

***CHAPTER-II***  
***TAXES/ VAT ON SALES, TRADE ETC.***



## CHAPTER-II TAXES/VAT ON SALES AND TRADE

### 2.1 Tax administration

The Principal Secretary (Excise) administers Sales Tax/Value Added Tax at the Government level. The Excise & Taxation Commissioner (ETC) is the Head of the Excise and Taxation Department and is assisted by two Additional ETCs, one Joint ETC, six Deputy ETCs. There are 12 Assistant ETCs at District level in the field, assisted by 69 Excise & Taxation Officers (ETOs). In addition, there are Excise and Taxation Inspectors in the field to control all the activities of Department and other allied staff for administering the relevant tax laws and rules.

### 2.2 Results of audit

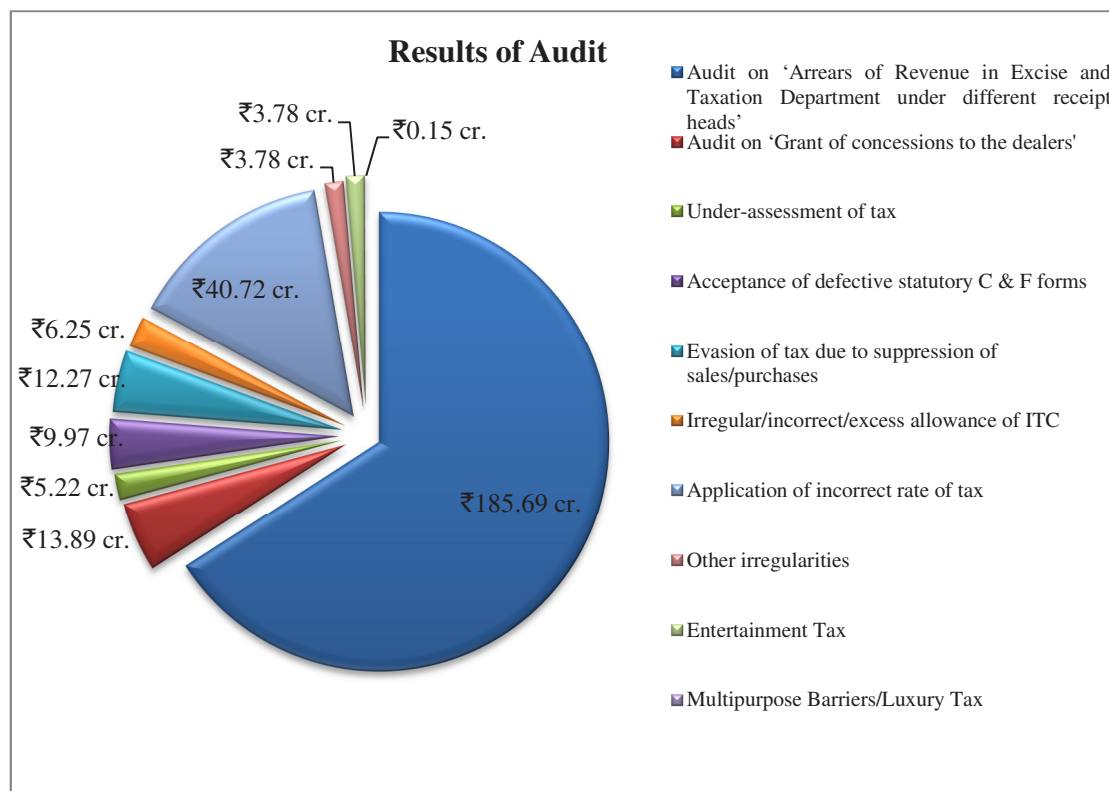
During 2017-18, test check of records of 33 units involving receipt of ₹1,865.44 crore under VAT/GST, Luxury and Multipurpose Barrier, out of 89 units revealed under assessment of tax and other irregularities involving ₹281.72 crore in 300 cases which fall under the following categories as depicted below:

**Table: 2.1 Results of audit**

			₹ in crore	
Sr. No.	Categories	Number of cases	Amount	
1.	Audit on 'Arrears of Revenue in Excise and Taxation Department under different receipt heads'	01	185.69	
2.	Audit on 'Grant of concessions to the dealers'	01	13.89	
3.	Under-assessment of tax	24	5.22	
4.	Acceptance of defective statutory forms C and F	19	9.97	
5.	Evasion of tax due to suppression of sales/purchases	47	12.27	
6.	Irregular/incorrect/excess allowance of ITC	70	6.25	
7.	Application of incorrect rate of tax	32	40.72	
8.	Other irregularities	78	3.78	
<b>Total</b>		<b>272</b>	<b>277.79</b>	
<b>Others Tax and Non-Tax</b>				
1.	Entertainment Tax	03	3.78	
2.	Multipurpose Barriers	13	0.15	
3.	Luxury Tax	12		
<b>Total</b>		<b>28</b>	<b>3.93</b>	
<b>Grand Total</b>		<b>300</b>	<b>281.72</b>	

The position of results of audit is depicted in the graph below:

Graph 2.1



During the year 2017-18, the Department accepted under-assessment and other deficiencies of ₹2.74 crore in 75 cases out of which an amount of ₹86.63 lakh was realised in 66 cases relating to audit findings of earlier years.

Significant cases in the form of two thematic audits having money value of ₹199.58 crore and as seven paragraphs having money value of ₹29.74 crore are discussed as follows:

## 2.3 Preparedness for transition to Goods and Services Tax

### Introduction

*As per model law approved by Goods and Services Tax Council, the Government/Department was prompt in its preparedness for implementation of Goods and Services Tax under the Act/Rules. Due to frequent changes in the rules/regulations since 1 July 2017 on the recommendations of the Goods and Services Tax Council, the State Government could not implement many of the procedures. The Department needs to sort out the legacy issues like assessments of pre-Goods and Services Tax cases, recovery of arrears and refund of tax relating to pre-Goods and Services Tax regime expeditiously in a time bound and focused manner. The Goods and Services Tax Network had also not been able to provide the complete IT solution.*

Goods and Services Tax (GST) is implemented with effect from 1 July 2017. GST<sup>1</sup> is being levied on intra-State supply of goods or services (*except alcohol for human consumption and five specified petroleum products*<sup>2</sup>) separately but concurrently by the Union (CGST) and the States (SGST)/Union territories (UTGST). Further, Integrated GST (IGST) is being levied on interstate supply of goods or services (including imports) and the Parliament has exclusive power to levy IGST. Prior to implementation of GST, Value Added Tax was leviable on intra-State sale of goods in the series of sales by successive dealers as per Himachal Pradesh Value Added Tax (HPVAT) Act, 2005 and Central Sale Tax (CST) on sale of goods in the course of interstate trade or commerce as per CST Act, 1956.

The State Government was empowered to regulate the provisions of HP VAT Act whereas provisions relating to GST are being regulated by Centre and State on the recommendation of Goods and Services Tax Council (GSTC), which is constituted with representation from Centre and all the States, to recommend on the matters related to GST. The State Government notified (June 2017) the Himachal Pradesh Goods and Services Tax (HP GST) Act, 2017 and Himachal Pradesh Goods and Services Tax Rules, 2017. Various taxes<sup>3</sup> are subsumed under GST.

Goods and Services Tax Network (GSTN) is set up by the Government of India to provide IT services. It provides *Front-end* IT services to taxpayers namely registration, payment of tax and filing of returns. *Back-end* IT services *i.e.* registration approval, taxpayer detail viewer, refund processing, MIS reports etc. are also being provided by GSTN to Model-II<sup>4</sup> States. Himachal Pradesh has opted for Model-II.

<sup>1</sup> Central GST: CGST and State/Union Territory GST: SGST/UTGST.

<sup>2</sup> Petroleum products: crude oil, high-speed diesel, petrol, aviation turbine fuel and natural gas

<sup>3</sup> Value Added Tax, Central Sales Tax, Entry Tax, Luxury Tax and Entertainment Tax etc.

<sup>4</sup> **Model-I State:** only front-end services provided by GSTN and **Model-II State:** both Front-end and Back-end services provided by GSTN

### 2.3.2 Scope of Audit

The activities of the State Government/Commercial Taxes Department relating to implementation of GST since 162<sup>nd</sup> amendment to the Constitution of India *i.e.* September 2016 to March 2018 were reviewed. Besides, records of the office of the Commissioner, Commercial Taxes (CCT) and data available on the Departmental web based application *www.gst.gov.in* regarding legacy issues *i.e.* assessment, recovery/refund, rectifications, submission of declaration forms etc. were examined.

### 2.3.3 Trend of Revenue

GST was implemented from July 2017 and total receipts under GST including non-subsumed/subsumed taxes from April 2017 to March 2018 were ₹4,843.86 crore (including IGST advance ₹484.84 crore) against ₹4,381.91 crore under pre-GST taxes during the same period of previous year 2016-17 *i.e.* an increase of 10.54 *per cent.* Actual receipts under pre-GST taxes and GST is depicted below:

Table: 2.2 Trend of Revenue

Year	Budget Estimate	Receipts under pre-GST taxes	Receipts under SGST and IGST		Total receipts under pre-GST taxes and GST	Increase compared with last year receipts (in percentage)	Compensation received	Total receipts
			SGST	IGST apportionment				
2013-14	3,232.90	3,141.10	-	-	3,141.10	-	-	3,141.10
2014-15	3,195.62	3,660.57	-	-	3,660.57	16.53	-	3,660.57
2015-16	3,937.01	3,992.99	-	-	3,992.99	9.08	-	3,992.99
2016-17	4,715.67	4,381.91	-	-	4,381.91	9.74	-	4,381.91
2017-18	5,135.48	2,525.87 <sup>1</sup>	-	-	4,843.86	10.54	1,059.00 <sup>3</sup>	5,902.86
2017-18			1,833.15 <sup>2</sup>	484.84				

Protected figure under the GST is ₹3,546 crore for the period July 2017 to March 2018 for the State.

<sup>1</sup>April to June 2017<sup>2</sup>July 2017 to March 2018

<sup>3</sup>₹539.00 crore was received during 2017-18 and ₹520 crore in 2018-19.

Source: Finance Accounts and Budget Estimates

*There was an increasing trend in receipts during the last four years.*

### 2.3.4 Legal/statutory preparedness

The State Government notified (June 2017) the Himachal Pradesh Goods and Services Tax Act, 2017 and the Himachal Pradesh Goods and Services Tax Rules, 2017. E-way bill system was implemented in the State on interstate transactions with effect from 27 March 2018 and on intra-state transactions with effect from 31 May 2018. Further, State Government had issued necessary notifications from time to time for facilitating the implementation of GST in the State. The State Government/Commercial Taxes Department had issued 237 notifications/circulars/orders regarding GST from June 2017 to March 2019.

### 2.3.5 IT preparedness and capacity building efforts by the Department

GSTN is to provide three *front-end* services to taxpayers namely registration, payment of tax and filing of returns. As Himachal Pradesh has opted for Model-II for implementation of GST, *back-end* applications like registration approval, taxpayer detail viewer, letter of undertaking (LUT) processing, refund processing,

management information system (MIS) reports etc. for GST administration are being developed by GSTN. As per information provided by the Department, the access for *back-end* application was available to State through Multi-Protocol Level Switching (MPLS) connectivity at State Data Centre.

