# Chapter-II
# Taxes/VAT on Sales and Trade

# CHAPTER-II

# TAXES/VAT ON SALES AND TRADE

## 2.1 Tax administration

The Principal Secretary (Excise and Taxation) administers State GST and Excise at the Government level. The Commissioner of State Taxes and Excise (CSTE) is the Head of the Excise and Taxation Department and is assisted by three Additional CSTE, two Joint CSTE, and five Deputy CSTE. There are 12 Deputy CSTE at District level in the field, assisted by 119 Assistant CSTE. In addition, there are State Taxes and Excise Officers and Assistant State Taxes and Excise Officers 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

There were 88 auditable units in the Department. Out of these, audit selected 35 units involving receipt of ₹ 1,920.02 crore during the year 2019-20. Test check of 21,516 cases out of the total 55,376 cases, related to VAT/GST, Multipurpose Barrier and Luxury tax revealed under assessment of tax and other irregularities involving ₹ 127.77 crore in 296 cases which fall under the following categories as depicted in **Table 2.1**.

***Table 2.1: Results of audit***

| | | | ₹ in crore |
|---|---|---|---|
| **Sr. No.** | **Categories** | **Number of cases** | **Amount** |
| 1 | Under assessment of tax | 27 | 11.82 |
| 2 | Acceptance of defective statutory forms *C, D, F* and *I* | 20 | 42.51 |
| 3 | Evasion of tax due to suppression of sale/purchase | 23 | 33.92 |
| 4 | Irregular/incorrect/excess allowance of ITC | 42 | 10.27 |
| 5 | Application of incorrect rate of tax | 15 | 12.37 |
| 6 | Other irregularities | 118 | 15.54 |
| **Total** | | **245** | **126.43** |
| **Others Tax and Non-Tax** | | | |
| 1. | Entertainment Tax | 15 | 0.02 |
| 2. | Multipurpose barriers and Luxury tax | 36 | 1.32 |
| **Total** | | **51** | **1.34** |
| **Grand Total** | | **296** | **127.77** |

*Source: Inspection Reports*

During the year 2019-20, the Department accepted and recovered under-assessment and other deficiencies of ₹ 96.64 lakh in 156 cases related to audit findings of earlier years. The Department also accepted under-assessment and other deficiencies of ₹ 15.55 crore in 85 cases related to audit findings of 2019-20 out of which ₹ 0.72 lakh in three cases was recovered.

Significant cases (eight Paragraphs), involving an amount of ₹ 18.13 crore, are discussed in the following paragraphs.

## 2.3 *Excess allowance of Input Tax Credit*

***Assessing Authorities did not properly take into consideration unsold local purchases in closing stock at the end of the tax period, which resulted in excess allowance of ITC by ₹8.45 crore to 333 dealers.***

*Section 11* of the HPVAT Act, 2005, provides that input tax credit (ITC) is claimed on the input tax paid on local purchases, but this claim can be made by a dealer only at the time of sale of those local purchases. Therefore, if there is unsold stock of local purchases, which is reflected in the closing stock of the dealer during a tax period, the ITC on the unsold closing stock should be withheld for that tax period and may be allowed in a subsequent tax period when the sale is made. Rule 23 of HP VAT Rules provides that where a registered dealer has used the goods purchased partially for taxable sales and is unable to maintain accounts and the sale by him includes sale of tax free goods and taxable goods and/or branch transfers, then it shall be presumed that goods so purchased during the tax period have been used in the proportion of turnover of sales of tax free goods, taxable goods and branch transfers respectively of the tax period and the ITC shall be calculated and claimed in that proportion accordingly. Further, *Section 19* provides for payment of interest if a dealer fails to pay the tax due by the prescribed date.

The Additional Excise and Taxation Commissioner-cum-Appellate Authority clarified in a judgment dated 12 April 2012, that if a dealer claims ITC on the unsold stock of local purchases made during the year, then interest under *Section 19* on excess ITC claimed should be charged up to the period when the stock was sold and not till the period when assessment was carried out.

