

**CHAPTER IV**  
**Compliance Audit Paragraphs on**  
**Revenue Sector**



## **CHAPTER IV: COMPLIANCE AUDIT PARAGRAPHS REVENUE SECTOR**

### **Section 2: Finance (Taxation) Department**

#### **4.2.1 Tax administration**

The Finance (Taxation) Department is responsible for the administration of taxes on sales, trade *etc.* in the State. The Commissioner of Taxes (CT), Assam is the Head of the Department who is responsible for administration of all taxation measures and for general control and supervision over the zonal and unit offices and the staff engaged in collection of taxes and to guard against evasion of taxes. He is also the authority for disposing of revision petitions under all Taxation Acts and laws besides providing clarifications under the Assam Value Added Tax (AVAT) Act, 2003. Additional Commissioners of Taxes, Joint Commissioners of Taxes (JCT), Deputy Commissioners of Taxes (DCT), Assistant Commissioners of Taxes (ACT), Superintendents of Taxes (ST) and Inspectors of Taxes both at the Headquarters and zonal/unit levels assist the CT. The Commissionerate of Taxes had one Head Office/Commissioner's Office, 10 Zonal Offices, five Appellate Offices, 34 Unit Offices and 23 Recovery Offices.

The provisions of the AVAT Act, 2003; the Assam Goods and Services Tax Act, 2017 (*w.e.f.* 01 July 2017), the Central Sales Tax (CST) Act, 1956; the Assam Professions, Trades, Callings and Employments Taxation Act, 1947; the Assam Electricity Duty Act, 1964; the Assam Taxation (on Specified Lands) Act, 1990; the Assam Agricultural Income Tax Act, 1939 and various administrative orders issued from time to time governed the functioning of the Department.

#### **4.2.2 Working of Internal Audit Wing**

Internal audit is a vital component of internal control mechanism, which functions as an internal oversight mechanism of the Department and a vital tool, which enables the management to assure itself that the prescribed systems are functioning reasonably well. It was observed that although the Government created an internal audit wing in May 1988 with staff strength of eight internal auditors in the office of the CT, Assam, no personnel was posted in the wing since February 2011.

#### **4.2.3 Results of Audit**

Test check of records of 19 unit offices<sup>127</sup> (out of total 74 unit offices) relating to VAT/CST/AET/Agricultural Income Tax assessments and other records showed irregularities involving ₹ 126.86 crore in 303 cases, which fall under the following categories as detailed in *Table 4.2.1*.

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<sup>127</sup> Including Office of the Agricultural Income Tax Officer, Guwahati, Assam

**Table 4.2.1: Results of Audit**

Sl. No.	Category	Number of Cases	Amount (₹ in crore)
1	Concealment of turnover	24	16.00
2	Irregular grant of ITC	32	4.08
3	Turnover escaping assessment	6	2.14
4	Short levy of tax and interest	52	34.48
5	Irregular allowance of concessional rate of tax	72	37.70
6	Short/ non-levy of entry tax	06	2.40
7	Other irregularities	111	30.06
<b>Total</b>		<b>303</b>	<b>126.86</b>

During the year, the Department accepted under-assessments and other deficiencies in 133 cases involving ₹ 18.37 crore. Of these, 11 cases involving ₹ 6.72 crore were pointed out by Audit during the year 2018-19 and the rest in earlier years. An amount of ₹ 11.45 crore in 123 cases was realised during the year 2018-19.

A few illustrative cases having financial impact of ₹ 7.09 crore on concealment of turnover, short levy of tax and non-levy of tax *etc.*, are discussed in succeeding paragraphs.

### Compliance Audit Paragraphs

#### Assam Value Added Tax and Central Sales Tax Act

#### 4.2.4 Allowance of concessional rate of tax against invalid/obsolete declaration forms

*Assessing Officers failed to detect invalid/obsolete 'C' forms submitted by 20 dealers resulting in short levy of tax of ₹4.64 crore on which interest was also leviable.*

**[ACT, Guwahati (Unit-A, B, C & D); April 2018 - March 2019]**

As per Section 8 of the Central Sales Tax (CST) Act, 1956, inter-State sales of goods to registered dealers supported by declaration Form 'C' were taxable at the concessional rate of two *per cent* from 01 June 2008. Otherwise, tax was leviable at the rate of tax applicable to sale of such goods within the State. Further, as per Rule 12 of the CST (Registration and Turnover) Rules, 1957 (Amended), 'C' form is to be submitted on quarterly basis from 01 October 2005 onwards.

**4.2.4.1** The Commissioner of Taxes (CT), Government of Manipur (GoM) *vide* notification dated 25 July 2012 intimated the CTs of all States that every registered dealer shall make online requisition for declaration in forms C, F & H and all offline issuance of these forms shall be discontinued with effect from 30 September 2012. The CT, GoM further clarified that the declaration forms issued to the dealers prior to the notification *ibid* shall remain valid for use up to 31 October 2012 and forms remaining unutilised in the custody of the dealers shall stand obsolete and invalid with effect from 01 November 2012.

On scrutiny of records of 742 assessment/scrutiny cases in four unit offices<sup>128</sup> (out of 34 unit offices), Audit noticed that in 29 assessment/scrutiny cases<sup>129</sup>, the dealers claimed concessional rate of tax supported by Form ‘C’ which had become obsolete and invalid. The AAs while assessing/scrutinizing (between August 2015 to December 2018) the dealers’ accounts pertaining to the period 2012-13 to 2015-16, accepted the turnover involving ₹ 43.89 crore supported by manually issued<sup>130</sup> ‘C’ forms (130 Form ‘C’) and assessed at the rate of two *per cent* (concessional rate) instead of five/14.5/15.5 *per cent*<sup>131</sup>. Thus, AAs failed to disallow concessional rate of tax claimed on the turnover supported by obsolete and invalid forms, and levy tax at the prescribed rate on such turnover. This resulted in short levy of tax of ₹ 4.49 crore on which interest was also leviable (**Appendix 7**).

On this being pointed out by audit, the ACTs<sup>132</sup> stated that out of 18 dealers, three dealers<sup>133</sup> had replaced their manual forms with online forms. Besides, ACT, Unit-B re-assessed four dealers<sup>134</sup> and disallowed concessional rate of tax on defective forms and issued demand notice for tax and interest of ₹ 3.16 crore, but the report on realisation is yet to be received (September 2020). The ACTs are silent on the action taken against the other defaulters (December 2020).

Audit noticed acceptance of manually issued forms (GoM) and allowance of concessional rate of tax on such declaration forms in respect of four assessing unit offices in the State. The Department may internally verify/check similar issues in their other unit offices.

**4.2.4.2** During 2018-19, out of 34 assessing unit offices, audit examined records of the 14 assessing unit offices (41 *per cent*). In two unit offices, it was noticed that in four out of 92 assessment cases scrutinised under CST Act, concessional rate of tax was allowed against invalid Form ‘C’ as illustrated below:

Two dealers under ACT, Unit B and Unit D, Guwahati, made inter-State sales of ₹ 36.38 crore to registered dealers during 2011-12, 2013-14 and 2014-15 and claimed concessional rate of tax in support of 32 ‘C’ forms. The AAs while assessing the dealer in December 2014 and February 2018 accepted the ‘C’ forms submitted and assessed the dealer accordingly. Scrutiny of declaration forms submitted by the dealer showed

<sup>128</sup> ACT, Unit –A, Unit-B, Unit-C and Unit-D, Guwahati

<sup>129</sup> 18 dealers. 27 assessment cases and two scrutiny cases.

<sup>130</sup> Transaction involved on or after 1 November 2012.

<sup>131</sup> Five *per cent*: 14.5 *per cent*: and 15.5 *per cent*:

<sup>132</sup> ACT Unit B, Guwahati and ACT, Unit D, Guwahati.

<sup>133</sup>

Name of the Dealer	Action Taken by the Department
M/s. R D Computech & Agencies Pvt. Ltd	Seven manual forms replaced with online forms and ₹ 16.17 lakh <i>i.e.</i> difference of value of goods the dealer has deposited ₹ 94,364
M/s. Ushodaya Enterprise Pvt. Ltd	Six manual forms (out of eight obsolete forms) replaced with online forms and deposited ₹ 1.46 lakh in respect of two defective forms valuing ₹24.82 lakh which was not replaced by online forms.
M/s. Lotte India Corporation Ltd	All seven manual forms replaced with online forms.

<sup>134</sup> M/s. Wipro Enterprise Pvt. Ltd., M/s. Procter & Gamble Home Products Ltd., M/s. Case New Holland Construction Equipment (India) Pvt. Ltd. and M/s. Birla Tyres

that four 'C' forms involving turnover of ₹ 1.29 crore were among the series of forms<sup>135</sup> declared invalid<sup>136</sup> by Government of Nagaland (November 2011). The Commissioner of Taxes, Nagaland also forwarded the notification to all the State Commissioner of Taxes for giving wide publicity among the State Assessing Authorities. However, while completing the assessment, the AAs failed to detect the transactions against these invalid forms and irregularly allowed concessional rate on those forms. This resulted in short levy of tax of ₹ 14.68 lakh on which interest was also leviable (detailed in *Appendix 8*).

In response to audit query, the Department stated (May 2019) that though there were no specific direction issued to Assessing Officers to cross check notifications issued by the Commissioner of Taxes of other States in general, it was the duty of all Assessing Officers to cross check as much inventories as possible at the time of assessment. Moreover, Department had also not issued necessary instruction to Assessing Officers to cross verify authenticity of declaration forms through TINXSYS (Tax Information Exchange System) and downloading relevant Gazette notifications of other States to prevent acceptance of invalid C Forms by Assessing offices.

Audit has noticed allowance of concessional rate of tax against invalid forms in two unit offices. Thus, the Department may internally examine similar issues in other unit offices to arrest leakage of government revenue.

***Recommendation: The Government may instruct the Department to mandatorily cross verify the invalid 'C' Forms declared by the Government of Manipur and Government of Nagaland while allowing concessional rate of tax to dealers. The Department may also consider insertion of a mandatory column in the Assessment Order format certifying that AO has also checked the list of invalid 'C' forms issued by other States.***

#### **4.2.5 Non-reversal of excess ITC**

*Non-reversal of excess Input Tax Credit (ITC) on inter-State sales and stock transfer out of the intra-State purchase, due to failure of the Assessing Officer to analyse item-wise business of the dealer during assessment, resulted in short realisation of tax of ₹15.25 lakh*

#### **[Assistant Commissioner of Taxes, Unit-A, Guwahati; January – March 2019]**

Under Section 14 (3A)<sup>137</sup> of the Assam Value Added Tax (AVAT) Act, 2003 (as amended<sup>138</sup>), if goods, other than the goods specified in the Fourth Schedule, which are taxable at the rate of four *per cent* or above under this Act, are sold in the course of

<sup>135</sup>

Serial No. of declaration of 'C' forms	Effective date	Reasons
NL 076126 to 076225	14-09-2007	Lost
NL 098251 to 099250	28-07-2009	Lost

<sup>136</sup> Gazette Notification No. 15 Part-II A dated 15 November 2011

<sup>137</sup> Deleted vide Notification No.LGL.6/2003/112 dated 17 June 2015

<sup>138</sup> Government of Assam Notification No. LGL. 6/2003/79 dated 26 April 2013.

inter-State trade and commerce to a registered dealer at the concessional rate of tax applicable under sub-section (1) of Section 8 of the CST Act, 1956, the input tax credit shall be reduced by the amount of tax calculated at the rate of two *per cent* of the purchase price excluding tax of such goods or the raw materials and packing materials used in the manufacture of such goods. Such input tax credit shall be reduced in the month in which such inter-State sales take place. Also, Section 14 (6) (h) (as amended) provides, in case of stock transfer input tax credit may be allowed for the tax paid in excess of the amount of tax calculated at the rate of four<sup>139</sup> *per cent* on the purchase price excluding tax of goods.