Under overall supervision of Excise and Taxation Commissioner, Shimla, training programmes for Officers were organised. Orientation Training Program on GST upto the level of Excise and Taxation Officer (ETO) was organized in three batches at Thiruvananthapuram, Kerala during October/November 2015. Training on Back Office Modules and Refund Modules was organized at Delhi upto the level of Deputy Commissioner during December 2018. Moreover, 20 workshops were organized on GST at the unit level. The Department also intimated that the target of providing training to officers/officials at various levels was fully achieved by training 517 officers/officials. The website named *www.gst.gov.in* had been in place for providing GST related information such as Act/rules, notification/circulars/orders, e-Way bill etc. A centralized Call Centre was also established to attend to the problems/queries of taxpayers.

### **2.3.6 Implementation of GST**

Audit observed that major issues/challenges faced by the Department in implementation of GST were in registration, migration, allocation of taxpayers, filing of returns, payment of tax, transitional credit, refund etc. These issues alongwith the changes in Rules and Regulations made since 1 July 2017 by the State Government were analyzed in audit as discussed below:

### **2.3.7 Registration of taxpayers**

Every person registered under any of the pre-GST laws and having a valid Permanent Account Number (PAN) is to be issued a certificate of registration on provisional basis. The final certificate of registration is to be granted on completion of prescribed conditions. Further, taxpayers having turnover of more than the threshold limit of ₹10 lakh are required to be registered under the GST Act. This limit remained upto 31 January 2019 and was revised to ₹20 lakh from 01 February 2019.

### **2.3.8 Migration of existing taxpayers of Commercial Taxes Department**

Under the Himachal Pradesh GST Act, 2017, every person registered under any existing law of subsumed taxes and having a PAN shall enroll on common portal by validating his e-mail address as well as mobile number. Such person shall be granted registration on a provisional basis. Every person who has been granted a provisional registration shall submit an application alongwith the information and documents specified in the application on common portal. A certificate of registration shall be made available to the registered person electronically if the information and the particulars furnished in the application are found to be correct and complete.

As per information provided by the Department, position of provisional registration and final registration of existing registered dealers in the Commercial Taxes Department is depicted below:

**Table: 2.3 Migration of existing taxpayer**

Total number of existing dealers as on 30 June 2017	Total number of provisional ID received from GSTN (percentage w.r.t. column I)	Complete enrolment done (percentage w.r.t. column I)	Total number of dealers not finally enrolled under GST
1	2	3	4
73,520	72,688 (99 per cent)	53,537 (72.82 per cent)	19,151

Source: Departmental figures

99 per cent of the existing dealers received provisional ID from GSTN but only 72.82 per cent of the existing dealers completed the migration process and were finally registered under GST.

The Department stated that the reason for short enrollment was that, in the VAT regime, dealers having GTO of ₹5 lakh were to be registered, whereas in GST, the dealers having GTO upto ₹10 lakh were exempted from registration.

### 2.3.9 Allocation of taxpayers between Centre and State

#### (a) Existing registered taxpayers of Commercial Taxes Department and Central Excise Department

As per recommendation of GST Council, 90 per cent of existing registered taxpayers having turnover up to ₹1.50 crore and 50 per cent of existing registered taxpayers having turnover of more than ₹1.50 crore were allotted to the State. Accordingly, State was allotted the jurisdiction of 48,506 existing registered taxpayers (November 2017) as detailed below:

**Table: 2.4 Existing registered taxpayers**

Description	Turnover above ₹1.50 Crore	Turnover below ₹1.50 Crore	Total
Centre	3,799	4,968	8,767
State	3,798	44,708	48,506
<b>Total</b>	<b>7,597</b>	<b>49,676</b>	<b>57,273</b>

Source: Departmental figures

#### (b) New taxpayers

Jurisdiction of newly registered taxpayers is being allotted to the State and Centre by GST portal electronically during submission of application for registration by the taxpayers. The position of new registration under the jurisdiction of State as on 31 March 2019 is depicted below:

**Table: 2.5 Newly registered taxpayers**

Application received upto March 2019	Number of applications rejected	Number of applications approved	Number of applications pending
63,789	9,504	53,747	538

Source: Departmental figures



Thus, 538 applications were pending at various stages of registration as on March 2019. These included the cases received from date of framing rules viz. 22 June 2017.

### 2.3.10 Filing of returns

As per Himachal Pradesh GST Act, 2017, taxpayers, other than composition taxpayers, are required to furnish details of outward supplies of goods or services in Form GSTR-1<sup>5</sup>, details of inward supplies of goods or services in Form GSTR-2<sup>6</sup> and a return in Form GSTR-3 (electronically generated by system on the basis of information furnished through GSTR-1 and GSTR-2) monthly. The taxpayers under composition levy are required to file a quarterly return GSTR-4.

The prescribed process of return filing was 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-3B<sup>7</sup> with payment of tax by 20<sup>th</sup> of the succeeding month. Further, taxpayers having turnover below ₹1.50 crore were to file GSTR-I on quarterly basis. The details of taxpayers who have filed their return (GSTR-3B) during the period from July 2017 to March 2018 are depicted in table:

**Table: 2.6 Month-wise details of returns filed**

Month/year	Total taxpayers	No. of taxpayers filed the returns	No. of taxpayers who had not filed returns	Percentage of taxpayers who filed the returns
July 2017	50,631	49,701	930	98
August 2017	56,145	53,445	2,700	95
September 2017	60,003	55,881	4,122	93
October 2017	58,024	52,223	5,801	90
November 2017	59,612	52,163	7,449	88
December 2017	60,836	52,440	8,396	86
January 2018	62,906	53,455	9,451	85
February 2018	65,080	54,457	10,623	84
March 2018	67,654	55,316	12,338	82

It can be seen that percentage of returns filed has decreased from 98 *per cent* to 82 *per cent*. Thus, monitoring of these returns was important to ensure timely deposit of due tax by the taxpayers.

### 2.3.11 Payment of tax by dealers under composition

Any taxable person whose aggregate turnover in any preceding financial year is less than ₹75 lakh can opt for a simplified composition scheme where tax will be payable at a concessional rate of one *per cent* on the turnover in a State without

<sup>5</sup> **GSTR-1:** (a) invoice wise detail of all interstate and intrastate supplies made to the registered persons and interstate supplies with invoice value more than ₹2.50 lakh made to the unregistered persons, (b) consolidated details of all intrastate supplies made to the unregistered persons and state wise interstate supplies with invoice value upto ₹2.50 lakh made to the unregistered persons and (c) debit and credit notes, if any, issued during the month.

<sup>6</sup> **GSTR-2:** (a) invoice wise details of all interstate and intrastate 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.

<sup>7</sup> **GSTR-3B:** monthly return required to be filed by all taxpayers other than taxpayers opted for composition levy.

benefit of input tax credit. The limit was revised to one crore from October 2017. Quarterly return GSTR-4<sup>8</sup> is required to be filed after payment of due tax.

The position of returns filed is as below:

**Table: 2.7 Details of taxpayers and returns filed**

Quarter	Eligible taxpayers to file GSTR-4	Total returns filed	Percentage
June 2018	21,482	19,471	91
September 2018	21,691	18,949	87
December 2018	21,360	18,075	85

It can be seen that percentage of returns filed had decreased from 91 *per cent* to 85 *per cent*. Thus, monitoring of these returns was important to ensure timely deposit of due tax by the taxpayers.

### **2.3.12 Transitional credit**

As per HP GST Act, 2017, registered taxpayers were entitled to carry forward and claim un-availed amount of ITC of the pre-GST regime (as per VAT returns) in the GST regime other than a person opting to pay tax under Section 10 (composition levy). This included un-availed input tax credit in respect of capital goods not carried forward in the VAT returns. Further, the taxpayers are also entitled to take credit of VAT in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on which credit is not claimed in earlier law and the taxpayer is eligible for input tax credit on such inputs under the HPGST Act. The registered taxpayers are required to file a return in prescribed form TRAN-I. However, taxpayers shall not be allowed to take credit where all the returns required under the pre-GST law for the period of six months immediately preceding the appointed date are not furnished.

Scrutiny of relevant dump data provided (March 2019) by Department and cross verification with VAT returns (VAT-XXV) for the period April to 30 June 2017 filed by taxpayers revealed that 14,367 taxpayers had filed TRAN-I and claimed transitional credit of ₹558.89 crore. Audit test checked 580 cases where transitional credit was claimed and cross verified with VAT returns (VAT-XXV). Audit observed the following:

- 25 taxpayers had claimed ITC of ₹1.27 crore in TRAN-01 against the available ITC of ₹78.06 lakh as per returns submitted by the dealers for the quarter ending 30 June 2017. Thus, ITC of ₹48.94 lakh had been claimed in excess of what was available to dealers on unsold stock/ capital goods etc.
- 33 tax payers had claimed ITC of ₹3.73 crore in TRAN-01, whereas no ITC was available as per returns submitted by these dealers for the quarter ending 30 June 2017.

The action taken by the Department against these taxpayers was not on records.

<sup>8</sup> GSTR-4: Returns to be filed by the composition dealers.

### 2.3.13 Refund under GST

Refund module under GSTN was not operational, hence, refunds are being allowed through manual system to applicants. Specific procedures are prescribed for refund of the balance amount in the electronic cash ledger or un-utilised input tax credit at the end of particular tax period. Refund of un-utilised input tax credit is allowed in case of zero-rated supplies made without payment of tax or when the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies.

As per information provided by the Department, position of refunds was as under:

**Table: 2.8 Details of refund allowed**

						₹ in crore
Applications received for refund upto March 2019		Refunds allowed within prescribed period		Refunds allowed after prescribed period		Number of applications rejected
Number of taxpayers	Amount	Number of tax payers	Amount	Number of taxpayers	Amount	
773	196.59	617 (79.81 per cent)	167.04	5 (0.70 per cent)	6.08	151

It is observed that the Department allowed refunds to 79.81 per cent of the registered taxpayers within the prescribed period of sixty days and 151 applications were rejected.

### 2.3.14 Legacy issues

Audit assessed the legacy issues regarding assessment, recovery of arrears and other related matters as follows:

#### 2.3.14.1 Recovery of arrears

As per information furnished by the Department, arrears (VAT and CST) aggregating ₹3,086.23 crore were pending as on 1 April 2018. The Department had classified the arrears in different categories. Arrears of ₹2,610.10 crore had been referred for recovery as arrears of land revenue, ₹109.89 crore were stayed by the Courts, ₹16.69 crore was recoverable from Government Departments/undertakings/Boards, ₹27.88 crore was proposed to be written off, ₹27.19 crore was pending under appeal and ₹294.48 crore was recoverable from others.

#### 2.3.14.2 Assessment of dealers

Dealers are registered under HP VAT Act, 2005, CST Act, 1956 and for other minor taxes *i.e.* Entry Tax, Luxury Tax, Entertainment Tax, etc. prior to implementation of GST. Therefore, assessments of the dealers registered under old tax regime upto 30 June 2017 were to be completed by the Department within the prescribed period<sup>9</sup>. The Department entered into agreement with the World Bank (December 2016) to implement Himachal Pradesh Public Financial Management Project. The period of the agreement is 2018-2022. One of the terms is to clear the pendency under VAT/CST regime. As per above agreement, the Department is required to complete 90 per cent of assessments by the end of program period.

