

CHAPTER-II: SALES TAX/VALUE ADDED TAX

2.1 Results of audit

Test check of the records relating to sales tax/value added tax (VAT), conducted during the year 2007-08 revealed underassessment/short payment/loss of revenue and other irregularities involving Rs. 973.50 crore in 778 cases, which fall under the following categories:

(Rupees in crore)

Sl. No.	Categories	No. of cases	Amount
1.	Performance appraisal of exemption of central sales tax on account of branch transfer/consignment sale	1	782.73
2.	Irregular claim of exemption/concessional rate of tax on statutory forms	68	129.65
3.	Concealment of sale/purchase	16	13.04
4.	Incorrect claim of exemption of tax on high sea sale	4	1.62
5.	Application of incorrect rate of tax	8	1.52
6.	Other cases	681	44.94
Total		778	973.50

During the year 2007-08, the department accepted underassessments etc. of Rs. 28.17 crore involved in 38 cases and raised additional demand of Rs. 9.14 crore pointed out in audit during the year 2007-08 and in earlier years. Rs. 18.41 lakh were realised in 6 cases during the year 2007-08.

A few illustrative cases involving Rs. 147.10 crore and a “**performance appraisal of exemption of central sales tax on account of branch transfer/consignment sales**” involving Rs. 782.73 crore are mentioned in the succeeding paragraphs.

2.2 Performance appraisal of exemption of central sales tax on account of branch transfer/consignment sale

Highlights

- Non-compliance of instructions for ascertaining the genuineness and correctness of 'F' forms submitted by the dealers in support of exemption of tax on account of branch transfer/consignment sale through cross verification of transactions from the concerned states, led to non-realisation of revenue of Rs. 20.17 crore.

(Paragraph 2.2.7)

- Failure of the department to levy the tax for non-submission of 'F' forms by the dealers within the stipulated period resulted in non-realisation of revenue of Rs. 730.74 crore.

(Paragraph 2.2.9.1)

- Incorrect exemption of tax on branch transfer/consignment sale of Rs. 215.77 crore on incomplete forms resulted in loss of revenue of Rs. 25.53 crore.

(Paragraph 2.2.9.2)

- Incorrect exemption of tax on invalid 'F' forms resulted in short realisation of tax of Rs. 11.63 crore.

(Paragraph 2.2.9.3)

- Failure of the department to levy tax, interest and penalty against the dealers whose 'F' forms were found not to have been issued by the sales tax offices of the concerned states resulted in non-realisation of revenue of Rs. 5.41 crore.

(Paragraph 2.2.10)

2.2.1 Introduction

As per provisions of the Central Sales Tax Act (CST Act), 1956, read with the Central Sales Tax (Registration and Turnover) Rules, 1957, {CST (R&T) Rules} and the Central Sales Tax (Delhi) Rules {CST (Delhi) Rules}, 2005, every dealer is required to declare his place of business in other states at the time of seeking registration. Transfer of goods claimed otherwise than by way of sale made by a registered dealer to any other place of his business located outside the state is exempt from tax on production of prescribed declaration in form 'F' duly filled in and signed by the principal officer of the other place of his business or his agent as the case may be along with the evidence of dispatch of such goods. For contravention of the provisions of the CST Act or rules made thereunder, the transferor is liable to pay tax, interest and penalty as prescribed under the State law.

It was decided by audit to review the mechanism for ensuring that the exemptions on account of branch transfer/consignment sale were allowed correctly by the Department of Trade and Taxes (DTT). The review revealed

a number of system and compliance deficiencies which have been discussed in the subsequent paragraphs.

2.2.2 Organisational set up

The Commissioner of Trade and Taxes is responsible for the administration of the Acts and Rules in the department. He is assisted by four Additional Commissioners and 16 Joint/Deputy Commissioners. There are 10 zones, one special zone and one key customer services (KCS) unit, each headed by a Joint/Deputy Commissioner and 106 wards headed by Value Added Tax Officers (VATO).

2.2.3 Audit objectives

The review was conducted with a view to ascertain whether:

- exemption of tax allowed by the assessing authorities (AA) at the time of assessment had correctly been worked out in accordance with the provisions of the applicable Acts and Rules on branch transfer/consignment sale;
- cross verification of transactions of dealers was conducted by the AAs to verify the genuineness of the exemptions claimed on declarations in form 'F' submitted by the dealers; and
- internal controls existed in the department to ensure proper use of declaration in form 'F' so as to prevent leakage of revenue.

2.2.4 Scope and methodology of audit

Test check of the assessment records for the periods between 2003-04 and 2005-06 (assessments completed between 2004-05 and 2006-07) of three out of 10 zones of the Trade and Taxes Department with gross turnover of more than Rs. 1 crore was conducted between March and May 2008. These three zones were selected on the basis of tax collection i.e. high, medium and low to ensure a representative coverage. Key customer services unit, which dealt with assessment cases of major dealers, was also selected to ensure coverage of all major dealers. In addition, cases of irregular exemption of tax on account of branch transfer/consignment sale noticed during regular audit in respect of all 106 wards were also included. The audit methodology included scrutiny of the assessment records/returns in the selected zones, cross verification of 'F' forms aggregating Rs. 25 lakh per dealer in a financial year with the records of sales tax offices in nine¹ States/Union Territories.

2.2.5 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation of the Department of Trade and Taxes in providing necessary information and records for audit. An entry conference was held with the department in March 2008 wherein the department was appraised about the scope of audit and methodology. The draft review report was forwarded to the Government and

¹ Andhra Pradesh, Gujrat, Haryana, Himachal Pradesh, Karnataka, Maharashtra, Punjab, Rajasthan, Uttar Pradesh, and Union Territory of Chandigarh selected on the basis of volume of branch transfer/consignment sale.

the department in May 2008 and was discussed in exit conference meeting held in October 2008. The response/replies of the department have been incorporated in the relevant paragraphs.

