

CHAPTER-II: Taxes on Sales, Trade etc.

2.1 Results of audit

Test check of sales tax assessments, refund cases and other connected records conducted during the year 2006-07 revealed under assessments of sales tax amounting to Rs.395.96 crore in 974 cases, which broadly fall under the following categories:

Sl. No.	Particulars	Number of cases	Amount (Rupees in crore)
1.	Under assessment of turnover under Central Sales Tax Act	405	41.34
2.	Application of incorrect rates of tax	98	10.42
3.	Non levy of penalty	29	2.15
4.	Non levy of interest	35	1.15
5.	Incorrect computation of turnover	38	0.97
6.	Other irregularities	368	25.12
7.	Review on 'Levy and collection of sales tax'	1	314.81
	Total	974	395.96

During the year 2006-07, the Excise and Taxation Department accepted under assessments of tax of Rs.1.84 crore involved in 147 cases of which 53 cases involving Rs.0.53 crore were pointed out in audit during 2006-07 and the rest in earlier years. An amount of Rs.0.83 crore was recovered in 88 cases during the year 2006-07, of which Rs.0.56 crore recovered in 58 cases related to earlier years.

In two cases, entire amount of Rs.17.18 lakh was recovered after the cases were brought to the notice of Government.

A few illustrative cases involving Rs.6.37 crore and a review on **"Levy and collection of sales tax"** involving Rs.314.81 crore highlighting important cases are mentioned in this chapter.

2.2 Review: Levy and collection of sales tax

Highlights

1,99,797 assessments upto the year 2005-06 had not been finalised as of 31 March 2006.

(Paragraph 2.2.6.1)

Sales tax of Rs.56.99 crore on rental charges of telephones sets/teleprinters apparatus collected by Department of Telecommunication during April 1989 to July 2002 was not levied, besides minimum penalty of Rs.113.98 crore.

(Paragraph 2.2.7)

Interest of Rs.8.85 crore was not levied besides penalty on non payment of purchase tax of Rs.9.51 crore.

(Paragraph 2.2.8)

Penal actions involving minimum penalty of Rs.117.42 crore and interest of Rs.17.57 crore in 50 cases of 17 dealers were not finalised alongwith regular assessments in contravention of provisions of State sales tax laws and departmental instructions.

(Paragraph 2.2.9)

114 cases of 75 dealers, where stay had been granted against recovery of Rs.23.85 crore, had not been decided by the appellate authority within three months of grant of stay as per departmental instructions.

(Paragraph 2.2.12)

Claims of interest liability amounting to Rs.10.81 crore had not been lodged with/intimated to the official liquidators.

(Paragraph 2.2.13)

Introduction

2.2.1 Assessment, levy and collection of sales tax in Haryana are governed under the Haryana General Sales Tax Act, 1973 (HGST Act) and Rules framed thereunder upto 31 March 2003 and thereafter under Haryana Value Added Tax Act, 2003 (HVAT Act) and Rules framed thereunder. Besides, Central Sales Tax Act, 1956 (CST Act) and Rules framed thereunder are in operation for inter State sales (ISS).

Assessments are also made by virtue of self assessment scheme, 2000 and deemed assessment. The Act, further, provides that where any tax, interest and penalty etc. are payable in consequence of any order passed thereunder, demand notice shall be served upon the assessee to pay the amount specified therein within 30 days from the date of service of such notice. Tax, interest and penalty are assessed and recovered under the provisions of the Acts and dues that remain unpaid constitute arrears in sales tax. These are recoverable as arrears of land revenue.

Organisational set up

2.2.2 The Financial Commissioner and Principal Secretary to Government Haryana, Excise and Taxation Department is the administrative head in Government and is responsible for administration of sales tax laws. The overall control and superintendence of the sales tax/value added tax (VAT) vests with the Excise and Taxation Commissioner (ETC), who is assisted by Additional Excise and Taxation Commissioners, Joint Excise and Taxation Commissioners (JETCs), 22 Deputy Excise and Taxation Commissioners (DETCs), excise and taxation officers (ETOs), assistant excise and taxation officers (AETOs), taxation inspectors and other allied staff for the purpose of administration of sales tax laws.