<sup>9</sup> Within five years after the returns of a year has been filed.

No time line has been prescribed under VAT Act/Rules for assessment of the dealer except if dealer fails to comply with the terms of a notice issued under the Act *ibid*. Assessing Authority shall, within five years after the expiry of such period, proceed to assess to the best of his judgment the amount of the tax due from the dealer.

As per information supplied by the Department, 1,68,690 cases were pending as on 31 October 2018. The Department proposed to clear the pendency under pre-GST regime by November 2020. Further, the Department forwarded a scheme to the Secretary, GST Council (January 2019) to waive off 35 *per cent* of disputed tax payable from tax payers along with interest and penalty. The further progress in the matter was awaited.

Dy. Commissioner of revenue districts Baddi and Solan attributed the reasons of pendency of assessments to non-receipt of statutory forms 'C' and 'F' from dealers and shortage of staff.

#### **2.3.14.3 Delay in issue of notice for assessment**

HPVAT Act, 2005 provides that if the returns relating to any year have been filed and are correct and complete in material particulars, the dealer shall be deemed to have been assessed for that year. If the AA is not satisfied with the return, the AA may issue a notice for assessment within five years of filing of return. If the assessee does not respond, AA has to finalise the assessment within five years of issue of notice, to the best of his judgment. However, if assessee responds, then there is no time limit for assessment of the case.

Audit scrutiny of arrear cases of three AETCs (Solan, Sirmour and Baddi) revealed that 1,17,986 cases under VAT and CST were pending for finalization (June 2019). Out of this, 29,037 cases pertained to the period 2005-06 to 2012-13. The Department had issued notices to these dealers during 2018 and 2019, after the prescribed time limit of five years after filing of return. As per the provisions *ibid*, the AAs were to issue notices for assessment within five years of filing of return but the same not done. This will have impact on the revenue realisation of the State.

The Deputy Commissioner State Taxes & Excise stated (April 2019) that network and connectivity issue was the main constraint. Against the required speed of 10 Mbps speed of only 512 kbps was available due to which data could not be accessed on the common portal and sometimes the connections were timed out. Further, proper MIS data in order to view the mismatches, return defaulter and refund application was not available. Data mine and analysis was very difficult as extraction of data was to be done from cloud based data. Access to check input tax credit was also not available online due to which it could not be ascertained whether at source point the dealer had deposited the tax. It was suggested that a complete online refund system be devised.

### **Conclusion**

The Government/Department was prompt in its preparedness for implementation of GST which can be seen with reference to enactment of Act and Rules as per model law approved by GST Council. Frequent changes were made in Rules/regulations since 1<sup>st</sup> July 2017 on recommendations of the GST Council. Filing of returns was postponed due to difficulties faced by the tax payers. GSTN was not able to provide the complete IT solution regarding filing of returns. The State Government was hamstrung in implementing the provisions of GST as it had limited role in these matters. A complete network system needs to be devised with required speed for successful implementation of GST Act. The Department needs to sort out the legacy issues like assessments of pre-GST cases, recovery of arrears and expedite clearance of pending cases in a time bound manner. Dealers need to be sensitized to apply for refunds of pre-GST regime.

The above points were reported to the Department and the Government in April 2019; replies were awaited (August 2019).

## 2.4 Audit on 'Grant of concessions to dealers'

*Assessing Authorities allowed concessions and excess rebate to dealers without verifying their entitlement on inter-state sales. Invalid, duplicate and defective statutory forms were accepted and concessions were allowed without form 'C'. This resulted in loss of revenue of ₹13.89 crore, besides, interest of ₹8.87 crore was also leviable.*

### Introduction

To promote industrial growth in the State, a package of incentives and concessions to industrial units under Central Sales Tax (CST) Act, 1956 were announced by the Government. CST Act, 1956 provides for concessional rate of tax of two *per cent* in Inter-State trade. Purchasing dealer has to obtain *form-C*<sup>10</sup> from his State and give it to the selling dealer to avail this concession. The concessional rate of tax of two *per cent* with *form-C* is available for both manufacturer and trader. If the inter-state sale is carried out without *form-C*, then the applicable rate of tax for the item sold in the State of selling dealer is applicable.

A dealer sending goods from one State to his branch in other State can avail the concession of zero tax on production of *form-F*<sup>11</sup> which is issued by the State where the branch of the unit is situated.

As per HPVAT Act 2005, interest at the rate of one *per cent* on tax due for a period of one month and at the rate of one and a half *per cent* per month thereafter is payable, till the default continues.

Government of Himachal Pradesh through Industrial Policy Guidelines of 1991, 1996, 1999, 2004 and 2013 introduced package of incentives and concessions to industrial units under Himachal Pradesh General Sales Tax (HPGST) Act, 1968, HPVAT Act, 2005 and the Central Sales Tax (CST) Act, 1956. Under these policy guidelines units engaged in manufacturing activities will be eligible for payment of tax at concessional rate of one *per cent* (upto 31 March 2013). This was changed to one and half *per cent* (from 1 April 2013) in respect of sale in the course of interstate trade or commerce on production of *form-C*. However, industrial units coming into operation on or after 1 April, 2013, with effect from the date of commencing of production, or on existing industrial units which carry out substantial expansion (25 *per cent*) both on installed capacity and manpower, the concessional rate of tax would still be one *per cent* for a period of five years or till the implementation of Goods and Services Tax, whichever is earlier.

To avail this concession, any manufacturing unit should be located in Category-'C' areas<sup>12</sup> and has at least 70 *per cent* of its total employee from amongst the bonafide *Himachalis*. As a proof of employing 70 *per cent* of its total employee from

<sup>10</sup> *Form-C* is issued by purchasing dealer to the selling dealer to avail concession on interstate sale.

<sup>11</sup> *Form-F* is used for transferring goods to its branches in other States.

<sup>12</sup> **Category-A-area:** falling under *Kanungo* (Revenue Authority) circles, **Category-B area:** under development blocks and **Category-C area:** all tribal areas.

amongst bonafide *Himachalis*, the industrial unit shall obtain *form-I* from the Department of Industries of the GoHP and give it to the assessing authority.

The concessional rate of tax of one *per cent* upto 31 March 2013 was available to all items including those in the negative list<sup>13</sup> on production of *form-C*. However, from 1 April 2013, breweries, distilleries, non-fruits/vegetables-based wineries and bottling plants and industrial units specified in the negative list were to be levied CST of two *per cent* on production of *form-C*.

In case of any violation of this condition at any point of time by the concerned industrial unit, no further concession shall be admissible to it and in such an event all incentives already availed by such unit shall be recovered and such unit shall be liable for action under the Act.

Audit on '**Grant of concessions to dealers**' covering period 2014-15 to 2016-17 was conducted between December 2017 and April 2018 through test check of records maintained in seven, out of 12 AETCs<sup>14</sup>. There were total 3,769 assesseees in seven test checked AETCs, who claimed concessions. Audit selected 692 dealers (18%) in these seven AETCs. Out of 692 dealers, irregularities were found in 103 dealers (15%) involving tax effect of ₹13.89 crore. The total CST receipts of the State during the review period was ₹1,344.05 crore. The audit findings are discussed in the succeeding paragraphs.

#### **2.4.2 Irregular allowance of concessional rate of tax**

As per notification of Excise and Taxation Department of March 2005, the units engaged in manufacturing activities will be eligible for payment of tax at concessional rate of one *per cent* instead of applicable rate of two *per cent* in respect of sale in the course of interstate trade or commerce if the unit obtains certificate in *form-T* from the Department of Industries of the GoHP that unit has employed at least 70 *per cent* bonafide *Himachalis* and has furnished the same certificate to assessing authority.

Scrutiny of records of seven AETCs revealed that in AETC Baddi, AA while finalising the assessments (March 2017) of one dealer for the years 2012-13 to 2013-14 accepted *form-I* which was issued for the year 2005-06 and which depicted that unit had employed 54.66 *per cent* instead of 70 *per cent* bonafide *Himachalis*. This dealer was not eligible for the concessional rate of tax. AA incorrectly levied concessional rate of tax of one *per cent* on interstate sale of ₹77.34 crore instead of applicable rate of two *per cent*. This resulted in loss of revenue of ₹77.34 lakh<sup>15</sup>, besides, interest of ₹59.35 lakh (for the period April 2014 to December 2017) was also leviable.

*Allowing concessional rate of tax to ineligible dealer resulted in short levy of tax of ₹77.34 lakh.*

<sup>13</sup> Negative list contains items on which concession rate of tax is not applicable.

<sup>14</sup> AETCs Baddi, Chamba, Nurpur, Shimla, Sirmour, Solan and Una

<sup>15</sup> Two *per cent* of ₹77.34 crore is ₹154.68 lakh and one *per cent* is ₹77.37 lakh (loss ₹154.68-₹77.34)

### **2.4.3 Application of incorrect rate of concessional tax**

The Government of Himachal Pradesh, Excise and Taxation Department notification dated 1 April 2013 provides that in respect of sale in course of interstate trade or commerce of goods (other than those in the negative list) manufactured by a dealer running any existing industrial unit in the State of Himachal Pradesh, tax levied under the Central Sales Tax Act, shall be calculated and payable at rate of 1.5 *per cent* of the taxable turnover of such goods with effect from 1 April 2013 for a period of five years or till the date of implementation of Goods and Service Tax, whichever is earlier.

Scrutiny of records of seven AETCs revealed that in two AETCs<sup>16</sup>, AAs had allowed concessional rate of tax to four dealers who were engaged in manufacturing of craft & printing papers and plastic articles falling in the negative list<sup>17</sup>. These dealers were not entitled to avail any concessional rate of tax on interstate sales of ₹104.63 crore for the tax period 2010-11 to 2014-15. AAs, while finalising the assessments of the dealers between October 2014 and August 2016, allowed one or one & half *per cent* concessional rate of tax and levied tax of ₹1.47 crore instead of leviable tax at the rate of two *per cent* amounting to ₹2.09 crore. Thus, failure of AAs to verify the nature of manufactured goods led to application of incorrect concessional rate of tax resulting in short levy of tax of ₹62.00 lakh. Interest of ₹50.43 lakh (for the period April 2011 to December 2017) was also leviable.

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*Not verifying the nature of manufactured goods resulted in short levy of tax of ₹62.00 lakh.*

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### **2.4.4 Non-verification of substantial expansion for concessions**

The Government of Himachal Pradesh, by notification dated 1 April 2013 prescribed that concessional rate of tax of one *per cent* instead of two *per cent* shall be levied on new industrial units coming into operation on or after 1 April, 2013 with effect from date of commencing of production, or on existing industrial units which carry out substantial expansion (25 *per cent*) both on installed capacity and manpower for a period of five years or till the implementation of Goods and Services Tax, whichever is earlier.

Scrutiny of assessment records of seven AETCs revealed that in two AETCs<sup>18</sup> AAs had finalized the assessment of four dealers who made interstate sales of ₹78.19 crore for the years 2013-14 and 2014-15. AAs while finalising the assessments applied concessional rate of tax of one *per cent* and levied tax of ₹78.19 lakh instead of leviable tax at the rate of one and half *per cent* amounting to ₹1.17 crore without verifying the substantial expansion of the industrial units. Audit observed that there was nothing on record to show that units had carried out substantial expansion on or after 1 April, 2013 and as such these units did not qualify to avail

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<sup>16</sup> AETCs Baddi and Una

<sup>17</sup> Industrial units which are not eligible for concessional rate of tax as per notification of April 2013

<sup>18</sup> AETCs Solan and Una



concessional rate of tax. Thus, without verification of substantial expansion, AAs had applied incorrect rate of tax resulting in under assessment of tax to the tune of ₹39.10 lakh. Interest of ₹24.06 lakh (for the period April 2014 to December 2017) was also leviable.