Audit findings

System deficiencies

2.2.6 Absence of data base of tax exemption on branch transfer/consignment sale

The department allows exemption of tax on account of branch transfer/consignment sale. A reliable data base of branch transfer/consignment sale by dealers as well as exemption of tax allowed to them is, therefore, a prerequisite for informed decision making. It was noticed in audit that no data was available in respect of exemption of tax allowed on account of branch transfer/consignment sale. Consequently, the revenue foregone during the assessment years 2003-04 to 2005-06 due to exemption of tax on account of branch transfer/consignment sale was not quantifiable by the department.

The Government may, therefore, consider creating a data base of exemption of tax on account of branch transfer/consignment sale.

2.2.7 Absence of monitoring mechanism to ensure cross verification of 'F' forms

Section 6-A of the CST Act read with Rule 12(5) of the CST (R&T) Rules, provides that exemption of tax to a registered dealer is granted in case of branch transfer/consignment sale provided they are supported by declaration in form 'F'. Submission of false or misleading or deceptive records, accounts or documents attracts penalty and interest on the tax due², in addition to amount of tax payable by the dealer. Further, Sub-rule 7 of Rule 8 of CST (Delhi) Rules provides that no registered dealer to whom a declaration form is issued by the AA shall either directly or through any other person transfer the form to another person. The instructions issued in June 2005 provide that in case of large value transactions claimed to have been made on the basis of central declaration forms such as H, C, F, etc., the genuineness of the forms must be got verified from the concerned issuing authority of the State/Union Territory through enforcement branch or sending the officials posted in the ward to different destinations. However, the department did not prescribe a system of periodical reporting by the AAs to the superior authorities about the position of conducting of the cross verification of transactions made in the course of inter state trade or commerce against 'F' forms.

² Under Delhi Sales Tax Act, 1975 (DST Act), simple interest at one *per cent* per month for a period of one month and at one and a half *per cent* per month thereafter and penalty of a sum not exceeding two and a half times of the amount of tax due while under Delhi Value Added Tax Act, 2004 effective from 1 April 2005, interest at 15 *per cent* per annum computed on daily basis and a penalty of Rs. 1 lakh or the amount of the tax deficiency, if any, whichever is greater.

2.2.7.1 Misutilisation of forms

During the assessment years 2003-04 to 2005-06, six dealers of four wards³ and KCS unit availed exemption of tax on sale of Rs. 39.35 crore against 84 'F' forms. Cross verification of these forms with the assessment records of the concerned issuing dealers in their states⁴ revealed that in 75 cases the forms were issued to other dealers of Delhi and not to the dealers of Delhi who had claimed and were allowed exemption. Further, in nine cases, the 'F' forms were issued by the sales tax offices of the concerned state in the name of a dealer other than the issuing dealer. Failure on the part of AAs to scrutinise the claim and cross verify the transactions from the concerned states resulted in incorrect grant of exemption of tax of Rs. 3.93 crore besides interest of Rs. 1.41 crore and maximum penalty of Rs. 6.31 crore.

After the cases were pointed out, the department stated in October 2008 that in 11 cases involving Rs. 73.55 lakh notices have been issued and in 11 cases involving Rs. 1.03 crore the matter has been referred to the concerned state taxation offices of other states for verification of the facts. In 41 cases involving Rs. 1.56 crore, the department stated that claims allowed were in order as the dealers have either submitted original 'F' forms or have submitted the photocopies of the supporting documents like bank statement, details of goods receipts, sale *patti* etc., as proof of consignment sale. The reply is not tenable as the 'F' forms against which the exemption was allowed were either not issued to these dealers of Delhi or the form issuing dealers were other than those to whom the 'F' forms were issued by the sales tax offices of other states. Further report and reply in remaining 21 cases involving Rs. 2.02 crore has not been received (November 2008).

2.2.7.2 Exemption of tax on fake forms

During the assessment years 2003-04 to 2005-06, seven dealers of five wards⁵ availed exemption of tax on sale of Rs. 15.96 crore against 57 'F' forms. Cross verification of these forms with the assessment records of the concerned issuing dealers in their states⁶ revealed that the issuing dealers of these forms were either non-existent or that the forms were not issued by sales tax offices of the concerned states to the purchasing dealers. Failure on the part of AAs to scrutinise the claim and cross verify the transactions from the concerned states resulted in incorrect grant of exemption of tax of Rs. 1.60 crore besides interest of Rs. 66.94 lakh and maximum penalty of Rs. 3.96 crore.

After the cases were pointed out, the department stated in October 2008 that additional demand of Rs. 7.15 lakh has been raised in four cases and notices have been issued in 18 cases involving Rs. 1.30 crore. In 21 cases involving Rs. 55.74 lakh, the department stated that claims allowed were in order as the dealers have either submitted original 'F' forms which were issued to the respective dealers in other states or have submitted supporting documents as proof of consignment sale. The reply is not tenable as the 'F' forms against which the exemption was allowed were not issued to the issuing dealers by the

³ Ward Nos. 2, 6, 27 and 89.

⁴ Andhra Pradesh and Rajasthan.

⁵ Ward Nos. 2, 27, 32, 55 and 57.

⁶ Gujrat, Haryana, Maharashtra, Punjab and Rajasthan.

taxation department of the concerned state. Further report and reply in remaining 14 cases involving Rs. 33.50 lakh has not been received (November 2008).

2.2.7.3 Excess exemption claimed by dealers

During the assessment years 2003-04 to 2005-06, five dealers of ward no. 96 and KCS unit availed exemption of tax against 28 'F' forms. Cross verification of these forms with the assessment records of the concerned issuing dealers in their states⁷ revealed that the dealers claimed exemption on sale value of Rs. 29.84 crore while details of purchases valued as Rs. 23.53 crore only were furnished by the dealers to the AAs in their concerned states. Failure on the part of AAs to scrutinise the claim and cross verify the transactions from the concerned states resulted in incorrect grant of exemption of tax of Rs. 71.72 lakh besides interest of Rs. 27.25 lakh and maximum penalty of Rs. 1.30 crore.