Audit objectives

2.2.3 Detailed analysis of assessment, levy and collection of sales tax/VAT was conducted with a view to ascertain whether:

- revenue in the shape of tax, penalty and interest has been properly assessed, levied, collected and remitted to Government account;
- concessions or exemptions were allowed to eligible dealers as per provisions of the Acts; and
- effective internal control system over the departmental activities existed.

Scope of audit

2.2.4 Records of 10* out of 22 districts sales tax offices and office of ETC Haryana for the period from 2001-02 to 2005-06 were test checked between May and December 2006. The results of the review are contained in the succeeding paragraphs:

* Ambala, Faridabad (East), Faridabad (West), Gurgaon (East), Gurgaon (West), Jagadhari, Jhajjar, Karnal, Panipat and Sonapat.

Trend of revenue

2.2.5 Details of budget estimates and actual receipts and percentage of variation for the last five years ending 31 March 2006 are given as under:

(Rupees in crore)

Sr. No.	Year	Budget estimate	Actual receipts	Percentage of increase over previous year
1.	2001-02	3,056	2,944.81	—
2.	2002-03	3,300	3,337.43	13
3.	2003-04	3,795	3,838.00	15
4.	2004-05	4,250	4,760.91	24
5.	2005-06	5,490	5,604.46	18

Table above indicate that sales tax receipts had been increasing every year and growth of sales tax revenue over the previous year ranged between 13 and 24 per cent during the years 2001-02 to 2005-06.

Assessment

2.2.6 Under HGST Act, no dealer, who is liable to pay tax, can carry on business unless he possesses a certificate of registration issued by the assessing authority (AA) under whose jurisdiction he conducts business. Every registered dealer is required to submit to the AA a monthly/quarterly return of turnover, on the prescribed dates, accompanied by a copy of challan in support of proof of payment of tax by him in the treasury. Assessment of sales tax is done by the designated officers to determine and levy tax alongwith interest and penalty, if any, under the provisions of sales tax laws on the basis of returns filed by the dealers. If the AA is satisfied that the returns furnished are correct and complete, he shall assess the amount of tax on the basis of such returns without calling for the production of books of accounts or any other evidence in certain specified circumstances. Where the AA is not satisfied that the returns furnished are correct and complete, he may call for the books of accounts of the dealer in support of his returns. In case, where a dealer fails to file any return for any period or fails to appear with books of accounts, the AA shall, within five years after the expiry of such period, proceed to assess *ex parte* to the best of his judgment the amount of tax due from the dealer after giving him reasonable opportunity of being heard. Proceedings for assessments are required to be initiated within five years from the close of the year to which assessment relates.

Delay in finalising assessments

2.2.6.1 Under HGST Act, no time limit for finalisation of assessment has been prescribed for the AA. However, time limit of three years has been fixed for completion of the assessment from the close of the year to which the assessment relates under the HVAT Act. The position of assessments finalised during the years 2001-02 to 2005-06 as reported by the department was as under:

Year	Opening balance	Cases due for assessment during the year	Total	Cases finalised during the year	Balance at the close of the year	Percentage of cases finalised to total number of cases
2001-02	1,62,618	1,59,063	3,21,681	1,14,003	2,07,678	35
2002-03	2,07,678	1,79,265	3,86,943	1,53,078	2,33,865	40
2003-04	2,33,865	1,64,386	3,98,251	1,92,321	2,05,930	48
2004-05	2,05,930	1,59,740	3,65,670	1,42,901	2,22,769	39
2005-06	2,22,769	1,63,789	3,86,558	1,86,761	1,99,797	48

From the table above it would be observed that percentage of finalisation of assessment during 2001-02 to 2005-06 ranged between 35 to 48 *per cent*.