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

During 2018-19, out of 34 assessing unit offices, audit examined records of the 14 assessing unit offices (41 *per cent*) and in one unit it was noticed that the Assessing Officer did not properly scrutinise trading accounts of the dealer while completing assessment though information relating to opening and closing stock of intra-State and inter-State purchase of goods were available, which resulted in non-reversal of excess ITC as illustrated below:

An item-wise analysis of trading accounts of a dealer<sup>140</sup> as certified by Chartered Accountant for the period 2013-14 and 2014-15, audit noticed that the dealer in course of inter-State trade and commerce, sold/transferred goods (GI Ridgings, TMT bar *etc.*) out of local purchases.

The Assessing Officer, during assessment (November 2016) while allowing full ITC on intra-State purchase, failed to analyse item-wise businesses of the dealer to adjudicate applicability of the above mentioned provisions of the AVAT Act, 2003 and did not reverse excess ITC regarding the items sold/transferred in course of inter-State trade and commerce out of local purchases. In absence of segregation of profit earned between local sales and in course of inter-State trade and commerce, audit could not quantify accurate quantum of ITC reversible. Therefore, failure of the AO to reverse excess ITC resulted in short realisation of minimum tax of ₹ 15.25 lakh<sup>141</sup> on which interest was also additionally leviable. The details of calculation are shown in **Appendix 9**.

After this being pointed out by audit, the AO stated (July 2019) that the accounts of the assessee were re-assessed (June 2019) under Section 40 of the AVAT Act, 2003 and levied tax and interest of ₹ 21.07 lakh and ₹ 29.42 lakh for 2013-14 and 2014-15 respectively. The department also issued demand notices (June 2019), however, realisation of amount is still awaited (December 2020).

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<sup>139</sup> Reduced vide Notification No.LGL.6/2003/112 dated 17 June 2015

<sup>140</sup> M/s. Ravi Steel Pvt. Ltd.

<sup>141</sup> Assuming that the dealer had earned entire profit in course of inter-State trade and commerce.

Audit has reported non-reversal of excess ITC in one case as the requisite information was available in the assessment records, however, in most of the cases, audit could not analyse assessment orders due to non-availability of item wise opening and closing stock of intra-state and inter-state purchase of goods. The Department should internally examine similar issues in other cases to arrest leakage of government revenue.

***Recommendation: The Department may advise Assessing Officers to carry out all mandatory checks before allowing benefit of ITC claims and ensure compliance to the statutory provision in force.***

#### **4.2.6 Underassessment of turnover**

*The Deputy Commissioner of Taxes (DCT), Nagaon Zone undervalued the opening stock while completing assessment despite available information, which resulted in underassessment of turnover of ₹28.98 lakh leading to short levy of tax of ₹8.69 lakh.*

##### **[Assistant Commissioner of Taxes (ACT), Nagaon; January-February 2018]**

As per Section 40 of the AVAT Act, 2003, if the prescribed authority has reason to believe that the Assessing Officer (AO) had under-assessed any part of the turnover, he may proceed to assess the amount of tax due from the dealer in respect of such turnover within a period of eight years. Further, Section 30 of the Act *ibid* provides that if any dealer fails to pay the amount of tax due within the time prescribed for its payment, such dealer shall, in addition to the tax, be liable to pay simple interest at the rate of 1.5 per cent per month on the unpaid tax amount.

As per Section 2(44) (i) of the AVAT Act, 2003, sale price includes the amount of duties or fees levied or leviable on the goods under the Assam Excise Act, 1910 or under any other enactment whether such duties or fees are paid or payable by or on behalf of the seller or the purchaser or any other person. The item 'Indian Made Foreign Liquor (IMFL) and Beer' is taxable at 30 per cent *w.e.f.* 21 July 2011 under Schedule-IV of the AVAT Act, 2003.

Out of total 179 assessments completed under the AVAT Act, 2003 in office of the ACT, Nagaon during 2015-17, audit selected 75 assessment cases for scrutiny and in one case<sup>142</sup>, audit observed that the dealer disclosed opening stock in the annual return and audited accounts for the year 2012-13 as ₹ 15.10 lakh. The DCT, Nagaon Zone while assessing the dealer for the year 2012-13 in December 2015, accepted the opening stock as ₹ 15.10 lakh and completed the assessment by determining taxable turnover of ₹ 3.58 crore (including excise duty) and levied tax accordingly. However, scrutiny of Annexure-I attached with the annual return for the year 2011-12 showed that the dealer had a closing stock of taxable goods valued at ₹ 1.41 crore as on 31 March 2012 out of which, stock valued at ₹ 97.39 lakh was under the process of destruction as the officer-in-charge of the said bonded warehouse found it unsuitable for sale to retail/ human consumption.

<sup>142</sup> M/s. A B Bonded Warehouse dealing in 'IMFL and Beer'

Thus, the closing stock of the dealer for the year 2011-12 should not have been less than ₹ 44.07 lakh (basic price only) after deducting the goods under the process of destruction. However, the DCT, Nagaon Zone while assessing the dealer for the year 2012-13 brought forward closing stock as on 31 March 2012 as ₹ 15.10 lakh instead of ₹ 44.07 lakh (minimum) as opening stock of 01 April 2012. The undervaluation of closing stock led to underassessment of turnover of ₹ 28.98 lakh<sup>143</sup> (basic price only without Excise Duty<sup>144</sup>) over the assessed turnover of ₹ 3.58 crore during 2012-13. This resulted in short levy of tax of ₹ 8.69 lakh (minimum) on which interest was also leviable.

On this being pointed out, the Department while accepting the audit observation stated (July 2019) that the dealer had already closed down his business and failed to comply to the show-cause notice issued by the Department. Re-assessment was done u/s 40 of the AVAT Act, 2003 in July 2019 and a demand amounting to ₹ 18.69 lakh had been raised. Department further intimated (February 2020) that due to non-deposit of demanded amount, an arrear certificate was forwarded to Recovery Officer, Nagaon for realisation.

**Recommendation:** *As the cases pointed out by Audit are based on the test-check in one-unit office, the Department may internally examine similar issues in all offices in the State and take time bound action to effect recovery before the cases become time barred.*

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Particulars	(Amount in ₹) 2012-13
Closing Stock for the year 2011-12 as shown in annual return as well as assessment order of the year 2011-12	1,41,46,288
Less : Stock of IMFL and Beer under process of destruction (excluded as not saleable)	97,38,808
Closing Stock should have been for the year 2011-12 (considering basic price only without excise duty)	44,07,480
Less : Opening Stock as disclosed in the annual return and considered in assessment for the year 2012-13	15,09,635
Value of Stock under assessed for the year 2012-13 (considering basic price only without excise duty as information in respect of sale of goods including excise duty is not available to Audit)	28,97,845
Tax leviable @ 30 per cent	8,69,353
Interest leviable @ 1.5 per cent per month upto March 2019 for 71 months	9,25,840

<sup>144</sup> In absence of details of different brands of 'IMFL and Beer' in closing stock for the year 2011-12, excise duty on stock could not be ascertained based on records submitted by the dealer to the Taxation authority.

## Assam Agricultural Income Tax Act

### 4.2.7 Non-levy of interest

*Arbitrary and irregular grant of exemption by the Agricultural Income Tax Officer (AITO), on levy of interest for short/non-payment of advance tax by assessee resulted in non-levy of interest of ₹1.97 crore*

**[AITO, Guwahati, Assam; November 2018]**

Under the provision of Section 8B<sup>145</sup> of the Assam Agricultural Income Tax Act (AAIT), 1939, in case of an assessee, being a company, which derives income from cultivation, manufacture and sale of tea, if the agricultural income tax payable under this Act on the sixty *per cent* portion of agricultural income computed as per provisions of the Income Tax Act, 1961 (Central Act 43 of 1961) is less than 10 *per cent* of the sixty *per cent* of the book profit computed in the manner as referred to in Section 115 JB of the Income Tax Act, 1961 (Central Act 43 of 1961), sixty *per cent* of such book profit shall be deemed to be agricultural income under this Act of such assessee and the assessee shall be liable to pay agricultural income tax at the rate of 10 *per cent* of such agricultural income. However, rate of tax under Section 8B was raised<sup>146</sup> to 18 *per cent* from 10 *per cent* *w.e.f.* 01 April 2010 for the assessment year 2010-11<sup>147</sup>.

Section 35 (1) of the AAIT Act, 1939 provides that an assessee shall pay to the credit of the State Government, as advance tax, an amount equal to the agricultural income tax calculated in his total agricultural income derived during the latest previous year in respect of which he has been assessed in such number of equal instalments not exceeding four and within such date<sup>148</sup> as prescribed under Rule 29 (i). Section 35 A further specify that if an assessee is required to pay advance tax under Section 35, estimates at any time before the last instalment of the advance tax is due and finds that by reason of his income of the year, for which he is liable to pay advance tax being likely to be more or less than the income on which the advance tax payable by him under Section 35 or for any other reason, the advance tax payable would be more or less than the amount which he is so required to pay shall furnish an estimate to the AITO.

Further, under Section 35 B (1) of the AAIT Act, 1939, where in any financial year an assessee has paid advance tax under Section 35 or Section 35 A and the advance tax so paid is less than ninety *per cent* of the tax determined on regular assessment under Section 20, simple interest at the rate of two *per cent* for each English Calendar month from the first day of April of such succeeding financial year in which the advance tax was payable up to the month prior to the month or regular assessment shall be payable by the assessee upon the amount by which the advance tax paid falls short of the tax determined on regular assessment.

<sup>145</sup> Inserted vide Government notification no. LGL.22/2002/124 dated 12/02/2009.

<sup>146</sup> Notification No. LGL.61/2009/31 dated 7 September 2010.

<sup>147</sup> Section 3 of the AAIT Act, 1939

<sup>148</sup> Payment of 4<sup>th</sup> installment (*i.e.* last installment) by 15 March of the financial year.

During 2018-19, Audit test checked 52 assessment cases (out of 783 cases) in the office of the Assam Agricultural Income Tax Officer, Guwahati and noticed that one dealer<sup>149</sup> was assessed<sup>150</sup> (July 2014) for the assessment year 2010-11 under Section 8B<sup>151</sup> of AAIT Act, 1939 and tax levied was of ₹ 3.16 crore<sup>152</sup>. The assessee had deposited ₹ 17.36 lakh only as advance tax for the assessment year 2010-11, which was less than 90 per cent of tax assessed, and the balance amount of tax was paid belatedly in three installments (₹ 1.13 crore, ₹ 45.24 lakh, and ₹ 1.40 crore in March 2011, October 2012, and August 2014 respectively). However, in course of assessment, the AITO did not levy interest of ₹ 1.97 crore<sup>153</sup> though leviable under provision of Section 35 B (1) of the Act *ibid* for belated payment of advance tax, mentioning that interest was not leviable, as the assessee was not liable to pay advance tax as required under Section 35 or 35 A of the Act.

The contention of the AITO was not acceptable as the assessee had submitted 'nil' estimate as required under Section 35 A and had deposited (March 2010) advance tax of ₹ 17.36 lakh for the assessment year 2010-11. Thus, arbitrary and irregular grant of exemption by AITO on levy of interest resulted in non-levy of interest of ₹ 1.97 crore.

After this being pointed out by audit, while accepting the audit observation the department re-assessed (March 2019) the case on the basis of reply from the assessee and levied interest of ₹ two crore u/s 35 B (1) of the AAIT Act, 1939. The demand notice was issued but realisation of tax was not done (December 2020).

Audit noticed non-levy of interest on payment of tax under Section 8B of the AAIT Act, 1939 in one case. The Department may internally verify similar issues in other cases.

***Recommendation: The Government may instruct the Department to recover the dues in above case and suitable action may be initiated against the officials.***

<sup>149</sup> M/s. Apeejay Surendra Corporate Services Ltd.

