

CHAPTER – II : SALES TAX

2.1 Result of audit

Test check of the records of the sales tax offices conducted during the year revealed irregular grant of concessional rate/exemption, loss of revenue, turnover escaping assessment, non/short levy of interest etc., amounting to Rs. 109.04 crore in 243 cases which fall under the following categories:

(Rupees in crore)

Sl. No.	Category	Number of cases	Amount
1.	Irregular grant of exemption	32	52.86
2.	Loss of revenue	5	7.82
3.	Turnover escaping assessment	18	5.20
4.	Non/short levy of interest	33	4.03
5.	Other lapses	155	39.13
Total		243	109.04

During the year 2007-08, the department accepted non-levy of tax and interest, irregular grant of concessional rate of tax, incorrect grant of exemption etc., amounting to Rs. 19.71 lakh in nine cases and recovered Rs. 12.16 lakh.

A few illustrative cases involving Rs. 57.22 crore are mentioned in the following paragraphs.

2.2 Turnover escaped assessment

Under the provisions of the Assam General Sales Tax (AGST) Act, 1993 read with section 9(2) of the Central Sales Tax (CST) Act, 1956, if any part of the turnover of a dealer in respect of any period has escaped assessment to tax, the assessing officer (AO) may within four years from the end of the relevant year make a reassessment of the dealer. Further, if a dealer fails to pay the full amount of the tax payable by him by the due date, he is liable to pay simple interest at the rate of two *per cent* for each month on the amount by which the tax paid falls short.

2.2.1 Test check of the records of the Superintendent of Taxes (ST), Morigaon between January and February 2007 revealed that a dealer disclosed sale of finished goods valued as Rs. 333.51 crore (AGST : Rs. 18.52 crore; CST : Rs. 314.99 crore) as per the annual returns of turnover for the period from 1998-99 to 2000-01. While finalising the assessments in July 2005, the AO accepted the turnover and assessed tax of Rs. 18.14 crore including interest. Verification of annexure III¹ furnished by the dealer alongwith the return, however, revealed that the actual turnover of the dealer during the aforesaid period was Rs. 387.69 crore. Thus, turnover of Rs. 54.18 crore (Rs. 387.69 crore – Rs. 333.51 crore) escaped assessment resulting in short levy of tax of Rs. 12.13 crore including interest.

2.2.2 Test check of the records of the ST, Morigaon between January and February 2007 revealed that a dealer disclosed stock transfer and interstate sales of goods worth Rs. 349.70 crore and Rs. 294.96 crore respectively for the years 1998-99 to 2000-01. The AO while finalising the assessment in July 2005 accepted these and levied tax of Rs. 13.02 crore including interest of Rs. 4.18 lakh. Scrutiny of the annexure III submitted by the dealer alongwith his returns revealed that the dealer in his manufacturing account had exhibited stock transfer of Rs. 383.37 crore to outside the State during the aforesaid period. Thus, the taxable turnover was understated by Rs. 33.67 crore (Rs. 383.37 crore – Rs. 349.70 crore) which escaped assessment resulting in short levy of tax of Rs. 9.17 crore including interest of Rs. 5.81 crore.

2.2.3 Test check of the records of the ST, Hailakandi in November 2007 revealed that the AO finalised (March 2006) the assessment of a dealer for the year 2002-03 on a turnover of Rs. 310 crore under both the AGST and the CST Acts. Scrutiny of the audited accounts and annexure III submitted by the dealer alongwith his returns revealed that sale of finished goods during the aforesaid period was Rs. 327 crore. Thus, sales turnover of Rs. 17 crore escaped assessment resulting in short levy of tax of Rs. 3.16 crore including interest.

2.2.4 Test check of the records of the Assistant Commissioner of Taxes (ACT), Guwahati unit-D between July and September 2007 revealed that while finalising the assessment of a dealer in March 2007 for the year 2003-04, the AO determined stock receipts of the dealer as Rs. 18.05 crore on

¹ Manufacturing account of a dealer which is required to be furnished alongwith the return.

the basis of the annual return of turnover. Scrutiny of the utilisation statement of form 'F' submitted by the dealer, however, revealed that the dealer actually received stock worth Rs. 20.93 crore. Thus, purchase turnover of Rs. 2.88 crore escaped assessment which resulted in short levy of tax and interest of Rs. 45.09 lakh.

