

CHAPTER – II
TAXATION DEPARTMENT



CHAPTER-II: TAXATION DEPARTMENT

2.1 Tax Administration

The Taxation Department is responsible for the administration of taxes on sales, trade *etc.*, in the State. The collection of tax is governed by the provisions of the Meghalaya Value Added Tax (MVAT) Act, 2003; the MVAT Rules, 2005; the Central Sales Tax (CST) Act, 1956; the CST Rules, 1957; the Meghalaya Sales of Petroleum and Petroleum Products (including Motor Spirit) and Lubricants Taxation (MSL) Act, *etc.* With the introduction of Goods & Services Tax on 01 July 2017, CST Act and MVAT Act have been repealed, except for the old cases.

The Additional Chief Secretary to the Government of Meghalaya, Excise, Registration, Taxation and Stamps (ERTS) Department is in overall charge of the Taxation Department at the government level. The Commissioner of Taxes (CoT) is the Head of the Department and responsible for administration of all taxation measures and for general control and supervision over the zonal and unit offices and the staff engaged in collection of taxes and to guard against evasion of taxes. He is also the authority for disposal of revision petitions under all taxation acts and laws besides providing clarifications under the Meghalaya Value Added Tax (MVAT) Act, 2003. The CoT is assisted by Joint Commissioner of Taxes (JCT), Assistant Commissioners of Taxes (ACTs), Superintendents of Taxes (SsT), Inspectors of Taxes both at the Headquarters and zonal/unit levels. At the district level, 17 Superintendents of Taxes (SsT) have been entrusted with the work of registration, scrutiny of returns, collection of taxes, levy of interest and penalty, issue of road permits/declaration forms, enforcement and supervision.

2.2 Results of Audit

Test check of the records of 16 units relating to VAT during 2017-18 revealed under-assessment of tax and other irregularities involving ₹258.22 crore in 115 cases which fall under the following categories:

Table 2.1 Results of Audit

Sl. No.	Category	Number of cases	Amount
1.	Short collection of tax	01	0.36
2.	Evasion of tax	28	36.36
3.	Concealment	03	62.49
4.	Other irregularities	83	159.01
Total		115	258.22

(₹ in crore)

During the year, the Department accepted cases of under-assessments and other deficiencies of ₹112.27 crore in 78 cases. An amount of ₹5.83 crore was realised in 13 cases till January 2019.

A few cases having financial impact of ₹20.61 crore, in terms of under-assessment/short levy/non-levy of tax and other provisions of the Acts are discussed in the paragraphs 2.3 to 2.12.

2.3 Failure of the Superintendent of Taxes (ST) to detect evasion of tax through fraudulent stock transfer of coal

Failure of the ST to detect evasion of tax by a dealer who fraudulently claimed stock transfer of coal and evaded payment of tax amounting to ₹4.41 crore out of which an amount of ₹1.25 crore was recovered.

[Superintendent of Taxes (ST), Jowai; September 2017]

Under Section 6A(1) of the Central Sales Tax (CST) Act, 1956 read with Rule 12 of the CST (Registration & Turnover) Rules, 1957, any dealer who claims exemption from paying CST on inter-State movement of goods in consequence of stock transfer to his other place of business, such a claim has to be supported by production of 'F' forms¹.

Under Section 8 of the CST Act read with Rule 12 of the CST Rules, inter-State sale of goods is taxable at the concessional rate of two *per cent* if such sale is made to any registered dealer, duly supported by declarations in Form 'C' from the purchasing dealer; else such sale is taxable at the local rate of tax. The provisions of the MVAT Act apply *mutatis mutandis* in case of assessments under the CST Act.

Further under Section 45 of the Meghalaya Value Added Tax (MVAT) Act, 2003 if the returns furnished by a dealer are incorrect, then the ST can assess him to the best of his judgement. Under Section 90 read with Section 96 of the Act *ibid*, if the dealer furnishes incorrect returns, then penalty not exceeding double the amount of tax is leviable. Further under Section 40 of the Act, simple interest at the rate of 2 *per cent* per month is leviable on the tax short paid. Section 107 of the MVAT Act provides that if the amount of tax, interest, penalty or other sum payable remain unpaid, it may be recovered as an arrear of land revenue.

In Meghalaya, coal is taxable at five *per cent*.

During the period between April 2015 and March 2016, a dealer *i.e.* M/s National Enterprise disclosed total turnover of ₹122.60 crore; of which, he claimed exemption from paying CST on account of stock transfer of coal valued at ₹88.23 crore to another dealer *i.e.* Bata India Limited (Coal Division) in West Bengal on production

¹ Form 'F' is issued to the importing dealer by the Taxation Authorities of that State to where the stock is being transferred. The importing dealer furnishes this 'F' form to the exporting dealer, who in turn submits the same to the Taxation Authorities of the (exporting) State for claiming tax exemption.

of six 'F' forms. The ST completed the assessments between September 2015 and December 2016.

Based on examination of the case records of the dealer audit observed as under:

- The Taxpayer Identification Number (TIN) of the dealer from West Bengal on the 'F' forms corresponded to a dealer with the trade name of 'M/s Bata India Limited' and not 'M/s Bata India Limited (Coal Division)' as provided in the 'F' forms.
- The 'F' forms were verified from the online² database and were found to have been issued to 'M/s Bata India Limited' and not 'M/s Bata India Limited (Coal Division)' as provided in the 'F' forms.
- No proof in support of stock transfer such as evidence of despatch of goods and receipt of the same by the dealer in West Bengal was furnished by the dealer.