<sup>150</sup> Assessed u/s 20 of the AAIT Act, 1939 vide order dated 1 July 2014

<sup>151</sup> The assessee adjusted previous year's loss of ₹ 21.58 crore from agricultural income computed (60 per cent of composite income determined under the Income Tax Act, 1961) under Section 8 of the AAIT Act, 1939, which led to agricultural income for the period less than ten per cent of the sixty per cent of the book profit computed in the manner as referred to in the section 115JB of the Income Tax Act, 1961.

<sup>152</sup> At the rate of 18 per cent for the assessment year 2010-11

<sup>153</sup>

Date of deposit	Amount deposited (in ₹)	Delay in deposit calculated from April 2010 (in months)	Interest leviable (in ₹)
19/03/2010	17,36,040	0	0
31/03/2011	1,12,85,671	12	27,08,561
03/10/2012	45,23,765	30	27,14,259
02/08/2014	1,40,36,420	51 (delay considered up to the date of assessment)	1,43,17,148
<b>Total</b>	<b>3,15,81,896</b>		<b>1,97,39,968</b>

#### **4.2.8 Agricultural income escaped assessment**

*The Agricultural Income Tax Officer (AITO) failed to cross check composite income disclosed by the assessee in return under Assam Agricultural Income Tax (AAIT) Act with return submitted to Income Tax Department which resulted in short levy of tax of ₹9.32 lakh*

##### **[AITO, Guwahati, Assam; October 2018]**

Section 8(2)(h) of the Assam Agricultural Income Tax Act, 1939 provides that in case of agricultural income from cultivation and manufacture of tea, the agricultural income for the purposes of this Act shall be deemed to be that portion of the income from cultivation, manufacture and sale which is the agricultural income within the meaning of the Indian Income Tax Act, 1961 and shall be ascertained by computing the income from the cultivation, manufacture and sale of tea as computed for Indian Income Tax Act. The ratio for apportionment of composite income fixed at 60:40 for the purpose of agricultural income tax and income tax respectively.

As per Section 30 of the Assam Agricultural Income Tax Act, 1939, if for any reason any agricultural income chargeable to agricultural income tax has escaped assessment for any assessment year or has been assessed at too low or has been the subject of undue relief under this Act, the Superintendent of Taxes or Agricultural Income Tax Officer may at any time within eight years of the end of that assessment year may proceed to assess or reassess such income.

Section 35 C provides for non-payment of advance tax; interest is leviable at the rate of two *per cent* per month from month succeeding the financial year in which advance tax was payable up to the month prior to the month of regular assessment. Further, Section 22 provides if an assessee has concealed the particulars of his income or has deliberately furnished inaccurate particulars of such income and has thereby returned it below its real amount, the assessee shall pay by way of penalty in addition to any tax paid by him, a sum not exceeding the amount of the agricultural income tax which would have been avoided if the income so returned by him had been accepted as the correct income.

During 2018-19, Audit test checked 52 assessment cases (out of 783 cases) in the office of the Assam Agricultural Income Tax Officer, Guwahati and in one case audit noticed that an assessee company<sup>154</sup> filed annual return under the AAIT Act for the assessment year 2011-12 and 2012-13 declaring composite income of ₹ 8.67 lakh and ₹ 9.25 lakh computed as per Income Tax Act, 1961. Accordingly, the AITO while finalising the assessments (September 2017) for both the years derived agricultural income of ₹ 5.20 lakh and ₹ 5.55 lakh (being the 60 *per cent* of composite income) and levied tax of ₹ 1.56 lakh and ₹ 1.67 lakh respectively.

However, cross-verification of composite income with the Income Tax returns of the assessee for the assessment year 2011-12 and 2012-13, Audit noticed that the composite

<sup>154</sup> M/s. Jalinga Tea Co. (I) Pvt. Ltd

income assessed<sup>155</sup> by IT Department were ₹ 19.10 lakh and ₹ 50.57 lakh respectively. The concealment of composite income resulted in escapement of taxable agricultural income for the assessment year 2011-12 and 2012-13 amounting to ₹ 6.26 lakh and ₹ 24.80 lakh respectively and resultant short levy of agricultural income tax of ₹ 23.18 lakh<sup>156</sup> including interest. In addition, the assessee is also liable to pay penalty as per provision of Section 22 of the Act *ibid* for submission of inaccurate particulars of income before the assessing authority. Thus, failure of the AITO to take cognisance of the IT returns during the assessment resulted in short realisation of tax of ₹ 9.32 lakh on which interest was also leviable.

After this was pointed out by audit, the Department while accepting the audit observation, re-assessed (March 2019) the company for both the years and levied tax and interest of ₹ 35.09 lakh. The demand notices were issued but realisation was not reported (December 2020).

Audit noticed escapement of turnover in one case. The Department may internally verify similar issues in other cases.

***Recommendation: The Department may issue instructions to assessing authorities to invariably cross-check the particulars of State Agricultural Income Tax return with the Income Tax returns filed by the dealers, before finalising assessment under Assam Agricultural Income Tax Act.***

<sup>155</sup> The assessee declared the same amount as Composite income in the IT Return for the years 2011-12 and 2012-13.

<sup>156</sup>

(Amount in ₹)

Sl. No.	Particulars	2011-12	2012-13
(i)	100% composite income as per income tax return u/s 143(1) and 154 of IT Act, 1961	19,10,228	50,57,304
(ii)	100% composite income considered during assessment by AITO	8,66,729	9,24,795
(iii)	Short consideration of composite income	10,43,499	41,32,509
(iv)	Short consideration of agricultural income (60% of (iii))	6,26,099	24,79,505
(v)	Tax short levied @ 30%:	1,87,830	7,43,851
(vi)	Interest leviable u/s 35 (C)	3,15,554 (April 2012 to March 2019 = 84 months)	10,71,145 (April 2013 to March 2019 = 72 months)
(vii)	Total tax and interest leviable	5,03,384	18,14,996
(viii)	<b>Grand total</b>	<b>23,18,380</b>	

#### **4.2.9 Short levy of Agricultural Income Tax due to allowance of inadmissible deduction**

*While computing total agricultural income, the Agricultural Income Tax Officer (AITO) failed to take into account the deductions disallowed by the Central Income Tax authority resulting in short levy of tax amounting to ₹6.04 lakh.*

**[AITO, Guwahati, Assam; October 2018]**

As per Section 30 of the Assam Agricultural Income Tax (AAIT) Act, 1939, if for any reason any agricultural income chargeable to agricultural income tax has escaped assessment for any assessment year, or has been assessed at too low rate or has been the subject of undue relief under this Act, the Superintendent of Taxes or AITO may at any time within eight years of the end of that assessment year proceed to assess or reassess such income.

During 2018-19, Audit test checked 52 assessment cases in the office of the Assam Agricultural Income Tax Officer, Guwahati and noticed that in two cases, the assessee companies had claimed exemption/ deduction from the total agricultural income for the assessment year 2014-15; however, the Central Income Tax authority disallowed expenses inadmissible for deduction from total agricultural income (composite income<sup>157</sup>). The AITO while finalising assessment (April 2017 and June 2017) allowed these expenses. Thus, the failure of the AITO to take into account the deduction disallowed by the Income Tax Authority resulting in short determination of agricultural income tax to the tune of ₹ 20.13 lakh and consequently short levy of tax of ₹ 6.04 lakh on which interest was also leviable (*Appendix 10*).

After this was pointed out by audit, the Department stated that assessment order in respect of one dealer<sup>158</sup> had been re-assessed (June 2019) and raised a demand notice of ₹ 5.81 lakh including interest of ₹ 3.12 lakh, but the report on realisation is yet to be received. As regards to the other dealer<sup>159</sup>, the Departmental reply is awaited (December 2020).

***Recommendation:*** *Audit noticed allowance of inadmissible deduction resulting in short disclosure of turnover under AAIT Act, 1939 in two cases. The Department may internally verify similar issues in other cases and advise its offices to cross-verify the Income Tax Returns of the assessee for income/deduction claimed, before finalising the assessment.*

<sup>157</sup> Composite income is derived from the business of growing, manufacturing and selling of tea and 40 per cent of such income is, in terms of Rule 8 of the Income Tax Rules, 1962, is deemed to be income subject to the Income Tax Act, 1961 whereas the balance 60 per cent of the income is treated as agricultural income for the purpose of levy under the AAIT Act, 1939.

<sup>158</sup> M/s. Bazalone Group Ltd.

<sup>159</sup> M/s. Warren Tea Co., Kolkata

## Assam Entry Tax Act

### 4.2.10 Short levy of Entry tax

*Assessing Authority (AA) did not detect the actual import value of cement for self-consumption which resulted in short levy of entry tax of ₹8.70 lakh.*

**[Assistant Commissioner of Taxes, Unit-A, Guwahati; January – March 2019]**

Rule 3 (1) of the Assam Entry Tax Act (AET) provides that there shall be levied and collected an entry tax on the entry of specified goods into any local area for consumption, use or sale therein, at the rates respectively specified against each item in the Schedule. The entry tax shall be leviable on the import value of the specified goods and shall be paid by every importer of such goods. The item 'Cement' brought from outside Assam for self-consumption was taxable at the rate of four *per cent w.e.f.* 14 September 2009.

Further, the AET Act read with the Assam Value Added Tax Act provides that a registered dealer liable to pay tax shall submit to the AO his monthly statement of such purchase along with a copy of the treasury challan(s) for the full amount of tax payable on the purchase value of goods disclosed in the statement before the expiry of the next succeeding month of purchase.

During 2018-19, out of the total 34 assessing unit offices, 14 assessing unit offices were audited. In Unit-A, Guwahati (out of 27 cases selected for audit), during scrutiny of annual returns<sup>160</sup> of a dealer<sup>161</sup>, dealing in manufacturing of 'Cement' (under the AET Act, Audit noticed that the dealer had imported cement worth ₹ 2.32 crore during the year 2011-12 (before commencement of commercial production), on which entry tax of ₹ 9.30 lakh was leviable. However, the Assessing Authority (AA) while finalising the assessment (March 2017) considered import value of cement as ₹ 14.89 lakh and levied entry tax of ₹ 0.60 lakh. Resultantly, the AA assessed that the dealer has made an excess payment of ₹ 2.46 lakh and refunded the amount accordingly (September 2017). Thus, failure of the AO to consider actual import value of the cement as shown in revised return of the dealer resulted in short levy of tax of ₹ 8.70 lakh<sup>162</sup>.

The case was reported to the Department/Government in May 2019; reply was awaited (December 2020).

***Recommendation: As the cases pointed out by Audit are based on the test-check in one-unit office, the Department may internally examine similar omissions in all assessment offices in the State.***

<sup>160</sup> Revised on September 2014

<sup>161</sup> M/s. Topcem India, Guwahati, which deals in manufacturing of 'Cement' was granted Entitlement Certificate (No. CTS-78/2014 (273)/245) for AVAT and CST exemption (99 *per cent* of liabilities under AVAT and CST) on sales of manufacturing goods and Entry tax exemption on machineries and raw materials from the date (25 November 2011) of commencement of commercial production.

<sup>162</sup> ₹ 9.30 lakh minus ₹ 0.60 lakh.

## Section 3: Excise Department

### 4.3.1 Administration

The State Excise Department is responsible for collection of revenue under Assam Excise Act and enforcement of Excise laws on prohibition of illicitly distilled liquor, *Ganja, Bhang* and Opium. In addition, the Department is also responsible for enforcing the provisions of Narcotic Drugs and Psychotropic Substances Act and the Medicinal and Toilet Preparation Act. The Commissioner of Excise (CE), Assam is the head of the Department. He is primarily responsible for administration and execution of Excise policies and programmes of the State Government. An Additional Commissioner of Excise, a Joint Commissioner of Excise and two Deputy Commissioners of Excise<sup>163</sup> assisted the CE.