2.2.5 Test check of the records of the ACT, Guwahati unit-A between July and September 2007 revealed that while finalising the assessment of a dealer in July 2006 for the year 2004-05, the AO determined the gross turnover as Rs. 29.60 crore. Of this, concessional rate of tax was allowed on a turnover of Rs. 27.33 crore supported by a declaration in form 'C' and the remaining turnover of Rs. 2.27 crore was exempted from tax treating it as stock transfer. Scrutiny of the 'C' form furnished by the dealer, however, revealed that the declaration form covered sales turnover of Rs. 30.70 crore during the year 2004-05. Thus, turnover of Rs. 3.37 crore (Rs. 30.70 crore – Rs. 27.33 crore) escaped assessment resulting in short levy of tax of Rs. 19.97 lakh.

The cases were reported to the department and the Government between April 2007 and February 2008; their replies have not been received (October 2008).

2.3 Short levy of interest

Under the provisions of the AGST Act, if a dealer fails to pay the full amount of the tax payable by him by the due date, he is liable to pay interest at the rate of two *per cent* for each month on the amount by which the tax paid falls short.

2.3.1 Test check of the records of three² sales tax unit offices between February and September 2007 revealed that seven dealers failed to pay the full amount of the tax payable for the years between 1998-99 and 2003-04 by the due date. The delay in payment of tax ranged between 32 and 96 months. While finalising the assessments of these dealers between May 2005 and May 2007, the AOs levied interest of Rs. 4.14 crore against leviable interest of Rs. 5.75 crore. This resulted in short levy of interest of Rs. 1.61 crore.

After the cases were pointed out, the AO, Golaghat and Guwahati unit-C levied interest of Rs 6.72 lakh in two cases. A report on recovery and reply in the other cases have not been received (October 2008).

2.3.2 Test check of the records of three³ sales tax unit offices between June and September 2007 revealed that the AOs while referring the tax demand against three dealers for the years between 1998-99 and 2003-04 to the *bakijai* officer⁴ between June 2006 and May 2007 failed to update the interest calculation and incorrectly levied interest of Rs. 1.10 crore instead of Rs. 2.45 crore. This resulted in short levy of interest of Rs. 1.35 crore.

The cases were reported to the department and the Government between May and December 2007; their replies have not been received (October 2008).

² Golaghat, Guwahati unit-A and Guwahati, unit-C.

³ Guwahati unit-A, Guwahati, unit-D and North Lakhimpur.

⁴ Recovery officer.

2.4 Application of lower rate of tax

Under schedule IV of the AGST Act, cement is taxable at the rate of 12 *per cent* for sale to persons other than registered dealers and at the rate of eight *per cent* to a registered dealer at the point of first sale in the State. Sales at the last point within the State are taxable at the rate of four *per cent*. The sale to a registered dealer is to be supported by a declaration in form 'A'. Besides tax, an additional tax at the rate of 10 *per cent* on the amount of tax is also leviable.

Test check of the records of the ACT, Guwahati unit-A between July and September 2007 revealed that a dealer imported cement by utilising 100 delivery notes⁵ during the years 2001-02 to 2003-04. While finalising the assessments between April 2005 and March 2007, the AO determined taxable turnover of Rs. 4.43 crore and levied tax at the rate of 4.4 *per cent* treating these sales as last point sales. The assessments were irregular as the sales of cement imported by using delivery notes were first point sales and hence should have been taxed at the rate of 13.2 *per cent*. Application of lower rate of tax resulted in short levy of tax of Rs. 82.11 lakh including interest.

The case was reported to the department and the Government in December 2007; their replies have not been received (October 2008).

2.5 Concealment of turnover

Under the AGST Act read with the CST Act, if a dealer conceals the particulars of his turnover, he shall pay by way of penalty, in addition to tax, additional tax and interest, a sum not exceeding one and half times the amount of tax sought to be evaded.