In order to confirm the genuineness of stock transfer claim made by the dealer, Audit cross-verified (May 2018) the details of 'F' forms with the Taxation Department of West Bengal. The Taxation Department, West Bengal confirmed (July 2018) that the dealer of West Bengal (M/s Bata India Limited) had not entered into any agreement with the Meghalaya dealer (M/s National Enterprise) for stock transfer of coal and had not received any consignment of coal during the period as claimed by the dealer of Meghalaya.

It was, thus, observed that the dealer of Meghalaya submitted fraudulent 'F' forms with a view to evade tax. The ST failed to detect the fraudulent 'F' forms at the time of assessments under Section 45 of MVAT Act, as he failed to verify the genuineness of 'F' forms for stock transfer claimed by the dealer.

Thus, due to failure of the ST, the dealer evaded payment of tax amounting to ₹4.41 crore³ on which interest of ₹2.28 crore⁴ was also leviable. Additionally, penalty not exceeding ₹8.82 crore was also leviable for deliberate mis-representation of facts in the tax returns.

The case was referred to the Taxation Department, Government of Meghalaya in April 2018. The Department in its reply (January 2019) stated that the dealer's returns were reassessed to treat the stock transfer as 'sale to others'⁵. An amount of ₹1.25 crore had been recovered from the excess tax balance available with the dealer and the demand notice for the remaining amount of ₹3.16 crore had been served to the dealer. Also, the ST reported that the dealer had expired. The Department did not convey any further action taken to recover the dues as arrears of land revenue under Section 107 of MVAT Act. Further, the reasons as to why the ST did not levy the

² From the TINXSYS website. It is a centralised database containing details of all sales tax dealers throughout the country including declaration forms issued to them.

³ @ 5 per cent on ₹88.23 crore.

⁴ Calculated upto 31.03.2018.

⁵ Sale to others is taxable at full rate of local taxation (5 per cent)

statutory interest due and penalty for submission of fraudulent documents with intention to evade tax was not communicated to Audit (June 2019).

Audit has noticed failure of the ST to detect evasion of tax by a dealer through fraudulent stock transfer of coal on verification of records of one unit out of 28 unit offices in the State. The Department should look into similar issues in other unit offices also to see whether such fraudulent claims had taken place.

Recommendation: *The Department should issue instructions to all STs to verify the genuineness of 'F' forms before allowing the dealer to claim concessional tax on stock transfer and the Department should initiate action to realise the balance amount of tax along with interest and penalty from the dealer under Section 107 of MVAT Act. The Department should also fix responsibility on the ST, Jowai for failure to detect the fraud of the dealer at the time of assessment under Section 45 of MVAT Act, 2003.*

2.4 Superintendent of Taxes (ST) failed to detect short payment of tax

An automobile dealer did not pay tax amounting to ₹1.98 crore which was not detected due to failure of the ST to scrutinise the returns, out of which an amount of ₹ 16.35 lakh was recovered.

[ST, Circle-III, Shillong; December 2017]

Under Section 35 of the MVAT Act, every registered dealer has to furnish quarterly tax returns duly supported by proof of payment of tax. If a dealer fails to pay the full amount of tax payable by due date, simple interest at the rate of two *per cent* per month from the first day of the quarter following the due date is leviable for the period of the default under Section 40 of the MVAT Act. Further, under Section 39 of the MVAT Act, each and every return furnished by a registered dealer is subject to scrutiny by the ST to *inter alia* verify the correctness of return and payment of tax thereon.

Audit examination of records of the ST, Circle III, Shillong revealed that an automobile dealer⁶ submitted returns for the period from April 2014 to June 2017, wherein he disclosed sale of ₹36.93 crore, on which tax amounting to ₹5.54 crore at 13.5/14.5 *per cent*⁷ was payable. The returns were not yet scrutinised by the ST. Audit observed that against the total tax liability of ₹5.54 crore, the dealer paid ₹3.56 crore belatedly with delays ranging between one day and 291 days. The dealer did not pay the balance tax amount of ₹1.98 crore (December 2017).

The ST's failure to ensure scrutiny of the returns of the dealer with such a high sales turnover resulted in non-realisation of tax amounting to ₹1.98 crore. Additionally,

⁶ M/s R.P. Motors.

⁷ Rate of tax increased from 13.5 to 14.5 *per cent* w.e.f.22nd January 2015.

interest amounting to ₹1.03 crore⁸ was also leviable for delay in payment of tax and for failure to pay the balance tax.

The case was referred to the Taxation Department, Government of Meghalaya in July 2018. The Department in its reply (January 2019) stated that the dealer's returns were assessed and issued the demand notice to the dealer to pay the outstanding tax of ₹1.72 crore and interest of ₹1.12 crore. The ST further reported that tax amounting to ₹16.35 lakh had been recovered against the dealer's liability (January 2019). The reasons for issue of short demand notice for payment of tax of ₹10.00 lakh had not been intimated (June 2019).

No further communication in respect of status of recovery of balance amount of tax of ₹1.82 crore and interest was received from the Department (June 2019).

Audit has noticed failure of the ST to detect short payment of tax by a dealer on verification of records of one unit out of 28 unit offices in the State. The Department should internally look into the similar issues in other unit offices also.