After the cases were pointed out, the department stated in October 2008 that the matter has been referred to the concerned state taxation office for verification of the facts in three cases involving Rs. 11.40 lakh. In four cases involving Rs. 29.33 lakh, the department stated that the dealer has withdrawn the old four forms and submitted seven new forms and accordingly has been reassessed. The reply is not tenable as the existing laws on the subject do not provide for this kind of replacement. Further report and reply in remaining 21 cases involving Rs. 58.24 lakh has not been received (November 2008).

The Government may, therefore, consider prescribing a periodical return by the AAs to the superior authorities about the number of 'F' forms required to be cross verified, actual number of forms verified, shortfall, if any, to ensure compliance of the departmental instructions.

2.2.8 Internal control

2.2.8.1 Inadequate mechanism to ensure proper maintenance of records of 'F' forms

The Delhi Sales Tax Rules, 1975/Delhi Value Added Tax (DVAT) Rules, 2005 stipulates that all statutory forms are to be printed at the Government press under the authority of the Commissioner. Such forms are obtainable from the Commissioner or his authorised agent on payment of such charges as may be specified by the Commissioner from time to time. In October 2005, the department prescribed the procedure for receipt, custody and issue of statutory forms. As per these instructions, the Form Branch responsible for receipts, custody and issue of statutory forms was required to make reconciliation of forms at the end of the day and all the entries of the day were to be attested by the In-charge of forms and VATO forms and the inventory of the forms was to be made after physical verification at the end of every quarter by the team of officers deputed for this purpose. The Department of Trade and Taxes established Centralised Form Cell (CFC) with effect from 1 October 2007 for issue of various types of statutory forms for allowing purchases and inward stock transfers by the dealers. Prior to October 2007, statutory forms were being issued to the dealers from their respective wards.

⁷ Haryana, Karnataka and Uttar Pradesh.

However the department did not prescribe any mechanism to ensure that the prescribed records/registers are properly maintained by the designated officer(s).

Test check of the records revealed as under:

- the Form Branch neither made reconciliation of 'F' forms at the end of the day nor conducted the physical verification at the end of every quarter;
- the Form Branch received 1,60,000 'F' forms from India Security Press, Nasik, during May 2006. These forms were, however, taken in the stock register on different dates⁸;
- the Form Branch destroyed obsolete statutory forms of various types during October 2006 which included 781 'F' forms. However, as per stock register for the year 2006-07, there were only 596 'F' forms which were to be destroyed; and
- with the establishment of CFC, all the VATOs/Assistant Value Added Tax Officers (AVATO) of the wards were required to surrender all the unused 'F' forms lying in their wards to the Form Branch for proper utilisation. However, there were 14,595 'F' forms lying unused in the wards as of April 2008.

The Government may, therefore, consider prescribing periodic review of the stores/stocks of 'F' forms by the higher authorities to ensure proper utilisation of 'F' forms.

2.2.8.2 Internal audit

The DTT has an Internal Audit Cell (IAC) under the charge of the Joint Commissioner (Audit). This cell was to conduct test check of cases of the assessment years 2003-04 and 2004-05 under the DST Act, as well as under CST Act and of cases of 2005-06 under DVAT Act, so as to ensure adherence to the provisions of the Act and Rules as well as departmental instructions issued from time to time.

In addition, the Directorate of Audit under the Finance Department is entrusted with the internal audit of all offices/departments of Government of NCT of Delhi including the Trade and Taxes Department.

An appraisal of the functioning of the IAC revealed that there was no evidence of an effective or meaningful internal check being exercised by the department in terms of prescribed procedures, periodicity of audit or accountability. It was noticed that the department has not implemented any annual audit plan for checking of the cases for the assessment years 2003-04 to 2005-06 to ensure proper working of the department.

Further, the Directorate of Audit of the Finance Department has also not conducted the internal audit of the Trade and Taxes Department during the period under review.

The Government may, therefore, consider taking immediate remedial measures for effective functioning of the internal audit cell of the department.

⁸ 17 August 2006 (70,000), 22 December 2006 (30,000) and 17 April 2007 (60,000).

2.2.9 Scrutiny of returns

Under Section 26 of the DVAT Act and Rule 28 (1) of the DVAT Rules, every registered dealer shall furnish return in form DVAT 16 for each tax period⁹ showing his all purchases and sales including inter state purchases, sales and stock transfer, during that tax period. In addition, every dealer shall also furnish a reconciliation return in form DVAT 51 within a period of three months after the end of each quarter in respect of inter state sales along with statutory declaration forms 'C', 'F', etc. under Rule 4 of the CST (Delhi) Rules. As per Section 31 of the DVAT Act, the day on which the dealer submits his return, he is deemed to have been assessed for that tax period. However, in order to have a check on the activities of the dealers, the department issued instructions in June 2005 for scrutiny of returns between two and 100 *per cent* depending on the annual turnover by the VATOs/AVATOs/Operational Circles.

2.2.9.1 Exemption of tax without submission of 'F' forms

Section 6-A of the CST Act and Rule 9 of the CST (Delhi) Rules provide that any dealer who claims that he is not liable to pay tax under this Act in respect of any goods on the ground that the movement of such goods from one state to another was occasioned by transfer of such goods by him to any other place of his business or to his branch or to his agent or principal as the case may be and not by reason of sale, the burden of proving it shall be on that dealer. For this purpose, he may furnish to the VATO a declaration in form 'F' duly filled and signed by the principal officer of the other place of business or his agent or principal as the case may be, within a period of three months after the end of the quarter to which the declaration relates. However, for submission of declaration for the year 2005-06, the department extended the date upto 30 April 2007. If the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale and the taxable event will be the date of movement of transfer of such goods. The dealer shall also be liable to pay simple interest at 15 *per cent* per annum computed on a daily basis under Section 42 of the DVAT Act.