Excise revenue comes from *ad-valorem* levy, establishment charges, various kinds of licence fees on foreign liquor/ beer, country spirit, rectified spirit, *etc.* Further, import pass fee, export pass fee, transport pass fee, brand and label registration/ renewal fee also generate revenue for the Government. During 2016-17, the Department restructured *ad-valorem* levy, revised licence fee of various excise licences, increased different kinds of fees in respect of label registration/ renewal and profile fee and replaced the Assam Excise Act, 1910 and the Assam Excise Rules, 1945 by the Assam Excise Act, 2000 and the Assam Excise Rules, 2016 respectively *w.e.f.* 01 September 2016. The point of levy of Excise Duty was shifted to the level of first point of transaction made within the State ensuring that only duty paid liquor comes out from the manufactories/ bottling plants/ breweries. This change is aimed at curbing leakage of excise revenue.

### 4.3.2 Results of Audit

Test check of records of 19 unit offices (out of total 49 unit offices) relating to *ad-valorem* levy, establishment charges, license fee, *etc.*, revealed non/ short realisation of *ad-valorem* duty, non-realisation of establishment charges and other irregularities involving ₹ 78.74 crore in 104 cases. The details are given in **Table 4.3.1**.

**Table 4.3.1: Results of Audit**

Sl. No.	Category	Number of cases	Amount (₹ in crore)
1	Non/ Short payment of annual license fee	7	5.30
2	Evasion of <i>ad-valorem</i> duty and VAT	4	2.02
3	Loss of Excise duty and VAT	6	0.56
4	Non-realisation of revenue on wastage beyond permissible limit	2	0.85
5	Short realisation of revenue on transit loss beyond permissible limit	1	0.60
6	Non-realisation of Establishment Charges	6	3.50
7	Other irregularities	78	65.91
<b>Total</b>		<b>104</b>	<b>78.74</b>

<sup>163</sup> One at Headquarters and another for Bodoland Territorial Area.

During the year, the Department accepted 21 cases involving ₹5.45 crore. Of these, Audit pointed out three cases involving ₹4.49 crore during the year 2018-19 and the rest in earlier years.

A few illustrative cases having financial impact of ₹23.50 crore on non-realisation annual licence fee, excise duty and establishment charges, etc., are discussed in succeeding paragraphs.

## Compliance Audit Paragraphs

### 4.3.3 Non-realisation of Ad-valorem duty and VAT

*The Department suspended/cancelled two Wholesale Warehouse licenses (erstwhile Bonded Warehouse) but did not initiate action to recover the dues as land revenue, as per provision of the Assam Excise Act, 2000, resulting in unrealised revenue of ₹4.56 crore.*

#### [Superintendents of Excise (SsE) Barpeta and Tinsukia; April – November 2018]

Assam Excise Rules, 2016 allows existence of Bonded Warehouses<sup>164</sup> only in the manufactories and erstwhile Bonded Warehouse (not in manufactories) are now called as Wholesale Warehouse<sup>165</sup>. To regularise functioning of the Wholesale Warehouse, Government of Assam<sup>166</sup> constituted a Joint team to assess *Ad-valorem* levy and Value Added Tax (VAT) involved on such transitional taxable under-bond stock of liquor/spirit held by the erstwhile Bonded Warehouse licensees as on 31 August 2016 including stock in transit. Based on Joint team's report, the licensee of the Wholesale Warehouse would deposit entire amount of *Ad-valorem* levy and VAT within a period of three months from the date of introduction of Assam Excise Rules, 2016. Further, in the same order, Government instructed the Commissioner of Excise (CE), Assam, in case of failure of the erstwhile Bonded Warehouses to deposit the entire amount of arrear *Ad-valorem* levy and VAT within the period specified, the Warehouse licence shall be liable to be cancelled and stock therein shall be liable to be confiscated.

Further, Section 36 of Act *ibid* provides for recovery of all excise revenue due to the State Government by sale of licensees' movable property, or as arrear of land revenue or in the manner provided for the recovery of public demands by any law for the time being in force.

During 2018-19, in course of audit of 14 SsE/DSsE offices<sup>167</sup> out of 45 SsE/DSsE, it was noticed that two Wholesale Warehouses had failed to deposit the Ad-valorem levy

<sup>164</sup> Premises licenced for deposit or storage of spirits on which duty has not been paid

<sup>165</sup> Premises licenced for deposit or storage of spirits on which duty has been paid and from which IMFL may be supplied by wholesale

<sup>166</sup> Order No.EX.107/2016/19 dated 29 August 2016

<sup>167</sup> 21 Wholesale warehouses out of 88 Wholesale Warehouses

and VAT amounting to ₹ 4.56 crore<sup>168</sup> involved in the transitional stock of liquor/ spirit held preceding to the day of implementation of Assam Excise Rules, 2016 within the prescribed period. The CE, Assam suspended/cancelled wholesale licences in August 2017 and December 2017 for violation of terms and condition of extend of licence under Section 30 (1) (a)<sup>169</sup> and 30 (1) (c)<sup>170</sup> of the Assam Excise Act, 2000.

However, it was noticed that the Department/ CE, Assam had not taken any action under the provisions of Section 36 of the AE Act, 2000 and rules applicable thereunder to realise the government revenue by selling of movable property or as arrear of land revenue resulting in non-realisation of revenue amounting to ₹ 4.56 crore.

On this being pointed out by audit, the Department stated (January 2020) that *ad-valorem* duty of ₹ 1.93 crore (out of ₹ 2.29 crore) had been realised from one Wholesale Warehouse<sup>171</sup>. However, realisation of balance amount of dues from both the licensees was awaited (December 2020).

***Recommendation: Audit noticed loss of revenue due to suspension/ cancellation of licences without realising dues from the licensee in two cases. The Department may internally examine similar cases of wholesale warehouses and recover pending dues as per provision of the Assam Excise Act.***

#### **4.3.4 Non-realisation of Excise Duty on damaged stock**

*The Commissioner of Excise failed to instruct the SE/DSE to realise ad-valorem levy against damaged stock allowed for destruction, resulting in non-realisation of revenue of ₹2.50 crore.*

**[Commissioner of Excise (CE), Assam and Deputy Superintendent of Excise (DSE), Bilasipara; April-May 2018 and September 2018]**

The Assam Bonded Warehouse (ABW) Rules, 1965 provides<sup>172</sup> that a licensee of a bonded warehouse, who has imported or transported spirit (other than country spirit) under a bond for payment of duty, shall pay duty to Government at the prescribed rates on the quantity of spirits in bottles or in any vessel received in the warehouse.

Further, the ABW Rules, 1965<sup>173</sup> provides that if spirits stored in a bonded warehouse are found to be of inferior quality or otherwise unsuitable for the purpose for which they were stored, they might be rejected or destroyed or otherwise dealt with under the orders of the Commissioner of Excise. Rule 32 of the ABW Rules and Rule 188 of the

<sup>168</sup> (i) M/s. New Assam Bonded Warehouse, Barpeta Road, Barpeta : *Ad-valorem Duty* involved ₹ 2.29 crore and VAT ₹ 1.67 crore and (ii) M/s. Gaytry Distillers and Bottling industries, Tinsukia : ₹ 59.96 lakh – as assessed by a Joint team constituted by the Government of Assam.

<sup>169</sup> If any duty fee payable by the holder thereof be not duly paid.

<sup>170</sup> In the event of any breach by the holder thereof or by his servants, or by any one acting on his behalf, with his express or implied permission, of any of the terms or conditions of such licence, permit or pass.

<sup>171</sup> M/s. New Assam Bonded Warehouse Pvt. Ltd

<sup>172</sup> Rule 28

<sup>173</sup> Rule 43

Assam Excise Rules, 2016 specified that the State Government shall not be held responsible for the destruction, loss or damage of any spirits stored in warehouse by fire or theft or by gauging or by any other cause, whatsoever.

During test check of records, Audit noticed that the Commissioner of Excise (CE) ordered<sup>174</sup> the destruction of sedimented/unsuitable old stock of IMFL/Beer/Wine of 3,44,183.52 BL<sup>175</sup> (39,862 cases) stocked in the godown of two Bonded Warehouses<sup>176</sup> and no instruction was issued to realise *ad-valorem* duty on the damaged stock. Accordingly, the SE/ DSE in pursuance to the CE's order destroyed the aforementioned damaged quantity of IMFL/Beer/Wine, however, *ad-valorem* duty was not realised. This resulted in non-realisation of revenue against damaged stock amounting to ₹ 2.50 crore.

After pointing out by audit, the CE instructed (September 2019) the SE to realise *ad-valorem* levy amounting to ₹ 2.11 crore in respect of one Bonded Warehouse<sup>177</sup>, however, no such instruction was issued to DSE for realisation of *ad-valorem* of ₹ 38.81 lakh from other Bonded Warehouse (December 2020).

***Recommendation: The Department may internally examine all such cases and demand notices may be issued to those licencees concerned for payment of the Excise Duty.***

#### 4.3.5 Non-realisation of annual renewal licence fee

*Failure of the Superintendents/ Deputy Superintendent of Excise to enforce provisions of the Assam Excise Rules, 2016 and the Commissioner of Excise, Assam's instruction resulted in non-realisation of annual license renewal fee of ₹23 lakh.*

**[Superintendents of Excise (SsE), Kamrup, Bongaigaon, Barpeta, Karbi Anglong and Deputy Superintendent of Excise (DSE), Nazira; May 2018 - March 2019]**

Rules 61 and 128 of Assam Excise (AE) Rules, 2016<sup>178</sup> provides every licence may be renewed annually by the Excise Commissioner with the previous sanction of the State Government on payment of annual licence fees and if there is nothing adverse against the licensee on record.

Rule 129 (5) of AE Rules, 2016 provides every licensee to deposit the licence fee on or before 15 March through treasury challan or by any other method as may be determined by the State Government, for the renewal of licence for the next year. Rule 19 (a) III *ibid* reads with Government notification<sup>179</sup> (December 2016) specifies annual licence fee payable by the various licensees, as detailed below:

<sup>174</sup> Vide letter No.III-383/2015-16/223 dated 1 June 2016 (M/s. Rooby Bonded Warehouse Pvt. Ltd.) and No.III-239/2015-16/179 dated 28 January 2016 (M/s. Rishi Enterprise Bonded Warehouse)

<sup>175</sup> Bulk Litre

<sup>176</sup> (i) M/s. Rooby Bonded Warehouse, Guwahati (under the jurisdiction of SE, Kamrup): 3,14,586.36 BL (36,462 cases) and (ii) M/s. Rishi Enterprise Bonded Warehouse, Bilasipara: 29,597.16 BL (3,400 cases)

<sup>177</sup> M/s. Rooby Bonded Warehouse, Guwahati

<sup>178</sup> Gazette Notification No. Ex. 138/2015/99 dated 1 September 2016.

<sup>179</sup> Government Notification No. EX.176/2016/22 dated 27 December 2016.

**Table 4.3.2: Rate of Annual Renewal Licence Fee**

Sl. No.	Types of Licence	Details of Licence	Rate of Licence Fee (Amount in ₹)
1	IMFL Wholesale	--	5,00,000
2	IMFL 'OFF'	(i) For Urban Areas	2,00,000
		(ii) For Rural Areas	1,00,000
3	IMFL 'ON'	(i) For Urban Areas	2,50,000
		(ii) For Rural Areas	1,00,000
4	IMFL 'ON' Restaurant	(i) For Urban Areas	2,50,000
		(ii) For Rural Areas	1,00,000

Further, Rule 130 of the AE Rules, 2016 provides that failure to deposit annual licence fee within the time specified in Rule 129 *ibid*, will attract penalty of 50 *per cent* of the licence fee before renewal of licence. Rule 343 of AE Rules, 2016 further stipulates that non-payment of licence fees or any other fees payable to the Government should be administered by closure of the shop until the fees are paid and cancellation of licence with the sanction of the Commissioner of Excise (CE), Assam.

