

CHAPTER – II

SALES TAX

2.1 Results of audit

Test check of the records of sales tax offices during the year 2006-07 disclosed underassessment of Rs. 461.40 crore in 536 cases which broadly fall under the following categories:

(Rupees in crore)

Sl. No.	Category	No. of cases	Amount
1.	Non/short levy of interest and penalty	248	345.27
2.	Irregular concession/exemption	73	48.08
3.	Incorrect rate of tax and mistake in computation	38	36.89
4.	Irregular grant of set-off	92	18.90
5.	Other irregularities	85	12.26
Total		536	461.40

During the year 2006-07, the department has accepted underassessment of Rs. 6.17 crore in 125 cases and recovered Rs. 1.58 crore in 54 cases.

After the issue of the draft paragraphs, the department recovered Rs. 1.32 crore during 2006-07.

A few illustrative cases involving important audit observations involving Rs. 27.86 crore are discussed in the following paragraphs:

2.2 Non/short levy of central sales tax

Under the Central Sales Tax 1956 (CST Act), tax leviable on inter-state sale of goods shall be at the rate of 10 *per cent* or at the rate applicable for the sale or purchase of such goods inside the State whichever is higher. In the case of declared goods, tax is to be calculated at twice the rate applicable to the sale of such goods inside the State. However, in case of inter-state sale supported by declaration in form C, tax leviable shall be at the rate of four *per cent* or the rate applicable to the sale or purchase of such goods inside the State whichever is lower.

2.2.1 The Commissioner issued a circular (February 2006) for saral assessment without ensuring collection of declaration forms from the dealers. This resulted in the assessments being carried without the collection of required declaration under the CST Act and probable loss of revenue on account of such concessions. Test check of 248 dealers in 19² offices revealed that inter-state sales amounting to Rs. 1,272.63 crore were granted concessions without required declaration involving tax implication of Rs. 110.71 crore.

The matter was referred to the department and the Government in February 2007; their reply has not been received (November 2007).

2.2.2 Test check of the assessment records of 13 dealers for the period 2001-02 to 2004-05 in nine³ offices assessed during 2004 to 2006 revealed that the AOs allowed the concessions without submission of declarations resulting in short levy of tax of Rs. 2.57 crore including interest of Rs. 47.52 lakh and penalty of Rs. 77.21 lakh.

The department and the Government accepted (April 2007) the audit observations involving Rs. 10.39 lakh in the cases of five dealers and recovered Rs. 54,000 in case of one dealer. A report on recovery and reply in the remaining cases have not been received (November 2007).

2.2.3 It has been judicially held⁴ that PP/HDPE⁵ fabrics will be classified as plastic instead of textile material for the purpose of levy of central excise duty. Assessment manual of Sales Tax Department provides that if any entry in the schedule to the Act is linked with the Central Excise Act, any amendment made in the Central Excise Act shall have the effect on the entry under the Sales Tax Act as well. The earlier determination order passed by the Commissioner on the subject was not withdrawn/revised in view of the judicial pronouncement. Therefore, the assessments continued treating the HDPE fabrics as textile material (an exempted goods) though tax was leviable at the rate of eight *per cent* treating it as 'plastic'.

² ACST: 7 Ahmedabad, 2 Surendranagar, 2 Anand, Unja, 1 Nadiad, Patan, 13 Ahmedabad, Gondal, 1 Ahmedabad, Amreli, 19 Ahmedabad, 3 Surat, 3 Vadodara, 7 Vadodara, 1 Rajkot
DCCT: Corporate cell 1 Ahmedabad, 17 Ahmedabad, 6 Ahmedabad
STO: Dahod

³ ACST: Billimora, 1 Ahmedabad, Vijapur, 3 Vadodara and 7 Vadodara,
DCST: 3 Ahmedabad, 14 Bharuch, 11 Vadodara and Petro 1, Ahmedabad

⁴ Raj Packwell case (January 2000)

⁵ Poly propylene/High density poly ethylene

Test check of the records of 10⁶ offices revealed that in the assessment of 14 dealers for the periods 2000-01 and 2004-05 assessed during 2004 to 2006, the AOs allowed the HDPE fabrics as exempted item resulting in non-realisation of revenue of Rs. 1.54 crore.