Test check of the records of 20 wards¹⁰ and KCS unit of DTT revealed that in 68 cases for the assessment year 2005-06, the dealers availed exemption of CST on a turnover of Rs. 7,356.86 crore on account of branch transfer/consignment sale. However, the dealers submitted 'F' forms of Rs. 1,847.61 crore by the stipulated dates. The AAs also failed to scrutinise the returns and detect non-submission of 'F' forms. This resulted in irregular exemption of tax of Rs. 562.11 crore besides interest of Rs. 168.63 crore as detailed in Annexure I.

⁹

Turnover	Tax period
Below Rs. 10 lakh	Yearly
Rs. 10 lakh but below Rs. 50 lakh	Half yearly
Rs. 50 lakh but below Rs. 5 crore	Quarterly
Rs. 5 crore and above	Monthly

¹⁰ Ward Nos. 1, 2, 27, 28, 32, 50, 51, 54, 59, 62, 66, 69, 70, 73, 83, 88, 93, 96, 99 and 101.

After the cases were pointed out, the department stated in November 2008 that additional demand of Rs. 3.04 crore had been raised in eight cases and notices involving Rs. 12.15 crore had been issued in 10 cases. In one case involving Rs. 4.05 lakh, the department stated that the dealer had submitted the details of movement of goods i.e. railway/goods receipts etc. The reply is not tenable as the submission of 'F' forms has been made mandatory with effect from 11 May 2002. Further report and reply in remaining 49 cases involving Rs. 715.51 crore has not been received (November 2008).

2.2.9.2 Exemption of tax on incomplete forms

Section 6-A of the CST Act provides that when a dealer claims exemption of tax on the ground that the movement of such goods from one state to another was on account of stock transfer/consignment sale, the onus of proof like goods receipt, railway receipt, challan, details of materials, etc. shall be on the dealer. To establish his claim for exemption of tax, the dealer may furnish declaration in form 'F' along with supporting evidence like goods receipts, railway receipts, challans, details of material received, etc.

Test check of the records of six wards¹¹ and KCS unit of DTT revealed that in 188 'F' forms available in assessment records of 23 dealers for the assessment year 2005-06, the dealers claimed exemption of tax on account of branch transfer/consignment sale of Rs. 211.59 crore on the basis of declarations in form 'F'. A perusal of these forms revealed that essential documents/details like railway receipts, challan numbers, etc. by which the goods were transferred were not available in support of such transfer of goods. In the absence of these details, the forms were liable to be rejected and subjected to tax as per the provisions of the Act. Failure of the AAs to scrutinise the returns and 'F' forms resulted in short realisation of tax of Rs. 21.46 crore besides interest of Rs. 4.07 crore as detailed in Annexure II.

After the cases were pointed out, the department stated in November 2008 that additional demand of Rs. 1.79 crore has been raised in 28 cases and notices in 24 cases involving Rs. 65.46 lakh have been issued. Further report and reply in the remaining 136 cases involving Rs. 23.08 crore has not been received (November 2008).

2.2.9.3 Exemption of tax on invalid 'F' forms

Under Section 6-A of the CST Act read with Rule 12(5) of the CST (R&T) Rules, declaration in form 'F' may cover transfer of goods effected during a period of one calendar month by a dealer to any other place of his business or to his agent or principal outside the state as the case may be. Otherwise, the transactions are to be treated as inter state sales and taxed accordingly. Further, under Section 86 (12) of the DVAT Act the dealer shall also be liable to pay penalty at one *per cent* of the tax deficiency per week or Rs. 100 per week, for the period of default, whichever is higher.

Test check of the records of 13 wards¹² and KCS unit of DTT revealed that in 59 'F' forms available in the assessment records of 19 dealers for the

¹¹ Ward Nos. 6, 28, 52, 63, 90 and 96.

¹² Ward Nos. 2, 9, 27, 50, 52, 56, 60, 61, 65, 66, 67, 77 and 101.

assessment years 2004-05 and 2005-06, the dealers claimed exemption of tax on account of branch transfer/consignment sale of Rs. 64.06 crore on the basis of form(s) 'F' declarations. Of this, turnover of Rs. 50.45 crore was supported with the form(s) 'F' declarations covering the period beyond one month and was thus liable to be treated as inter state sales not supported by valid declarations. Failure of the AAs to scrutinise the returns and 'F' forms resulted in short realisation of tax of Rs. 5.08 crore besides interest of Rs. 76.23 lakh and penalty of Rs. 5.79 crore.

After the cases were pointed out, the department stated in November 2008 that additional demand of Rs. 66.66 lakh had been raised in 14 cases and notices in 10 cases involving Rs. 2.60 crore had been issued. The replies of the department in 25 cases involving Rs. 2.54 crore are not tenable as mentioned below:

Sl. No.	Ward No.	Tin No. of the dealer (No. of forms)	Reply of the department	Reasons for the reply being not tenable
1.	101	07110222290 (3 forms)	The dealer has now filed separate 'F' forms for each calendar month.	As per Section 31 and 32 of the DVAT Act, the return filed by the dealer shall be deemed to be assessed on the same day on which return is filed. If the return filed by the dealer is incomplete or incorrect or does not comply with the requirement of the Act, no show cause notice will be issued to the dealer and demand notice for assessment shall be served on the dealer against which objection can be filed before the prescribed authority. Accordingly, acceptance of new forms is not correct.
2.	56	07930192651 (5 forms)		
3.	65	07790212178 (1 form)		
4.	61	07940266317 (6 forms)		
5.	02	07900231031 (1 form)		
6.	77	07660143475 (1 form)		
7.	KCS-I	07870119449 (2 forms)		
8.	61	07430218728 (3 forms)	As per the judgment of the High Court of Tamil Nadu in the case of M/s. Bimetal Bearings Ltd. Vs. State of Tamil Nadu (1993) 90 STC 128 (MAD), requirement of one form for one month's transaction is only a direction.	The submission of 'F' forms has been made mandatory with effect from 11 May 2002. The judgment cited predates the amendment made in the CST Rules.
9.	50	07370042124 (2 forms)	The dealer has submitted missing 'F' forms in assessment.	The audit observation relates to submission of 'F' forms having more than one month's transactions, to which the department has not replied.
10.	09	07070220381 (1 form)	The dealer has submitted railway receipt/goods receipt details in all the cases.	