Age wise pendency of cases as on 31 March 2006 was as under:

Age wise assessments pending finalisation for	Number of assessment cases
More than seven years	244
More than five years but less than seven years	1,109
More than three years but less than five years	5,386
Total	6,739
Less than three years	1,92,583
Total	1,99,322^s

No specific efforts had been made by the department to reduce pending assessment cases. Due to non fixing of time limit for the finalisation of assessments in HGST Act, the number of pending assessments increased from 1,62,618 as on 1 April 2001 to 1,99,797 as on 31 March 2006 i.e. increase by 23 *per cent*. Meanwhile due to such prolonged delays, the chances of some registered dealers having closed business and escaping tax assessment and penalty and interest, thereof, could not be ruled out.

After this was pointed out, ETC Haryana stated in July 2007 that the district officers had been directed to ensure disposal of cases for the period prior to 2003-04 at the earliest.

^s There is a difference of 475 remand cases (1,99,797-1,99,322) details of which were not made available to audit.

2.2.6.2 The sales tax collected during five years ending March 2006 on the basis of voluntary payment by registered dealers and through additional demands as intimated by the department is given below:

(Rupees in crore)

Year	Amount collected at pre assessment stage	Additional demand after regular assessment	Amount refunded	Net collection	Total gross state receipts	Percentage of sales tax collection to gross state receipts
2001-02	2,884.09	76.97	11.81	2,949.25*	6,637.26	44
2002-03	3,234.99	110.54	12.85	3,332.68*	7,357.53	45
2003-04	3,655.00	194.15	11.15	3,838.00	8,571.10	45
2004-05	4,494.23	293.06	26.38	4,760.91	9,984.64	48
2005-06	5,480.84	169.01	45.40	5,604.45	11,537.21	49

From the above table, it would be seen that the percentage of collection of sales tax as compared to gross tax receipts of the State increased by five *per cent* from 44 in 2001-02 to 49 *per cent* in 2005-06.

2.2.6.3 During test check of records of nine ** offices of DETC, it was noticed that in 630 cases of 408 dealers involving Government dues amounting to Rs.299.82 crore assessed during the years 2001-02 to 2005-06, there was an abnormal delay *** ranging between 11 and 162 months in the finalisation of assessments as detailed below:

Assessments taken up	Number of cases	Amount (Rupees in crore)
After 12 months but upto 24 months	139	81.60
After 24 months but upto 36 months	182	43.86
After 36 months but upto 48 months	155	40.45
After 48 months but upto 60 months	74	88.96
After 60 months	80	44.95
Total	630	299.82

Delay in framing assessments resulted in delay/non recovery of revenue.

* The net collections of sales tax as shown by the department during the years 2001-02 and 2002-03 were at variance with that of Finance Accounts.

** Ambala, Faridabad (East), Faridabad (West), Gurgaon (East), Gurgaon (West), Jagadhari, Karnal, Panipat and Sonapat.

*** Delay calculated after allowing 12 months for finalisation of assessments in the absence of any norms fixed.

2.2.7 Non levy of tax on rental charges

Hon'ble Supreme Court in the case of M/s Bharat Sanchar Nigam Limited and others Vs. Union of India held* in March 2006 that mobile phone connection provided by service providers to the consumers is a service and not sale. Further, it stipulated that telephone services is nothing but a service. There is no sale element apart from the obvious one relating to the hand sets if any; and any other accessory supplied by the service provider remains to be taxed under sales tax laws.

During the audit of assessment records of the office of DETC Ambala, it was noticed that AA while finalising between September 2004 and January 2005 assessment of an unregistered dealer 'Department of Telecommunication' (DOT) for the period from April 1989 and July 2002 levied sales tax of Rs.56.99 crore on rental charges of Rs.648.77 crore. The dealer filed an appeal before the Hon'ble High Court of Punjab and Haryana at Chandigarh. The Court remanded the case in September 2006 with the directions to decide the case in accordance with Supreme Court judgment *ibid*. AA decided not to levy tax. The decision of AA not to levy tax was incorrect as DOT, in the instant case, provided telephone sets/teleprinters apparatus and collected rental charges towards apparatus which constituted sales. These sales were not exempted from levy of sales tax either under sales tax laws or under the *ibid* Supreme Court judgment. As such the amount collected was taxable. This resulted in short levy of tax of Rs.170.97 crore including minimum penalty of Rs.113.98 crore.