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*Concessional rate was granted without verification of substantial expansion resulted in under assessment of tax of ₹39.10 lakh.*

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#### **2.4.5 Incorrect application of concessional rate of tax on interstate sale**

HP Government vide notification of May 1992, notified that one *per cent* tax will be levied on cotton-yarn, *rajmash* and cereals etc. in the course of interstate trade and commerce of goods. Further, as per notification of April 2013, concessional rate of tax is changed from one *per cent* to one and half *per cent* from 1 April 2013 in the course of interstate trade and commerce of goods including the items covered under notification of May 1992 (other than those manufactured by breweries, distilleries, non-fruits/vegetables based wineries and bottling plants and industrial units specified in the negative list).

Scrutiny of assessment records of seven AETCs revealed that in two AETCs<sup>19</sup> AAs had finalised the assessments of four dealers between May 2015 and October 2016 for the tax period between 2013-14 and 2014-15. The items of sale were cotton-yarn, rice and *rajmash*, taxable at the rate of one & half *per cent*. AA incorrectly levied tax at the rate of one *per cent* on inter-state sales of ₹168.65 crore amounting to ₹1.69 crore instead of leviable tax of ₹2.53 crore at applicable tax rate of one & half *per cent*. This resulted in underassessment of tax of ₹84.33 lakh. Interest of ₹48.90 lakh was also leviable.

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*Incorrect application of rate of tax resulted in under assessment of tax of ₹84.33 lakh.*

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#### **2.4.6 Grant of concessions without form-C**

Central Sales Tax(CST) Act, 1956 prescribes that in the course of interstate trade or business, the selling dealer has to submit *form-C* obtained from the purchasing dealer to avail concessional rate of tax or else the tax at full rate is to be paid.

Scrutiny of records of seven AETCs revealed that in two AETCs<sup>20</sup>, AAs had finalised assessments in April 2015 (for the year 2009-10) and in November 2016 (for the year 2014-15) of two dealers who had made interstate sales of ₹25.74 crore out of which sales valued at ₹57.74 lakh were not supported with *form-'C'*. AAs had levied concessional rate of tax of one & half *per cent* and two *per cent* amounting to ₹0.89 lakh, whereas these interstate transactions were taxable at the rate of

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<sup>19</sup> AETCs Baddi and Nurpur

<sup>20</sup> AETCs Chamba: one dealer: ₹0.57 lakh and Solan: one dealer: ₹6.41 lakh

13.75 per cent and 12.50 per cent amounting to ₹7.87 lakh. This resulted in short levy of tax of ₹6.98 lakh<sup>21</sup>. Interest of ₹2.88 lakh was also leviable.

The Department stated (September 2018) that AETCs had issued notices to the dealers for reassessment. The reply of the Government was still awaited (August 2019).

#### **2.4.7 Acceptance of ineligible declaration forms**

In case of sale in the course of interstate trade or commerce seeking full or partial exemption from tax, statutory forms 'C', and 'F' are pre-requisite for claiming tax exemption under the CST Act, 1956 before finalisation of assessment of dealer. The form-C is provided by the purchasing dealers to the selling dealer for claiming concession in the course of interstate trade or commerce. These forms are issued in three parts i.e. *Original, Duplicate and Counterfoil*. It has been judicially held that production of original forms containing full particulars like date of issue, transaction details, name of selling and purchasing dealers, value of form and period to which these forms pertain etc. for claiming concessional rate of tax is mandatory. Audit test checked the concessional forms in respect of 237 dealers and found irregularities in 48 dealers (20%) involving tax effect of ₹10.18 crore.

##### **2.4.7.1 Form-‘C’**

(i) Scrutiny of records of seven AETCs revealed that in five AETCs<sup>22</sup>, AAs while finalising the assessments between April 2015 and March 2017 of 33 dealers for the tax periods 2005-06 to 2014-15, incorrectly allowed concessional rate of tax on interstate sales on ineligible forms-‘C’. The forms contained wrong address of seller/purchaser, had overwriting or cuttings over critical inputs and entries, or photocopies/counter-foils instead of original forms (*Annexure-IV*). It had also been judicially held that production of original copy of Form-‘C’ for claiming concessional rate of tax was mandatory to prevent the misuse of the form for the commission of fraud and collusion with a view to evade payment of tax. These forms were liable to be rejected at the time of assessments.

The amount involved in the ineligible forms-‘C’ was ₹12.80 crore and AAs levied tax of ₹13.12 lakh at the concessional rate of one/two per cent whereas tax of ₹83.76 lakh at the rate of four, five, 12.50 and 13.75 per cent was leviable. Thus, non-rejection of the invalid and defective statutory forms resulted in short levy of tax of ₹70.64 lakh. Interest of ₹84.15 lakh was also leviable.

The Department stated (December 2018) that in eight cases, an additional demand of ₹21.14<sup>23</sup> lakh had been created and recovered, whereas five dealers had

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<sup>21</sup> ₹52.33 lakh X 12.25 per cent (13.75% – 1.50%) + ₹5.41 lakh X 10.5 per cent (12.5%-2%)

<sup>22</sup> AETCs 2015-16-Baddi (12 dealers: ₹31.60 lakh), Nahan (three dealers: ₹3.56 lakh), Nurpur (two dealers: ₹3.46 lakh), Solan (seven dealers: ₹2.64 lakh) and Una (four dealers: ₹22.30 lakh 2016-17-Una (five dealers: ₹7.08 lakh)

<sup>23</sup> AETCs Sirmour: one dealer: ₹5,000, Solan: five dealers: ₹20.90 lakh, Una: two dealers: ₹0.19 lakh

submitted the original *form-C*, and the remaining cases were under process for re-assessment.

(ii) Audit examined *forms-C* attached with the assessment files in AETCs Baddi, Sirmour and Solan and observed the following deficiencies:

- (a) Audit cross verified *forms-C* valuing ₹4.57 crore placed in the assessment files with details of the same forms in the online system of the concerned State. In eight forms, the names of the purchasing dealers were different. In one form date of issue was different.
- (b) In six cases, verification report of *forms-C* valuing ₹2.88 crore, were placed on record. Online verification of these forms showed status as '*No matching record found for the above inputs*' in five cases and '*No record exists for this form*' in one case.
- (c) In one case, *form-C* valuing ₹6.75 lakh was placed in the file of a dealer whereas value of the same form was ₹2.91 lakh in online verification report.

There could not be a mismatch in forms placed on record and verified through online system as the contents of the forms were not editable in the online system because these forms were generated through the websites of the concerned State in which dealers were registered. Thus, possibilities of malpractices/fraudulent use of forms for above mismatches generated online could not be ruled out.

(iii) Name of the purchasing and selling dealers with TIN, date of issue, details of invoices with amount, the quarter of transaction and validity year are to be mentioned in *forms-C*. One *form-C* is to be used for transactions for a quarter. Audit observed deviations as detailed below:

- (a) In eight forms valuing ₹2.62 crore, transactions pertained to two different assessment years which was in contradiction of the provisions of the CST Act.
- (b) In 65 forms having value of ₹14.87 crore, period of transactions was later than the issuing date which indicate that statutory forms were issued in advance to the dealers.
- (c) In 149 forms valuing ₹298.16 crore, the dates of issue of forms and validation period were not mentioned on forms.
- (d) In six forms having value ₹46.48 lakh, the date of issue was 1983, 1996, 2000, 2007 and 2008 whereas the transactions pertained to 2011-12 onwards.
- (e) Five forms amounting to ₹74.58 lakh were used beyond the validity period mentioned in the forms.
- (f) In 10 forms valuing ₹8.29 crore neither the date of issue nor the bill date was recorded but the AA accepted these forms without verification.

The total value of *form-C* on which no tax concession was available worked out to ₹332.65 crore. This resulted in short levy of tax of ₹10.18 crore. Interest of ₹8.87 crore was also leviable.

*The deficiencies pointed out above were indicative of the fact that Assessing Authorities had not verified the forms and defective/ineligible forms were accepted and concessional rate of tax was allowed resulting in short levy of tax of ₹10.89 crore.*

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The Department stated that it was not feasible to verify all the statutory forms. It was further stated that forms were verified at random either online through 'TINXSYS' and website of concerned State or by writing to the concerned State for verification of correctness.

#### **2.4.7.2 Form-'F'**

CST Act 1956, read with CST Rules 1957, provides that exemption of tax to a registered dealer is granted in case of branch transfer/consignment sale, provided these are supported by a declaration *form-'F'*. Further, single *form-'F'* is to cover the transactions of only one calendar month. Besides, interest at the prescribed rate under the Act is also leviable on the unpaid amount of tax.

Scrutiny of records of seven AETCs revealed that in four AETCs<sup>24</sup>, AAs while finalising the assessments of seven dealers between May 2015 and March 2016 for the tax periods 2009-10 to 2013-14, had allowed exemption of tax of ₹30.61 lakh on transfer of stock amounting to ₹5.82 crore against declaration *form-'F'*. Audit observed that *form-'F'* were liable to be rejected at the time of assessments as these were covering transactions for more than one calendar month. However, AAs concerned did not properly scrutinise these forms and allowed concessions which resulted in non-levy of tax of ₹30.61 lakh. Interest of ₹29.92 lakh was also leviable (*Annexure-V*).

The Department stated (December 2018) that in two cases an additional demand of ₹5,000<sup>25</sup> had been created and recovered whereas the remaining cases of the dealers were under process for re-assessment. The reply of the Government was still awaited (August 2019).

#### **Conclusion**

*The Department had allowed concessional rate of tax to dealers who had not employed prescribed limit of Himachalis and by applying incorrect rate of tax on goods falling under negative list to ineligible dealers. Concession was granted even without submission of declaration form. No system existed in the Department to review and verify grant of concessions to dealers for substantial expansion. Assessing Authorities had not verified the forms and defective/ ineligible forms were accepted and concessional rate of tax was allowed. Concession was allowed on F forms covering transactions of more than one month.*

The above points were reported to the Department and the Government in July 2018 and April 2019; replies were awaited (August 2019).