Recommendation: The Department should realise the balance amount of tax along with interest from the dealer. Further, the Department should also ask all SsT to prioritise the scrutiny of tax returns of high value dealers. Department should fix responsibility on the ST who failed to scrutinise the returns of the high value dealer.

2.5 Failure of the Superintendents of Taxes (SsT) to detect incorrect application of rate of tax

Two dealers paid tax on turnover of ₹35.08 crore at old rate of 12.5/13.5 per cent instead of applicable rate of 14.5 per cent resulting in short payment of tax of ₹68.70 lakh which was not detected by the SsT.

[SsT, Circle-VII & XIII, Shillong; March 2018]

Under Section 39 of the MVAT Act, each and every return furnished by a registered dealer is subject to scrutiny by the ST to *inter alia* verify the correctness of return and payment of tax thereon. Further, under Section 45 of the MVAT Act, if the returns furnished by a dealer are incorrect, the ST can assess to the best of his judgement the amount of tax due from the dealer. If a dealer furnishes incorrect returns, then interest at the rate of two *per cent* per month and penalty not exceeding twice the amount of tax is leviable under Sections 40 and 96 of the Act *ibid*.

In Meghalaya, items listed under Schedule-IV of the MVAT Act were taxable at 12.5 *per cent* up to February 2011; at 13.5 *per cent* from February 2011 to January 2015; and 14.5 *per cent* thereafter.

⁸ Calculated upto 31.03.2018.

Two dealers⁹ submitted quarterly tax returns for the period from April 2015 to June 2017, wherein they disclosed sale of Schedule-IV items amounting to ₹35.08 crore. They paid tax amounting to ₹4.40 crore calculated at old rate of 12.5/13.5 *per cent*.

Against their tax liability of ₹5.09 crore (at 14.5 *per cent*), the dealers paid tax of ₹4.40 crore, resulting in short payment of tax of ₹68.70 lakh. Further, an interest of ₹13.57 lakh¹⁰ on tax payable and penalty not exceeding ₹1.38 crore for furnishing of incorrect returns were also leviable. The details are given in *Appendix I*.

Although the information was available in the case records of the dealers, the SsT did not verify the correctness of the returns furnished by the dealers as they failed to complete scrutiny of the returns which resulted in short payment of tax to that extent.

The cases were referred to the Taxation Department, Government of Meghalaya in July 2018. The Department in its reply (January 2019) stated that the dealers' tax returns were assessed and had issued the demand notices to the dealers accordingly. Status of recovery had not yet been intimated to Audit (June 2019).

Audit has noticed failure of the SsT to detect incorrect application of rate of tax by two dealers on verification of records of two units out of 28 unit offices in the State. The Department should internally look into the similar issues in other unit offices also.

Recommendation: In case of revision of rate of tax in any (class of) commodity, the Department should instruct the SsT to mandatorily take up the assessment of tax returns of the dealers dealing in such commodities.

2.6 Failure of the Superintendent of Taxes (ST) to detect short payment of tax

ST failed to detect short-payment of tax of ₹2.18 crore during scrutiny on which interest of ₹42.25 lakh and ₹0.71 lakh was leviable, out of which tax of ₹70.00 lakh and interest ₹3.92 lakh was paid by the dealer.

[ST, Circle-III, Shillong; December 2017]

Under Section 35 of the MVAT Act, every registered dealer has to furnish quarterly tax returns duly supported by proof of payment of tax. If a dealer fails to pay the full amount of tax payable by due date, simple interest at the rate of two *per cent* per month from the first day of the quarter following the due date is leviable for the period of the default under Section 40 of the MVAT Act. Further, under Section 39 of the MVAT Act, each and every return furnished by a registered dealer is subject to scrutiny by the ST to *inter alia* verify the correctness of return and payment of tax thereon. If a dealer furnishes incorrect returns, penalty not exceeding twice the amount of tax is additionally leviable under Section 96 of the Act *ibid*.

⁹ **Circle-XIII:** M/s Airlife Wellness Products

Circle-VII: M/s Hindustan Steel Works Construction Limited.

¹⁰ Calculated upto 31.03.2018.

It was observed during audit that an automobile dealer¹¹ submitted returns for the period from July 2015 to March 2017, wherein he disclosed sale of goods amounting to ₹40.66 crore, on which tax amounting to ₹5.90 crore¹² was payable. The dealer claimed in his returns that the entire tax amount of ₹5.90 crore was paid. Examination of records by Audit, however, revealed that the dealer actually paid tax amounting to ₹3.72 crore as per the *challans* furnished with the returns (December 2017).

The ST completed the scrutiny of tax returns up to September 2016 in July 2017. At the time of scrutiny, the dealer had outstanding tax liability of ₹1.12 crore¹³ on which interest of ₹12.46 lakh was also leviable. The ST did not take any action to recover the tax amount. Further, the ST did not take up the scrutiny of tax returns for the period from October 2016 to March 2017.

Failure of the ST to detect the short payment of tax at the time of scrutiny and non-completion of scrutiny, thereby, resulted in short payment of tax amounting to ₹2.18 crore. For short payment of tax, interest of ₹42.25 lakh¹⁴ was also leviable. Additionally, for furnishing incorrect returns, the dealer was also liable to pay penalty not exceeding ₹4.36 crore.