After this was pointed out, ETC Haryana stated in July 2007 that the matter would be examined.

Non levy of interest

2.2.8 Under the HGST Act, a dealer is liable to pay purchase tax on goods (other than goods specified in schedule B) purchased from within the State without payment of tax and used in the manufacture of goods. No deduction from dealer's gross turnover (GTO) is admissible if such goods are transferred to his branch office outside the State. In the event of default in payment, the dealer is liable to pay interest on the amount of tax remaining unpaid at one *per cent* per month for the first month and at one and a half *per cent* per month thereafter so long as the default continues.

During test check of records of DETC Ambala, it was noticed that a dealer purchased petroleum products valued at Rs.247.44 crore during the years 1994-95 to 1996-97 and made branch transfer outside the State. JETC (Range) Faridabad, (Revisional Authority), while finalising the revisional orders during 2001-02, levied purchase tax of Rs.9.51 crore but did not levy interest of Rs.8.85 crore due for non deposit of tax with the returns. This resulted in non levy of interest of Rs.8.85 crore besides penalty.

After this was pointed out, ETC Haryana stated in July 2007 that AAs had been directed to complete the action to levy interest at an early date.

* (2006) 27 PHT 268 (SC) (FB) dated 2 March 2006.

Non levy of interest and penalty

2.2.9 Under the HGST Act, if a dealer has maintained false or incorrect accounts or documents with a view to suppress his sales, purchases or stock of goods or has concealed any particulars of his sales or purchases or has furnished to or produced before any authority any accounts, return, document or information which is false or incorrect, he shall be liable to pay penalty in addition to the tax to which he is assessed or is liable to be assessed, a sum not less than twice and not more than three times the amount of tax which would have been avoided. The instructions issued by ETC Haryana in September 1993 stipulate that it is the duty of every AA to finalise penal proceedings alongwith the assessment and if, for some reason, the penal action is kept pending, that should be initiated immediately after the assessment is finalised and must be completed within six months of assessment.

During review of assessment cases in seven* offices of DETC, it was noticed that in 50 cases of 17 dealers for different assessment years between 1994-95 and 2002-03 finalised between March 2003 and December 2005, demands for tax of Rs.76.76 crore were raised but action to levy penalty and interest for non payment of tax were stated to be taken separately. However, no such proceedings were initiated even after a lapse of 12 to 46 months. Thus, improper action on the part of AAs resulted in non levy of minimum penalty of Rs.117.42 crore and interest of Rs.17.57 crore.

After this was pointed out, ETC Haryana stated in July 2007 that AAs had been directed to complete the action to levy/imposition of interest/penalty at an early date.

Arrears of sales tax

2.2.10 Under the HGST Act, every dealer is required to submit to the AA a monthly/quarterly return of turnover and pay tax due as per returns within the prescribed period. After making final assessment, a demand notice is served on the dealer for the balance tax, if any, specifying the time by which demand shall be payable. For non/delayed payment of tax, interest and penalty is also leviable under the Act/Rules. Thus, amount of tax, interest and penalty which remain unpaid constitute arrears of sales tax. If the dues are not paid by the dealer within time specified in the demand notice or within the extended period, if any, the AA may apply to the Collector for the recovery of Government dues as arrears of land revenue and to issue recovery certificate and take all legal steps such as attachment of property/assets and detention of dealer necessary for recovery of tax dues as arrears of land revenue.

* Ambala, Faridabad (East), Faridabad (West), Gurgaon (West), Karnal, Panipat and Sonapat.