The matter was referred to the department and the Government in March 2007; their reply has not been received (November 2007).

2.3 Short levy of penalty

Section 45(6) of the Act prescribes levy of penalty if the tax deposited by the dealer along with the returns is less than the assessed tax by more than 25 *per cent*. The penalty leviable shall not exceed one and one half times of the difference. Further, the Commissioner prescribed (3 June 1992) different slab rates for different percentages of default.

Test check of the records of 15⁷ offices revealed that in the assessment of 24 dealers for the period from 1998-99 to 2003-04 assessed during March 2003 to March 2006 the AOs did not levy penalty of Rs. 15.98 crore.

The department and the Government accepted (April 2007) the audit observations involving Rs. 6.01 crore in case of 12 dealers and recovered Rs. 1.58 lakh from three dealers. A report on recovery and reply in the remaining cases have not been received (November 2007).

2.4 Application of incorrect rate of tax

The schedules attached to the GST Act prescribe the rates of tax applicable to different category of goods. Any good not mentioned in the entries contained in the schedules I and II to the Act is chargeable to tax as a residuary entry.

Test check of the records of three⁸ offices revealed that the AOs while finalising the assessment of four dealers, for the period between 1996-97 and 2001-02 during 2005-06, levied tax at incorrect rates on the sales of Rs. 53.43 crore of plant and machinery, alcohol, urea and aluminum casting. This resulted a short levy of tax of Rs. 2.04 crore including interest of Rs. 71.32 lakh and penalty of Rs. 41.54 lakh.

The department and the Government accepted (April 2007) the audit observations involving Rs. 1.12 crore in cases of two dealers. A report on recovery and reply in the remaining cases have not been received (November 2007).

2.5 Short levy of interest

The GST Act provides for charging of interest at the rate of 18 *per cent* if the payment of sales tax is delayed beyond the prescribed period. The Gujarat

⁶ DCST: 1 Ahmedabad, 23 Rajkot, 17 Surat.

ACST: 1, 6 and 17 Ahmedabad, Godhra, 1 Rajkot, 7 Vadodara and 2 Vapi

⁷ DCST: 3 and 6 Ahmedabad, 14 Bharuch, 21 Junagadh, 23 Rajkot and 10 Vadodara
ACST: 6 and 19 Ahmedabad, Modasa, Morbi, 3 Surat, 3 Vadodara, 7 Vadodara and 2 Vapi
DC corporate cell-1, Ahmedabad

⁸ Ahmedabad, Godhra and Vadodara

Motor Spirit Cess Act, 2001 prescribes for levy of interest at the rate of 24 *per cent* for the period of delay in payment of cess.

Test check of the records of eight⁹ offices revealed non/short levy of interest of Rs. 1.89 crore for belated payment of tax in the assessment of 15 dealers for the period 1999-2000 to 2003-04 assessed during 2004 to 2006.

The department and the Government accepted (April 2007) the audit observations involving Rs. 23.13 lakh in cases of six dealers. A report on recovery and reply in the remaining cases have not been received (November 2007).

2.6 Incorrect grant of benefits under sales tax incentive schemes

Under the sales tax incentive scheme 1990-95 and 1995-2000, eligible industrial units were allowed to purchase raw material, processing material, consumable stores and packing material against declaration on payment of purchase tax at the rate of 0.25 *per cent* only and the remaining tax applicable was to be charged against the incentive granted by the Government. Similarly, tax leviable on the sale of manufactured goods specified in the eligibility certificate was also permitted for adjustment. Section 50 further provides that in the event of breach of conditions of declaration, purchase tax so adjusted shall be recovered with interest and penalty.