The case was referred to the Taxation Department, Government of Meghalaya in August 2018. The Department in its reply (January 2019) stated that dealer's tax returns were assessed and had issued the demand notice to the dealer for payment of tax amounting to ₹2.18 crore, interest of ₹0.71 crore and penalty of ₹4.36 crore. The dealer had paid tax of ₹70 lakh and interest of ₹3.92 lakh against the demand notice (January 2019).

The status of realisation of balance amount of tax of ₹1.48 crore and the interest of ₹0.67 crore due for delay in payment of tax were awaited (June 2019).

Audit noticed failure of the ST to detect short payment of tax during scrutiny on verification of records of one unit out of 28 unit offices in the State. The Department should look into similar issues in other unit offices also.

Recommendation: The Department should fix responsibility of the ST for not completing the scrutiny and to recover tax of ₹1.48 crore.

¹¹ M/s Syrpai Automotive.

¹² 14.5 per cent of ₹40.66 crore = ₹5.90 crore.

¹³ For the period from July 2015 to September 2016.

¹⁴ Calculated upto 31.03.2018.

2.7 Short-payment of admitted tax not detected by the Superintendent of Taxes (ST)

ST failed to detect that a dealer paid tax amounting to ₹42.13 lakh against admitted tax liability of ₹67.30 lakh, resulting in short payment of tax of ₹25.17 lakh on which interest of ₹14.40 lakh is also leviable.

[ST, Nongpoh; October 2017]

Under Section 45 of the MVAT Act, every registered dealer has to furnish quarterly tax returns duly supported by proof of payment of tax. Further if a dealer fails to pay the full amount of tax payable by due date, simple interest at the rate of two *per cent* per month from the first day of the quarter following the due date is leviable for the period of the default under Section 40 of the MVAT Act.

Scrutiny of records of Superintendent of Taxes, Nongpoh in October 2017 revealed that a Liquefied Petroleum Gas (LPG) dealer¹⁵ submitted quarterly tax returns for the period from April 2014 to June 2017, wherein he disclosed sale of taxable goods¹⁶ amounting to ₹4.77 crore. For the taxable sale, the dealer disclosed tax liability of ₹67.30 lakh¹⁷. However, against the total tax liability of ₹67.30 lakh, he paid tax amounting to ₹42.13 lakh only, resulting in short payment of tax of ₹25.17 lakh.

The ST failed to detect the same, which resulted in short payment of tax amounting to ₹25.17 lakh. Due to short payment of tax, interest of ₹14.40 lakh¹⁸ was also leviable on the dealer.

The case was referred to the Taxation Department, Government of Meghalaya in August 2018. The Department in its reply (January 2019) stated that the dealer's tax returns were assessed and had issued the demand notice for payment of tax of ₹10.61 lakh and interest of ₹2.22 lakh to the dealer. The reply of the CoT was not acceptable as against the due tax of ₹25.17 lakh and interest of ₹14.40 lakh demand notice was issued for ₹10.61 lakh and ₹2.20 lakh respectively. Justification for short-levy of tax of ₹14.56 lakh and interest of ₹12.18 lakh to the dealer was not furnished. Further, the status of recovery of demanded tax and interest had not yet been intimated to Audit (June 2019).

Audit has noticed failure of the ST to detect short payment of admitted tax by a dealer on verification of records of one unit out of 28 unit offices in the State. The Department should look into the similar issues in other unit offices also.

Recommendation: The Department should fix responsibility to the concerned Superintendent of Taxes for failure to detect short payment and to initiate recovery of the balance amount of tax along with interest from the dealer.

¹⁵ M/s Ribhoi Gas Agency

¹⁶ Total sale of ₹8.56 crore out of which ₹3.79 crore for domestic LPG cylinders (tax exempted) and ₹4.77 crore commercial LPG cylinders (taxable at 13.5/14.5 *per cent*)

¹⁷ Commercial LPG cylinder is taxable @ 13.5 *per cent* up to January 2015 and @ 14.5 *per cent* thereafter.

¹⁸ Calculated upto 31.03.2018.

2.8 Failure of the Superintendent of Taxes (ST) to apply necessary check

The ST failed to apply necessary checks while issuing the certificate of non-deduction of tax, which resulted in short payment of tax amounting to ₹62.12 lakh.

[ST, Circle-VIII, Shillong; March 2018]

Under Section 5(2)(c) of the MVAT Act, in case of work contracts, the actual charges towards labour, services *etc.* are deductible from the gross turnover to arrive at the taxable turnover. 25 per cent of gross turnover value is allowed to be deducted *in lieu* of labour charges *etc.* in cases where the amount of such charges is not ascertainable from the contract.

Section 106(1) of the MVAT Act stipulates that any Government Department responsible for making any payment on account of works contract shall deduct tax at source and credit the same to the Government account. However, the contractor can obtain from Taxation Authority a certificate for non-deduction of tax at source in Form 25A¹⁹ under Rule 39(5)(c) of the MVAT Rules. The Taxation Authority shall issue the Form 25A on production of details of the works executed and proof of payment in respect of such work by the contractor.

Under Section 45 of the MVAT Act, if the returns furnished by a dealer are incorrect, the ST can assess to the best of his judgement the amount of tax due from the dealer. If a dealer fails to pay the full amount of tax payable by due date, simple interest at the rate of two per cent per month from the first day of the quarter following the due date is leviable under Section 40 of the MVAT Act. In addition, for non-payment of tax, penalty not exceeding twice the amount of tax involved is also leviable under Section 90 read with Section 96 of the Act *ibid.*

In Meghalaya, 'works contract' was taxable at 13.5 per cent²⁰ upto 22 January 2015.