In addition, the CE, Assam instructed<sup>180</sup> (February 2018) all the Deputy Commissioner/ SsE/ Deputy SsE of Assam that the existing valid licensees are to deposit the annual renewal fee before 15 March 2018, failing which the penalty of 50 *per cent* of the licence fee shall be imposed. While issuing the instruction the CE mentioned that this arrangement has been made only to ensure timely deposit of annual renewal fee and annual renewal shall be granted by the Government in due course, however, payment of annual renewal fee shall not confer any right on licensee to claim renewal.

In course of audit of 14 SsE/ DSsE (out of 45 SsE/DSsE in the State) during 2018-19, it was observed that one Wholesale Bonded Warehouse and 16 retail 'ON'/ 'OFF' licensees either failed to pay annual renewal fee or paid the same after the due date as mentioned below:

**4.3.5.1** Records of the SsE, Bongaigaon, Barpeta and DSE, Nazira showed that one wholesale bonded warehouse and six retail 'ON'/ 'OFF' licensees failed to renew their licences in advance for the year 2017-18 to 2018-19. This resulted in non-realisation of annual renewal fee of ₹ 23 lakh and additionally a penalty of ₹ 11.50 lakh was also leviable (*Appendix 11*). The SsE/DSE did not take any action to direct the defaulting licensees to renew their licences and payment of dues except in one case<sup>181</sup>. Further, SsE/DSE did not send any recommendation to the CE, Assam for cancellation of licences in order to prevent unauthorised operation of these licences in the State. Thus, SsE/ DSE failed to realise annual renewal fee amounting to ₹ 34.50 lakh including penalty or to ensure discontinuance of businesses without renewal of licence as per provisions of the AE Rules, 2016 and executive instruction.

**4.3.5.2** Records of the SsE, Kamrup and Karbi Anglong shows that 10 retail 'ON'/ 'OFF' licensees deposited their renewal fee amounting to ₹ 18 lakh for the year 2018-19 after the due date of payment (delay ranging from 51 to 152 days). However,

<sup>180</sup> Letter No. I-190/2015-16/ Pt-I/225 dated 27 February 2018.

<sup>181</sup> M/s. Avijit Saha, Wholesale warehouse under the jurisdiction of the SE, Barpeta, was directed to deposit the renewal fee vide letter No. EXB-1/2016/3038-40 dated 25 June 2018.

SsE failed to levy penalty of ₹ nine lakh (*Appendix 12*) for late payment of annual renewal fee as leviable under the provisions of the AE Rules, 2016 and executive instruction.

Audit further observed that the deficiencies highlighted above occurred mainly due to non-existence of internal controls, non-maintenance of demand, collection and balance register and absence of monitoring by the SsE/DSE towards realisable revenues of the State.

The matter was reported to the Government/Department in July 2019 and January 2020, reply was awaited (December 2020).

***Recommendation: The Department may strengthen its monitoring mechanism and ensure realisation of annual license fee in time as per the provision of the Assam Excise Rules. The supervising higher authorities may put in place a review mechanism including submission of documents to ensure that such case are reported to them.***

#### 4.3.6 Non-realisation of Establishment charges

*Superintendents of Excise (SsE) failed to realise establishment charges of ₹1.01 crore from licensees.*

##### [SsE of Golaghat, Tinsukia and Kamrup; December 2018-March 2019]

Rule 7 of Assam Bonded Warehouse (ABW) Rules, 1965 provides that the Commissioner of Excise (CE) shall appoint such Excise Officers and establishment as he thinks fit to the charge of the bonded warehouse. The licensee shall pay to the State Government at the end of each calendar month, such establishment charges as the CE may determine from time to time. The cost of establishment shall include pay and allowances, if any, as well as leave salary and pension contribution.

Further, as per notification of August 2016<sup>182</sup>, the excise establishment posted at the erstwhile bonded warehouses (now wholesale warehouse licensees) shall not be withdrawn till the entire amount of arrear *ad-valorem* levy and VAT on the transitional taxable under-bond stock of liquor including the stock in transit is deposited and the licensee concerned shall be liable to reimburse to the Government, the salary, *etc.* of such excise establishment till they are withdrawn by the Government on a no-dues certificate issued by the concerned Superintendent of Excise (SE) or Deputy Superintendent of Excise and the concerned Superintendent of Taxes.

On scrutiny of records relating to establishment charges of eight SsE offices (out of 26 SsE offices in the State) during 2018-19, Audit noticed that in three unit offices<sup>183</sup>, excise personnel remained posted at three distilleries/ bottling plants<sup>184</sup> (out of total 18

<sup>182</sup> As per Serial No. 9 of Notification No. EX.107/2016/19 dated 29 August 2016

<sup>183</sup> SsE of Golaghat, Tinsukia and Kamrup

<sup>184</sup> (1) M/s Gaytry Distillers and Bottling Industries wholesale warehouse, Tinsukia, (2) M/s Himalayan Distillery Pvt. Ltd., Kamrup and (3) M/s Mangalam Distillery and Bottling, Kamrup.

distilleries/ bottling plants) and nine wholesale warehouses<sup>185</sup> (erstwhile bonded warehouse) (out of 37 bonded warehouses) where licensees owed ₹ 1.01 crore as establishment charges<sup>186</sup> (*Appendix 13*).

Audit noticed that the SsE did not issue demand notices on regular basis and in cases where demand notices were issued, they did not pursue further, leading to non-realisation of dues. Further, Audit noticed that the SsE did not maintain demand, collection and balance register for reviewing the receivable establishment charges from the licensees and to initiate timely action for realisation of government dues.

On this being pointed out by audit, the SE, Golaghat stated that M/s B. G Bonded Warehouse has deposited (September 2019) ₹ 1.21 lakh. Recovery from other distilleries/ bottling plant/ wholesale warehouse not yet reported (December 2020).

The matter was reported to the Government/Department in July 2019 and January 2020, reply was awaited (December 2020).

***Recommendation: The Department should put in place a mechanism to realise the establishment charges of the officials posted in all units concerned on monthly basis and ensure recovery of the establishment charges prior to issuance/renewal of licences.***

#### **4.3.7 Security deposit short/non realised following enhancement of rates**

*Superintendents/ Deputy Superintendents of Excise failed to realise enhanced security deposit as per provisions of the Assam Excise Rules, 2016 amounting to ₹ 14.99 crore from 794 licensees*

**[Superintendents of Excise (SsE), Sivasagar, Tinsukia, Golaghat, Kamrup, and Karbi Anglong, Diphu, Deputy Superintendents of Excise (DSsE), Sonari, Nazira and Bokakhat; October 2018 - March 2019]**

Rules made under the Assam Excise (AE) Rules, 2016<sup>187</sup> provides that in addition to annual licence fee, the licence holders of retail IMFL 'OFF'/ 'ON', bonded warehouse and distilleries are required to deposit security money for the due observance of the conditions and terms of the licence at the rate as shown in **Table 4.3.3**.

<sup>185</sup> (1) M/s R.S. Bonded Warehouse Pvt. Ltd., Golaghat, (2) M/s B.G Bonded Warehouse, Golaghat, (3) M/s Eastern Enterprise Pvt. Ltd, Kamrup, (4) M/s KDC bonded Warehouse Pvt. Ltd., Kamrup, (5) M/s Rang Bonded Wholesale Warehouse Pvt. Ltd., Kamrup, (6) M/s Kalong Valley Enterprises, Kamrup, (7) M/s Robby Bonded warehouse, Kamrup, (8) M/s Megha Assam Pvt. Ltd., Kamrup and (9) M/s Paradise Bonded Warehouse, Kamrup.

<sup>186</sup> *Ad-valorem* levy and VAT on transitional stock remained unpaid between the period March 2017 and March 2018.

<sup>187</sup> Gazette Notification No. Ex. 138/2015/99 dated 1 September 2016

Table 4.3.3: Security Deposit for various types of licenses

Types of license	Security deposit payable
'OFF'/'ON' retail sale licence <sup>188</sup>	Equivalent amount of licence fees <sup>189</sup>
Bonded Warehouse <sup>190</sup> licence	Fifty <i>per cent</i> of licence fees or more according to the volume of business <sup>191</sup>
Distillery licence	Fifty <i>per cent</i> of licence fees or more according to the volume of business <sup>192</sup>

In case of any breach of condition of licence under the AE Rules, it shall be incumbent on the part of the Commissioner of Excise to realise all sums due to the State Government from security deposit made by the licensee and to cancel their licences. However, security deposit may be refunded towards the end of the year or transferred at the licensees' request to the next year.

In course of audit of 18 SsE/ DSsE (out of 45 SsE/DSsE in the State) during 2018-19, in eight SsE/ DSsE offices, it was noticed that 610 licensees of IMFL 'OFF'/ 'ON' and one distillery<sup>193</sup> did not pay the enhanced security money of ₹11.54 crore (*Appendix 14*) while the licensees paid their annual renewal fees for the year 2017-18 and 2018-19. Further, Audit noticed that the records of security deposits<sup>194</sup> concerning to 181 licensees of IMFL 'OFF'/ 'ON' and two bonded warehouse from whom security deposit of ₹ 3.45 crore (*Appendix 15*) was to be realised by the SsE/ DSsE concerned, were not available. Thus, the SsE/ DSsE failed to ensure implementation of the provisions of the AE Rules, 2016 which had enhanced the license fee as also the security deposit, which may have adverse consequence in the event of breach of terms and conditions by the licensees under the AE Rules, 2016.

On this was pointed out, SE, Golaghat stated (November 2019) that licences were issued prior to implementation of AE Rules, 2016, therefore, realisation of security money does not arise without instruction of the higher authority. Reply furnished by the SE, Golaghat is not tenable as the Rule 19 (b) of AE Rules, 2016, which was implemented from September 2016 authorise security money, if not forfeited, to be refunded or transferred at the request of licensee to the next year.

Audit noticed short/non-realisation of security money from the licensees in respect of eight SsE/DSsE. The Department may internally examine similar issues in other SsE/DSsE offices.

The matter was reported to the Government/Department between December 2018 to May 2019, reply was awaited (December 2020).

**Recommendation:** *The Department may issue instructions to ensure that excise officers recover enhanced Security Deposits at the time of realizing the annual licence fee from dealers.*

<sup>188</sup> Except 'ON' the premises in a club, temporary and occasional licences and Military Canteen tenant licence.

<sup>189</sup> Rule 19(b) of the AE Rules, 2016. Annual licence fee prescribed under Rule 19 (a) (III).

<sup>190</sup> Premises within a manufactory.

<sup>191</sup> Rule 458(3) of the AE Rules, 2016.

<sup>192</sup> Rule 500(c) of the AE Rules, 2016.

<sup>193</sup> M/s Radiant Manufacturers Pvt. Ltd.

<sup>194</sup> Such as challans, bank guarantee etc.

## Section 4: Transport Department

### 4.4.1 Administration

The Commissioner of Transport (CoT), Assam is responsible to ensure road safety through implementation of Motor Vehicles Act and Rules and also regulate the road transport sector through the State Transport Authority and the Regional Transport Authority in the districts. The CoT needs to ensure proper licensing of drivers after they fulfil required conditions and also register motor vehicles. It has also the responsibility of educating the public on road safety norms, so that no life is lost or impaired because of road accidents.

The Principal Secretary to Government of Assam (GoA), Transport Department is Head of the Transport Department. Two Joint Commissioners of Transport, three Deputy Commissioners of Transport and five Assistant Commissioners of Transport assisted the CoT, Assam. District Transport Officers (DTOs) head the Districts level offices<sup>195</sup>. Motor Vehicle Inspectors, Enforcement Inspectors and other officials assisted the DTOs. They are empowered to implement Taxes on Laws and Rules thereunder *i.e.* the Motor Vehicles Act, 1988, the Central Motor Vehicles Rules, 1989, the Assam Motor Vehicle Rules, 2003, *etc.*

The Transport Department is responsible for collection of taxes, fees and fines on motor vehicles in Assam. For commercial vehicles, motor vehicle tax is realised every year and the vehicle owner has the option to pay it quarterly, half yearly or annually; while One Time Tax of 15 years is realised in case of private vehicles. Besides, composite fee *in lieu of* motor vehicle tax is also collected from owners of commercial vehicles bearing national permit/ tourist permit of other states plying in Assam. Further, there is provision for levy and collection of fines for various offences imposed under the respective Acts and Rules.