The reply in the remaining 10 cases involving Rs. 5.83 crore has not been received (November 2008).

2.2.9.4 Irregular exemption of tax on consignment sale

Section 6-A of the CST Act provides that any dealer who claims that he is not liable to pay tax under this Act in respect of any goods on the ground that the

movement of such goods from one state to another was occasioned by transfer of such goods by him to any other place of his business or to his branch or to his agent or principal as the case may be, and not by reason of sale, the burden of proving it shall be on that dealer. It has judicially been held¹³ that whether a transaction is sale or transfer to his agent will have to be determined having regard to the terms of the agreement, the intention of the parties and dealings between them.

Test check of the records of three wards¹⁴ of DTT revealed that in three cases for the assessment year 2005-06, the dealers availed exemption of tax on a turnover of Rs. 1.54 crore on account of consignment sales without entering into an agreement with the consignees. In the absence of agreements, exemptions availed by the dealers were incorrect. Failure of the AAs to scrutinise the returns and 'F' forms with reference to agreements submitted by the dealers resulted in short levy of tax of Rs. 18.39 lakh besides interest of Rs. 5.52 lakh and penalty of Rs. 18.39 lakh.

After the cases were pointed out, the department stated in November 2008 that in one case involving Rs. 4.12 lakh notice has been issued. In one case involving Rs. 5.35 lakh the department stated that the dealer has submitted railway receipt/goods receipt. The reply is not tenable as the audit observation relates to consignment sale without agreement which has not been replied to. Further report and reply in the remaining one case involving Rs. 32.83 lakh has not been received (November 2008).

2.2.9.5 Short accounting of branch transfer/consignment sale in reconciliation return

Test check of the records of ward no. 91 and KCS unit of DTT revealed that in four cases for the assessment year 2005-06, the dealers claimed exemption of tax on account of branch transfer/consignment sale of Rs. 179.37 crore in their DVAT 16 returns. Of this, branch transfer/consignment sale of Rs. 169.96 crore was, however, shown in central reconciliation return DVAT 51. Thus the dealer concealed turnover of Rs. 9.41 crore. Failure of the AAs to scrutinise the returns and reconciliation statements resulted in short payment of tax of Rs. 1.01 crore besides interest of Rs. 30.29 lakh and penalty of Rs. 1.01 crore.

After the cases were pointed out, the department stated in November 2008 that in two cases involving Rs. 55.77 lakh, default assessment had been done. The reply is not tenable as in default assessment the audit observations have not been taken into account. The reply in remaining two cases involving Rs. 1.77 crore has not been received (November 2008).

2.2.9.6 Transfer of goods to places not declared in registration certificates

Sub-section (1) of Section 7 of the CST Act stipulates that every dealer has to declare his places of business in other states at the time of seeking registration. Further, sub-section (1) of Section 6-A read with Rule 12(5) of the CST

¹³ Bhopal Sugar Industries Vs STO (1997) 40 STC 42 (SC).

¹⁴ Ward Nos. 6, 27 and 56.

(R&T) Rules provide that a declaration in form 'F' has to be submitted for transfer of goods to other places of business or to his agent or principal.

Test check of the records of four wards¹⁵ of DTT revealed that in four cases for the assessment year 2005-06, the dealers availed exemption of tax on a turnover of Rs. 3.33 crore on account of branch transfer to places other than those declared in the registration certificates of the dealers. Failure of the AAs to scrutinise the returns, 'F' forms and registration certificates resulted in short levy of tax of Rs. 41.59 lakh besides interest of Rs. 12.48 lakh and penalty of Rs. 41.59 lakh.

After the cases were pointed out, the department stated in November 2008 that the dealer has submitted the photocopies of registration certificates of his branches in one case and in another case it was stated that the sale of Mumbai branch has been included in the consolidated balance sheet. The replies are not tenable as the audit observation relates to branch transfer of goods to places other than those declared in the registration certificate which has not been replied. Further report and reply in the remaining two cases involving Rs. 53.82 lakh has not been received (November 2008).

2.2.9.7 Exemption of tax on duplicate portion of 'F' forms

Sub-rule 2 of Rule 9 of the CST (Delhi) Rules provides that the transferor shall furnish along with the reconciliation return in DVAT 51, the portion marked 'original' of the declaration in form 'F'.

Test check of the records of ward no. 91 of DTT revealed that in one case for the assessment year 2005-06, the dealer claimed exemption of tax on account of branch transfer/consignment sale of Rs. 1.33 crore on the basis of duplicate portion of 'F' forms. In the absence of the original portion of 'F' forms, the exemptions availed by the dealer were incorrect. Failure of the AAs to scrutinise the returns and 'F' forms resulted in short payment of tax of Rs. 13.31 lakh besides interest of Rs. 3.99 lakh and penalty of Rs. 13.31 lakh.

After the case was pointed out, the department stated in November 2008 that the dealer has filed the original portions of 'F' forms. The reply of the department is not tenable as the existing laws on the subject do not provide for this kind of replacement.

2.2.9.8 Exemption of tax on transactions not pertaining to assessment year

Test check of the records of ward no. 101 of DTT revealed that in one case for the assessment year 2005-06, the dealer claimed exemption of tax on account of branch transfer/consignment sale of Rs. 66.64 lakh on the basis of declarations in 'F' forms. A perusal of these forms revealed that the transactions mentioned in these forms pertained to the year 2004-05. Failure of the AAs to scrutinise the returns and 'F' forms resulted in short realisation of tax of Rs. 6.66 lakh besides interest of Rs. 2 lakh and penalty of Rs. 6.66 lakh.