A dealer²¹ was issued a work contract by Public Works Division (Roads), Jowai valued at ₹7.00 crore in December 2012. The work was executed by the dealer and the turnover for the same was reflected in his quarterly tax return of December 2013²².

The dealer applied for and availed in Form 25A a certificate for non-deduction of tax at source on this work contract from the ST in January 2014. He disclosed to the ST in his application that the total work valued at ₹7.00 crore constituted of exempted value of ₹5.44 crore (towards labour *etc. i.e.*, 78 per cent) and gross taxable value of work of ₹1.56 crore²³. However, the dealer did not give details of exempted value of works

¹⁹ Form 25A is issued by Taxation Department on advance payment of tax.

²⁰ Rate of tax had been revised to 14.5 per cent *w.e.f.* January 2015.

²¹ M/s Kee Pala.

²² Submitted on 23 January 2014.

²³ Gross taxable sale (₹1.56 crore) was inclusive of taxes. It included ₹18.40 lakh (₹16.21 lakh goods *plus* ₹2.19 lakh) at 5 per cent. (₹ in crore)

Total work value	Exemption claimed towards labour, <i>etc.</i>	Taxable turnover of work disclosed by the dealer	Tax paid	Taxable sales turnover determinable after allowing exemption	Tax payable by the dealer	Tax short paid
7.00	5.44	1.56	0.09	5.25	0.71	0.62

done to the ST while applying for non-deduction of tax. Based on his application, the dealer disclosed total tax liability of ₹8.76 lakh and paid the admitted tax on 22 January 2014. The ST accordingly issued him a certificate of non-deduction of tax at source in Form 25A ignoring the details of works executed by the dealer.

Audit observed that against his gross turnover of ₹7.00 crore, the dealer was liable to pay tax of ₹70.92 lakh (being 13.5 per cent of the taxable sale of ₹5.25 crore²⁴). Against this, the dealer paid only ₹8.76 lakh resulting in short payment of tax of ₹62.12 lakh.

The ST failed to detect the false declarations made by the dealer in his application for Form 25A. He instead issued him a certificate of non-deduction of tax at source which enabled the dealer to not pay due tax on payments made to him for the full value of the works to the PWD

Failure of the ST to apply necessary checks of details of the contract while issuing the non-deduction of tax certificate resulted in short payment of tax amounting to ₹62.12 lakh on which interest of ₹59.67 lakh²⁵ was leviable. Additionally, for short payment of tax penalty not exceeding ₹1.24 crore was also leviable.

The case was referred to the Taxation Department, Government of Meghalaya in August 2018. The Department in its reply (January 2019) stated that the ST had asked the dealer to produce the books of account for carrying out the reassessment, however the dealer had not yet complied.

No further replies had been received from the Taxation Department, Government of Meghalaya (June 2019).

Audit noticed failure of the ST to apply necessary checks while issuing non-deduction of tax certificate to a dealer resulting in short payment of tax on verification of records of one unit out of 28 unit offices in the State. The Department should look into the similar issues in other unit offices also.

Recommendation: The Department should instruct the SsT to apply due diligence while issuing the certificate of non-deduction of tax to the works' dealers. The Issuing Authority should keep the documents/books in support of assessing the exempt sale in lieu of labour charges etc. on record in dealers' tax files. Responsibility should be fixed on the ST for issuing non-deduction of tax certificate without applying proper check.

²⁴ Taxable sale = 75 per cent of ₹70040000 = ₹52530000.

²⁵ Calculated upto 31.03.2018.

2.9 Superintendent of Taxes failed to detect concealment of turnover

Superintendent of Taxes failed to detect concealment of turnover of ₹38.28 crore which resulted in evasion in tax to the tune of ₹1.34 crore.

[ST, Circle-VI, Shillong; March 2018]

As per Section 86 of the MVAT Act, any dealer whose gross turnover during a year exceeds ₹40 lakh has to get his accounts audited by a Chartered Accountant and submit a report of such audit to the ST within six months from the end of that year. The Audited Accounts *inter alia* must be accompanied by certified statements of Balance Sheet and Profit & Loss Accounts.

In case of tax deducted at source for works contracts, Section 106(4) of the MVAT Act read with Rule 39(4) of the MVAT Rules provides that the dealer shall furnish copy of the certificate of tax deduction and the *challan* copy to tax authorities for adjustments of such deductions against his tax dues.

Further, under Section 45 of the MVAT Act, if the dealer fails to furnish returns or the returns furnished by a dealer are incorrect, then the ST can assess to the best of his judgement the amount of tax due from the dealer. If a dealer fails to pay the full amount of tax payable by due date, simple interest at the rate of two *per cent* per month from the first day of the quarter following the due date is leviable under Section 40 of the MVAT Act.

In Meghalaya 'works contract' is taxable at 14.5 *per cent* (*w.e.f.* from 22 January 2015) after making deductions towards labour charges *etc.* Under Section 5(2)(c) of MVAT Act, labour charges *etc.* allowed to be deducted from gross turnover is 25 *per cent* in the cases where the amount of such charges is not ascertainable from the contract.