Total sales tax arrears pending collection as on 31 March of each year during the years 2001-02 to 2005-06 were as under:

(Rupees in crore)

Year	Arrears at the beginning of the year	Current demand added during the year	Total	Collection of demand during the year	Arrears at the end of the year	Percentage of collection to total arrears
2001-02	252.48	202.66	455.14	64.29	390.85	14
2002-03	390.85	226.20	617.05	176.56	440.49	29
2003-04	440.49	484.30	924.79	207.40	717.39	22
2004-05	717.39	449.64	1,167.03	257.99	909.04	22
2005-06	909.04	453.21	1,362.25	220.10	1,142.15	16

It would be seen from the above table that collection/clearance of arrears ranged between 14 and 29 *per cent*, hence the arrears are bound to increase every year. The arrears increased from Rs.252.48 crore in the beginning of 2001-02 to Rs.1,142.15 crore at the end of 2005-06 i.e. an increase of 352 *per cent*. This shows that Government/department had not taken serious and concerted measures for recovery.

The break up of arrears of Rs.1,142.15 crore pending as on 31 March 2006 was as under:

Sl. No.	Stage of action	Amount (Rs. in crore)
1.	Recovery stayed by Courts, sales tax tribunal, appellate authorities and Government/departmental authority	421.28
2.	Under liquidation	159.42
3.	In the process of recovery covered by recovery certificates: <ul style="list-style-type: none"> • inter State • inter district 	74.63 8.41
4.	Other stages: <ul style="list-style-type: none"> • property attached • demand under write off • under instalments • recoverable 	52.39 16.90 9.31 399.81
	Total	1,142.15

After this was pointed out, ETC Haryana stated in July 2007 that arrears of Rs.187.48 crore have been recovered upto March 2007 and efforts were on for recovery of remaining amount of arrears.

Delay in issue of recovery certificates

2.2.11 Under the HGST Act, no time limit has been prescribed for issue of recovery certificates against defaulting dealers.

Test check of records of four offices of DETC revealed that delay* (between 3 and 250 months) in sending the recovery certificates against 36 defaulting dealers resulted in non realisation of revenue of Rs.8.40 crore in 81 cases as detailed below:

Sr. No.	Name of the district	Number of dealers/cases	Assessment year (s) date of finalisation of assessment (between)	Delay in issuing recovery certificates (RCs) (amount in lakh of rupees)				
				1-36 months Case/ Amount	36-72 months Case/ Amount	72-108 months Case/ Amount	108-144 months Case/ Amount	Above 144 months Case/ Amount
1.	Faridabad (East)	4/4	1984-85 to 1999-2000 (July 1990 and August 2003)	3/19.19	-	-	1/2.14	-
2.	Faridabad (West)	11/17	1986-87 to 2000-01 (June 1991 and September 2003)	8/43.37	6/10.59	1/5.95	2/8.20	-
3.	Karnal	6/22	1990-91 to 1998-99 (March 1993 and March 2003)	7/2.02	15/361.36	-	-	-
4.	Sonepat	15/38	1980-81 to 1998-99 (February 1983 and October 2002)	28/342.02	8/44.20	-	-	2/0.62
	Total	36/81		46/406.60	29/416.15	1/5.95	3/10.34	2/0.62

After this was pointed out, ETC Haryana attributed the delay to non availability of whereabouts of the dealers or other reasons.

Demands under stay

2.2.12 As per instructions issued by ETC Haryana in March 1984, it should be ensured that appeal cases in which revenue of more than Rs.5,000 is involved and in which stay has been granted against recovery of tax are decided within three months of grant of stay.

Test check of records of the offices of eight** DETC revealed that demands of Rs.23.85 crore created between March 2000 and October 2005 in 114 cases of 75 dealers were stayed by JETC (Appeals) between July 2001 and June 2005. These cases had not been decided within the prescribed period and were pending as of 31 March 2006. Despite specific departmental instructions, the authority did not implement the same resulting in non realisation of revenue of Rs.23.85 crore.

After this was pointed out, ETC Haryana stated in July 2007 that JETC (Appeal) is a quasi judicial authority who has to see to the appropriate time for such disposal. The fact remained that departmental instructions were not followed.