2.6.1 Test check of the records of four¹⁰ offices revealed short adjustment of Rs. 1.12 crore against exemption limit of six dealers for the period 2000-01 and 2003-04 assessed during 2004-05 due to application of incorrect rates.

In another case at unit 6, Ahmedabad, the assessing officer (AO) allowed in November 2006 tax adjustment of Rs. 24.47 lakh to a dealer on the items not mentioned in the eligibility certificate for the period of 2000-01. The irregular adjustment resulted in short levy of Rs. 52.36 lakh including interest of Rs. 13.21 lakh and penalty of Rs. 14.68 lakh.

The department and the Government accepted (April and May 2007) audit observations of Rs. 8.18 lakh in case of four dealers. Report on recovery and reply in respect of three dealers have not been received (November 2007.)

2.6.2 Under sales tax incentive schemes, upto 2 March 2001, the additional tax (AT) on purchase and sales tax was to be paid in cash by the dealers holding exemption certificate. Adjustment of AT was not permissible against the deferred tax credit. Interest and penalty are also leviable under the GST Act.

Test check of the assessment records of 11 dealers in six¹¹ offices for the period 2000-01 and 2002-03 assessed during 2004-05 revealed that in case of six dealers Rs. 4.37 lakh required to be recovered in cash was incorrectly adjusted against the exemption limit. Tax of Rs. 5.90 lakh was levied short in

⁹ DCST: 2 Ahmedabad and 14 Bharuch
ACST: 6 and 19 Ahmedabad and Dhangadhra, Flying squad, Ahmedabad
DCST: Petro 1 Ahmedabad, Corporate Cell-1, Ahmedabad

¹⁰ ACST: 2 Vapi and 7 Vadodara
DCST: Vapi
STO: Idar

¹¹ ACCT: 6 Ahmedabad, 1 Bhavnagar, Dhangadhra, Veraval, 7 Vadodara and 2 Vapi

case of four dealers and adjustment of Rs. 56,000 was wrongly allowed against deferred tax credit. Besides, interest and penalty of Rs. 11.31 lakh was also leviable for the lapse.

The department and the Government accepted (April 2007) audit observations and recovered Rs. 1.98 lakh from four dealers. A report on recovery in the remaining cases has not been received (November 2007).

2.6.3 Sales tax incentive schemes issued under the GST Act stipulate that a beneficiary unit should remain in production during the currency of its eligibility period mentioned in the exemption/deferment certificate. If the unit failed to continue its production during the prescribed period, it was required to refund the entire amount of incentives availed by it within a period of 60 days of such default. Interest and penalty are also leviable under the Act. In case of non-payment, the dues can be recovered as arrears of land revenue.

2.6.3.1 Test check of the records of ACST-I, Nadiad, revealed that a dealer after availing of exemption of Rs. 9.31 lakh during 1996-97 and 1997-98 discontinued production from April 1999 during the currency of the eligibility period. The amount of exemption availed by the dealer was required to be recovered from him. However, the ACST-I, Nadiad did not initiate any action for cancellation of the exemption certificate and recovery of the dues. This resulted in non-realisation of tax of Rs. 9.31 lakh. Besides interest and penalty was also leviable.

2.6.3.2 Test check of the records of ACST, Dhrangadhra, revealed that a dealer holding sales tax deferment certificate discontinued production of its unit in 2002-03. The certificate of deferment was cancelled by the department. The ACST Dhrangadhra, while finalising the assessment for the period 2000-01 & 2001-02 in 2005-06 omitted to levy interest and penalty of Rs. 26.60 lakh resulting in non-realisation of revenue to that extent.

The above cases were reported to the department in August 2006 and the Government in January 2007. The department and the Government accepted the audit observation (April 2007) in one case of Nadiad. A report on recovery and reply in the remaining case has not been received (November 2007).