Audit scrutiny of records of 12 DCSTEs[1] during 2017-19 revealed that Assessing Authorities (AAs), while finalizing the assessments of 333 dealers for the tax period between 2009-10 to 2017-18, withheld ITC of only ₹ 9.11 crore on closing stock. Audit calculated that on the basis of proportion of local purchases lying unsold in closing stock, AAs should have withheld ITC of ₹ 17.56 crore on closing stock. Thus, AAs allowed excess ITC of ₹ 8.45 crore in contravention of *Section 11* of the Act, *ibid*, for which no justification was found on record. The excess allowance of ITC on unsold stock also enabled the dealers to defer their tax liability by at least a year, due to which interest amounting to ₹ 1.35 crore also became leviable as per judgment, *ibid*.

The matter was referred to Government in March 2021. The Government replied (September 2021) that notices had been issued to dealers in all the cases objected by Audit and ₹ 20.32 lakh had been recovered in 122 cases.

[1] DCSTEs: **2017 - 18:** Baddi (two cases: ₹ 25.72 lakh), Chamba (15 cases: ₹ 26.22 lakh), Mandi (98 cases: ₹ 1.87 crore), Nahan (four cases: ₹ 6.48 lakh), Reckong Peo (nine cases: ₹ 15.81 lakh), Shimla (23 cases: ₹ 50.41 lakh), Solan (50 cases: ₹ 98.68 lakh) and Una (13 cases: ₹ 57.00 lakh)
**2018 - 19:** Baddi (five cases: ₹ 51.11 lakh), Chamba (six cases: ₹ 10.60 lakh), Hamirpur (28 cases: ₹ 13.92 lakh), Kangra at Dharamshala (29 cases: ₹ 66.85 lakh), Kullu (two cases: ₹ 2.16 lakh), Nahan (10 cases: ₹ 80.25 lakh), Nurpur at Kangra (four cases: ₹ 3.91 lakh), Shimla (23 cases: ₹ 70.45 lakh) and Solan (12 cases: ₹ 78.20 lakh)

**The Department should strictly adhere to provisions with regard to allowance of ITC during a tax period to protect revenue due to the Govt. in that tax period.**

## *2.4 Wrong allowance of concessional rate of tax*

***Failure of the Assessing Authorities to correctly classify the nature of manufactured goods led to illegitimate allowance of concessional rate of tax, which resulted in under assessment of tax of ₹2.83 crore.***

Excise and Taxation Department notified in April 2013 a concessional rate of tax of one and a half *per cent* on interstate sale of goods, except the goods specified in negative list[2], which would continue to attract *Central Sales Tax* (CST) of two *per cent*.

Scrutiny of records for the period 2017-19 of four Deputy Commissioners of State Taxes & Excise (DCSTEs)[3] carried out in 2019 revealed that the AA while finalising the assessments (2018-19) for the year 2013-14 to 2017-18, in 36 cases of 20 dealers, allowed a concessional rate of tax of one and a half *per cent* on interstate sale of items falling in the negative list, which should have attracted a CST of two *per cent*. On these negative list items worth ₹ 565.82 crore, the AAs levied tax of ₹ 8.49 crore at one and a half *per cent*, instead of leviable tax of ₹ 11.32 crore at two *per cent*, which resulted in short levy of tax of ₹ 2.83 crore[4].

The matter was reported to the Government (January 2021); Government replied (September 2021) that notices had been issued in all cases objected by Audit and recovery of ₹ 1.24 lakh had been made in one case.

**The Government may consider creating a mechanism for ensuring accountability of officials for failure to implement the provisions of the VAT Act/Rules.**

## *2.5 Grant of concessions without statutory forms*

***Acceptance of invalid and defective statutory forms by the Assessing Authorities and allowance of concessional rate of tax on inter-state sale resulted in short levy of tax of ₹ 2.38 crore. In addition, interest of ₹ 2.36 crore was required to be levied.***

Central Sales Tax (CST) Act 1956 provides for certain tax exemptions in case of sale in the course of interstate trade or commerce on production of certain forms. These forms are issued in three parts i.e., *Original, Duplicate* and *Counterfoil*. It has been directed by Supreme Court[5] 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. is mandatory for claiming concessional rate of tax.