After the case was pointed out, the department stated in November 2008 that the consignee dealer mentioned the year of transfer of goods from Delhi as

¹⁵ Ward Nos. 45, 46, 62 and 104.

2004-05 on 'F' forms where as the goods were sold in the year 2005-06. The reply of the department is not tenable as the 'F' forms were required to be issued and submitted with the return for claiming exemption of tax on the basis of date of transfer of goods. Accordingly, the exemption of tax claimed on these forms during assessment year 2005-06 was not correct.

Compliance deficiencies

2.2.10 No action against defaulting dealers

Test check of records revealed that during cross verification of 'F' forms in 2005-06, the department found that out of 152 'F' forms involving Rs. 38.68 crore, 62 forms involving Rs. 16.73 crore were not issued to the respective purchasing dealers of the concerned states while Delhi dealers availed exemption of tax against these forms. However, the department did not initiate any penal action against these dealers even after a lapse of two years. Short levy of tax in these cases by applying minimum rate of tax works out to Rs. 1.34 crore besides interest of Rs. 72.26 lakh and penalty of Rs. 3.35 crore.

2.2.11 Conclusion

A reliable data base of revenue foregone on account of exemptions which is a pre requisite for informed decision making was absent. Hence the revenue foregone relating to the assessment years 2003-04 to 2005-06 regarding exemption of tax on account of branch transfer/consignment sale could not be quantified by the department. In the absence of any system of periodical reporting by the AAs to the superior authorities about the position of conducting of cross verification of transactions made in the course of inter state trade or commerce in support of exemption of tax on account of branch transfer/consignment sale, the assessing authorities could not detect the irregularities which led to non-realisation of revenue. The internal controls of the department are also weak as is evidenced by the improper maintenance of the records of 'F' forms and non-follow up/finalisation of assessment of defaulting dealers. The functioning of the internal audit cell is also ineffective.

2.2.12 Summary of recommendations

The Government may consider:

- creating a data base of exemption of tax on account of branch transfer/consignment sale;
- prescribing a periodical return/statement by the AAs to the superior authorities about the number of 'F' forms required to be cross verified, actual number of forms verified, reasons for shortfall, if any;
- evolving a mechanism of periodic review of the stores/stocks of 'F' forms by the higher authorities to ensure proper utilisation of 'F' forms; and
- taking immediate measures for effective functioning of the internal audit cell.

2.3 Irregular claim of exemption/concessional rate of tax on statutory forms

Under the CST Act, where sale of any goods in the course of inter state trade or commerce has either occasioned the movement of such goods from one state to another or has been effected by a transfer of documents of title to such goods during their movement from one state to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods (sale in transit) to the Government or to a registered dealer shall be exempt from tax. However, the exemption is subject to production of a certificate in form 'E – I' or 'E – II' duly filled and signed by the registered dealer from whom the goods were purchased and declaration in form 'C' obtained from the buyer.

Further, under the CST Act read with the rules made thereunder, sale of goods by one registered dealer may be allowed at the concessional rate of tax of four *per cent* if the dealer furnishes a declaration in form 'C' covering all the transactions of sales. In the case of export sale, exemption is admissible subject to the furnishing of 'H' forms. The DTT has prescribed due date of filing of the statutory forms for claim of exemption as 20 February 2007 in respect of sale made in the first and second quarter and 30 April 2007 in respect of sale made in third and fourth quarter, for the year 2005-06. Transactions not supported by the statutory forms attract tax, interest and penalty at prescribed rates.

2.3.1 Test check of the records of five wards¹⁶ of DTT conducted during April 2007 to March 2008 revealed that in seven cases, the dealers claimed exemption on transit sales of Rs. 505.33 crore made during the year 2005-06 without furnishing valid statutory forms by the due date. The failure of the assessing authority to scrutinise returns and the reconciliation statements in DVAT 51 to ascertain the receipt of the statutory forms, resulted in short payment of tax of Rs. 50.53 crore. Besides, interest of Rs. 8.95 crore and penalty of Rs. 30.79 crore were also leviable on account of such short payment.

After the cases were pointed out, the department stated in September 2008 that additional demand of Rs. 33.04 lakh has been raised in three cases, out of which Rs. 5.66 lakh in one case had been recovered. A report on recovery of the balance amount and reply in remaining cases has not been received (November 2008).

2.3.2 Test check of the records of 27 wards¹⁷ of DTT conducted during April 2007 to March 2008 revealed that in 59 cases, the dealers claimed concessional rate of tax on inter state sales of Rs. 422.56 crore made during the year 2005-06 without furnishing valid statutory 'C' forms by the due date. The failure of the assessing authority to scrutinise returns and the reconciliation statements in DVAT 51 to ascertain the receipt of the statutory forms, resulted in short payment of tax of Rs. 21.28 crore. Besides, interest of Rs. 3.69 crore and penalty of Rs. 12.67 crore were also leviable.

¹⁶ Ward Nos. 42, 50, 90, 100 and 103.

¹⁷ Ward Nos. 2, 9, 14, 24, 39, 45, 49, 50, 51, 53, 66, 67, 68, 69, 70, 72, 79, 85, 86, 90, 93, 94, 99, 100, 106, Key Customer Services-II and Key Customer Services-IV.

After the cases were pointed out, the department stated in September 2008 that in one case involving revenue of Rs. 22.95 lakh notice has been issued to the dealer. In another 20 cases additional demand of Rs. 1.81 crore has been raised out of which four dealers have paid Rs. 9.52 lakh. The reply in remaining cases has not been received (November 2008).

2.3.3 Test check of the records of two wards¹⁸ of DTT conducted during April 2007 to March 2008 revealed that in two cases the dealer claimed concessional rate of tax on interstate sale/exemption on export of Rs. 9.47 crore in the year 2005-06. The claims were however not supported with the valid statutory 'H' forms. This resulted in under assessment of tax of Rs. 94.06 lakh. Besides, interest of Rs. 17.87 lakh and penalty of Rs. 61.75 lakh were also leviable.