2.6.4 The incentive schemes provide that a unit eligible for exemption should make the sales within the state of Gujarat. In the event of transfer of the manufactured goods to its branch or on consignment outside the State, aggregate amount computed at the rate of four *per cent* or the rate of sales tax applicable to the goods, whichever is lower, on the goods so transferred is to be adjusted against the tax incentive limit.

During test check of the records of DCST-14, Bharuch, audit observed that two dealers transferred manufactured goods valued as Rs. 1.99 crore to the branches outside the State during 2001-02. The DCST did not levy and adjust the tax of Rs. 7.46 lakh against the tax incentive limit in the assessment completed in 2005-06.

The department and the Government accepted the audit observations (April 2007). A report on recovery has not been received (November 2007).

2.7 Incorrect computation of set off

Rule 44 of the GST Rules prescribed that an AO may reduce the amount set off by invoking section 47(4), if he is satisfied that the average price of similar goods sold by the manufacturers or importers differs by more than 10 *per cent*.

Test check of the records of the ACST-20, Ahmedabad revealed that two dealers engaged in the resale of lignite sold it at a price lower by 15 *per cent* than the purchase price during 2001-02 and 2002-03. The AOs incorrectly allowed set off of Rs. 68.38 lakh while finalising the assessments in July 2004 and December 2004. This resulted in non-realisation of revenue of Rs. 68.38 lakh.

After the cases were pointed out in March 2007, the department accepted (November 2007) the audit observations and initiated action for recovery.

2.8 Short levy of tax due to computation error

Test check of the records of two¹² offices revealed that the AOs made mistakes in computation of tax and penalty in the assessment of two dealers for the period 1991-92 and 2000-01 assessed during 2005-06. This resulted in short levy of tax of Rs. 8.05 lakh in one case and penalty of Rs. 17.36 lakh in another case.

The department and the Government accepted (April 2007) the audit observations involving Rs. 17.36 lakh in one case. A report on recovery and reply in the other case has not been received (November 2007).

2.9 Non-levy of tax due to incorrect classification of goods

As per entry 86 of schedule I, sugar is exempted from the levy of sales tax provided additional excise duty is levied on it under the Central Excise Tariff Act. *Saakar*, *batasha* are classified as sweets instead of sugar and do not attract additional excise duty. Hence, sales of these items are chargeable to sales tax at the rate of six *per cent*.

Test check of the records of two¹³ offices revealed that the AOs while finalising, in 2004-05, the assessment of two dealers for the period 2002-03 exempted sales of *saakar* and *batasha* valued as Rs. 1.56 crore from the levy of sales tax treating it as sugar - a tax free item. This resulted in non-levy of tax of Rs. 21.48 lakh including interest of Rs. 2.52 lakh and penalty of Rs. 8.74 lakh.

The department and the Government accepted (April 2007) the audit observations. A report on recovery has not been received (November 2007).

2.10 Non-levy of purchase tax

Under Section 15B of the GST Act, where a dealer purchases goods and uses them as raw material, processing material or as consumable stores in the manufacture of taxable goods, purchase tax at the prescribed rate is leviable. Purchase tax so levied is admissible as set off provided the goods manufactured are sold by the dealer in the State of Gujarat. The High Court of

¹² Jt. Commissioner, Flying Squad, Ahmedabad and DCCT, Petro-2, Ahmedabad

¹³ ACCT: 1 Rajkot and 2 Surat

Gujarat¹⁴ held that a dealer is liable to pay purchase tax even on the goods purchased from exemption certificate holders (under incentive scheme) as such items are taxable otherwise.

Test check of the records of eight¹⁵ offices revealed that nine dealers purchased raw materials valued as Rs. 8.41 crore during 1995-96 and 2002-03 from sales tax exemption certificate holders. The raw material valued as Rs. 3.15 crore was used in the manufacture of goods for consignment sales outside the state of Gujarat. This consumption of raw material was not charged to purchase tax in the assessments made during December 2005 to October 2006. This resulted in short levy of purchase tax of Rs. 14.25 lakh including interest of Rs. 4.24 lakh and penalty of Rs. 1.98 lakh.