---

2 list of items prescribed by the Department of Industries, GoHP which will attract two *per cent* CST

3 Baddi, , Nahan, Nurpur (Kangra) and Solan

4 Baddi: ₹ 2.21 crores; : Nahan: ₹ 0.13 crore; Nurpur (Kangra): ₹ 0.22 crore and Solan ₹ 0.27 crore

5 Commissioner Sale Tax v/s M/s Prabhu Dayal Prem Narayan (1988) 71 STC (SC) and Delhi Automobiles Private Limited v/s Commissioner of Sales Tax (1997) 104 STC 75 (SC).

***Form 'C'***

*Section 6* of 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, otherwise tax at full rate is to be paid. Further, a single *form 'C'* is meant to cover transactions of only one quarter.

Scrutiny of records in 2019-20 showed that in four District Commissionerates of State Taxes and Excise [6] (DCSTEs), the Assessing Authorities (AAs), while finalizing assessments (between August 17 to February 19) of six dealers, having Gross turnover (GTO) of ₹ 46.06 crore for the tax period 2009-10 to 2016-17, allowed concessional rate on sales of ₹ 2.75 crore, on the basis of ineligible *form 'C'*. These forms either did not pertain to the relevant period, or transactions covered in a single form was of more than one quarter. These forms should have been rejected at the time of assessment. Instead, the AAs levied tax of ₹ 4.58 lakh at the concessional rate of one and half *per cent or* two *per cent* on sales of ₹ 2.75 crore based on these ineligible *form 'C',* whereas tax of ₹ 30.90 lakh at the rate of four, five and 13.75 *per cent* should have been levied. This resulted in short levy of tax of ₹ 26.31 lakh. Besides, interest of ₹ 22.52 lakh also required to be levied.

***Form 'F'***

*Section 8* of CST Act 1956, read with the CST Rules 1957, prescribes tax exemption to a registered dealer in case of branch transfer/consignment sale, provided these are supported by declaration in *form 'F'*. Further, a single *form 'F'* is to cover transactions of only one calendar month.

Scrutiny of records (2019-20) of two DCSTEs[7] showed that AAs while finalising assessment (between May 2018 to November 2018) of six dealers having GTO of ₹ 236.97 crore for the tax periods 2009- 10 to 2017-18, allowed exemption of tax of ₹ 62.99 lakh on stock transfer of ₹ 12.65 crore on the basis of declaration in *form 'F'*. Audit observed that these *form 'F'* should have been rejected at the time of assessment as single form covered transactions for more than one calendar month. This resulted in non-levy of tax of ₹ 62.99 lakh. Besides, interest of ₹ 66.96 lakh was also required to be levied.

***Form 'H'***

Under *Section 5* of CST Act 1956, read with *Rule 12(10)* of the CST (Registration and Turnover) Rules 1957, a dealer is exempt from tax in the course of export of goods out of the territory of India if he submits *form 'H'* duly filled and signed by the exporter along with the evidence of export of such goods.

Scrutiny of records in 2019-20 of two DCSTEs,[8] showed that while finalising assessments (between June 18 and February 19) of two dealers having GTO ₹ 65.65 crore for the tax period

[6] DCSTEs: Nahan (one case: ₹ 16.85 lakh), Nurpur (three cases: ₹ 5.29 lakh), Shimla (three case: ₹ 1.34 lakh) and Solan (one case: ₹ 2.84 lakh).
[7] DCSTEs: Baddi (four cases: ₹ 46.98 lakh) and Solan (three cases: ₹ 16.01 lakh).
[8] DCSTEs: Baddi (one case: ₹ 0.04 crore) and Shimla (three cases: ₹ 1.39 crore).