During audit of ST, Circle VI, Shillong, it was observed that a dealer²⁶ disclosed sales turnover amounting to ₹1.26 crore in course of execution of work contracts during the period from April 2016 to March 2017. The dealer paid tax amounting to ₹18.30 lakh accordingly. No TDS *challans* were found on record as proof of payment of additional tax.

The ST completed the scrutiny of returns up to March 2017 and accepted the returns as correct.

Audit examination of the annual audited account for the year 2016-17 submitted by the dealer revealed that during the same period, the gross receipts shown by the dealer was ₹39.54 crore. The dealer thus concealed turnover of ₹38.28 crore and evaded tax of ₹4.16 crore²⁷.

²⁶ M/s S. Marbaniang.

²⁷ Taxable sale under Section 5(2)(c) = 75 *per cent* of gross sale (₹38.28 crore) = ₹28.71 crore. Tax due = 14.5 *per cent* of taxable sale (₹28.71 crore) = ₹4.16 crore.

Thus, Audit observed that the ST, at the time of scrutiny, failed to detect the under-reporting of sale turnover even though the detailed audited accounts were available in the dealer's case records, thereby, resulting in short payment of tax of ₹4.16 crore. Additionally, penalty not exceeding ₹8.32 crore and interest amounting to minimum of ₹74.93 lakh²⁸ were also leviable for concealment of turnover.

The case was referred to the Taxation Department, Government of Meghalaya in August 2018. The Department in its reply (February 2019) stated that the ST had re-verified the dealer's case records for the period 2016-17 and assessed the taxable turnover as ₹12.28 crore on which tax of ₹1.34 crore was payable out of which ₹0.36 crore was paid by the dealer. The ST had issued demand notices to the dealer for the payment of balance tax amounting to ₹97.98 lakh. Inspection of the reassessment orders by Audit revealed that the ST had not levied interest for the delay in payment of tax and penalty for wilful concealment of turnover. The reasons for not levying the penalty and interest was not intimated to Audit.

No further replies had been received from the Taxation Department, Government of Meghalaya (June 2019).

Audit has noticed failure of the ST to detect concealment of turnover by a dealer on verification of records of one unit out of 28 unit offices in the State. The Department should internally look into the similar issues in other unit offices also.

Recommendation: The Department should instruct the SsT to take into account all relevant records and books of accounts including annual audited accounts while taking up scrutiny of the returns submitted by the dealer. In cases where there is a discrepancy between the returns submitted and the annual audited accounts and no additional tax demand is raised, reasons for the same should be recorded.

Responsibility of ST, Circle VI, Shillong should be fixed for failure to perform his duties.

2.10 ST failed to detect evasion of tax on sale of Motor Spirits and High Speed Diesel

The ST did not take up assessment of the returns of a dealer resulting in evasion/non- realisation of tax amounting to ₹2.18 crore.

[ST, Circle-IV, Shillong; December 2017]

Under Section 11(4) of the Assam (Sales of Petroleum *etc.*) Taxation Act, 1955 (as adapted by Meghalaya), if a dealer fails to furnish return or if the ST is not satisfied with the correctness of returns furnished by a dealer, then the ST can assess to the best of his judgement the amount of tax due from the dealer.

²⁸ Calculated upto 31.03.2018

Under Section 16(1) of the Act, if the dealer fails to furnish return or has concealed particulars of his turnover, then the dealer is liable to pay as penalty, in addition to the tax payable, a sum not exceeding one and half times the tax payable.

Under Section 20A of the Act *ibid*, interest on tax payable is to be levied at the rate of 12 *per cent* per annum for first 60 days and at 24 *per cent* per annum beyond that. The due date for tax payment is the end of the month following the quarter.

A dealer²⁹ disclosed combined sale of 'Motor Spirits' (MS) and 'High Speed Diesel' (HSD) valued at ₹11.26 crore for the period between January 2015 and September 2016 in his tax returns and paid the admitted tax accordingly. The dealer did not submit any returns after September 2016.

The ST did not complete the assessment of the dealer's returns at the time of Audit (December 2017).

Audit examined the purchase statements and details of 'C' forms utilised by the dealer and observed the following:

- During the period between January 2015 and September 2016, for which the dealer furnished his tax returns, the dealer actually purchased MS/HSD valued at ₹16.77 crore. Thus, the dealer concealed stock of MS/HSD worth ₹5.51 crore in his returns. It resulted in evasion of minimum tax amounting to ₹74.39 lakh³⁰.
- During the period between October 2016 and June 2017, the dealer paid tax amounting to ₹69 lakh. The dealer did not furnish the tax returns for this period. The ST, however, continued to issue 'C' forms to the dealer for inter-State purchase of MS/HSD for sale within the State. Audit examination of the 'C' forms issued to the dealer revealed that during the aforesaid period, the dealer purchased petroleum products amounting to ₹15.75 crore having a minimum³¹ tax value of ₹2.13 crore against which the dealer paid tax of ₹69 lakh. It resulted in short payment of tax amounting to ₹1.44 crore.

Despite non-submission of returns, the ST failed to issue notice to the dealer or complete assessments of dealer's returns between January 2016 and September 2017 the dealer concealed the turnover. Further, the ST continued to issue 'C' forms to the dealer facilitating him to continue with his business.