2.5.1 Test check of the records of the ACT, Guwahati unit-A between July and September 2007 revealed that the AO finalised the assessments of three dealers between July and December 2006 for the years 2003-04 and 2004-05 determining a turnover of Rs. 23.19 crore based on the purchase/stock transfer of goods from outside the State as furnished in the returns by these dealers. Scrutiny of the utilisation statement of forms 'F', however, revealed that the dealers had actually received goods worth Rs. 25.41 crore through purchase/stock transfer. Thus, the dealers concealed minimum turnover of Rs. 2.22 crore (Rs.25.41 crore – Rs.23.19 crore) which escaped the notice of the AO resulting in evasion of tax of Rs. 38.78 lakh including interest and penalty.

2.5.2 Test check of the records of the ACT, Guwahati unit-D between July and September 2007 revealed that two dealers disclosed purchase of cement valuing Rs. 85,000 during the years 2002-03 and 2003-04 from other two dealers registered in Guwahati unit-A and Guwahati unit-D which were accepted by the AOs and assessed accordingly between July 2004 and March 2005. Cross verification of the records of the selling dealers, however,

⁵ Delivery note is a declaration whereby a registered dealer can import goods from outside the state.

revealed that the two dealers actually purchased cement valued as Rs. 1.59 crore. This resulted in concealment of turnover of Rs. 1.58 crore with consequential evasion of tax of Rs. 13.07 lakh including interest of Rs. 6.12 lakh.

The cases were reported to the department and the Government in December 2007; their replies have not been received (October 2008).

2.6 Incorrect determination of taxable turnover

Under the provisions of the AGST Act, taxable turnover in respect of works contract is determined by deducting the value of declared goods purchased locally in Assam on payment of tax and thereafter the labour and other charges incurred by the dealer from the gross turnover.

2.6.1 Test check of the records of the ACT, Guwahati unit A between July and September 2006 revealed that while assessing a dealer engaged as works contractor in March 2006 for the year 2004-05, the AO allowed deduction of Rs. 3.88 crore from the gross turnover of Rs. 11.25 crore. Scrutiny of the list of declared goods available in the case records of the dealer disclosed that the dealer purchased cement valued as Rs. 1.20 crore and included it in the list of declared goods. As cement is not listed under CST Act as declared goods, deduction of Rs. 1.20 crore, being the value of cement, from the gross turnover was incorrect and resulted in under assessment of taxable turnover by Rs. 1.20 crore. Thus, failure of the AO to detect the irregularity resulted in short levy of tax of Rs. 12.47 lakh including interest of Rs. 2.73 lakh.

2.6.2 Test check of the records of the ACT, Guwahati Unit-C between February and March 2007 revealed that while assessing a dealer engaged as a works contractor in January 2006 for the year 2003-04, the AO allowed deduction of Rs. 84.28 lakh being the value of declared goods purchased in Assam from the gross turnover of Rs. 2.60 crore. Scrutiny of the list of declared goods available in the case records of the dealer disclosed that the value of declared goods allowed as deduction included goods worth Rs. 17.91 lakh purchased from outside the State. Thus, allowing deduction of the value of declared goods purchased from outside the State of Assam was incorrect which resulting in short levy of tax of Rs. 2.40 lakh including interest.

After the case was pointed out, the AO stated (October 2007) that the dealer had been asked to produce the necessary documents in support of purchase of declared goods for initiating further course of action. The reply of the AO is not tenable as the relevant documents available in the case records of the dealer clearly indicate that deduction allowed includes Rs. 17.91 lakh on account of purchases made from outside the State. A report on further development has not been received (October 2008).

The above cases were reported to the department and the Government between April and September 2007, their replies have not been received (October 2008).

2.7 Irregular adjustment of tax

Under the AGST Act and the Rules made thereunder, the amount of tax payable by a supplier/works contractor shall be deducted at source by the drawing and disbursing officer who shall deposit it into the Government account within 10 days from the expiry of each calendar month. The Act provides that in the event of failure of a person to deposit the tax deducted at source, the AO may recover the same as arrears of land revenue.

