 2016 and October 2017.

⁵⁹ For the year 2011-12 and 2012-13; assessed in March 2016 and March 2017.

statutory Form-F. It has further been held⁶⁰ that statutory Form-F are also required in case of inter- State movement of goods for job-work on returnable basis. If the dealer fails to furnish such statutory forms, then, the movement of such goods shall be deemed to have been occasioned as a result of sale and tax shall be levied accordingly.

Audit observed in case of one dealer of ACCT, Unit-11, Ahmedabad that the Assessing Authority (AA) had allowed deduction of ₹ 1.84 crore from the taxable turnover for goods sent for job work and no tax was levied on such turnover even though the dealer had not furnished the statutory Form-F in support of such job work. CST at appropriate rate required to be levied was not levied. This resulted in non-levy of tax to the extent of ₹ 8.77 lakh excluding interest and penalty.

On this being pointed out, the Department accepted the audit observation and stated (November 2018) that demand had been raised on reassessment. The status of recovery is awaited (January 2019).

2.7.2 Application of lesser rate of tax on interstate sales

Under Section 6A(1) of the CST Act, a dealer is not liable to pay tax in respect of transfer of goods by him to any place of his business or to his agent or principal, where such transfer of goods is supported by a declaration in Form-F in original. In case of non-furnishing of Form- F by the registered dealers, tax is leviable at the rates applicable on sale of such goods within the State.

Audit observed in assessment cases of two dealers of two offices⁶¹ that Form-F were not furnished by the registered dealers. Out of these two cases, in assessment case of one dealer, the AA had levied tax at the rate of five *per cent* instead of 15 *per cent* on sales of Rubber Processing Oil (₹ 98.99 lakh) and 17.5 *per cent* on sales of Calcium Grease (₹ 1.67 lakh). This resulted in under assessment of tax of ₹ 8.37 lakh on turnover of sales of ₹ 1.01 crore. In case of other dealer, tax was levied at the rate of five *per cent* on total inter-state sales valued at ₹ 6.22 crore. However, a perusal of the records revealed that the AA had levied tax at the rate of 15 *per cent* during the previous year. The reasons for levy of tax at lesser rate during the year were not available on the record.

Application of lesser rates resulted in less realization of revenue of ₹ 45.37 lakh, excluding interest and penalty. After this was pointed out, the Department intimated (July/ November 2018) that it had initiated revision proceedings for realization of the amount as pointed out by the audit. The Government confirmed (August 2018) reply of the Department in one case. Further report on recovery has not been received (January 2019).

⁶⁰ The Allahabad High Court: Ambica Steel Ltd. vs. State of UP dated 17 August 2007 [(2008) 12 VST 216]. The same was also upheld (March 2009) by the Supreme Court [(2009) 24 VST 356].

⁶¹ ACCT: Unit 5 Ahmedabad and Unit 64, Surat.

2.7.3 Incorrect determination of CST turnover

Under Section 2(j) of CST Act "turnover" used in relation to any dealer liable to tax under this Act means the aggregate of the sale prices received and receivable by him in respect of sales of any goods in the course of interstate trade or commerce made during any prescribed period. In case of non-production of the required declaration forms, tax is leviable at the rates applicable on sale of such goods within the State.

Audit observed in assessment case of one dealer of the Dy. Commissioner of Commercial Tax, Corporate-10, Rajkot that the turnover of sales (Iron and Steel) shown in monthly returns (₹ 43.44 crore) was higher as compared to that shown in the annual return (₹ 40.93 crore) for the year 2011-12. The AA did not adopt sales turnover as per monthly returns resulting in less determination of turnover of ₹ 2.51 crore⁶² taxable at the rate of five *per cent*. This resulted in short levy (March 2016) of CST of ₹ 12.56 lakhs, excluding interest and penalty.

On this being pointed out, the Department accepted the audit observation and stated (November 2018) that revision order had been passed.

2.8 Short levy of interest (VAT)

Under Section 42(6) of the GVAT Act, where the amount of tax assessed or reassessed for any period, exceeds the amount of tax already paid by the dealer for that period, the dealer shall pay simple interest at the rate of 18 *per cent* per annum on the amount of tax remaining unpaid for the period of default. As per Section 30(5) of the GVAT Act, 2003, where a dealer does not pay the amount of tax within the time prescribed for its payment under this Section, then there shall be paid by such dealer for the period commencing on the date of expiry of the aforesaid prescribed time and ending on date of payment of the amount of tax, simple interest at the rate of 18 *per cent* per annum, on the amount of tax not so paid or on any less amount thereof remaining unpaid during such period.

Audit observed⁶³ in three assessment cases of two dealers of two offices⁶⁴ that the Assessing Authorities (AAs) had calculated interest incorrectly on delayed payment of tax. In one assessment⁶⁵ of one dealer, the AA levied interest of ₹ 4.86 crore instead of leviable amount of ₹ 5.90 crore on delayed payment of tax by the dealer, due to adoption of incorrect period of delay. In case of two assessments⁶⁶ of the other dealer, interest was not calculated from the month when tax was due after disallowance of Input Tax Credit. This resulted in total short levy of interest to the extent of ₹ 1.21 crore.

⁶² The dealer had made the sales without production of the declaration forms as such tax at the rate of five *per cent* has been applied.

⁶³ in June and August 2017.

⁶⁴ ACCT: 22 Ahmedabad and 98 Jamnagar.

⁶⁵ For the period 1 April 2011 to 30 June 2011 as the registration number of the dealer was cancelled on 30 June 2011, assessment finalized in March 2016.

⁶⁶ For the year 2010-11 and 2012-13, assessments finalized in March 2015 and March 2017 respectively.

On this being pointed out, the Department accepted audit observation in case of one dealer and stated (November 2018) that revision proceedings had been initiated. In the case of the other dealer the Department accepted audit observation for the assessment period 2012-13 and initiated rectification proceedings.

2.9 Non-levy of penalty

Section 31(3) of the GVAT Act, 2003 stipulates that the tax collected and deposited under the provisions of this Act to which a dealer may be held not liable shall not be refunded to the dealer and the amount of such tax shall stand forfeited to the Government. Further, under Section 31(4) of the Act *ibid*, if any person collects any amount by way of tax in contravention of the provisions of the Act, he shall be liable to pay, in addition to any tax payable, a penalty equal to the amount so collected.

During test check of the assessment records of office of the ACCT-31, Visnagar audit observed (April 2017) in one assessment⁶⁷ of one dealer that the tax collected by the dealer as per Balance Sheet was ₹ 84.76 lakh but liability of tax payable was ₹ 71.79 lakh. Thus, tax of ₹ 12.97 lakh though collected in excess was not deposited in Government account. In addition to this, penalty of ₹ 12.97 lakh was also not levied. This resulted in total non-levy of penalty of ₹ 25.93 lakh.

On this being pointed in audit, the Department accepted the audit observation and stated (November 2018) that reassessment order had been passed against which the dealer had filed appeal before the GVAT Tribunal on paying an amount of ₹ 2.60 lakh. The Tribunal had granted stay against recovery till disposal of the case.

⁶⁷ For the year 2011-12, assessment finalised in March 2016.