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<sup>24</sup> AETCs Baddi (two dealers: ₹11.71 lakh), Shimla (one dealer: ₹7.01 lakh) Solan (two dealers: ₹8.05 lakh) and Una (two dealers: ₹3.84 lakh)

<sup>25</sup> AETCs Solan: one dealer: ₹0.02 lakh and Una: one dealer: ₹0.03 lakh

## 2.5 Audit on 'Arrears of Revenue in Excise and Taxation Department under different Receipts heads'

*Incorrect reporting of arrears by field units and deficient monitoring led to incorrect depiction of arrears in the Departmental records. Lack of timely action by the Department to realise the arrears, delay in assessments of remanded-back cases, non-auctioning of attached properties and non-provision of time limit in the Act/Rules to recover the arrears resulted in accumulation of arrears of ₹185.69 crore.*

### Introduction

The unpaid amount of tax, additional tax demand, interest and penalty, which is recoverable from dealers but not paid within the prescribed time, is termed as 'arrears'. Tax on sales and trade is a major source of revenue for the State, which is collected by the Excise and Taxation Department (ETD). HPVAT Act prescribes that a dealer is required to file his return along-with treasury receipt of tax deposited on a monthly or quarterly basis<sup>26</sup>. If the tax due is not paid within the date mentioned in the Tax Demand Notice, the Department can proceed to recover the amount, in the following manner:

After the arrears on account of Government dues have been assessed and finalized by the Department, AA will issue a notice to the defaulter to pay the dues mentioned in the notice. If the defaulter even after serving three notices does not pay the Government dues or respond to the Department or prefer an appeal before the Appellate Commissioner, AETC shall declare the amount due as arrears of land revenue and take up the matter with the Revenue Authority to insert red entry in the revenue record so that property of the dealer cannot be disposed off in any manner i.e. by way of power of attorney, sale, transfer of rights and lease etc. Revenue Recovery Act (RRA) provides that if Arrears of Land Revenue (ALR) are payable by a defaulter having property in a District other than that in which the arrears accrued, the Collector may send Revenue Recovery Certificate (RRC) to the Collector of that District, stating therein the name of the defaulter and such other particulars as may be necessary for identification of the property, the amount payable by dealer and details of due.

Powers have been delegated<sup>27</sup> to the Excise and Taxation Department to recover the Government dues as arrears of land revenue under the Himachal Pradesh Land Revenue (HPLR) Act, 1954. The recovery of Government dues can be made by service of writ demand on defaulter, arrest and detention, distress and sale of moveable property, sale or attachment of estate or holding and proceedings against moveable property of the defaulter. However, no time limit has been fixed in the Act to complete the recovery process (*Annexure-VI*).

<sup>26</sup> (**Quarterly return**) up to one Crore within 40 days, exceeding one crore but not exceeding five crore within 45 days from the end of each quarter and (**Monthly return**) exceeding five crore within forty five days from the expiry of each month of a financial year.

<sup>27</sup> Delegated the power of Collectors and Assistant Collectors to the Excise Department between December 1990 and January 1993

Excise and Taxation Department is also responsible for collection of revenue under the receipts head '0039-State Excise', '0040-Taxes/VAT on Sales and Trade', '0042-Passenger and Goods Tax' and '0045-Other Taxes and Duties on Commodities and Services'.

Collection of Excise Duty, License Fee, Brand Fee, Import/Export Fee, Overtime Fee, interest and penalty, under receipt head '0039-State Excise', is collected by Excise and Taxation Department. The receipt from commercial motor vehicles under receipt head '0042-Passenger and Goods Tax' consists of passenger tax, goods tax, additional goods tax, and other receipts. Levy and collection of receipts from the Passenger and Goods Tax is regulated under the Himachal Pradesh Passengers and Goods Taxation Act (HPPGT), 1955 and Himachal Pradesh Passengers and Goods Tax Rules (HPPGTR), 1957.

During November 2017 to April 2018, Audit examined the arrears records of office of the Excise and Taxation Commissioner (ETC), Shimla and seven<sup>28</sup> out of 12 Assistant Excise and Taxation Commissioners (AETCs) for the period from 2014-15 to 2016-17. Out of total 8,725 cases of pending arrears, Audit selected 7,500 cases involving arrears of ₹3,060.83 crore. Out of these, irregularities in 1,004 cases involving money value of ₹185.69 crore were noticed as discussed below:

### 2.5.2 Position of Arrears and ALR cases

The demands on account of VAT after the due dates<sup>29</sup> if not recovered under the provisions of VAT Act/Rules, shall become recoverable as Arrears under Land Revenue. The Departmental authorities have been delegated with the powers of the Assistant Collector/Collector under the Himachal Pradesh Land Revenue Act, to ensure prompt recovery of the government dues from the defaulters.

The position of the arrears in the State *vis-a-vis* in selected units as on 31 March 2017 under different Major Receipt Heads is depicted below:

Table: 2.9 Position of arrears

						₹ in crore	
Arrears pending for recovery	Major Head 0039-SED	Major Head 0040-VAT	Major Head 0042-PGT	Major Head 0045-OTD	Total arrears	Total no. of cases involved	
State	86.40	2,958.37	7.06	65.63	3,117.46	8,725	
<b>Test checked seven units</b>							
Baddi	7.52	406.87	0.74	20.29	435.43	1,225	
Bilaspur	1.35	30.40	0.21	19.15	51.11	424	
Mandi	2.30	16.50	1.93	0.01	20.74	433	
Shimla	18.53	16.68	0.41	0.85	36.46	1,222	
Sirmour	10.94	2,249.14	0.35	10.25	2,270.68	768	
Solan	7.52	92.54	0.58	7.30	107.94	2,392	
Una	28.31	107.43	0.32	2.41	138.47	1,036	
<b>Total of units</b>	<b>76.47</b>	<b>2,919.56</b>	<b>4.54</b>	<b>60.26</b>	<b>3,060.83</b>	<b>7,500</b>	

<sup>28</sup> AETC Baddi, Bilaspur, Mandi, Shimla, Sirmour, Solan and Una

<sup>29</sup> Tax should be deposited within 30 days after issue of tax demand notice or as the time specified therein by the Assessing Authority.

### Arrears under Major receipt head '0040-Taxes/VAT on Sales and Trades'

Arrears of ₹2,958.37 crore for the whole State under Major receipt head '0040-Taxes/VAT on Sales and Trades' were pending for recovery, which had accumulated since 1989-90.

Age-wise analysis of the arrears cases under VAT in test checked units was as given below:

**Table: 2.10 Position of ALR cases under VAT**

Category of arrears	₹ in crore							
	More than 10 years (Upto 2006-07)		More than 3 years (2007 to 2014)		Less than 3 years (2014 to 2017)		Total	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount
Total arrears pending for recovery	1,456	52.70	2,878	114.82	2,891	2,752.04	7,225	2,919.56
Arrears declared to be pursued under the provisions of the HPLR Act	219	41.04	120	60.88	268	2,487.96	607	2,589.88
Arrears not declared as ALR and pending with Department	1,237	11.66	2,758	53.94	2,623	264.08	6,618	329.68

Audit observed that 7,225 cases involving ₹ 2,919.56 crore were pending for recovery, out of which only 607 cases involving ₹ 2,589.88 crore had been declared as ALR under the HPLR Act. No action had been taken to declare the remaining 6,618 cases involving ₹ 329.68 crore as ALR under the HPLR Act.

### 2.5.3 Mismatch of arrears figures

Arrears figures are compiled at different levels. ETO is the field level unit. Each AETC receives monthly statement of arrears from ETO under his jurisdiction. AETC consolidates the figures and sends monthly figures to ETC. At ETC level the arrears figures received from all AETCs is consolidated every month. The compiled figures at the ETC level give the arrear figures of the whole State. For monitoring of recovery of arrears initiated by the concerned AAs, a centralized up-to date database, showing district-wise/party-wise details of outstanding amount in the beginning of the year, addition, recovery during the year and outstanding amount at the end of the year, is required to be maintained at the apex level.

Scrutiny of records of ETC revealed that the office had not maintained detailed information in respect of recovery of arrears showing district-wise/party-wise details of outstanding recoverable amount at the beginning of year, addition during the year, recovery made during the year and balance outstanding at the end of year.

Audit examined consolidated records of ETC and seven AETCs. The following inconsistencies in the arrears figures were observed:

- In AETC Mandi, arrears pendency was shown as ₹16.50 crore whereas in the records of ETC it was shown as ₹14.69 crore.
- In the records of ETC, arrears as on 31 March 2017 was shown as ₹406.87 crore for AETC Baddi and ₹16.68 crore for Shimla whereas it was ₹389.15 crore in the records of AETC Baddi and ₹15.35 crore in the records of AETC Shimla.

Audit analysed the reasons for variation/mismatch and noticed that AETC Shimla had not accounted for arrears in arrears statement of two ETOs for the year 2016-17.

Audit further observed that ETC had communicated to the Government an amount ₹7.49 crore as arrears for AETC Shimla for the year 2016-17, whereas outstanding arrears of ₹16.68 crore was communicated to Audit.

The ETC, while accepting (June 2018) the audit observations, stated that no centralised database was maintained.

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*Lack of monitoring, non-maintenance of detailed database and non-reconciliation resulted in wrong depiction of arrears.*

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#### **2.5.4 Non-monitoring of arrears statements**

As per instruction issued by the Excise and Taxation Commissioner in November 2014, all field offices shall ensure that the arrears register is maintained party-wise and is updated with recovery figures on monthly basis. The Commissioner, Excise and Taxation shall monitor arrears through monthly statement of arrears being forwarded by the field offices.

Audit scrutiny of monthly statement of arrears (between November 2017 and April 2018) in seven selected field units revealed the following:

- Audit cross-checked arrears statement with ALR register of AETC Shimla and revealed that AA was not maintaining arrears register party-wise and updated with recovery figures on monthly basis. Audit noticed that 76 cases involving ₹1.10 crore were declared as ALR as on 31 March 2017 in the arrear statement, whereas in ALR register, 12 cases involving ₹95.28 lakh were entered out of which only one case of ₹15.69 lakh was matching with arrears statement. However, remaining cases of arrears were not found entered in the ALR register or did not match with the arrears statement.
- Scrutiny of arrears statement of seven AETCs revealed that in AETC Baddi, AA had not maintained the party-wise arrears register and recovery figures on monthly basis was not updated. Audit observed in one case that demand notice amounting to ₹2.34 crore were issued to a dealer against which ₹62.62 lakh had been recovered and remaining amount of ₹1.71 crore was still pending for recovery. However, only ₹87.57 lakh was shown as outstanding in the arrears statement, which resulted in short account of arrears of ₹83.43 lakh.

AETC Baddi stated (January 2019) that process of compilation of arrears was being done and would rectify shortly.

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*Lack of monitoring, non-maintenance of detailed database and non-conducting of regular review and reconciliation of figures resulted in wrong depiction of arrears.*

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### 2.5.5 Lacunae in the Acts/Rules

No time limit had been prescribed under HPGST/VAT Acts for assessment/scrutiny, completion of various processes of recovery of arrears and for initiating and completing recovery proceedings under HPLR Act/Rules. Further, the ETC had not fixed any time limit for periodic review of arrears by the AETCs and to obtain security/surety from the dealers with reference to the quantum of business.

The above deficiencies in the Act coupled with fact that the pendency of assessments was already phenomenal, resulted in accumulation of arrears. This would have adverse impact on the revenue of the State. Audit cross checked VAT Acts with reference to neighboring States viz. Haryana and Punjab, and observed that a timeline of three years has been specified for the assessment of the dealers in VAT Acts of neighboring States whereas in HPVAT Act no timeline has been specified for assessment except giving a notice for assessment within five years from the date of filing of annual return despite the fact that Himachal Pradesh usually follows Punjab Acts in many cases. Loss of revenue which occurred due to the above inadequacies, are discussed below:

#### 2.5.5.1 Accumulation of arrears due to delay in assessment and inaction of the Department

HPVAT Act provides that when the registration certificate (RC) of a dealer is cancelled under the Act, the tax payable by the dealer for the period upto the date of cancellation of RC may be assessed.