Test check of the records of the ACT, Guwahati unit-C between February and March 2007 revealed that a dealer dealing in works contract was assessed to tax of Rs. 98.07 lakh in August 2005 for the years 2003-04 and 2004-05. The AO in his assessment order mentioned the payment of tax of Rs. 48.11 lakh by the dealer and finalised the assessments accordingly. Scrutiny of the assessment orders and other records disclosed that the dealer had actually deposited tax of Rs. 37.64 lakh for which treasury challans were available and the balance tax of Rs. 10.47 lakh was shown as deducted at source by the Executive Engineer (EE), Public Works Division (PWD), Tinsukia from the bills of the contractor. No treasury challan was available in support of deposit of the tax deducted at source. This resulted in irregular adjustment of tax of Rs. 10.47 lakh.

The case was reported to the department and the Government between May and September 2007; their replies have not been received (October 2008).

2.8 Non-levy of tax on containers

Under the AGST Act and the Rules made thereunder, sale price of containers or packing materials used in the sale of exempted goods where no accounts of such sales of container or packing materials are maintained or where such sales are shown at a price lower than the market price, shall be determined at the rate of one *per cent* of the sale value of the exempted goods. Since container or packing materials are not mentioned in any of the schedule attached to the AGST Act, the item is taxable at the rate of eight *per cent* as other goods.

Test check of the records of the ACT, Guwahati unit-B between January and March 2007 revealed that while finalising the assessments of two dealers between July 2005 and February 2006 for the years 2002-03 and 2003-04, the AO failed to levy tax on the containers valuing Rs. 41.83 lakh (being one *per cent* of the turnover of exempted goods worth Rs. 41.83 crore). This resulted in non-levy of tax of Rs. 7.33 lakh including interest.

The case was reported to the department and the Government (June 2007); their replies have not been received (October 2008).

2.9 Incorrect allowing of deduction

Under the AGST Act, 'taxable turnover' is determined after allowing deduction of tax included in the gross turnover according to the prescribed

formula. No such deduction is admissible where the turnover is exclusive of tax.

Test check of the records of the ACT, Guwahati unit-C between February and March 2007 revealed that while assessing a dealer in July 2005 for the years 1998-99 to 2000-01, the AO allowed deduction of Rs. 35.77 lakh as tax element from the gross turnover of Rs. 3.94 crore against Rs. 15.14 lakh actually paid by the dealer as shown in the returns. Excess allowing of deduction of Rs. 20.63 lakh (Rs. 35.77 lakh – Rs. 15.14 lakh) resulted in short levy of tax of Rs. 5.13 lakh including interest.

After the case was pointed out, the AO stated (October 2007) that the assessments have been rectified and fresh demand notices issued. A report on realisation of tax has not been received (October 2008).

The case was reported to the department and the Government in May 2007 and September 2007, their replies have not been received (October 2008).

2.10 Non-levy of additional tax

Under the AGST Act, additional tax at the rate of 10 *per cent* of the tax payable by the dealer is to be levied with effect from 5 June 1998. The provisions of the State Act apply *mutatis mutandis* in case of assessment/reassessment under the CST Act. Further, according to the clarification issued by the Commissioner of Taxes (CT), Assam on 30 March 2004, additional tax is also payable on interstate sale of goods not supported by declarations in form 'C' or 'D' at 10 *per cent* or at the State rate of tax whichever is higher. Besides, interest as applicable is also leviable on the unpaid tax.

Test check of the records of the ACT, Guwahati unit-A between July and September 2007 revealed that the AO completed the assessments of a dealer in March 2007 for the year 2003-04 on a turnover of Rs. 65.70 lakh which was not supported by declarations in form C/D under the CST Act. The AO while finalising the assessments levied tax at the rate of 12 *per cent* but failed to levy the additional tax. This resulted in non-levy of additional tax of Rs. 2.34 lakh including interest.

The case was reported to the department and the Government in December 2007; their replies have not been received (October 2008).

2.11 Irregular grant of exemption to industrial units

Under the provisions of the CST Act (as amended with effect from 11 May 2002), eligible industrial units under the Assam Industrial Sales Tax Concession Scheme, 1997 (scheme) may claim exemption from the payment of tax on their interstate sales, provided the sales are made to the registered dealers and supported by declaration in form C/D. Otherwise, tax is leviable at the rate of 10 *per cent* or at the rate applicable under the State Act, whichever is higher. To avail such exemption, the intending industrial units shall have to obtain a certificate of authorisation from the concerned sales tax authority on the basis of eligibility certificate issued by the Industries department. In

addition, interest at the prescribed rate is also leviable on the unpaid amount of tax.