* Delay calculated after allowing 12 months from the date of raising demands in the assessments.

** Ambala, Faridabad (East), Faridabad (West), Gurgaon (East), Gurgaon (West), Karnal, Panipat and Sonepat.

Non inclusion of interest in the demand sent to liquidator

2.2.13 As per instructions issued by ETC Haryana in March 1984, interest liability which is raised against a dealer on account of non payment of tax is to be included in the arrears while registering the claim with the official liquidator. For this purpose, upto date interest liability is worked out and claim of consolidated amount is to be registered with the official liquidator.

During test check of records of six* offices of DETC, it was noticed that in case of seven* dealers, claims amounting to Rs.22.38 crore relating to different assessment years between 1993-94 and 2001-02, finalised between September 2004 and March 2006, were registered with the official liquidators during the period between September 2004 and March 2006, but claims of interest liability amounting to Rs.10.81 crore were not included.

After this was pointed out, ETC Haryana admitted the objection and intimated in July 2007 that the AA Faridabad levied interest of Rs.33 lakh vide order dated 8 July 2007 and action in remaining cases would be taken shortly.

Acknowledgement

2.2.14 Audit findings as a result of test check of records of Excise and Taxation Department, Haryana were reported in May 2007 to Government with a specific request in June 2007 for attending the meeting of the Audit Review Committee so that the view point of Government may be taken into account before finalising the review. The meeting was held on 4 July 2007 which was attended by the Additional Excise and Taxation Commissioner and views thereof incorporated in the review.

Conclusion

2.2.15 The department did not levy tax of Rs.56.99 crore on rental charges collected on supply of telephone sets/teleprinters apparatus by DOT. There was abnormal delay ranging between 11 and 162 months in the finalisation of 630 assessment cases test checked. Besides, there was irregularity in framing assessments by the AAs due to non levy of penalty and interest. As a result of these failures, the department lost revenue to the extent of Rs.314.81 crore in respect of only test checked cases.

Recommendations

2.2.16 Sales tax is a major source of tax revenue of the State. For proper and effective assessment and collection of sales tax, the State Government may consider:

- fixing norms for monthly disposal of sales tax assessment cases as HGST Act has been repealed since April 2003;
- bringing about amendments in the Act/Rules to fix time limit for initiation of recovery proceedings.

* Ambala: 1, Faridabad (East): 1; Faridabad (West): 2; Gurgaon (West): 1; Panipat: 1 and Sonapat: 1.

2.3 Under assessment of tax due to arithmetical mistake in calculation

Under the CST Act, tax on ISS of goods (other than declared goods) shall be calculated at the rate of 10 *per cent* or at the rate applicable to the sale of such goods inside the State, whichever is higher, when such sales are not supported by form 'C'.

During test check of records of DETC, Rohtak, it was noticed in September 2006 that a dealer, availing the benefit of exemption of tax, made ISS of goods (packaging material) valued at Rs.45.87 crore during 2002-03 without furnishing declaration form 'C'. The AA, while finalising the assessment in October 2005, erroneously levied tax of Rs.45.87 lakh instead of Rs.4.59 crore on sales of Rs.45.87 crore. This resulted in under assessment of tax of Rs.4.13 crore.

After this was pointed out in September 2006, the AA admitted the mistake and sent the case to DETC Rohtak (revisional authority) for taking suo motu action in September 2006. Further report on action taken had not been received (August 2007).

The matter was referred to Government in November 2006 and May 2007; report had not been received (August 2007).

2.4 Under assessment of tax due to incorrect determination of gross turnover

Under HGST Act, turnover includes the aggregate of the amount of sales and purchases and part of sales and purchases made by any dealer whether as principal, agent or in any other capacity less any sum allowed as cash discount but including any sum charged for anything done by the dealer in respect of the goods at the time of, or before, delivery thereof. The ETC Haryana while pointing out lapses on the part of some AAs in not taking into account proper market price for the purpose of working out the sale turnover of quarry contractors, directed all DETCs in June 1984 to make proper enquiries regarding the sale price and ensure that the said sale price indicated in the books and returned to the department is realistic. As a guiding principle, the ratio of 1:3 between the royalty account and GTO could be adopted as convenient basis for initiating proceedings and determining actual facts.