### 4.4.2 Results of Audit

Test check of records of 26 offices<sup>196</sup> (out of total 52 offices) of the Transport Department during 2018-19 showed non/ short levy and realisation of motor vehicles taxes/ fines amounting to ₹ 23 crore in 120 cases as shown in **Table 4.4.1**.

**Table 4.4.1: Results of Audit**

Sl. No.	Category	Number of cases	Amount (₹ in crore)
1	Non-realisation of Road Tax and fine	14	5.28
2	Non-realisation of Inspection fee and fine	13	14.07
3	Non realisation/ renewal of Trade licence Fee	10	0.28
4	Non assignment of new registration numbers	3	0.64
5	Others	80	2.73
<b>Total</b>		<b>120</b>	<b>23.00</b>

<sup>195</sup> There are 29 Districts level offices.

<sup>196</sup> Excluding Apex Office *i.e.* Office of the Secretary, Government of Assam Transport Department.

During the year, the Department accepted 23 cases involving ₹ 5.78 crore. An amount of ₹ 11.24 lakh in four cases was realised during the year 2018-19.

A few illustrative cases having financial impact of ₹ 6.19 crore on non-realisation MV Tax, fitness fee and licence fee, *etc.* are discussed in succeeding paragraphs.

## Compliance Audit Paragraphs

### 4.4.3 Motor Vehicle (MV) tax and fine not realised from Commercial Vehicles

*The DTOs failed to detect tax defaulters of commercial vehicles despite implementation of 'VAHAN' software. This resulted in non-realisation of motor vehicle taxes of ₹4.03 crore from 6,062 vehicle owners.*

**[DTOs, Kamrup (Metro) (R & L), Hailakandi, Dhemaji, North Lakhimpur, Barpeta, Tinsukia, Darrang, Dima Hasao, Bongaigaon, Morigaon, Kokrajhar, Chirang and Baksa; April 2018 - March 2019]**

Section 5 of the Assam Motor Vehicle Taxation (AMVT) Act, 1936 provides that MV tax is leviable on vehicle used for commercial purposes in advance each year or the vehicle owner has the option to pay it quarterly and annually. The Department revised rate of MV tax in May 2011 and September 2015. Further, every owner who fails to pay the appropriate road tax in time shall be liable to pay a fine of ₹ five *per* day of such delayed payment.

Section 44 of the AMVT Act, 1936 provides that the licensing officer shall maintain a Combined Register in respect of all vehicles plying in his jurisdiction in Form III<sup>197</sup> to watch the recovery of MV tax. However, after migration to 'VAHAN 4'<sup>198</sup>, from 'VAHAN 2'<sup>199</sup> software in Assam<sup>200</sup>, all such information as contained in a Combined Register are also available in the system. The DTO is required to generate report in respect of tax deposited and review the tax defaulter report generated through 'VAHAN' software at periodic intervals and issue demand notices to defaulters.

Rule 49 (2) of the AMV Rules, 2003 provides that if a vehicle owner decides to withdraw his vehicle off the road for repairs, *etc.* for a period of more than 30 days continuously, and seeks temporary exemption of taxes for this period, then he/ she is required to submit an application in Form 'H' in triplicate along with the documents of the vehicle/ number plates before the Registering Authority.

<sup>197</sup> All particulars relating to vehicle such as Registration number, Date of registration, Date of purchase, Date of validity of registration, Engine number, Chassis number, name and address of vehicle owner, *etc.*

<sup>198</sup> Which is an online system.

<sup>199</sup> Which was off line system.

<sup>200</sup> Phase manner district wise, starting from November 2016.

During audit of 13 DTOs<sup>201</sup> (April 2018 – March 2019), it was seen from reports generated from ‘VAHAN’ software that out of the total 2.76 lakh commercial vehicles (as on March 2018) in 13 DTOs (out of 29 DTOs), 6,062 vehicle owners (2.20 per cent) had not paid MV tax of ₹ 4.03 crore between October 2008 to March 2018. The ‘VAHAN’ software did not show that these vehicles were off the road<sup>202</sup>/ transferred to other Districts/ States or their registration certificates being cancelled or surrendered. Thus taxes due were recoverable from the owners of the vehicles.

The Department had not taken any action to recover MV tax of ₹ 4.03 crore. In addition, fine of ₹ 1.13 crore was also leviable (calculated up to March 2018) (*Appendix 16*) as per the AMVT Act.

On this being pointed out by Audit, nine DTOs<sup>203</sup> stated (February 2018 to August 2018) that demand notices have been issued to the owners of the defaulting vehicles for realisation of road tax and three DTOs<sup>204</sup> had realised ₹ 9.31 lakh (against recoverable amount of ₹ 47.62 lakh pointed by audit) from 105 defaulters (out of 1,322 defaulters).

Besides, Department stated (May 2020) that steps will be taken to upgrade the monitoring mechanism and appropriate action will also be initiated against the defaulters for recovery of the dues.

Audit has noticed non-realisation of MV tax of ₹ 4.03 crore and fine of ₹ 1.13 crore on verification of records of 13 unit offices, out of 29 unit offices in the State. The Department should internally examine similar issues in other unit offices also.

***Recommendation: The DTOs should regularly monitor the dues of commercial transport vehicles owners with assistance of ‘VAHAN’ Software. They should ensure that demand notices are issued on real-time basis to the tax defaulters.***

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<sup>201</sup> DTOs, Kamrup (Metro) (R & L), Hailakandi, Dhemaji, North Lakhimpur, Barpeta, Tinsukia, Darrang, Dima Hasao, Bongaigaon, Morigaon, Kokrajhar, Chirang and Baksa.

<sup>202</sup> Submission of ‘H’ form for exemption of tax during the period.

<sup>203</sup> DTOs, Hailakandi, Dhemaji, North Lakhimpur, Barpeta, Tinsukia, Dima Hasao, Morigaon, Kokrajhar and Chirang.

<sup>204</sup> DTOs, North Lakhimpur, Morigaon and Hailakandi.

#### 4.4.4 Non-verification/ renewal of fitness certificate of transport vehicles

*DTOs had not verified fitness expiry of vehicles despite facility of generating Fitness Expiry Report, being available in 'VAHAN' software. This resulted in non-recovery of testing fee and renewal fee amounting to ₹ 61.86 lakh from 10,133 transport vehicles potentially plying without valid fitness certificate.*

**[DTOs, Kamrup (Metro) (R & L), Tinsukia, Bongaigaon, Hailakandi, Karimganj, Morigaon, North Lakhimpur, Dhemaji, Baksa and Dima Hasao; April 2018 - March 2019]**

Under Section 56 of the Motor Vehicles (MV) Act, 1988, a transport vehicle shall not be deemed to have a valid registration under the Act, unless it carries a certificate of fitness. Further, under Section 84 (a) of the MV Act, 1988, one of the conditions for every permit is that the vehicle to which the permit relates, carries a valid certificate of fitness issued under Section 56 of the Act. As per Rule 62 of the Central Motor Vehicle (CMV) Rules, 1989, the certificate of fitness issued at the time of registration of a new transport vehicle is valid for two years and is to be renewed every year on payment of testing fee and renewal fee.

In addition, the Government of Assam notified<sup>205</sup> (December 2018) an additional fee of ₹ 50 for each day delay after expiry of certificate of fitness.

As per Rule 26 of the Assam Motor Vehicle (AMV) Rules, 2003, the DTO shall maintain record of each fitness certificate issued by him. Further, as per Rule 87(2) of the AMV Rules, 2003, the Motor Vehicle Inspector (MVI) may inspect any transport vehicle at any time at any place to check whether the vehicle is fit for plying on public roads.

During audit of the 10 DTOs<sup>206</sup> (April 2018 – March 2019) (out of 29 DTOs), it was seen from Fitness Expiry Reports generated from 'VAHAN' software<sup>207</sup> that out of total 2,54,508 transport vehicles<sup>208</sup>, fitness certificate of 10,133 transport vehicles<sup>209</sup> (3.98 per cent) had expired between March 2015 and March 2018, but had not been renewed. Thus, the inspection fee and renewal fee of ₹ 61.86 lakh<sup>210</sup> was not realised from 10,133 transport vehicles. Besides, additional fee of ₹ 50 per day is also leviable. The category-

<sup>205</sup> Vide notification no. TMV.219/2017/22 dated 19 December 2018 followed by Government of India's notification no. G.S.R.1183 (E) dated 29 December 2016.

<sup>206</sup> Kamrup (Metro) (R&L), Tinsukia, Bongaigaon, Morigaon, Baksa, Karimganj North Lakhimpur, Hailakandi, Dhemaji and Dima Hasao.

<sup>207</sup> However, in respect of Karimganj and Hailakandi DTO offices the information is from manual records, as software was not working properly.

<sup>208</sup> Kamrup (Metro) (R&L)-168221, Tinsukia-21504, North Lakhimpur-16720, Hailakandi-10143, Baksa-5273, Bongaigaon-12341, Karimganj-9395, Dhemaji-3786, Morigaon-5312 and Dima Hasao-1813.

<sup>209</sup> Excluding vehicles under the jurisdiction of DTOs, Kamrup (Metro) (R&L) and North Lakhimpur for the period upto October 2017 and 17 May 2017 respectively which have already been featured in previous C&AG's Audit Report (Revenue Sector) for the year ending 31 March 2018.

<sup>210</sup> Rate for Testing per vehicle: ₹ 400 (LMV) & ₹ 600 (MMV/HMV) and rate of certificate renewal fee per vehicle ₹ 200 (LMV/MMV/HMV).

wise number of vehicles whose fitness certificate expired between March 2015 and March 2018 are shown in **Table 4.4.2**.

**Table 4.4.2: Expiry of fitness of Transport vehicles under 10 DTOs**

(Amount in ₹)

Sl No	Name of the DTO	Category of vehicle	No. of defaulting vehicles	Period of expired fitness certificates as per MIS Report of 'VAHAN' database	Testing fee realisable	Certificate renewal fee realisable	Total
1	Tinsukia	LMV/ MMV/HMV	1,241	12/01/2016 to 31/03/2018	508400	248200	756600
2	Bongaigaon		1,069	02/02/2016 to 31/03/2018	432600	213800	646400
3	Hailakandi		176	05/02/2016 to 31/03/2018	79600	35200	114800
4	Morigaon		1,377	20/03/2015 to 31/03/2018	5,55,800	2,75,400	8,31,200
5	North Lakhimpur		1,800	18/05/2017 to 31/03/2018	7,40,800	3,60,000	11,00,800
6	Dhemaji		1,192	16/05/2015 to 31/03/2018	4,87,800	2,38,400	7,26,200
7	Dima Hasao (Haflong)		256	01/04/2015 to 31/03/2018	1,05,800	51,200	1,57,000
8	Kamrup (Metro)		1,225	01/11/2017 to 31/03/2018	5,26,400	2,45,000	7,71,400
9	Karimganj		946	19/02/2016 to 31/03/2018	3,80,800	1,89,200	5,70,000
10	Baksa		851	29/06/2016 to 31/03/2018	3,41,400	1,70,200	5,11,600
<b>Total</b>			<b>10,133</b>		<b>41,59,400</b>	<b>20,26,600</b>	<b>61,86,000</b>

Test check further showed that in some cases, tax<sup>211</sup> due had been realised without renewal of fitness certificate. Though, complete address of the defaulters were available in the 'VAHAN' software and records maintained, the DTOs failed to ascertain actual status of these cases. Further, specific feature to prevent vehicle owners from paying tax whose fitness certificate had expired was not available in the software. Moreover, the unfit vehicles also pose a threat to road safety and environment.