Further, as per the scheme, the existing industries going for expansion/modernisation/diversification shall be entitled to the benefit of sales tax exemption, on sale of finished products and on purchase of raw materials for seven years subject to a maximum of 90 *per cent* of the additional and fixed capital investment. Under Para 8 (c) of the scheme, there shall be an increase in the production of an industrial unit over the average production of preceding three years prior to the year when the unit goes for expansion/modernisation/diversification.

2.11.1 Test check of the records of the ST, Haflong in September 2007 revealed that the assessments of a dealer for the years 2002-03 to 2004-05 were completed in January 2006. While finalising the assessment, the AO allowed exemption of tax of Rs. 12.26 crore on the turnover of Rs. 75.29 crore on the basis of eligibility certificate dated September 2005 issued by the Industries department and authorisation certificate dated January 2006 issued by the Sales Tax department. Scrutiny, however, revealed that the production after expansion/modernisation/diversification started in November 2001. The average production of the unit was 1.52 lakh MT of cement during the preceding three years before expansion/modernisation/diversification whereas the production after expansion/modernisation/diversification was 1.34 lakh MT, 1.11 lakh MT and 90,440 MT during 2002-03, 2003-04 and 2004-05 respectively. Since the production of the unit during 2002-03 to 2004-05 was lower than the average production of preceding three years, the unit was not entitled to get the benefit of sales tax exemption under the scheme. Irregular allowing of tax exemption during the years 2002-03 to 2004-05, thus, resulted in non-levy of tax of Rs. 12.26 crore.

2.11.2 Test check of the assessment records of the ACT, Guwahati unit-A and Karimganj between June and September 2007 revealed that while finalising the assessments between March and September 2006 of two industrial units for the period falling between 2002-03 and 2004-05, exemption from payment of tax was allowed on interstate sales valued as Rs. 1.54 crore. Scrutiny, however, revealed that the exemption allowed was irregular since the sales were not supported by declaration in forms 'C'. Irregular allowing of exemption without declaration forms resulted in non-levy of tax of Rs. 31.90 lakh including interest.

2.11.3 Under the scheme, new industrial units shall be exempt from paying tax for a period of seven years on the purchase of raw materials and on the sale of finished goods manufactured by them subject to a maximum limit of 150 *per cent* of the capital investment.

Test check of the records of the ACT, Guwahati unit-C and Karimganj between February and June 2007 revealed that the AOs while finalising the assessments of four industrial units between January 2001 and March 2006 for the years falling between 1999-2000 and 2004-05 allowed exemption from payment of tax of Rs. 88.82 lakh against the maximum limit of Rs. 70.50 lakh being 150 *per cent* of the capital investment of Rs. 55.80 lakh. This resulted in

excess allowing of exemption of Rs. 17.37 lakh. In addition, interest of Rs. 15.98 lakh was also leviable.

After the cases were pointed out, the ST, Guwahati unit-C stated in October 2007 that the dealer under his unit had applied for the authorisation certificate and exemption limit had been extended upto April 2007. The reply is not tenable as the dealer had already crossed his exemption limit of Rs. 26.55 lakh i.e. 150 *per cent* of the capital investment during the year 2003-04 and grant of further exemption was irregular. Replies in the other cases have not been received (October 2008).

2.11.4 Test check of the records of the ACT, Guwahati unit-A between July and September 2006 revealed that the assessment of a dealer holding authorisation certificate under the scheme was finalised in March 2006 for the year 2002-03 and tax of Rs. 15.11 lakh was determined on the turnover of Rs. 3.93 crore which was supported by 19 declarations in form 'C'. Scrutiny, however, revealed that the value of these declarations in form 'C' pertaining to the assessment year 2002-03 was Rs. 6.24 crore. Thus, interstate sales turnover of Rs. 2.31 crore (Rs. 6.24 crore – Rs. 3.93 crore) escaped assessment resulting in underassessment of tax of Rs. 9.84 lakh.

The cases were reported to the department and the Government between May and September 2007; their replies have not been received (October 2008).