The department accepted (April 2007) the audit observation in case of four dealers involving Rs. 9.56 lakh. A report on recovery and reply in the remaining cases have not been received (November 2007).

The matter was referred to the Government (February 2007); their reply has not been received (November 2007).

2.11 Irregular/excess grant of set off

The GST rules prescribe that a dealer may claim set off of purchase tax paid on the purchases of the raw material, processing material and consumable stores if it is used in the manufacture of taxable goods.

Test check of the records of four¹⁶ offices revealed that excess set off of Rs. 10.45 lakh including interest of Rs. 3.34 lakh and penalty of Rs. 29,000 was allowed in the assessment of five dealers for the period 1997-98 to 2001-02 assessed during 2004-05 as mentioned below:

(Rupees in lakh)			
Sl. No.	Nature of irregularity	Dealers (Number)	Excess set off
1.	Set off was to be disallowed proportionately on raw material used in the manufacture of stainless steel valve components as it did not fall under the same entry of the raw material, as provided in the rules.	1	1.33
2.	Excess set off of Rs. 3.59 lakh on aluminum chloride was allowed due to incorrect purchase value and Rs. 2.29 lakh due to application of incorrect rate of tax on purchase of diesel engines.	2	5.88
3.	Set off was allowed at higher rate of 13.2 per cent instead of applicable rate of 4.4 per cent on purchase of poly propylene granules.	1	1.65
4.	Set off was allowed on non-admissible item i.e. CI castings.	1	1.59
Total		5	10.45

¹⁴ M/s. Madhu Silica (85 STC 258) dated 28 February 1991

¹⁵ DCST-11 Vadodara, ACST- Gondal, 1 Jamnagar, II Rajkot, 9 Surat, 2 Vapi, 3 and 7 Vadodara

¹⁶ ACST: 19 Ahmedabad, Gondal, 2 Junagadh and 2 Vadodara

The department and the Government accepted (April 2007) the audit observations involving Rs. 6.58 lakh in cases of three dealers and recovered Rs. 3.59 lakh from one dealer. A report on recovery and reply in the remaining cases have not been received (November 2007).

2.12 Short levy of interest on purchase tax

Section 18(2) of the Gujarat Purchase Tax on Sugarcane Act, 1989 provides levy of interest at the rate of two *per cent* per month if the dealer fails to pay the amount of tax as per the return within one month to which the return relates.

Test check of the records of ACST, Veraval revealed that in the assessment of a dealer for the period October 1995 to September 1996 finalised in March 2005, instead of interest of Rs. 14.60 lakh leviable for belated payment of tax, the AO levied Rs. 5.21 lakh only which was paid by the dealer. This resulted in short levy of interest of Rs. 9.39 lakh.

The department and the Government accepted (April 2001) the audit observation. A report on recovery has been received (November 2007).

2.13 Non/short levy of turnover tax

The GST Act provides for levy of turnover tax if the total turnover of sales of a dealer exceeds Rs. 50 lakh in a particular year. It includes the sales made by all the branches of the dealer in the State and the tax will be payable on the aggregate turnover.

Test check of the records of seven¹⁷ offices revealed that in the assessment of seven dealers for the periods between 1993-94 and 1996-97 assessed in November 2001 and March 2006, turnover tax amounting to Rs. 6.69 lakh on the turnover of sales of Rs. 25.02 crore was not/short levied. Besides, interest of Rs. 1.09 lakh and penalty of Rs. 49,000 were also leviable.

The department and the Government accepted (April 2007) the audit observations involving Rs. 8.04 lakh in cases of six dealers and recovered Rs. 1.32 lakh from three dealers. A report on recovery and reply in the remaining case has not been received (November 2007).

¹⁷ DCST: 18 Valsad
ACST: 13 Ahmedabad, Ankleshwar, Bharuch, Billimora, Gondal and 2 Vapi