2012-13 to 2014-15, the AAs allowed tax exemption of ₹ 1.43 crore on export of stock worth ₹ 28.64 crore. In one case no Form 'H' was found and in three cases, bill of lading was not found in the file as a proof of export. This resulted in non-levy of tax of ₹ 1.43 crore. Besides, interest of ₹ 1.42 crore was also leviable.

***Form 'D'***

Under *Rule 6(21)(a)* of CST Rules 1970, a dealer has to submit *form 'D'* for sales made to the government under *Section 8(1)(a)* of CST Act 1956. As per Schedule "A" Part II of HPVAT Act 2005, the sale of such goods made to the Government of Himachal Pradesh, subject to furnishing of certificate in *form 'D'*, shall be taxed at five *per cent*.

Scrutiny of records (2019-20) of DCSTE Shimla showed that while finalising assessments (June 2018) of a dealer having GTO ₹ 4.38 crore for the tax period 2012-13 to 2017-18, the AA allowed tax exemption of ₹ 5.72 lakh on government sale amounting to ₹ 65.46 lakh without accompanying declaration in *form 'D'*. This resulted in non-levy of tax of ₹ 5.72 lakh. Besides, interest of ₹ 5.16 lakh under *Section 19(2)* of the HPVAT Act 2005 was also leviable.

Failure of the AAs to reject invalid and defective statutory forms resulted in irregular allowance of concessional rate of tax of ₹ 2.38 crore. Besides interest of ₹ 2.36 crore was also leviable.

The matter was reported to the Government in June 2021; the Government replied (September 2021) that notices had been issued to dealers in all cases objected by Audit and recovery of ₹ 1.35 lakh had been made in eight cases.

**The Government may consider issuing necessary directions to the Department to ensure that the dealers submit the respective mandatory Forms and fulfil the conditions mandated in the notifications before allowing concessional rates of tax at the time of finalising any assessment.**

## *2.6 Incorrect determination of turnover*

***Assessing Authorities assessed the Gross Turnover lesser than the actual turnover as depicted in certified accounts of the dealers, resulting in loss of revenue of ₹ 1.40 crore.***

As per *Section 2(v)(zd) of HPVAT Act*, 2005 "turnover" means the aggregate amount of sales, purchases and parts 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. Further, *Section 19* 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 1.5 *per cent* per month thereafter, till the default continues.

Test-check of records (between May 2019 to March 2020) of six DCSTEs[9] revealed that Assessing Authorities (AAs), while finalizing the assessments (2018-19) of 11 cases for the years 2010-11 to 2016-17, assessed lower GTO of ₹ 343.27 crore as shown by the assesses in their returns. Audit scrutiny found that GTO of ₹ 371.27 crore should have been assessed instead, as per the submitted certified accounts or in the Form STXI-B [10] of the dealers/contractors. However, no justification for taking lower GTO for assessment was found in the assessment orders. Thus, there was short assessment of GTO of ₹ 28 crore leading to short levy of tax by ₹ 1.40 crore (calculated at the minimum rate of 5 *per cent*). Besides, on account of incorrect reporting of gross turnover, and consequent default in payment of tax due by the dealers, interest of ₹ 1.75 crore as per section 19 of the Act was also leviable.

The matter was reported to the Government (June 2021); the Government replied (September 2021) that notices had been issued to the dealers in all the cases objected by Audit and recovery of ₹ 2.76 lakh had been made in three cases.