Thus, the ST facilitated the dealer in concealment of sale and evasion of tax thereon to the extent of ₹2.18 crore. For concealment of sale and non-furnishing of returns the dealer was liable to pay penalty of ₹3.27 crore and interest of ₹0.58 crore³²

²⁹ M/s D. Mercy Filling Station

³⁰ Tax calculated at the minimum rate of 13.5 *per cent* as applicable to High Speed Diesel. For Motor Spirits, rate of tax is 22 *per cent*. Tax amount evaded = 13.5 *per cent* of ₹5.51 crore = ₹74.39 lakh.

³¹ Tax calculated at the uniform rate of 13.5 *per cent* as applicable to High Speed Diesel. For Motor Spirits, rate of tax is 22 *per cent* but the same has not been considered.

³² Calculated upto 31.03.2018.

The case was referred to the Taxation Department, Government of Meghalaya in July 2018. The ST, Circle IV, Shillong stated (September 2018) that the case records of the dealer had been transferred to another Taxation Circle (Circle III, Shillong) since the dealer shifted his office under the jurisdiction of ST, Circle-III, Shillong. The ST (Circle III, Shillong) had informed (June 2019) that the dealer's returns were assessed and demand for payment of tax amounting to ₹83.93 lakh only and interest of ₹37.46 lakh was issued to the dealer. The dealer paid ₹52.11 lakh. The reasons for issue of short demand notice for payment of tax by ₹1.34 crore and interest of ₹0.21 crore was not intimated (June 2019).

Audit noticed failure of the ST to detect concealment of turnover by a dealer on verification of records of one unit out of 28 unit offices in the State. The Department should look into the similar issues in other unit offices also.

Recommendation: *The Department should instruct the SsT to issue notices to the dealers for non-submission of returns on time.*

2.11 SsT failed to detect concealment of stock of Petroleum

Two dealers concealed stock of ₹7.65 crore of motor spirits/high speed diesel and evaded tax of ₹1.03 crore which was not detected by the SsT during assessment, out of which the dealers paid tax of ₹55.83 lakh.

[SsT, Circles-IV, Shillong and Jowai; September and December 2017]

Under Section 11(4) of the Assam (Sales of Petroleum *etc.*) Taxation Act, 1955 (as adapted by Meghalaya), if a dealer fails to furnish return or if the ST is not satisfied with the correctness of returns furnished by a dealer, then the ST can assess to the best of his judgement the amount of tax due from the dealer.

Under Section 16(1) of the Act, if the dealer fails to furnish return or has concealed particulars of his turnover, then the dealer is liable to pay as penalty, in addition to the tax payable, a sum not exceeding one and half times the tax payable.

Under Section 20A of the Act *ibid*, interest on tax payable is to be levied at the rate of 12 *per cent* per annum for first 60 days and at 24 *per cent* per annum beyond that. The due date for tax payment is the end of the month following the quarter.

Audit scrutiny of the SsT, Circle IV, Shillong and Jowai revealed that two dealers³³ disclosed combined sale of 'Motor Spirits' (MS) and 'High Speed Diesel' (HSD) at ₹22.41 crore³⁴ for the period between April 2016 and March 2017. The SsT accepted the same during assessment between August 2016 and April 2017. However, audit examination of the purchase statements of the dealers and details of 'C' forms utilization revealed that during the same period, the dealers actually purchased MS/HSD valued at ₹30.06 crore³⁵.

³³ M/s Star Energy Point, Ratacherra under tax jurisdiction of ST Circle-IV, Shillong and M/s Heimon Service Station under ST, Jowai

³⁴ M/s Star Energy Point - ₹15.50 crore; M/s Heimon Service Station - ₹6.91 crore.

³⁵ M/s Star Energy Point - ₹20.75 crore; M/s Heimon Service Station - ₹9.31: crore

The SsT did not take into account these related records about purchases made by the dealers while completing the assessments. The SsT failed to detect the concealment of stock of MS/HSD worth ₹7.65 crore, resulting in evasion of minimum tax amounting to ₹1.03 crore³⁶. Additionally, penalty not exceeding ₹1.55 crore under Section 16(1) for concealment of turnover and interest of ₹29.65 lakh³⁷ under Section 20A were also leviable.

The cases were referred to the Taxation Department, Government of Meghalaya in July 2018. The Department in its reply (January 2019) stated that the SsT had completed the re-assessment of the dealers' tax returns and had issued the demand notices to the dealers for payment of tax of ₹84.96 lakh accordingly. The SsT further stated that the dealers had paid ₹55.83 lakh against the demand notices (January 2019). Examination of the reassessment orders by Audit revealed that the ST, Circle-IV, Shillong raised a demand notice to the dealer (M/S Star Energy Point) for ₹50.23 lakh and the dealer paid the amount accordingly. The ST, Jowai raised the demand notice to the dealer (M/s Heimon Service Station) for ₹34.73 lakh, out of which the dealer paid ₹5.60 lakh only. Justification for short assessment of tax of ₹0.21 crore by ST Circle-IV, Shillong (M/S Star Energy Point) was not furnished to Audit. Further, it was also noticed that the SsT had not levied interest for the delay in payment of tax and penalty for wilful concealment of turnover. The reasons for not levying the penalty and interest was not intimated to Audit.

No further replies had been received from the Taxation Department, Government of Meghalaya (June 2019).

Audit noticed failure of the SsT to detect evasion of tax by two dealers by concealing the stock of petroleum on verification of records of two units out of 28 unit offices in the State. The Department should look into the similar issues in other unit offices also.