During test check of records of DETC Yamunanagar in December 2005 and January 2006, it was noticed that two mining contractors (dealers) paid contract money amounting to Rs.6.78 crore to the Mines and Geology Department during the years 2001-02 and 2002-03. Since the dealers did not provide the details of expenditure incurred on extraction of mines and transportation charges etc in the trading accounts and returns furnished to the department, the AA was required to assess the GTO at Rs.20.32 crore by adopting ratio of 1:3 in terms of the instructions of June 1984 after initiating

assessment proceedings. However, the AA, while finalising assessments in July 2004 did not take cognizance of the instructions and levied tax of Rs.35.86 lakh on contract money of Rs.6.78 crore. This resulted in short levy of tax upto Rs.2.95 crore worked out on the basis of instructions ibid.

After this was pointed out in December 2005 and January 2006, the department issued notices to the dealers for reassessment and determined the GTO of Rs.10.64 crore after adding loading charges of Rs.3.86 crore as shown in the annual accounts of the dealer in April 2006 and raised an additional demand of Rs.75.55 lakh. Further progress of recovery had not been intimated (August 2007).

The matter was referred to Government in February 2006; reply had not been received (August 2007).

2.5 Under assessment of tax due to application of incorrect rate

Under the HGST Act, tax is leviable in accordance with the rates prescribed in the notification issued from time to time. Further under HGST Rules, notional sales tax liability (NSTL) means amount of tax payable by an eligible industrial unit on the sale of finished products but for an exemption, computed at the maximum rates and not at the concessional rates specified under the local sales tax law.

During test check of records of four DETCs, it was noticed between March 2005 and January 2007 that AAs applied incorrect rates of tax while assessing seven cases resulting in short levy of sales tax of Rs.88.57 lakh during the years 1999-2000 to 2002-03 as detailed below:

(Amount in lakh of rupees)

Sr. No.	Name of DETC	Assessment year/(month/ year of assessment)	Value of goods sold/ commodity	Rate of tax (in percentage)		Short levy
				Leviable	Levied	
1.	Panchkula	2001-02 and 2002-03 (October 2005)	204.95 angular type roof top towers	10	4	10.80
Remarks: After this was pointed out in April 2006, the AA created an additional demand of Rs.10.80 lakh (December 2006).						
2.	Gurgaon (West)	2001-02 (April 2005)	218.94 PVC leather cloth	12	10	4.38
		2001-02 (August 2005)	259.43 poly propylene	12	10	51.89
		2002-03 (March 2005)	110.31 mobile hand sets	12	4	8.82

Sr. No.	Name of DETC	Assessment year/(month/year of assessment)	Value of goods sold/ commodity	Rate of tax (in percentage)		Short levy
				Leviable	Levied	
Remarks: The department stated in two cases in October 2006 and August 2007 that the cases have been sent to revisional authority for taking suo motu action. Further report has not been received (August 2007).						
3.	Panipat	1999-2000 (June 2005)	153.66 13.21 HDPE* bags/sacks	10 4	5	7.56
Remarks: The AA stated in January 2007 that the dealer sold goods to manufacturers against declaration in form STD 4 and tax was rightly levied at the rate of five <i>per cent</i> . The reply was not tenable as exempted unit was not entitled to the benefit of concessional rate of tax under local sales tax law.						
4.	Sonepat	1999-2000 (May 2005)	158.77 17.98 Horlicks	10 10	7 8	4.76 0.36
Total						88.57

The cases were referred to Government between September 2005 and May 2007; reply had not been received (August 2007).

2.6 Incorrect allowance of deduction

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 to a dealer shall be exempt from tax provided the dealer furnishes a certificate in prescribed form E I or E II and a declaration in form 'C' obtained from purchasing dealer. Thus, the contract of supply of goods must come into existence after commencement and before termination of inter State movement of goods.