**The Government may consider setting up a mechanism to monitor turnover and a system to cross-check annual tax returns with certified accounts of the dealers and action should be taken against the officers, responsible for causing loss of Government revenue.**

## *2.7 Allowance of Inadmissible deductions and Excess deduction of labour charges in case of work contractors*

***Allowance of inadmissible deductions and excess deductions against labour charges resulted in underassessment of tax by ₹ 1.33 crore. Besides, interest of ₹1.41 crore was also leviable.***

*Rule 17(4)(a)* of the Himachal Pradesh VAT Rules, 2005 provides that the value of the goods involved in execution of a works contract shall be determined by taking into account the value of the entire works contract and deducting therefrom the components of payment made towards labour and services, amount paid to a sub-contractor for labour, charges for planning, designing and architect fee, hiring of machinery and tools, cost of consumables such as water, electricity and fuel, cost of establishment of the contractor and profit earned by the contractor on supply of labour and services as specified in it. *Rule 69(2)* provides that where labour charges are not determinable from the accounts of the works contractors, or seem unreasonably high considering the nature of the contract, the deductions towards labour charges shall be allowed by the Assessing Authorities (AAs) according to limits prescribed for that type of contract in the Rules, *ibid*. *Further, Section 19* of the HPVAT Act, 2005 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, as long as the default continues.

[9] DCSTEs - Baddi: three cases, ₹ 26.03 lakh; Kangra: two cases, ₹ 3.35 lakh; Nurpur: one case, ₹ 66.82 lakh; Shimla: two cases, ₹ 1.34 lakh; Sirmour at Nahan: one case, ₹ 2.11 lakh; and Solan: two cases, ₹ 40.37 lakh.

[10] Given by the work awarding agency to works contractors to certify their TDS (work contract tax)

### I. Inadmissible deductions

Scrutiny of records of four[11] DCSTEs in 2019-20 revealed that the AAs while finalising assessments (2018-19) of 20 works contractors for the tax period from 2005-06 to 2017-18, allowed miscellaneous deductions[12] worth ₹ 19.03 crore. *Rule 17(4), ibid,* clearly lists out the deductions allowed to a works contractor in determining gross turnover (GTO). However, the deductions allowed by the AAs were inadmissible under *Rule 17(4)*. Reasons for allowing such deductions in contravention of the rules were not found in the assessment orders. This resulted in under assessment of tax by ₹ 1.17[13] crore. Besides, on account of inadmissible deductions and consequent default in payment of the tax due by the dealers, interest of ₹ 1.34 crore was also leviable.

### II. Excess deductions against labour charges

Scrutiny of records of DCSTE Shimla revealed that AAs while finalizing the assessments (2018-19) of four dealers for the year 2008-09 to 2017-18, allowed deductions against labour charges worth ₹ 12.62 crore, whereas the labour charges as per the certified accounts of these dealers was only ₹ 10.92 crore. This difference of ₹ 1.70 crore resulted in under assessment of tax by ₹ 16.49 lakh. Besides, interest of ₹ 7.88 lakh was also leviable.

Thus, allowance of inadmissible deductions and non-verification of labour charges resulted in under assessment of tax by ₹ 1.33 crore (₹ 1.17 crore+₹ 16.49 lakh).

On being pointed out the DCSTEs (Kullu, Shimla and Una) intimated that action will be taken as per rules/Acts. DCSTE (Kullu) admitted the observations in nine cases and assured that compliance after reassessment would be intimated to audit.

DCSTE, Mandi replied that in four cases, TDS was deducted from the GTO under *Section 6* of HPVAT Act and further cited the judgement in case of M/s. Larsen and Toubro *Versus* State of Karnataka regarding deduction from GTO. The reply of DCSTE Mandi was not relevant since all admissible deductions on GTO are specified in Rule 17(4) of HPVAT Rules and allowance of TDS is not mentioned in it. Further, the Larsen and Toubro case pertains to tax on the sale of flats and does not mention any deduction on account of TDS from GTO.

The matter was reported to the Government (between August 2019 to June 2020); the Government replied (September 2021) that notices had been issued to dealers in all the cases objected by Audit and recovery of ₹ 7.84 lakh had been made in five cases.

**The Government may consider issuing necessary directions to the Department to carefully examine the assessments of the dealers and to avoid allowance of inadmissible deductions and excess allowance of labour charges.**

---

11 Kullu, Mandi, Shimla and Una

12 Tax deducted at source on WCT, administrative charges, vehicle running & maintenance charges, material purchased in state, royalty with VAT, machinery repair and maintenance, travelling expenses, labour cess etc.