Thus, due to the failure of the Department/ DTOs to take cognisance of Fitness Expiry Report and appropriate steps thereafter, the State has been put to a loss of ₹ 61.86 lakh and at the same time plying of unfit vehicles on roads posed threat to people's safety.

On this being pointed out, the Department stated (May 2020) that the DTOs were directed to verify the list of defaulter and take appropriate steps.

DTOs, Tinsukia and Hailakandi stated that the fitness certificates have been issued on realisation of fees manually however, the system does not allow entry of fees and fines realised manually. DTO, Karimganj renewed 30 fitness certificates out of 946 cases.

DTOs, Morigaon and Dima Hasao stated that list of defaulters had been shared with the enforcement wing for detection during road checking. Further, DTO, Morigaon issued fitness certificate in respect of 49 numbers of vehicles on realisation of ₹ 1.93 lakh being fees and fines.

**Recommendation:** *The Transport Department may consider coordinating with Traffic Police and share the Fitness Expiry Reports to trace out the unfit vehicles plying on road. Further, the Department may internally examine similar issues in*

<sup>211</sup> Quarterly/Annual road tax payable by the commercial vehicle.

respect of other DTOs. The Department may also take up this issue with MoRTH for effecting specific control in the VAHAN software, which would not permit vehicle owners to pay tax unless they have renewed their fitness certificate.

#### 4.4.5 License fee not realised from Agents for Goods and Passenger carrier

*Absence of a mechanism for periodic review of Agents Licences resulted in non-realisation of renewal licence fee of ₹ 41.30 lakh due from 68 Agents of Transport Carriers*

#### [Commissioner of Transport (CoT), Assam; May 2018]

Rule 53 (A) (1) of the Assam Motor Vehicle (AMV) Rules 2003, provide that an agent's licence for Goods and Passenger carriage shall be valid for a period of one year from the date of its grant or renewal. Rule<sup>212</sup> also provides, no person shall act as an agent unless he holds a valid licence granted by the Licensing Authority for the purpose of running their business. The rates<sup>213</sup> of renewal of licence fee in respect of Agent licence for Goods and Passenger Vehicles are as under:

**Table 4.4.3: Annual License fee for various vehicles**

Sl. No.	Class of Licence	Annual Licence Fee	
		Pre-revised rate (effective up to 29 December 2016)	Revised rate (effective from 30 December 2016 <sup>214</sup> )
1	Passenger Vehicle	₹ 10,000 per year, plus ₹ 600 per year for every Additional Branch.	₹ 20,000 per year for the main licence in Headquarter plus ₹ 10,000 per year for every Additional Branch.
2	Goods Vehicle	₹ 20,000 per year plus ₹ 1,200 per year for every Additional Branch.	₹ 40,000 per year for the main licence in Headquarter plus ₹ 20,000 per year for every Additional Branch.

Scrutiny of records (May 2018) and information furnished by the CoT to audit, revealed that Agent licences for 37 out of 40 (92 per cent) Agents of Goods carriers and 31 out of 119 (26 per cent) agents of Passenger carriers were not renewed by the Department during the period April 2015 to March 2018. This resulted in business being carried out by the agents in an unauthorised manner. Renewal licence fee for the period 2015-16 to 2017-18 worked out to ₹ 41.30 lakh<sup>215</sup> (*Appendices-17 and 18*), which remains unrealised (May 2018).

Non-realisation/ pendency of Agents licence fee was also pointed<sup>216</sup> out through a Performance Audit on "Working of Transport Department" featured in C&AG's Audit Report on Revenue Sector of Government of Assam for the year ended 31 March 2016. The Department while accepting the audit observation had stated (October 2016) that meetings with Agents have been held and they have been instructed to renew the

<sup>212</sup> Under 51(1) of the Assam Motor Vehicle (AMV) Rules 2003.

<sup>213</sup> Under 53 (B) of the Assam Motor Vehicle (AMV) Rules 2003.

<sup>214</sup> Notification No. TMV/153/2013/202 dated 30 December 2016.

<sup>215</sup> Goods & Passenger Vehicles ₹ 30.60 lakh and ₹ 10.70 lakh respectively.

<sup>216</sup> Para 4.2.11.

licences within the stipulated time and all DTOs have been instructed to ensure that no agent operates without valid licence. Despite the assurance given, the Government/ Commissioner of Transport failed to check the operation of agents of goods and passenger carrier without valid licence.

On this being pointed out, the Department while accepting the audit observation stated (September 2020) that the agents of Passenger carriers have not applied for cancellation of licence, however, the matter will be verified regarding non-renewal of licenses by Agents.

***Recommendation: The Department should carefully examine all such cases of functioning of the agent licence holder and take corrective measures without any further delay.***

## Section 5: Environment and Forest Department

### 4.5.1 Administration

State of Assam comprising of 33 civil districts including three hill districts is endowed with rich forest resources. The State has also been identified as one of the 18 biodiversity hotspots in the world. Out of the total geographical area of 78,438 sq. km., the forest cover of Assam is 28,105 sq. km<sup>217</sup>. Revenues in the Forest Divisions are mainly derived from sale proceeds of major and minor forest produce grown in the forest areas of the respective divisions through auction, negotiation and permit of allotment. Collection of royalty from minor minerals, licence fee from sawmills and timber depots also form part of forest revenue apart from fees, fines, *etc.* imposed under various Acts/Rules.

The Principal Chief Conservator of Forests and Head of Forest Force (PCCF and HoFF), Assam is in overall charge of the Department. Four Principal Chief Conservators of Forests (PCCF), 11 Additional Principal Chief Conservators of Forests (APCCF), 11 Chief Conservators of Forests (CCF) and nine Conservators of Forests (CF) assisted the PCCF and HoFF. In addition, there were 68 forest divisions<sup>218</sup> headed by a Deputy Conservator of Forests (DCF)/Divisional Forest Officers (DFOs). The divisions were further divided into ranges and beats for ensuring effective control and supervision of the forests.

The mandate of the Forest Department is to manage the Forest, Forest produces and Wildlife in the State. The principal act, regulation and rules which govern the functioning of Department of Environment and Forests are the Assam Forest Regulation, 1891; Assam Sale of Forest Produce, Coupes and *Mahals* Rules, 1977; Forest (Conservation) Act, 1980; Wildlife (Protection) Act, 1972; Assam Minor Minerals Concession Rules, 2013; and Rules and notifications/ orders issued thereunder, from time to time.

### 4.5.2 Results of Audit

Test check of records of 23 units relating to the Environment and Forest Department during 2018-19 revealed cases of non/ short realisation of royalty, non-levy of interest/ short realisation of royalty/ extension fee and other irregularities in 182 cases involving ₹ 11.63 crore as shown in **Table 4.5.1**.

<sup>217</sup> Very Dense Forest-2,797 sq. km, Moderately Dense Forest-10,192 sq. km; Open Forest-15,116 sq. km.

<sup>218</sup> Under the Forest Department, there were 33 Territorial Forest Divisions, eight Wildlife Forest Divisions and 14 Social Forestry Divisions. Assam also has two State Forestry Training Institutes, namely the Assam Forest School at Jalukbari and Assam Forest Guards School, Makum for training of the Foresters and Forest Guards respectively.

**Table 4.5.1: Results of Audit**

Sl. No.	Category	Number of cases	Amount (₹ in crore)
1	Non/ Short realisation of royalty	2	0.08
2	Non levy of interest/ VAT	7	0.27
3	Non-realisation of MMDRR fund	6	0.79
4	Non-disposal of Timber	9	0.52
5	Loss of Government revenue	8	2.14
6	Other irregularities	150	7.83
<b>Total</b>		<b>182</b>	<b>11.63</b>

During the year, the Department accepted and realised an amount of ₹3.87 crore in 28 cases pertaining to the audit observations issued prior to 2018-19.

A few illustrative cases having financial impact of ₹ 13.28 crore on irregular grant of Mineral Concession and short realisation of forest royalty, *etc.* are discussed in succeeding paragraphs.

## Compliance Audit Paragraphs

### 4.5.3 Irregular grant of Mineral Concessions

*Divisional Forest Officers granted Mineral Concessions (September –December 2015, August 2016 and May 2017) to other than the highest bidders without any recorded reasons, resulting in loss of forest revenue of ₹12.84 crore.*

#### **[Divisional Forest Officer (DFO), Dhemaji, Chirang, Dhansiri and Baksa Division; June - October 2019]**

As per the Rules 18 and 32 of Assam Minor Mineral Concession (AMMC) Rules, 2013, all mining contracts should be granted through competitive bidding process and allotted to the highest bidder<sup>219</sup>. In case of any exception, the appropriate authority should clearly record the reasons for rejection of higher bids and acceptance of lower bid.

Audit test checked settlement of Mineral Concessions (MCs) records in 11 Forest Territorial divisions<sup>220</sup> (out of 33 divisions) between June 2019 to October 2019. Out of 266 MCs, Audit scrutinised 108 MCs (41 *per cent*) and observed that the highest bidder of nine MCs in three divisions had been rejected without any recorded reasons (January 2015 – February 2015). Further, in two cases, the MCs were not allotted to the highest bidders on minor grounds<sup>221</sup> without giving any opportunity for rectification of defects in documents submitted in the interest of higher revenue. The cases of non-allotment of MCs to the highest bidders resulted in loss of revenue of ₹ 12.84 crore over the period of seven years as discussed in succeeding paragraphs:

<sup>219</sup> No-FIG.20/2001/4 dated 15 December 2003.

<sup>220</sup> Territorial divisions of Kamrup East, Kamrup West, Nagaon, Nagaon South, Cachar, Karbi-Anglong East, Dhemaji, Lakhimpur, Dhansiri, Chirang and Baksa.

<sup>221</sup> In one case the bidder was rejected on the ground of non-submission of caste certificate. In two cases the highest bidder was rejected on the ground of submission of FSC without self-attestation.

**4.5.3.1** On scrutiny of comparative statements in three forest divisions, Audit noticed that nine MCs were not settled with the highest bidder in spite of fulfilment of all required criteria<sup>222</sup>. The competent authority issued settlement orders between September 2015 and December 2015 of these nine MCs to bidders who offered lower price without any recorded reasons for rejection of higher bids and acceptance of lower bid. This resulted in loss of revenue amounting to ₹ 10.37 crore as shown below:

**Table 4.5.2: Details of MC Holders**

Division/ No. of MCs test-checked	Name of the MCs	Quantity under settlement (in cum)	Period & date of Settlement	Details of bids (₹ in lakh)		
				Highest	Allotted	Difference
<b>Baksa / 10 MCs</b>	Palla River Sand and Stone	28,000 (Sand)	7 Years & 28.10.15	108.50	73.50	35.00
		14,000 (Stone)				
	Pakhamara River Sand and Stone	28,000(Sand)	7 Years & 16.09.15	247.94	80.50	167.44
		10,500 (Stone)				
	Pagladia Stone & Sand Gravel	21,000 (Stone)	7 Years & 09.11.15	129.50	94.50	35.00
		28,000 (Sand)				
	Kaldia (Doijama) Gravel sand & Stone	3,500 (Sand)	7 Years & 01.10.15	31.50	17.50	14.00
		7,000 (Stone)				
Darranga Stone & Sand No.6	7,000 (Sand)	7 Years & 30.10.15	68.67	31.57	37.10	
	7,000 (Stone)					
Barnadi Sand & Stone-No.3	14,000 (Sand)	7 Years & 16.10.15	670.21	139.93	530.28	
	21,000 (Stone)					
Barnadi Stone & Sand-1(A)	8,750 (Sand)	7 Years & 16.09.15	329.00	171.85	157.15	
	36,750 (Stone)					
<b>Chirang / 15 MCs</b>	Aie-Ghat Sand Gravel	17,500 (Sand)	7 Years & 30.09.15	98.01	68.92	29.09
		17,500 (Stone)				
<b>Dhansiri / 12 MCs</b>	Dhansiri Sand/Stone No-1	14,000 (Sand)	7 Years & 29.12.15	86.00	54.49	31.51
		14,000(Stone)				
<b>Total</b>				<b>1,769.33</b>	<b>732.76</b>	<b>1,036.57</b>

On this being pointed out, the Department stated (December 2020) that the Dhansiri Sand/Stone Mahal No-1 was settled with the third bidder after the highest bidder withdrew the writ petition from the court in October 2015.