2.12 Irregular grant of exemption on stock transfers not supported by form 'F'

Under the CST Act, when any dealer claims exemption from the payment of tax in respect of goods by reason of transfer of such goods to any other place of his business outside the State, he may furnish to the AO, a declaration in form 'F' duly filled in and signed by the transferee along with the evidence of despatch of such goods. Further, as per the amended provision of the CST Act, declaration form 'F' is mandatory with effect from 11 May 2002. If the dealer fails to furnish such declaration, the movement of goods shall be deemed for all purposes to have been occasioned as a result of sale. As per the CST (Return and Turnover) Rules, 1957, one 'F' form is to cover the transactions of one calendar month only.

2.12.1 Test check of the records of Dhekiajulli and Haflong sales tax units between May and September 2007 revealed that while finalising the assessments between September 2004 and September 2006 in respect of three dealers for the assessment years 2002-03 to 2004-05, the AOs allowed exemption of tax on transfer of stock worth Rs. 75.59 crore. Scrutiny of declarations in form 'F' furnished by the dealers, however, revealed that stock transfer of goods worth Rs. 38.14 crore only was supported by declarations in form 'F'. Thus, allowing of exemption on stock transfer of Rs. 37.45 crore not supported by declarations in form 'F' was resulted in non-levy of tax of Rs. 8.59 crore.

After the cases were pointed out, the ST, Haflong stated in January 2008 that the assessments had been revised and demand notices issued. A report on

realisation and reply of the ST, Dhekiajuli have not been received (October 2008).

2.12.2 Test check of the records of three⁶ sales tax unit offices between June and November 2007 revealed that while finalising the assessments between March 2006 and March 2007 in respect of four dealers for the assessment years 2002-03 to 2004-05, the AOs allowed exemption of tax on transfer of stock worth Rs. 9.09 crore. Scrutiny of the declarations in form 'F' furnished by the dealers revealed that transactions of Rs. 5.64 crore supported by 20 'F' forms covered transactions beyond one calendar month and as such were not entitled to grant of exemption. This led to non-levy of tax of Rs. 1.13 crore including interest.

2.12.3 Test check of the assessment records of Hailakandi and Karimganj sales tax unit offices between June and November 2007 revealed that four dealers made stock transfer of tea valued as Rs. 6.44 crore during the years 2002-03 to 2004-05 to their agents at Kolkata/Siliguri for sale by auction and claimed exemption from payment of tax. The AO finalised the assessment between March and December 2006 after allowing exemption on the stock transfer of Rs. 6.44 crore though the transfer was not supported by form 'F'. Since submission of form 'F' for stock transfer was mandatory from 11 May 2002, the exemption allowed by the AO was incorrect and resulted in non-levy of tax of Rs. 1.12 crore.

The cases were reported to the department and the Government between July 2007 and March 2008; their replies have not been received (October 2008).

2.13 Incorrect grant of concessional rate of tax on sale against form 'C'

Under the CST Act, interstate sale of goods, other than declared goods, to the registered dealers if supported by valid declaration in form 'C' are taxable at the concessional rate of four *per cent*. Otherwise, tax is payable at the rate of 10 *per cent* or at the rate of tax applicable under the State Act, whichever is higher. In addition, interest at the prescribed rate is also leviable.

2.13.1 Test check of the records of the ACT, Guwahati unit-C and ST, Morigaon between January and March 2007 revealed that four dealers were assessed to tax between July 2005 and March 2007 for the years falling between 1998-99 and 2004-05 at the concessional rate of four *per cent* on the turnover of Rs. 229.46 crore. Scrutiny of form C/D revealed that interstate sales amounting to Rs. 215 crore only were supported by valid C/D forms. This resulted in irregular allowing of concessional rate on the turnover Rs. 14.46 crore and consequent short levy of tax of Rs. 2.43 crore including interest of Rs. 1.53 crore.

After the cases were pointed out, the AO, Guwahati unit-C stated in October 2007 that in one case, assessment had been rectified and a fresh demand for Rs. 1.32 lakh was raised.. A report on recovery and replies in other cases have not been received (October 2008).

⁶ Guwahati Unit-D, Hailakandi and Karimganj.