13 Tax leviable = inadmissible deduction x rate of tax(minimum) Kullu: six cases, ₹ 4.17 lakh; Mandi: four cases, ₹ 17.05 lakh; Shimla: 46 cases, ₹ 85.76 lakh; Una: 10 cases, ₹ 10.58 lakh

## *2.8 Inadmissible allowance of Input Tax Credit (ITC) on branch transfer*

***Failure of Assessing Authorities to disallow ITC on branch transfer resulted in inadmissible allowance of ITC of ₹87.03 lakh. Besides, interest of ₹1.24 crore was also leviable.***

*Section 11(4)* of the Himachal Pradesh 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 purchase of goods sent outside the State otherwise than by way of sale in the course of inter-state trade. *Section 19* 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* and thereafter one and half *per cent* till the default continues.

Audit scrutiny (2017-19) of records of five DCSTEs[14] revealed that the AAs while finalising assessments (between July 2017 and May 2019) of 11 dealers for the years 2006-07 to 2016-17, allowed ITC of ₹ 3.68 crore, on the goods sent as branch transfer, whereas the AA were required to disallow four *per cent* of ITC involved in the branch transferred goods, as per Section 11(4), *ibid*. The allowable ITC was ₹ 2.81 crore. This resulted in excess benefit of ITC of ₹ 0.87 crore. Besides, due to under assessment of tax on account of excess allowance of ITC, interest of ₹ 1.24 crore under *Section 19* of the Act, *ibid* was also leviable.

The matter was reported to the Government in March 2021; the Government replied (September 2021) that notices had been issued to dealers in all the cases objected by Audit and recovery of ₹ 5.39 lakh had been made in two cases.

**The Department may consider issuing necessary directions to the concerned officials to pay due attention to the ineligible items while making adjustment of ITC.**

## *2.9 Short/Non levy of Interest on additional demand of tax*

***Assessing Authorities levied interest of ₹ 17.38 lakh instead of leviable interest of ₹ 72.02 lakh on additional demand created, resulting in short levy of interest of ₹ 54.64 lakh.***

As per Section 19 of the 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* for a period of one month, and one and a half *per cent* per month thereafter, while the default continues.

Scrutiny of records (between May 2019 to December 2019) of two DCSTEs[15] revealed that the AAs while finalising assessments of 15 dealers for the tax period 2009-10 to 2016-17, raised additional tax demands of ₹ 84.02 lakh. AAs levied interest of ₹ 17.38 lakh for the period ranging from 12 to 35 months against the leviable interest of ₹ 72.02 lakh for a period ranging from 14 to 98 months *i.e.* upto the date of assessment. Further, it was noticed that the

[14] Baddi, Nahan, Nurpur(Kangra), Solan and Una
[15] DCSTEs Baddi and Nahan

department did not levy interest in four cases. Thus, there was short/non-levy of interest of ₹ 54.64 lakh[16] (₹ 72.02 lakh - ₹ 17.38 lakh).

No reasons were recorded in the assessment orders by the AAs for short/non-levy of interest. Audit has pointed out similar lapses in Inspection Reports/Audit Reports since 2011-12, however, the Department did not take any action to test-check assessments, which indicates indifference to guarding against revenue loss.

The Government replied (September 2021) that notices had been issued to dealers in all the cases objected by Audit and recovery of ₹ 16.27 lakh had been made in three cases

**The Government may consider issuing necessary directions to the Department to follow the provisions of the Act and exercise appropriate checks before finalising any assessment and responsibility of the erring officials may be fixed.**

## *2.10 Suppression of sale and stock*

***Under-reporting of sales and closing stock worth ₹ 4.55 crore in the annual returns enabled tax evasion of ₹ 32.82 lakh. Consequently, interest of ₹ 25.89 lakh and penalty of ₹32.82 lakh also became due on the evaded tax.***

Section 16(8) of the HPVAT Act, 2005 provides that if a dealer has maintained false or incorrect accounts with a view to suppress his sales, purchases or stocks of goods or has furnished return which is false or incorrect in any way, then he is liable to pay a penalty of upto twice the amount of tax but which shall not be less than one hundred *per cent* of such tax amount. Further as per Schedule A to Section 6(1)(a), sale of scrap is taxable at the rate of five *per cent*.