After the cases were pointed out, the department stated in September 2008 that additional demand of Rs. 1.17 crore had been raised in both the cases. A report on recovery and reasons for short demand has not been received (November 2008).

2.4 Concealment of sale/purchase

Under the DVAT Act, a person who furnishes a return under the Act, which is false, misleading, or deceptive in a material particular or omits from it any matter or thing without which the return is false, misleading in a material particular, shall be liable to pay, by way of penalty, a sum of Rs. 10,000 or the amount of tax deficiency, whichever is greater. In addition, interest on tax computed at the rate of 15 *per cent* per annum on daily basis is also payable.

2.4.1 Test check of the records of seven wards¹⁹ of DTT conducted during April 2007 to March 2008 revealed that in eleven cases the sales turnover was shown as Rs. 155.50 crore by the dealers in their returns, filed during the year 2005-06 as against actual sale of Rs. 185.06 crore disclosed in their accounts. This, resulted in concealment of sale of Rs. 29.55 crore with consequent short payment of tax of Rs. 4.10 crore. Besides, interest of Rs. 1.30 crore and penalty of Rs. 4.10 crore were also leviable.

After the cases were pointed out, the department stated in September 2008 that in one case involving Rs. 94.96 lakh notice has been issued to the dealer. Further report and reply in the remaining cases has not been received (November 2008).

2.4.2 Test check of the records of five wards²⁰ of DTT conducted during April 2007 to March 2008 revealed that in four cases relating to the year 2005-06, the dealers included purchases of Rs. 42 crore only in their returns as against Rs. 50.19 crore disclosed in the accounts. Further, in an another case, the dealer purchased goods of Rs. 82.09 crore on the strength of 'C' forms but included purchase of Rs. 77.56 crore only in the returns filed during the year 2005-06. This resulted in short accounting of purchase aggregating Rs. 12.72 crore with consequent short payment of tax of Rs. 1.53 crore. Besides, interest

¹⁸ Ward Nos. 3 and 33.

¹⁹ Ward Nos. 7, 45, 46, 62, 76, 92 and 100.

²⁰ Ward Nos. 42, 57, 82, 85 and 86.

of Rs. 48.13 lakh and penalty of Rs. 1.53 crore were also leviable on such short payments.

After the cases were pointed out, the department stated in September 2008 that additional demand of Rs. 6.16 lakh has been raised in one case. Further report and reply in the remaining cases has not been received (November 2008).

2.5 Incorrect claim of exemption of tax on high sea sale

Under the CST Act read with the rules made thereunder, sale of goods made by one registered dealer to another registered dealer is allowable as deduction from the turnover of the selling dealer when the goods is sold before they cross the customs frontier of India (high sea sale) by endorsement on documents viz., purchase agreement, bill of entry etc. The deduction is available on production of evidence in support of high sea sale such as the agreement, order placed by the foreign buyer, the shipping bills, bill of entry etc. duly authenticated by custom authorities.

Test check of the records of four wards²¹ revealed that in four cases relating to the year 2005-06 the dealer claimed exemption of tax on high sea sale turnover of Rs. 6.21 crore without furnishing any evidence in support of the above sale. Failure of the assessing authority to obtain the required evidence resulted in short payment of tax of Rs. 62.14 lakh. Besides, interest of Rs. 22.40 lakh and penalty of Rs. 77.70 lakh were also leviable for short payment of tax.

After the cases were pointed out, department raised additional demand of Rs. 7.27 lakh in August 2008 in one case. Further report and reply in remaining cases has not been received (November 2008).

2.6 Application of incorrect rate of tax

The DVAT Act specifies tax rates of value added tax payable by a dealer in respect of the goods or classes of goods mentioned in the various schedules appended to the Act. If any person furnishes incorrect returns, the Commissioner may assess or reassess the amount of tax due for a tax period. Short payment of tax attracts penalty at the rate of one *per cent* of tax deficiency per week or Rs. 100 per week for the period of default whichever is higher and interest at prescribed rates.

Test check of the records of six wards²² of the DTT conducted during April 2007 to March 2008 revealed that in eight cases relating to the year 2005-06, the dealers paid tax on sale valued at Rs. 7.94 crore at a lower rate than those prescribed. The assessing authority did not scrutinise the returns of the dealers to ascertain the correctness of rate at which tax was paid. This resulted in short payment of tax of Rs. 58.52 lakh. Besides, interest of Rs. 20.96 lakh and penalty of Rs. 72.74 lakh were also leviable.

After the cases were pointed out, the department stated in September 2008 that additional demand of Rs. 16.74 lakh had been raised in two cases, out of which Rs. 3.23 lakh in one case had been recovered. The replies of the

²¹ Ward Nos. 50, 70, 73 and 100.

²² Ward Nos. 4, 49, 57, 70, 86 and 99.

department in another two cases involving Rs. 11.78 lakh are not tenable as mentioned below:

Sl. No.	Ward No.	Reply of the department	Reasons for the reply not being acceptable
1.	49	The dealer deals in commodity which are covered by entry No. 84(168) of IIIrd Schedule of DVAT Act, Articles for conveyance or packing of goods, which are taxable at the rate of 4 <i>per cent</i> .	As per returns, the dealer is selling polythene bags, which are taxable at the rate of 12.5 <i>per cent</i> as determined by the VAT Commissioner on 13 July 2005.
2.	57	Steel stamping is an item of iron & steel covered by Schedule III, ferrous and non-ferrous metals and, therefore, taxable at the rate of 4 <i>per cent</i> .	The reply is contrary to the determination of VAT Commissioner on 10 February 2006 in which the rate of stamping was held to be 12.5 <i>per cent</i> .

Further report and reply in remaining cases has not been received (November 2008).