Further, as per instruction issued by the Excise and Taxation Commissioner in November 2014, all the Assessing Authorities shall maintain recovery files of individual defaulters, so that the actual status of the defaulters can be ascertained. In all cases where the arrears are pending for more than six months and recovery could not be effected, the cases should be identified and declared as ALR. There should be regular follow-up of cases sent to the Dy. Commissioner of other Districts/States under the Revenue Recovery Act (RRA), 1905 to ensure recovery of arrears.

Audit scrutiny of seven AETCs revealed that three AETCs<sup>30</sup>, did not take timely action to finalise the assessments or to verify the outstanding arrears. Audit observed that AETCs had not pursued the cases under the provision of HPLR Act as detailed below:

I. In AETC, Una, a dealer had applied for cancellation of his RC in May 2009 whereas his tax liabilities were pending for assessment for the tax years 2007-08 to 2009-10. AA cancelled his RC without assessing the tax liabilities. Further, AA assessed the dealer between January and August 2013 for the same tax period on ex-parte basis with an additional tax demand (AD) of ₹17.44 crore but dealer did not deposit the tax. Thus, due to failure on part of AA to assess the liabilities before cancellation of the RC, there was accumulation of arrears and loss of revenue of ₹17.44 crore.

<sup>30</sup> AETCs Baddi, Sirmour and Una

**II.** In AETC Baddi, AA had finalized the assessments of a dealer for the year 2006-07 in September 2009 and created additional demand of ₹17.07 lakh. The dealer did not pay the demand. A red entry<sup>31</sup> was made in the revenue records of the dealer in April 2012 against the tax liability of ₹17.07 lakh. The firm was auctioned in June 2012 and another dealer purchased the firm. The new owner of the firm paid the outstanding tax liability of ₹17.07 lakh in October 2012. AA assessed the original dealer for the year 2007-08 to 2011-12 in September 2016 and created additional tax demand of ₹8.48 crore.

AA was aware of the default of the original dealer in payment of demand for the year 2006-07 and also made red entry in April 2012. AA should have assessed the dealer for the years 2007-08 to 2011-12 immediately as the firm was changing a hand, which was not done. Thus, delay in assessment of a dealer, who was a defaulter, resulted in non-recovery of tax of ₹8.48 crore.

**III.** Audit scrutiny of the AETC, Nahan revealed that AA had framed assessment of a dealer for the period 1989-90 to 1992-93 between March 1995 and March 2002. AA had created an additional demand of ₹1.98 crore whereas the firm was already taken over by the Himachal Pradesh State Industrial Development Corporation on 20<sup>th</sup> January 1993 for non-payment of loan. Thus, long time taken in finalisation of the assessment (5 to 12 years) led to non-realisation of revenue even after lapse of 28 years resulting in accumulation of arrears of ₹1.98 crore and loss of revenue to the State exchequer.

**IV.** In AETC Nahan, audit scrutiny revealed that AAs had made assessments between December 2006 and November 2008 of four dealers for the years 1997-98 to 2004-05 and created an AD of ₹59.12 lakh, which was not paid. Audit noticed that AA had not declared the outstanding recoveries as ALR case to attach the properties of defaulters. Thus, due to inaction on the part of concerned AA to pursue the case under ALR, there was little possibility of recovery of ₹59.12 lakh which resulted in accumulation in the arrears to that extent.

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*Inordinate delay in finalizing the assessments of the dealers and absence of follow-up action as per Act/Rules against the dealers resulted in loss of ₹26.51 crore.*

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### **2.5.6 Non-obtaining of security and surety bond**

HPVAT Act provides for obtaining the solvent sureties along-with personal bonds to the satisfaction of AA. The security shall not be less than ten thousand rupees but not exceeding the estimated tax liability for one year.

Audit scrutiny of seven AETCs revealed that three AETCs<sup>32</sup> AAs while registering 12 dealers, out of 278 dealers under the purview of VAT, did not obtain the surety/securities amount. AAs finalised the assessments (between October 2007

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<sup>31</sup> An entry in the revenue records showing liabilities of Government dues so that property could not be disposed of in any manner.

<sup>32</sup> AETCs Mandi, Solan and Una

and January 2017) of the dealers for the years 2002-03 to 2014-15 and created an AD of ₹64.86 crore but the dealers had not deposited the tax demand.

*Non-obtaining of security/sureties from the dealers at the time of registration and delayed assessment by AAs resulted in accumulation of arrears of ₹ 64.86 crore.*

### **2.5.7 Non-assessment of remanded back cases**

Under HPVAT Act, if a dealer is aggrieved with orders of the Assessing Authority for additional demand, he can file appeal for revision with the Appellate Authority. Further, as per instruction issued by the Excise and Taxation Commissioner in November 2014, all Assessing Authorities shall take due care for timely disposal of all pending assessment cases including remanded-back cases.

Scrutiny of the records of seven AETCs revealed that in two AETCs<sup>33</sup>, AAs had issued notices for assessment within the prescribed period of five years and framed assessments in July 2004 (for the years 1994-95 to 1997-98) and March 2015 (for the years 2008-09 to 2010-11). Additional demand of ₹51.40 crore was created. The dealers aggrieved with the orders of AAs preferred appeal. The Appellate Authority remanded back the cases in July 2005 and August 2015 respectively with direction to dealers to be present before AAs for re-assessment along with all relevant records within one month. It was observed that the cases were not re-assessed till the date of audit (April 2018). The non-reassessment of these cases resulted in accumulation of arrears of ₹51.40 crore.

*Delay in assessment and not assessing the remanded back cases within the period of one month as ordered by Appellate Authority resulted in accumulation of arrears of ₹51.40 crore.*

### **2.5.8 Non-initiation of recovery process under Revenue Recovery Act**

Revenue Recovery Act (RRA) provides that if Arrears of Land Revenue are payable by a defaulter having property in a District other than that in which the arrears accrued, the Collector may send to the Collector of that District for Revenue Recovery Certificate (RRC), stating therein name of the defaulter and such other particulars as may be necessary for identification and the amount payable by him and account on which it is due.

Scrutiny of the records of seven AETCs revealed that in AETC, Solan, AAs assessed (between October 1995 and July 2014) 12 dealers for the years 1985-86 to 2013-14, and created AD of ₹1.34 crore including interest and penalty but the same was not deposited by the dealers. AAs declared the cases between September 2001 and August 2015 to be recovered as ALR. As properties of these dealers fall outside the jurisdiction of concerned Collector, RRC had to be issued to the District Collectors where the property was situated which was not done.

<sup>33</sup> AETCs Baddi and Sirmour

*Non-initiation of recovery process under RRA resulted in accumulation of arrears of ₹1.34 crore.*

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### **2.5.9 Non-auction of attached properties**

Under HPLR Act 1954, recovery of Government dues can be made by adopting any one or more of the processes such as servicing of writ demand on defaulter, arrest and detention, distress and sale of movable property proceedings against movable property and sale or attachment of estate or holding of the defaulter by the Collector.

Scrutiny of records of seven AETCs revealed that in four AETCs<sup>34</sup> assessments of six dealers were finalised between January 2011 and September 2015 for the tax periods 2005-06 to 2014-15 and an additional demand of ₹45.88 crore was created. The dealers had not deposited the AD. AAs had made red entries in the revenue record of the dealers during the years 2011-12 and 2014-15 and attached the properties but AAs did not make further efforts to auction the attached properties to recover the amount due.

*Non-action to auction properties resulted in accumulation of arrears to the tune of ₹45.88 crore.*

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### **Arrears under Major Receipt Head '0039-State Excise'**

Arrears of ₹86.40 crore under Major receipt head '0039-State Excise' were pending for recovery, which had accumulated since 1972-73.

### **2.5.10 Non-recovery of revenue due to administrative failure**

Excise Announcement (EA) 2016-17, provides that a successful allottee will furnish 10 *per cent* security in the shape of cash or FDR or Bank Guarantee or National Savings Certificates duly pledged in favour of AETC concerned or Excise and Taxation Officer-cum-in-charge of the District or two sureties who have own immovable property in Himachal Pradesh equal to the amount of 15 *per cent* of annual license fee within a period of seven days from the date of allotment. The sureties, who have filed a Surety Bond for any licensee, shall file undertaking that they have not given surety to any other licensee/person in the State for the same land. Further, if any person who has been allotted vends/unit fails to make deposit of the amount of basic license fee/security, the license may be resold and such allottee shall not be entitled for refund.

Scrutiny of records of seven AETCs revealed that in AETC, Shimla, same two individuals furnished sureties to licensees of seven vends. This is in contravention to the provisions of Excise Announcement 2016-17. The licensees were required to deposit license fee of ₹29.00 crore for the year 2016-17 but paid only ₹19.97 crore resulting in short payment of ₹9.03 crore. The Department had not taken any action to recover the dues from the surety or the licensee.

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<sup>34</sup> AETCs Baddi, Mandi, Sirmour and Solan

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*Non-compliance to the provisions regarding sureties resulted in short payment of ₹9.03 crore.*

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**Arrears under Major Receipt Head-'0042-Taxes on Passengers and Goods'**

**2.5.11 Non-maintenance of Daily Collection Register and Demand and Collection Register**

Under HP Passenger and Goods Taxation (HPPGT) Act, 1955 owners of vehicles are required to pay PGT at the prescribed rates either quarterly or annually. As per HP Passenger and Goods Taxation (HPPGT) Rules 1957, Excise and Taxation office of each District shall maintain a daily collection register in form PGT-23 and demand and collection register (DCR) in form PGT-24 in which particulars of every *challan* for proof of tax payment, surcharge or penalty or any other amount due as made by the owners of motor vehicle shall be recorded. Further, *challans* shall be filled up in quadruplicate; a copy of the *challan* shall be retained by the treasury, one copy shall be sent to the Assessing Authority and the other two copies shall be returned to the owners of the vehicles, of which one copy shall be attached to the monthly return and the other copy shall be retained with the owner for his record in proof of payment made. Further, if any sum is payable by an owner of vehicle, the AA shall serve a notice in Form PGT-11 to deposit the PGT under the Act *ibid*.

Scrutiny of DCR of seven AETCs revealed that amount paid by vehicle owners was not mentioned properly in the Demand and Collection Register. As DCR was not updated, total amount of PGT due and paid was not known to the Department. Due to this arrear records maintained by the Department did not reflect the correct outstanding dues.

Audit scrutiny of demand and collection register in AETC Shimla revealed that out of 874 commercial vehicles, which were registered (during 2007-08 to 2016-17) with AETC Shimla, 691 were liable to pay PGT of ₹80.43 lakh at prescribed rates<sup>35</sup>. This amount was not paid by the vehicle owners. The Department had not declared the amount as ALR.

Audit pointed out non-payment of PGT of ₹2.99 crore during the years 2014-15 to 2016-17 in all seven AETCs. This amount was not entered in the arrear records.

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*In view of non-updation of DCRs, whether the actual outstanding had been paid or not, could not be verified in audit.*

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<sup>35</sup> **Goods vehicles**-Loading capacity (in qtls) 0-10: ₹1,000, 10-20: ₹2,000, 20-30: ₹3,000, 30-120: ₹6,000 above 120: ₹10,000, **Passenger Vehicles**- (on seating capacity) 4+1: ₹1,350, 5-6: ₹2,400, 6-8: ₹5350, 9-13: ₹8,000, **School Buses**-(on seating capacity) upto 29: ₹7,200 and more than 29: ₹9,000

### **Arrears under major receipt head '0045-Other Taxes and Duties on Commodities and Services'**

Arrears of ₹65.63 crore under major receipt head '0045-Other Taxes and Duties on Commodities and Services' were pending for recovery, which had accumulated since 1989-90.