Scrutiny of records during May 2019 to February 2020 revealed that:

I. In three Deputy Commissionerates of State Taxes and Excise (DCSTEs[17]), 12 dealers having cumulative Gross Turnover (GTO) of ₹ 794.93 crore had not disclosed sales of ₹ 2.98 crore in 18 annual returns filed between 2010-11 to 2016-17, which were otherwise depicted in their Trading, Profit and Loss accounts as sale of assets (Vehicles, Plant and Machinery). These sales should have been taxed at the minimum rate of five *per cent* under Schedule 'A' of HPVAT Act, 2005. Thus, there was under assessment of tax of ₹ 14.88[18] lakh. Besides, interest of ₹ 16.51 lakh under Section 19, and penalty of ₹ 14.88 lakh under Section 16(8) of the Act, *ibid*, were due to be levied.

II. In two DCSTEs[19], two dealers having cumulative GTO of ₹ 20.51 crore in the tax years between 2013-14 to 2016-17, had declared opening stock of ₹ 98.89 lakh in their respective annual returns filed, but their certified accounts of the immediately preceding years showed closing stock of ₹ 2.56 crore. There was altogether a difference of

[16] DCSTEs Baddi: ₹ 11.06 lakh and Sirmour at Nahan: ₹ 43.58 lakh
[17] DCSTEs: Baddi, Nahan and Shimla.
[18] Baddi : eight cases, ₹ 9.94 lakh; Nahan : four cases, ₹ 4.00 lakh and Shimla : six cases, ₹ 0.94 lakh
[19] DCSTEs: Mandi, Shimla

₹ 1.57 crore in their closing and opening stocks during the tax period, which was tantamount to suppression of stocks of goods under Section 16 (8) of the Act, *ibid*. The Assessing Authority was required to check these details at the time of assessment as all the records were available. Applying the minimum applicable rate of tax on the suppressed GTO, under assessment of tax worth ₹ 17.94[20] lakh was found. Besides, interest of ₹ 9.38 lakh under Section 19 of the Act *ibid,* and minimum penalty of ₹ 17.94 lakh under Section 16(8) of the Act *ibid*, were also leviable.

Thus, lack of due diligence by the Assessing Authorities (AAs) in identifying suppression of sales and stocks worth ₹ 4.55 crore (₹ 2.98 crore + ₹ 1.57 crore) in their assessments, resulted in undue benefit to dealers and enabled tax evasion of ₹ 32.82 lakh (₹ 14.88 lakh + ₹ 17.94 lakh). Besides, penalty of ₹ 32.82 lakh (₹ 14.88 lakh + ₹ 17.94 lakh) under Section 16(8) and interest of ₹ 25.89 lakh (₹ 16.51 lakh + ₹ 9.38 lakh) under Section 19 has since become due on the evaded tax.

The AAs did not cross-check the tax returns with the certified accounts of the dealers for calculation of tax and interest during the tax period, even though all the records were available with the Department. This issue has been highlighted in the Audit Report on State Revenues of the last two years, and so its persistence would suggest wilful disregard of the same.

The matter was reported to the Government in January 2021; the Government replied (September 2021) that notices had been issued to dealers in all the cases objected by Audit.

**The Government may consider creating a mechanism for ensuring accountability of officials for failure to implement the provisions of the VAT Act/Rules.**

[20] DCSTEs : Mandi : one case, ₹ 17.83 lakh and Shimla : one case, ₹ 0.11 lakh