Recommendation: The Department should instruct the SsT to apply due diligence in respect of purchase records of the petroleum dealers at the time of assessment and also initiate action against the SsT for laxity in duty.

2.12 The ST failed to detect irregular claim of concessional rate of tax without declaration forms

Acceptance of claim of concessional rate of tax on sale/stock transfer of goods worth ₹2.34 crore without declaration forms by the ST resulted in short payment of tax amounting to ₹33.93 lakh.

[ST, Nongpoh; October 2017]

Under Section 6A(1) of the Central Sales Tax (CST) Act, 1956 read with Rule 12 of the CST (Registration & Turnover) Rules, 1957, any dealer who claims exemption

³⁶ Tax calculated at 13.5 per cent (on HSD). M/s Star Energy Point- 0.71 crore (13.5 per cent on ₹5.25 crore) and M/s Heimon Service Station-₹0.32 crore (13.5 per cent on ₹2.40 crore)

³⁷ Calculated upto 31.03.2018

from paying CST on inter-State movement of goods in consequence of stock transfer to his other place of business, such a claim has to be supported by production of 'F' forms³⁸. In absence of such proof, the transaction will be treated as sale for all purposes of CST Act.

Under Section 8 of the CST Act read with Rule 12 of the CST Rules, inter-State sale of goods is taxable at the concessional rate of two *per cent* if such sale is made to any registered dealer duly supported by declarations in Form 'C' from the purchasing dealer; else such sale is taxable at the local rate of tax. The provisions of the MVAT Act apply *mutatis mutandis* in case of assessments under the CST Act.

Under Section 45 of the MVAT Act, if the returns furnished by a dealer are incorrect, the ST can assess to the best of his judgement the amount of tax due from the dealer. Further, if a dealer furnishes incorrect returns, then interest at the rate of two *per cent* per month and penalty not exceeding twice the amount of tax is leviable under Sections 40 and 96 of the Act *ibid*.

As per Rule 12 of the CST (R&T) Rules 1957, Form 'F' and 'C' should be furnished to the prescribed authority by the dealer within three months after the end of the period to which the declaration or certificates relates.

In Meghalaya, food items are taxable at the rate of 14.5 *per cent*.

During audit of ST, Nongpoh, it was noticed that a dealer³⁹, dealing in manufacture and sale of food items and noodles, disclosed (tax exempted) stock transfer of goods amounting to ₹2.70 crore and inter-State sale amounting to ₹1.89 crore at concessional rate of 2 *per cent* and accordingly, paid tax amounting to ₹3.78 lakh on such inter-State sale during the period between January 2016 and September 2016.

Further examination of records of ST, Nongpoh (October 2017) by Audit however revealed that the dealer did not furnish the Form 'F' or 'C' in support of his claim of stock transfer/concessional sale which were required to be submitted within three months after the end of the period to which the declaration or certificates relates as per Rule 12 of the CST (R&T) Rules 1957. The ST failed to notice the same as the returns of the dealer were not scrutinized. The dealer stopped all trade related activities⁴⁰ after September 2016.

The dealer, thus, falsely declared interstate turnover of ₹4.59 crore as stock transfer/concessional sale without any proof in support of his claim resulting in short payment of tax amounting to ₹62.76 lakh⁴¹; on which penalty not exceeding ₹1.26 crore and interest of ₹24.28 lakh⁴² were additionally leviable.

³⁸ Form 'F' and 'C' are issued to the importing dealer by the Taxation Authorities of that State to where the stock is being transferred.

³⁹ M/s AA Nutritions.

⁴⁰ The dealer stopped applying for road permits and declaration forms.

⁴¹ Tax on stock transfer = 14.5 *per cent* of ₹2.70 crore = ₹39.13 lakh

Tax on concessional sale = (14.5-2 = 12.5) *per cent* of ₹1.89 crore = ₹23.63 lakh

Total = ₹62.76 lakh

⁴² Calculated upto 31.03.2018.

The ST did not initiate any action to ascertain the status of business activities of the dealer or assess the dealer on best judgement basis despite submission of incorrect returns. This resulted in short payment of tax to that extent.

The case was referred to the Taxation Department, Government of Meghalaya in September 2018. The Department in its reply (January 2019) stated that the dealer had submitted all the relevant 'C' and 'F' forms. However, further audit scrutiny revealed that the dealer had furnished the declarations in 'C' forms for inter-state sale amounting to ₹87.35 lakh and 'F' forms for interstate stock transfer amounting to ₹1.38 crore only. Thus, the interstate turnover of ₹2.34 crore (₹1.32 crore as stock transfer and ₹1.02 crore as concessional sale) was not covered by 'C' and 'F' form but concessional/exemption of tax was allowed, which resulted in short payment of tax of ₹33.93 lakh by the dealer. Due to short payment of tax the dealer is liable to pay penalty of ₹67.86 lakh on which interest of ₹10 lakh was also leviable to the dealer.

No further replies had been received from the Taxation Department, Government of Meghalaya (June 2019).

Audit noticed failure of the ST to detect irregular claim of concessional rate of tax without declaration forms on verification of records of one unit out of 28 unit offices in the State. The Department should look into the similar issues in other unit offices also.

Recommendation: Department should initiate action against the ST for his failure to scrutinize the returns to ascertain the false declaration made by the dealer and to recover the amount of due tax from the dealer.