#### **2.5.12 Non-recovery of toll lease money**

As per provisions of the Himachal Pradesh Toll Act 1975, when a lease has been allotted to any lessee after completing of all codal formalities, the lessee shall have to pay the lease money in 10 instalments on 20<sup>th</sup> day of each month, or as the Excise and Taxation Commissioner may fix. 15 per cent of lease amount shall be deposited by lessee on or before 10<sup>th</sup> February as security money and remaining 85 per cent shall be paid by lessee in 10 instalments in on 20<sup>th</sup> day of each month from April to January. If toll lessee fails to deposit 15 per cent payment of the monthly instalments of the respective financial year on or before 10<sup>th</sup> February each year as security money, his lease shall be deemed to have been cancelled without any notice, and the process to recover the amount as arrears under the HPLR Act 1954 would be initiated. It is also provided in eligibility conditions that allottee or person concerned should not be a defaulter under any taxation statute in Himachal Pradesh.

- i. Scrutiny of records of seven AETCs revealed that in two AETCs<sup>36</sup>, toll leases were allotted to two lessees on annual lease money of ₹45.06 crore for the year 2013-14. These lessees had deposited lease money of ₹33.17 crore against payable amount of ₹45.06 crore, which was short by ₹11.89 crore. Audit observed that AETCs had made red entries in land records of the defaulters for recovery of ₹11.89 crore under ALR Act but the Department did not take any action to auction the properties.
- ii. In AETC Baddi, a toll lease for annual lease money of ₹14.38 crore for the year 2013-14 was allotted to a firm which had five partners out of which two partners were already in default of payment of ₹2.22 crore for the year 2012-13. Further, out of ₹14.38 crore, lessee had paid an amount of ₹12.68 crore and an amount of ₹1.70 crore was not deposited by lessee which remained outstanding for the year 2013-14. Thus, allotment of lease to defaulter lessees was in contravention of the provisions of the Act resulting in loss of revenue to State exchequer and consequently further accumulation of arrears.

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*Irregular allotment of toll lease to defaulter in violation of provisions led to non-recovery of ₹13.59 crore (₹11.89 crore + ₹1.70 crore).*

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<sup>36</sup> AETCs Bilaspur and Una

### 2.5.13 Incorrect reflection of arrears

Test check of records of two AETCs<sup>37</sup> revealed that in three cases, arrears of ₹18.78 lakh pertaining to the years between 1994-95 and 2001-02 were shown as recovered in the ALR register whereas these were still shown as recoverable in the arrears statement. This resulted in incorrect reflection of arrears to extent of ₹18.78 lakh.

### Conclusion

Lack of monitoring, non-maintenance of detailed database and non-reconciliation resulted in wrong depiction of arrears. Inordinate delay in finalizing the assessments of the dealers and absence of follow-up action as per Act/Rules against firms/dealers resulted in revenue loss as the dealers have closed their businesses. Non-obtaining of security/sureties from the dealers at the time of registration, non-assessment of remand back cases and delayed assessment by AAs resulted in accumulation of arrears. Attached properties were not auctioned. Non-compliance to the provisions regarding sureties resulted in short payment of excise dues. Irregular allotment of toll lease to defaulters in violation of provisions led to non-recovery of dues.

The above points were reported to the Department and the Government in July 2018; replies were awaited (August 2019).

<sup>37</sup> AETCs Baddi: ₹4.98 lakh and Shimla: ₹13.80 lakh

## 2.6 Allowance of Input Tax Credit

**Assessing Authorities allowed Input Tax Credit without taking into consideration the closing stock/sale of tax free goods/branch transfer resulting in deferment of tax liability of ₹7.01 crore for 138 dealers.**

### I. Excess allowance of ITC

As per HP VAT Act, 2005 input tax credit (ITC) shall be allowed to the extent of amount of input tax paid by the purchasing dealer on the purchase of taxable goods made by him from a registered dealer in State. Further, as per notification of May 2007, amount of input tax credit shall be admissible to a dealer on the purchase value of goods sold by him during the tax period. If a dealer fails to pay the tax due by the prescribed date, he becomes liable to pay interest at the rate of one *per cent* for one month and thereafter one and half *per cent* per month till the default continues.

During 2017-18, Audit scrutinised the records of 12 AETCs<sup>38</sup> where 93,619 assessments were completed. Out of which, Audit test checked 37,448 cases and found that two AAs while assessing the annual returns of 129 dealers in 142 cases having Gross Turnover (GTO) of ₹1,161.50 crore for the tax periods between 2007-08 and 2015-16 had allowed ITC of ₹65.61 crore on local purchases of ₹656.47 crore. On the basis of proportion of local purchases to total purchases, ITC amounting to ₹10.66 crore on closing stock of ₹213.38 crore was required to be withheld whereas AAs withheld ITC of only ₹4.38 crore. Non-application of the provisions of the Act resulted in excess allowance of ITC amounting to ₹6.28 crore. Besides, interest amounting to ₹1.00 crore was also recoverable.

The Department stated (December 2018) that in 43 cases, an additional demand of ₹23.90<sup>39</sup> lakh had been created, out of which in 40 cases an amount of ₹12.89 lakh had been recovered, whereas remaining cases of the dealers, were under process for re-assessment.

### II. ITC on sale of tax-free goods

HP VAT Act 2005 provides that no ITC shall be claimed by a purchasing dealer and this shall not be allowed to him for tax collected on the purchase of goods used in the manufacture or processing or packing of goods, declared tax free under the Act *ibid*.

During 2017-18, Audit scrutinised the records of 12 AETCs where 93,619 assessments were completed. Out of which, Audit test checked 37,448 cases and

<sup>38</sup> AETCs Baddi, Bilaspur, Chamba, Hamirpur, Kangra, Kullu, Mandi, Nahan, Nurpur, Shimla, Solan and Una

<sup>39</sup> AETCs **2016-17**: Bilaspur: six dealers: ₹0.43 lakh, Hamirpur: one dealer: ₹0.90 lakh, Mandi: two dealers: ₹0.07 lakh, Nurpur: two dealers: ₹0.78 lakh, Shimla: one dealer: ₹5.28 lakh, Solan: four dealers: ₹1.56 lakh, **2015-16**: Chamba: 19 dealers: ₹10.53 lakh, Nurpur: five dealers: ₹2.54 lakh, Shimla: 3 dealers: ₹1.81 lakh



found that four AETCs<sup>40</sup> allowed ITC on sale of tax free goods to 6 dealers in 13 cases. AAs assessed the dealers at a GTO of ₹107.02 crore for the years 2008-09 to 2014-15, this included a tax free turnover of ₹34.68 crore. AAs allowed ITC of ₹1.58 crore whereas ITC worked out to ₹1.10 crore on the basis of tax free sales of ₹34.68 crore. This resulted in excess allowance of ITC of ₹47.96 lakh<sup>41</sup>. Interest of ₹7.67 lakh was also leviable.

The Department stated (December 2018) that in two cases, an additional demand of ₹0.89<sup>42</sup> lakh had been created, out of which an amount of ₹0.11 lakh had been recovered, whereas remaining cases of the dealers were under process for re-assessment.

### III. Incorrect allowance of ITC on branch transfer

HP VAT Act, 2005 provides that notwithstanding anything contained in sub-section, ITC shall be allowed only to the extent by which the amount of input tax paid in the State exceeds four *per cent* on purchases of goods sent outside the State otherwise than by way of sale in the course of inter-state trade.

During 2017-18, Audit scrutinised the records of 12 AETCs where 93,619 assessments were completed. Out of which, Audit test checked 37,448 cases and found that AETCs, Bilaspur and Una allowed ITC on branch transfer also to three dealers in five cases. AAs while finalising the assessments of three dealers having GTO of ₹667.67 crore for the tax periods 2010-11 and 2011-12, had disallowed ITC of ₹0.14 lakh only on stock transfer of ₹414.78 crore against the disallowable ITC of ₹25.45 lakh. This resulted in under assessment of revenue of ₹25.31 lakh<sup>43</sup>. Besides interest of ₹4.05 lakh was also leviable.

The Department stated (December 2018) that in one case, an additional demand of ₹0.32<sup>44</sup> lakh had been created and recovered, whereas remaining cases of the dealers were under process for re-assessment.

The matters were reported to the Government between August 2016 and May 2018; replies were still awaited (August 2019).

<sup>40</sup> AETCs Hamirpur, Kullu, Solan and Una

<sup>41</sup> AETCs Hamirpur (three dealers: ₹1.03 lakh), Kullu (one dealer: ₹40.18 lakh), Solan (one dealer: ₹1.68 lakh) and Una (one dealer: ₹5.07 lakh)

<sup>42</sup> AETC Hamirpur: two dealers: ₹0.89 lakh

<sup>43</sup> AETCs Bilaspur: one dealer: ₹22.75 lakh and Una: two dealers: ₹2.56 lakh

<sup>44</sup> AETC Una: one dealer: ₹0.32 lakh

## 2.7 Application of incorrect rate of tax

*Assessing Authorities applied incorrect rate of tax of four and five per cent instead of applicable rates of five and 13.75 per cent while finalising the assessments of 11 dealers resulting in undue benefit to the dealers and short realisation of tax amounting to ₹11.56 crore. Interest of ₹5.73 crore was also recoverable.*

Schedule-A under the HPVAT Act, 2005 provides that tax is leviable on sales made by a dealer. Further, Act *ibid* provides that if a dealer fails to pay the tax due by the prescribed date, he becomes liable to pay interest at the rate of one *per cent* on the tax due for a period of one month and one and a half *per cent* per month thereafter till the default continues.

During 2017-18, Audit test checked the records of 12 AETCs where 93,619 assessments were completed. Out of which, Audit test checked 37,448 cases and found that four AAs while finalising the assessment of 11 dealers in 23 cases between May 2015 and February 2017, levied incorrect rate of tax. These dealers had made intra and inter-state sales amounting to ₹137.79 crore during the years 2009-10 to 2015-16. AAs levied tax of ₹6.64 crore at the rate of four and five *per cent* instead of ₹18.20 crore at the applicable rate of five and 13.75 *per cent*. Thus, application of incorrect rate of tax resulted in short realisation of tax of ₹11.56 crore<sup>45</sup>, (₹18.20 crore-₹6.64 crore). Interest of ₹5.73 crore was also leviable.

The Department intimated (December 2018) that notices had been issued to dealers in six cases, whereas for remaining cases re-assessment was under process. The reply of the Government was still awaited (August 2019).

## 2.8 Incorrect determination of turnover

*Assessing Authorities assessed the Gross Turnover on lesser than the actual turnover resulting in loss of revenue of ₹5.47 crore, besides, interest of ₹4.61 crore was also leviable.*

As per HPVAT Act, 2005, turnover means the aggregate amount of sales, purchases or any part of sales and purchases made by any dealer and includes any sum charged on account of freight, storage, demurrage, insurance and for anything done by the dealer in respect of the goods at the time of or before delivery thereof.