The reply is not tenable as audit noticed that the Dhansiri Sand/Stone Mahal No-1 was settled with the third highest bidder in May 2015 *i.e.* prior to filing of the court case (June 2015). Moreover, no specific reply had been provided by the Department for settling the MCs with the lowest bidders w.r.t the Baksa and Chirang divisions.

**4.5.3.2** On scrutiny of records related to settlement of 25,200 cum stone and 16,800 cum sand for seven years in Upper Subansiri Tamuli sand and gravel MC<sup>223</sup> under DFO, Dhemaji Division, Audit noticed that PCCF & HoFF, Assam had settled (May 2017) the MC with the second highest bidder<sup>224</sup> (out of five bidders<sup>225</sup>) at his offered bid of ₹ 4.50 crore. The PCCF & HoFF rejected the highest bid<sup>226</sup> (bidding value of

<sup>222</sup> (i) PAN No., TIN to be mentioned in the tender form (ii) A Financial Soundness Certificate from the DC/SDO ascertaining the financial capability to operate the mining contract.(iii) Demand Draft of Earnest Money (iv) Caste Certificate *etc.*

<sup>223</sup> Out of selected 4 MCs.

<sup>224</sup> Shri Debojit Gogoi.

<sup>225</sup> There were five bidders. The DFO, Dhemaji and Conservator of Forest, Northern Assam Circle, Tezpur recommended for highest bidder Shri Joy Kumar Basumatary.

<sup>226</sup> Shri Joy Kumar Basumatary.

₹ 5.90 crore) on the ground that the Circle Officer issued his Financial Soundness Certificate (FSC) instead of Deputy Commissioner/ Sub-divisional Officer of the District as specified in the NIT. Although, the bidder requested the PCCF & HoFF to allow him an opportunity to rectify the defects in the documents submitted, which was not acceded to.

Further scrutiny revealed that the PCCF & HoFF, Assam had settled another MC<sup>227</sup> in February 2017 with the same bidder on an FSC issued by Circle Officer. Moreover, there were instances of settlement of MCs<sup>228</sup> under the same division with the highest bidder by giving an opportunity to submit FSC from the authority mentioned in the NIT. Thus, arbitrary decision of the PCCF & HoFF to settle the MC in favour of a bidder other than the highest bidder resulted in loss of revenue of ₹ 1.40 crore.

On this being pointed out by Audit, the Department stated (December 2020) that the decision to settle the *mahal* with the second highest bidder could have been taken as the price offer of the bidder was very high and which may result in escalation of price of sand and stone in Tamuli area.

The reply is not tenable as the possibility of increase in prices is not supported by any documentary evidence. Moreover, terms and conditions of bid did not mention any such criteria for rejection of the bid. Further, Audit noticed that while finalising the settlement of mahal, the PCCF & HoFF, Assam rejected the highest bidder's offer on the ground that FSC was obtained from the Circle Officer, which was not in consonance with the terms and condition of the sale notice.

**4.5.3.3** On scrutiny of comparative statement for settlement of 3,500 cum sand and 14,000 cum gravel for seven years in Agrong Sand & Gravel Mahal under DFO Chirang, Audit noticed that the division had received (January 2015) six bids, of which second highest bidder's<sup>229</sup> offer at ₹ 1.55 crore was valid in all respects. The DFO had rejected his bid on the ground that the bidder had submitted all required documents without self-attestation (February 2015). The MC was settled (August 2016) with fourth highest bidder<sup>230</sup> at his offered price of ₹ 48.02 lakh. Thus, arbitrary rejection of second highest bid on issue of defective documents, which could have been got rectified by the DFO, resulted in loss of revenue of ₹ 1.07 crore.

The matter was reported to the Government/ Department in May 2020; reply was awaited (December 2020).

***Recommendation: As the cases pointed out by Audit are based on the test-check, the Department may initiate action to examine similar cases across the State. They may issue instructions to DFOs to strictly follow the bidding process results and deviations if any, are recovered with approvals of higher authorities.***

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<sup>227</sup> Upper Subansiri Sonapur sand and gravel mahal.

<sup>228</sup> Siman Sand and Gravel Mahal and Likabali S&G Mahal.

<sup>229</sup> Highest bid of ₹ 5.82 crore was rejected due to non-submission of copy of PAN card by the bidder.

<sup>230</sup> The third bidder did not deposit earnest money.

#### 4.5.4 Short realisation of Forest Royalty

*Failure of the DFOs to observe provisions of the AMMC Rules, 2013 resulted in short realisation of Forest Royalty amounting to ₹31.96 lakh from 31 permit holders.*

#### [Divisional Forest Officer (DFO), Nagaon, Chirang & Karbi Anglong East Division; June - October 2019]

As per Rule 5(5) of the AMMC Rules, 2013<sup>231</sup>, a private land owner having clear title on the record of rights (*Jama bandi*) over a periodic *patta*<sup>232</sup> land is allowed to carry out mining operation in his periodic *patta* land up to a depth of 1.5 meters and sell minor minerals mentioned in Schedule Y<sup>233</sup> only, by paying 1.5 times of royalty of minerals as per the Rules laid down.

The Government of Assam in June 2015 notified<sup>234</sup> the following rate of royalty on minor minerals:

**Table- 4.5.3: Rate of Royalty on Minor Minerals**

Name of minor mineral	Rate of Royalty per cum (in ₹) effective from 17 June 2015
Earth	30
Sand	140
Gravel/ Stone/Boulder	200

Government of Assam did not specify royalty rate of sand gravel, however, the DFO, Chirang was realising royalty on sand gravel at the rate of ₹ 164 per cum<sup>235</sup>.

During scrutiny of records of 11 selected territorial divisions (out of 33 divisions) Audit noticed that three DFOs<sup>236</sup> issued 31 orders (September 2018–March 2019) permitting extraction of 24,678 cum of stone/ boulder, 5400 cum of sand gravel, 450 cum of sand and 25,400 cum of brick earth to *patta* land owners. Scrutiny further revealed that the DFOs realised ₹ 67.90 lakh (October 2018–March 2019) royalty charges at the normal rate of royalty of minor minerals instead of ₹ 99.86 lakh at one and half times of normal rate of royalty as applicable to *patta* land. However, the other eight divisions realised royalty on minor minerals extracted from *patta* land as per the AMMC Rules, 2013. Thus, non-compliance to provision of the AMMC Rules, 2013 by these three divisions, resulted in short realisation of forest royalty of ₹ 31.96 lakh from land owners as detailed in *Appendix 19*.

On this being pointed out by audit, the Department stated (December 2020) that the Nagaon division had issued demand notice to the permit holders and realised ₹ 3.74 lakh from seven permit holders (out of 11 permit holders). In respect of Chirang

<sup>231</sup> Amended *vide* Government of Assam's notification No. PEM.47/2018/16 dated 26 October 2018.

<sup>232</sup> Status of any land settled for longer tenure with right to transfer which is not in case of Annual or Short Lease Patta.

<sup>233</sup> Schedule Y contains name of Minor Minerals viz. Sand, Gravel, Stone, Boulder, Brick Earth, *etc.*

<sup>234</sup> Notification No. PEM.83/2009/Pt-VII – A/39 dated 17 June 2015.

<sup>235</sup> In absence of notified rate for sand gravel, the DFO, Chirang fixed royalty rate of ₹164 per cum (*i.e.* 60 per cent of royalty rate of sand plus 40 per cent royalty rate of gravel).

<sup>236</sup> DFOs, Chirang, Nagaon and Karbi Anglong East.

division, the Department stated that royalty was realised based on rates fixed by the Bodoland Territorial Council (BTC).

The reply is not tenable as the BTC has not framed any separate rules but follows the AMMC Rules, 2013 and rates of royalty fixed by the Mines and Mineral Department, Government of Assam.

***Recommendation: The Department may examine similar issues in other Forest Divisions and initiate corrective measures in the interest of State Revenue. Besides, the Department/ Government may also consider to notify rates of royalty on sand gravel for uniform application across the State.***

#### **4.5.5 Non-realisation of Contract Money of Minor Minerals at enhanced rate**

*Failure of the DFOs to realise enhanced rate of Contract money from 14 Mineral Concession holders after completion of each block of three years as per provisions of the Assam Minor Mineral Concession Rules, 2013, resulted in short realisation of revenue of ₹11.72 lakh in March 2019 on account of 'kist money'. There would be potential loss of revenue to the tune of ₹96.09 lakh till the end of contract period (between August 2022 and March 2023), if revision action is not taken.*

#### **[Divisional Forest Officers (DFO), Chirang & Karbi Anglong East Division; June - October 2019]**

As per Rule 18 (1) AMMC Rules, 2013, the minor mineral deposits, where the competent authority decides to grant the mineral concession in respect of such area in the form of a contract, may be granted on mining contract, for a specified annual quantity (or parts thereof) of minor mineral for a period ordinarily not less than seven years but not exceeding ten years following a competitive bidding process as prescribed under the AMMC Rules, 2013.

As per Rule 38(1) of AMMC Rules, 2013, the lessee/contractor shall deposit the annual dead rent or contract money, as the case may be, in respect of the minor minerals in four quarterly instalments in advance on the first day of April, June, September and December of the year.

Further, Rule 18(2) also provides that the amount of the successful bid shall become the annual contract money payable by the contractor. The annual contract money initially determined at the time of initial grant shall be increased at the rate of twenty-five *per cent* on completion of each block of three years.

Audit scrutinised records (June to October 2019) of 11 selected territorial divisions (out of 33 divisions) and noticed that for 14 MC holders (out of 31 test checked MCs holders<sup>237</sup>) of two territorial divisions, DFOs realised quarterly instalments of Contract money at the pre-revised rates, which the Department had initially determined while finalising the agreement with the successful bidders, instead of enhanced rate of twenty five *per cent* on completion of each block of three years as detailed in **Appendix 20**.

<sup>237</sup> Out of total 81 MCs.

Thus, failure of the DFOs to monitor observance of provision of AMMC Rules resulted in short realisation of Government revenue to the tune of ₹ 11.72 lakh.

Further, if the DFOs continue to realise *kist* money without prescribing enhanced annual contract value at the end of each block of three years as per provisions of the Rules *ibid*, this may result in potential loss of revenue of ₹ 96.09 lakh (*Appendix 21*) at the end of contract period.

On this being pointed out by Audit, the Department stated (December 2020) that *kist* money was not enhanced by error. However, demand notices were issued to MC holders to deposit the difference amount of royalty at enhance rates (Chirang Division). However, no reply was provided for Karbi Anglong East Division (December 2020).

***Recommendation:***

***The Government may explore possibilities of recovering the differential of annual contract money from the contractors in the interest of the State Revenue and also ensure to levy the enhanced kist money in all such cases, in advance, with the quarterly instalments of contract money.***

***The Department may strengthen its monitoring mechanism to ensure that the agreements with successful bidders, are finalised in accordance with the AMMC Rules, so as to prevent leakage of any revenue.***

**Guwahati  
The: 30 July 2021**



**(K. S. GOPINATH NARAYAN)  
Principal Accountant General (Audit), Assam**

**Countersigned**



**New Delhi  
The: 05 August 2021**

**(GIRISH CHANDRA MURMU)  
Comptroller and Auditor General of India**