2.13.2 The CT, Nagaland in his letter of February 2002 intimated the CT, Assam regarding cancellation of a series of declarations in form ‘C’ and ‘F’ with effect from 11 June 2001. This information was duly circulated to all the unit offices by the CT, Assam in December 2002 to take note of at the time of finalising the assessments.

Test check of the records of four⁷ sales tax unit offices between January and September 2007 revealed that while finalising the assessments of 12 dealers between August 2004 and March 2007 for the years falling between 2001-02 and 2004-05, the AOs levied tax at concessional rate on turnover amounting to Rs. 3.54 crore supported by declarations in form ‘C’ which were declared obsolete and invalid by the Government of Nagaland. Thus, acceptance of invalid/obsolete forms led to short levy of tax of Rs. 63.40 lakh including interest.

After the cases were pointed out, the AO, Guwahati unit-C stated in October 2007 that two dealers replaced the invalid/obsolete forms with valid ones and one dealer requested time to replace the same. The reply of the AO is not tenable as transactions supported by invalid/obsolete declaration forms can not be made validated at a later stage by substituting the valid forms. Reply in remaining cases has not been received (October 2008).

2.13.3 Test check of the records of two sales tax offices between February and September 2007 revealed that while finalising the assessments of four dealers in March 2007 for the periods falling between 2003-04 and 2004-05, the AOs irregularly allowed concessional rate of tax on interstate sales valued as Rs. 2.63 crore which resulted in short levy of tax amounting to Rs. 26.40 lakh. The details are mentioned below:

Name of the Unit No. of dealers	Period of assessment	Month of assessment	Nature of irregularities	Amount of tax including interest (Rs. in lakh)
<u>Guwahati unit-A</u> 1	2004-05	March 2007	Concessional rate of tax was allowed on interstate sale of Rs. 92.41 lakh against form ‘C’. Scrutiny revealed that the forms were issued to a Kolkata based dealer and not to the dealer of Assam.	8.22
<u>Guwahati unit-D</u> 2	2003-04 and 2004-05	March 2007	Concessional rate of tax was allowed on interstate sale of Rs. 1.22 crore against form ‘C’. Scrutiny revealed that the name of the dealer to whom it was issued was left blank.	10.81
<u>Guwahati unit-A</u> 1	2003-04	March 2007	Concessional rate of tax was allowed on Rs. 48.72 lakh against form ‘C’. Scrutiny revealed that out of Rs. 48.72 lakh, only Rs. 1.26 lakh was authenticated by the purchasing dealer. Thus, transaction amounting to Rs. 47.46 lakh was not covered by a valid declaration form.	7.37
Total				26.40

2.13.4 The CT, Mizoram in his letter dated October 1999 and January 2003 intimated the CT, Assam regarding cancellation of a series of declaration forms ‘C’ with effect from September 1999 and January 2003 respectively.

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Guwahati unit-A, Guwahati unit-B, Guwahati unit-C and Guwahati unit-D.

Test check of the records of the ACT, Guwahati unit-D between July and September 2007 revealed that the AO finalised the assessment of a dealer between March and September 2006 for the years 2001-02 to 2003-04 and levied tax at concessional rate of four *per cent* on the turnover of Rs. 70.95 lakh supported by four declarations in form 'C' which were declared invalid/obsolete by the Government of Mizoram. Acceptance of invalid/obsolete form 'C' and allowing of concessional rate of tax resulted in short levy of tax of Rs. 12.25 lakh including interest of Rs. 5.97 lakh.

The cases were reported to the department and the Government between April and December 2007; their replies have not been received (October 2008).

2.14 Incorrect grant of concessional rate of tax on sale against form 'D'

Under the CST Act, interstate sale of goods, other than declared goods, to a Government department, if supported by duly filled in form 'D', is taxable at the concessional rate of four *per cent*. Otherwise, tax is payable at the rate of 10 *per cent* or at the rate of tax applicable under the State Act, whichever is higher. In addition to tax, interest at the prescribed rate is also payable.