During 2017-18, Audit test checked the records of 12 AETCs where 93,619 assessments were completed. Out of which, Audit test checked 37,448 cases and found that nine AAs while finalising (between January 2015 and February 2017) assessments of 37 dealers in 44 cases for the years 2007-08 to 2014-15 assessed GTO at ₹997.93 crore against the actual GTO of ₹1,106.43 crore as shown in the certified accounts. Thus, there was short assessment of GTO of ₹108.50 crore

<sup>45</sup> AETCs (2016-17): Baddi (two dealers: ₹9.50 crore), Shimla (one dealer: ₹1.41 lakh), Solan (four dealers: ₹1.19 crore), (2015-16) (one dealers: ₹55.24 lakh) and Una (three dealers: ₹29.84 lakh)

leading to short levy of tax by ₹5.47 crore, besides interest of ₹4.61 crore was also leviable.

The Department intimated (December 2018) that in 11 cases an additional demand of ₹29.03<sup>46</sup> lakh was created and recovered and notices had been issued in 12 cases whereas remaining cases were under process. The reply of the Government was still awaited (August 2019).

## 2.9 Suppression of Sale and Stock

*26 dealers in 28 cases suppressed sales and closing stock of ₹8.54 crore which escaped assessment resulting in loss of revenue of ₹1.08 crore. Besides, interest of ₹71.35 lakh and minimum penalty of ₹9.94 lakh was also leviable.*

HPVAT Act 2005 provides that if a dealer has maintained false accounts with a view to suppressing his Sales, Purchases or stocks of Goods, or has concealed any particulars of his sales or purchases, or produced false accounts before any Authority under the Act then he is liable to pay penalty not less than 25 per cent of tax due.

(i) During 2017-18, Audit test checked the records of 12 AETCs where 93,619 assessments were completed. Out of which, Audit test checked 37,448 cases and found that in five AETCs<sup>47</sup>, 25 dealers in 27 cases having GTO of ₹386.19 crore during tax periods 2005-06 to 2014-15 had not disclosed sales of ₹3.17 crore in the annual returns which were otherwise depicted in their Trading and Profit and Loss accounts as sale of assets. Further, audit of AETC Shimla revealed that a dealer having GTO of ₹99.37 lakh for the year 2012-13 had shown opening stock of ₹8.99 lakh whereas closing stock of ₹38.40 lakh was depicted in his certified accounts of the previous year. AAs while finalising the assessments (between May 2014 and March 2016) of the dealers did not cross-check the annual returns with their annual accounts.

Thus, due to failure on the part of AAs to cross-check annual returns and annual accounts, dealers were able to suppress TTO of ₹3.46 crore (₹3.17 crore + ₹29.41 lakh) which escaped assessment, resulting in evasion of tax of ₹39.77<sup>48</sup> lakh. Interest of ₹35.69 lakh and minimum penalty of ₹9.94 lakh was also leviable.

(ii) In AETC Nahan 3,297 assessments cases were completed. Out of which, Audit test checked 1154 cases and found that AA while finalising assessment of a dealer in May 2016 for the year 2014-15, assessed sales as ₹12.11 crore and levied tax of ₹1.37 crore (at the prescribed rate of tax of 13.75 per cent). Audit observed

<sup>46</sup> AETC Shimla: one dealer: ₹12.84 lakh, Solan: one dealer: ₹0.24 lakh, Chamba: one dealer: ₹0.28 lakh, Mandi: one dealer: ₹13.35 lakh, Nurpur: one dealer: ₹0.10 lakh, Solan (2015-16): one dealer: ₹0.02 lakh, Una: five dealers ₹2.20 lakh

<sup>47</sup> AETC, Baddi, Bilaspur, Chamba, Kangra and Una

<sup>48</sup> AETCs Baddi: 10 dealers: ₹11.52lakh, Bilaspur: four dealers: ₹1.63 lakh, Chamba: one dealer: ₹5.73 lakh, Kangra: two dealers: ₹6.32 lakh and Una: eight dealers: ₹13.10 lakh and Shimla: one dealer: ₹1.47 lakh

that dealer had made sales of ₹17.10 crore as per annual return and had shown tax payable as ₹2.35 crore (at the tax rate of 13.75 per cent). However, AA had not recorded reasons in assessment order for taking sales as ₹12.11 crore instead of as ₹17.10 crore. Thus, short assessment of sales by ₹4.99 crore by the AA resulted in under assessment of tax by ₹68.57 lakh and consequent loss of revenue to that extent. Interest of ₹35.66 lakh was also recoverable.

The Department intimated (December 2018) that two AETCs<sup>49</sup> had created an additional demand of ₹0.12 lakh against two dealers, whereas in remaining cases, notices had been issued for re-assessment which were under process. The reply of the Government was awaited (August 2019).

## **2.10 Excess allowance of labour charges**

***Excess deduction of labour charges of ₹14.56 crore from GTO by AAs resulted in under assessment of tax of ₹67.02 lakh.***

HPVAT Act, 2005 provides that where the labour charges are not determinable from the accounts of the works contractors or are considered un-reasonably high in consideration of the nature of the contract, the deductions towards labour charges shall be allowed by the AAs according to limits prescribed for the type of contract specified in the Act/Rules *ibid*.

During 2017-18, Audit test checked the records of 12 AETCs where 93,619 assessments were completed. Out of which, Audit test checked 37,448 cases and found that six AAs while finalising the assessments of eight contractors in 13 cases between May 2016 and February 2018 for the tax period 2007-08 to 2015-16 allowed labour charges of ₹9.67 crore against the admissible deduction of ₹4.50 crore without verifying the labour accounts of the contractors. Thus, allowance of excess labour charges of ₹5.17 crore by the AAs without any reasons recorded in the assessment orders led to short levy of tax of ₹25.64 lakh. This resulted in short realisation of revenue to that extent.

In three AETCs<sup>50</sup>, 15,123 assessments cases were completed, out of which, Audit test checked 4,310 cases and found that AAs had allowed deduction of labour charges of ₹14.15 crore while assessing three contractors in eight cases for the tax period 2007-08 to 2015-16. However, these contractors had booked labour charges of ₹4.75 crore as depicted in their certified accounts. Thus, failure of AAs to cross-check the returns with the certified accounts of the contractors led to excess allowance of labour charges of ₹9.40 crore. This resulted in under assessment of tax by ₹41.38 lakh. Besides, interest of ₹25.64 lakh was also leviable.

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<sup>49</sup> AETCs Bilaspur: ₹0.01 lakh and Una: ₹0.11 lakh

<sup>50</sup> AETCs Bilaspur: one dealer: ₹0.54 lakh, Kangra: one dealer: ₹34.81 lakh and Mandi: one dealer: ₹6.03 lakh

The Department intimated (December 2018) that in three AETCs, an additional demand of ₹13.95<sup>51</sup> lakh was created and recovered from four contractors, whereas remaining cases of contractors were under process. The reply of the Government was awaited (August 2019).

### 2.11 Short-levy of interest

*Assessing Authorities levied interest of ₹8.40 lakh instead of leviable interest of ₹24.30 lakh on additional demand created, resulting in short levy of interest of ₹15.90 lakh.*

As per HPVAT Act 2005, if a dealer fails to pay the tax due by the prescribed date, he becomes liable to pay interest at the rate of one *per cent* on the tax due for a period of one month and at the rate of one and a half *per cent* per month thereafter, till the default continues.

During 2017-18, Audit test checked the records of 12 AETCs where 93,619 assessments were completed. Out of which, Audit test checked 37,448 cases and found that in two AETC<sup>52</sup>, AAs while finalising the assessments (between June 2015 and March 2017) in respect of 11 dealers in 18 cases for the tax period 2007-08 to 2013-14, created additional tax demands of ₹20.43 lakh and levied interest of ₹2.77 lakh against the leviable interest of ₹16.60 lakh on additional demand created upto the date of assessment. Further in AETC Baddi, AA assessed (December 2016) the cases of entry tax of a dealer for the tax period 2011-12 to 2015-16 and created entry tax demand of ₹19.24 lakh on interstate purchases of ₹23.74 crore. AA had levied interest of ₹5.63 lakh instead of ₹7.70 lakh which was short by ₹2.07 lakh. This resulted in short levy of interest of ₹15.90 lakh (₹13.83 lakh + ₹2.07 lakh).

The Department stated (December 2018) that AETCs had issued notices to the dealers for re-assessment. The reply of the Government was still awaited (August 2019).

### 2.12 Non-realisation of Entertainment Duty

*The Excise and Taxation Department did not levy entertainment duty on cable operators thereby forgoing revenue of at least ₹3.78 crore.*

The Cable TV Network (Regulation) Act, 1995, provides for mandatory registration of cable operators with the registering authority namely Head Postmaster of the area. HP Entertainment Act, 1968 provides for levy of entertainment duty at the rates to be specified by the Government. Television exhibition includes an exhibition with the aid of any type of antenna with a cable network attached to it.

<sup>51</sup> AETCs Chamba: two dealers ₹0.52 lakh, Bilaspur: one dealer: ₹0.08 lakh and Mandi: one dealer: ₹13.35 lakh

<sup>52</sup> (2015-16) AETCs Baddi: ₹4.70 lakh and Kangra: ₹0.69 lakh and (2016-17)Baddi: ₹10.51 lakh

The Excise and Taxation Department, by notification of May 2012, had stipulated that duty on all kinds of entertainments shall be levied at the rate of 10 *per cent* of the payment for admission with immediate effect. Further, if the proprietor fraudulently evades the payment of any dues, he shall be liable to a fine of ₹2000 and when the offence is continuing, a daily fine not exceeding ₹50, during the period of the continuance of the offence

Audit obtained information from District Public Relation Officers (DPROs) regarding registration of cable operators in three districts (Bilaspur, Kangra and Mandi) and found that there were 28 cable operators registered in these three Districts. Audit test checked the records regarding payment of entertainment duty from the concerned AETCs and found that none of the 28 cable operators registered in these districts was paying entertainment duty. *The Department did not recover the entertainment duty of ₹3.78 crore from the operators, as depicted below:*

**Table: 2.11 Non-realisation of Entertainment Duty from cable TV operators**

Name of District	Total no. of cable operators	No. of Cable Connections 2014-15	No. of Cable Connections 2015-16	No. of Cable Connections 2016-17	Rate per connection	Period of Entertainment duty	Total No. of months	Amount realized by operators from cable connections	Entertainment duty @ 10 per cent
1	2	3	4	5	6	7	8	9	10
Bilaspur	7	0	0	28,200	200	April 2016 to March 2017	12	6,76,80,000	67,68,000
Kangra at Dharamshala	6	23,870	23,870	23,870	280	April 2014 to March 2017	36	24,06,09,600	2,40,60,960
Mandi	15	9,435	13,260	16,262	150	April 2014 to March 2017	36	7,01,22,600	70,12,260
<b>Total</b>	<b>28</b>							<b>37,84,12,200</b>	<b>3,78,41,220</b>

Besides, penalty at the rates prescribed in the Act was also leviable for non-payment of entertainment duty.

The Department intimated (December 2018) that all AETCs had issued notices to the cable operators for recovery. The reply of the Government was still awaited (August 2019).

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*The cases pointed out are based on test check conducted by Audit. The Department may initiate action to comprehensively examine similar cases and take necessary corrective action.*

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