2.7 Incorrect claim of tax credit on opening stock

Under the DVAT Act read with the DVAT Rules, a registered dealer is entitled to claim tax credit equal to the amount of tax borne by him under the DST Act on the closing stock held by him on 31 March 2005 and taken as opening stock in 2005-06. The dealer is required to furnish to the Commissioner a statement in the prescribed form DVAT 18 of his trading stock, within four months after the commencement of the Act. In case the tax credit claimed is in excess of Rs. 1 lakh on opening stock, the statement shall be accompanied by a certificate signed by a Chartered Accountant that the tax credit claim made in time and correct. Incorrect claim of tax credit attract penalty equal to tax credit so claimed or Rs. 10,000 whichever is greater. The dealer shall also be liable to pay simple interest at the rate of 15 *per cent* per annum computed on daily basis.

Test check of the records relating to the assessment year 2005-06 of eight wards²³ of the DTT, conducted during April 2007 to March 2008 revealed that in five cases the dealers availed tax credit of Rs. 18.70 lakh on opening stock without furnishing details in form DVAT 18. In another three cases the dealers availed tax credit of Rs. 4.63 lakh without furnishing the certificate duly signed by the Chartered Accountant, though tax credits availed individually was more than of Rs. 1 lakh. This resulted in incorrect availing of tax credit of Rs. 23.33 lakh. Besides, interest of Rs. 10.24 lakh and penalty of Rs. 23.33 lakh were also leviable.

After the cases were pointed out, the department stated in September 2008 that additional demand of Rs. 13.89 lakh has been raised in four cases. In another case involving Rs. 6.41 lakh department stated that the dealer filed form DVAT 18 on 28 July 2005. The reply is not tenable as there is no record to prove that prescribed form was deposited within four months of commencement of the DVAT Act.

²³ Ward Nos. 3, 16, 45, 61, 70, 73, 75 and Key Customer Services-II.

2.8 Short payment of tax

Under the DVAT Act, a person is entitled to rectify mistake or error, within four years of the making of an assessment, in any return filed by him under the Act by revising the return voluntarily and paying tax, interest and reduced penalty thereon. Otherwise, short payment of tax attract penalty at the rate of one *per cent* of the tax deficiency per week or Rs. 100 per week for the period of default which ever is higher and interest at prescribed rates.

Test check of the records of three wards²⁴ of the DTT conducted during April 2007 to March 2008 revealed that three dealers paid tax short of Rs. 10.46 lakh due to calculation mistakes and in another case the dealer paid less tax by Rs. 1.19 lakh than the amount due from him during the year 2005-06. Neither the dealers deposited the tax short paid by depositing the differential amount nor the department asked them to deposit the same. This resulted in short realisation of revenue of Rs. 11.65 lakh. Besides, interest of Rs. 4.08 lakh and penalty of Rs. 15.23 lakh were also leviable.

The matter was reported to the department and the Government in May 2008, their reply has not been received (November 2008).

2.9 Excess claim of input tax credit

Under the DVAT Act, a registered dealer is entitled to a tax credit in respect of the turnover of purchase occurring during the tax period where purchase arises in the course of his activities as a dealer and the goods are to be used by him directly or indirectly for the purpose of making sales which are taxable under the Act or made in the course of interstate trade or export out of the territory of India. Further, one third of input tax credit on purchase of capital goods is also allowable in the tax period in which it is purchased, with the balance two third credit allowable in equal proportion in two immediately successive financial years.

Test check of the records of four wards²⁵ of DTT conducted between April 2007 to March 2008 revealed that in four cases the dealers claimed input tax credit of Rs. 19.36 lakh in the year 2005-06 on the purchase of tradable/capital goods as against allowable credit of Rs. 8.27 lakh. This resulted in excess claim of input tax credit of Rs. 11.09 lakh with consequent short payment of tax by the like amount. Besides, interest of Rs. 3.76 lakh and penalty of Rs. 12.14 lakh were also leviable.

The reply furnished by the department in September 2008 in two cases,

²⁴ Ward Nos, 49, 90 and 99.

²⁵ Ward Nos. 65, 66, 73 and 105.

involving Rs. 8.18 lakh is not tenable as mentioned below:

Sl. No.	Ward No.	Reply of the department	Reasons for the reply not being acceptable
1.	65	The local purchase included items taxable at the rate of four and 12.5 <i>per cent</i> . Therefore, the dealer correctly claimed input tax credit of Rs. 5.02 lakh.	From the return furnished by the dealer it is clear that the dealer is dealing in zip fasteners, which are taxable only at the rate of four <i>per cent</i> . Therefore, the input tax credit in this case works out to Rs. 2.55 lakh being four <i>per cent</i> of Rs. 63.73 lakh.
2.	105	The local purchase included items taxable at the rate of four and 12.5 <i>per cent</i> . Therefore, the dealer correctly claimed input tax credit of Rs. 4.40 lakh.	The dealer is dealing in PVC compound which are taxable at the rate of four <i>per cent</i> . Therefore, the input tax credit in this case works out to Rs. 3.49 lakh being four <i>per cent</i> of Rs. 87.13 lakh.

Further, reply in the remaining cases has not been received (November 2008).

2.10 Non-payment of tax on sale of capital assets

Under DVAT Act, sale of capital assets is a part of the business of the dealer and, therefore, taxable at prescribed rate. Non-payment of tax attracts penalty and interest at the prescribed rate.

Test check of the records of two wards²⁶ of the DTT conducted during April 2007 to March 2008 revealed that in two cases the dealer sold capital assets for Rs. 99.79 lakh during the year 2005-06. The dealers, however, did not pay tax on the above sale. This resulted in non-payment of tax of Rs. 4.07 lakh. Besides, interest of Rs. 1.29 lakh and penalty of Rs. 4.44 lakh were also leviable.

After the cases were pointed out, the department stated in September 2008 that additional demand of Rs. 30,000 had been raised in one case. Further report and reply in remaining one case has not been received (November 2008).

²⁶ Ward Nos. 9 and 46.