Test check of the records of the ACT, Guwahati unit-D between July and September 2007 revealed that while finalising the assessments of a dealer in March 2007 for the assessment year 2003-04, the AO allowed concessional rate of tax on interstate sale of goods worth Rs. 1.07 crore made to a Government department. Scrutiny of the declaration in form 'D' furnished by the dealer revealed that the dates of transactions worth Rs. 98 lakh was subsequent to the date of issue of the declaration form by the department. Thus, acceptance of defective form 'D' and allowing concessional rate of tax resulted in short levy of tax of Rs. 6.71 lakh.

The case was reported to the department and the Government in December 2007; their replies have not been received (October 2008).

2.15 Non-levy of penalty for misuse of form 'C'

Under the CST Act, if any registered dealer falsely represents that the goods purchased by him in the course of interstate trade are covered by his certificate of registration or after purchasing the goods utilises these goods for other purposes, the AO may impose by way of penalty an amount not exceeding one and a half times of the tax which would have been levied at the general rate in respect of the sale of goods.

Test check of the records of the ST, Jalukbari Check Post in February 2007 revealed that a dealer engaged in the business of manufacture and sale of coke, purchased aluminium sheet, weighing machine and stone crusher from West Bengal against declaration in form 'C' during the year 2002-03. Though these goods were not directly related to the manufacture of coke, yet the AO failed to levy penalty of Rs.4.03 lakh for misuse of the form 'C'.

After the case was pointed out, the ST stated (September 2007) that penalty of Rs. 4.03 lakh had been imposed and demand notice served upon the dealer. A report on realisation has not been received (October 2008).

The case was reported to the department and the Government in December 2007; their replies have not been received (October 2008).

2.16 Incorrect computation of VAT compensation

The AGST Act was repealed by the Assam Value Added Tax (AVAT) Act which came into force in the State from 1 May 2005. According to the consensus arrived at between the State Government and the Government of India (GOI), the Central Government would compensate the revenue loss, if any, arising out due to the implementation of VAT, to the State Government. To arrive at such loss, the State Government would compare the revenue of pre-VAT period on the basis of average growth rate of revenue of the three out of five best preceding years.

According to the modalities prescribed by the Government of India, the revenue loss was to be worked out by excluding the tax revenues generated from commodities like petrol, diesel, aviation turbine fuel (ATF), liquor, lottery tickets which are subject to 20 *per cent* floor rate of tax and kept outside VAT and the credits on account of input tax under VAT adjusted against CST from the overall tax revenue of that year. The resultant net revenue was to be compared with the projected tax revenue for working out the loss on account of introduction of VAT. The rate of compensation would be 100 *per cent*, 75 *per cent* and 50 *per cent* during the first, second and third year respectively of the implementation of VAT.

Scrutiny of the records of the CT, Assam revealed that the State Government preferred a compensation claim for revenue loss of Rs. 23.72 crore for the year 2005-06. The compensation claim was worked out by deducting Rs. 808.68 crore (Rs. 804.31 crore as non-VAT receipts and Rs. 4.37 crore on account of input tax credit under VAT adjusted against CST) from the total AGST/VAT receipts of Rs. 1697.45 crore for the year 2005-06 and then comparing it with the projected revenue of Rs. 912.49 crore calculated on the average of the best three out of five preceding year's receipts. A scrutiny of the records, however, revealed that out of Rs. 804.31 crore, an amount of Rs. 234.17 crore only was relating to non-VAT receipts on commodities like petrol, ATF, liquor, country spirit and molasses which are subject to 20 *per cent* floor rate of tax. Thus, the actual receipts of the Government for the year 2005-06 after allowing deduction as prescribed by the GOI sum up to Rs. 1,458.91 crore (Rs. 1697.45 crore – Rs. 234.17 crore – Rs. 4.37 crore) and was much higher than the projected tax revenue of Rs. 912.49 crore for the year 2005-06. Thus, the compensation claim of Rs. 23.72 crore preferred by the State Government was irregular and inadmissible.

After the case was pointed out, the department stated that items placed in the fourth schedule (non-VAT items of commodities) of the Assam VAT Act are required to be kept away from the calculation of VAT compensation even though the rate of tax in respect of items of commodities are below 20 *per cent*. The reply of the department was not tenable as the non-VAT commodities which are subject to 20 *per cent* floor rate of tax only were to be excluded while working out the compensation claim.