During test check of assessment records of DETC, Hisar, it was noticed in December 2006 that the dealer sold goods valued at Rs.7.80 crore by way of transfer of documents of title to goods during their movement from one State to another during the year 2002-03. The AA, while finalising the assessment in November 2005, allowed deduction of Rs.7.80 crore treating it as exempt from tax against production of E I, E II and C forms. The copies of contract of supplies of goods with HVPNL Panchkula produced by the dealer before the AA at the time of original assessment revealed that contract of sales were prior to the period of commencement of inter State movement of goods in January 2003. Thus sales made by the dealer company under the supply order were not covered under CST Act and as such were not exempt from tax.

* HDPE: High density poly ethylene.

Incorrect allowance of deduction resulted in under assessment of tax of Rs.31.19 lakh.

After this was pointed out in December 2006, DETC Hisar stated in June 2007 that case was sent to DETC (Inspection) Hisar on 16 March 2007 for taking suo motu action and had not yet been decided.

The matter was referred to Government in January 2007; reply had not been received (August 2007).

2.7 Non levy of tax on liquor

Under the HGST Act, sale on liquor (foreign liquor and Indian made foreign liquor) including beer, when sold by L-4/L-5 licensee, is taxable at the rate of 20 per cent.

During test check of records of DETC, Rohtak, it was noticed in February 2005 that M/s Haryana Tourism Corporation Limited, Rohtak, holding L-4/L-5 licence, sold beer and whisky valued at Rs.39.68 lakh without payment of tax during the year 1998-99. The AA, while finalising the assessment, incorrectly excluded the turnover from levy of tax treating the sale as tax free. The revisional authority took up the case for rectification under section 40 (1) of HGST Act and created additional demand of Rs.4.68 lakh on the sale of liquor valuing Rs.23.38 lakh instead of tax of Rs.7.94 lakh on turnover of Rs.39.68 lakh in April 2004. The omission resulted in under assessment of tax of Rs.3.26 lakh on differential amount of Rs.16.30 lakh.

After this was pointed out in February 2005, the AA stated in March 2005 that the case was sent to the revisional authority for taking *suo motu* action. The revisional authority rectified the revisional order dated 28 April 2004 *ab initio* and created additional demand of Rs.7.94 lakh on turnover of Rs.39.68 lakh in December 2005. Further progress of recovery had not been received (August 2007).

The matter was referred to Government in May 2005; reply had not been received (August 2007).

2.8 Excess allowance of input tax

Under section 15 A of HGST Act, as amended on 19 September 2000 effective from 13 July 2000, the amount of tax paid or payable (input tax) under the local Act or CST Act (the Acts) on the goods (except paddy) used in the manufacture or processing by a dealer producing goods including bye/waste products (manufactured goods) shall be reduced from the tax paid or payable (output tax) under the Acts on the sale of manufactured goods made by him during that period.

During test check of records of DETC, Sonapat, it was noticed in February 2007 that a dealer purchased wheat and *bardana* valued at Rs.8.08 crore after payment of tax of Rs.32.33 lakh and used in the manufacture of taxable goods (*atta, maida* and *suji*) and tax free goods (*chokar*) during the years 2001-02 and 2002-03. The AA, while finalising the assessments in January and March 2006, allowed set off of total amount of input tax of Rs.32.33 lakh including proportionate tax element of Rs.5.94 lakh on wheat consumed in manufacture of *chokar* (tax free). This resulted in excess allowance of input tax of Rs.5.94 lakh.

The matter was brought to the notice of the department in February 2007 and referred to Government in May 2007; reply had not been received (August 2007).

2.9 Incorrect assessment involving lump sum tax on works contract

Under the HVAT Act and Rules framed thereunder, the turnover representing value of goods involved in the execution of works contract and which had not suffered tax earlier inside the State is assessable to tax at the rates specified for such goods. However, a works contractor may opt to pay lump sum tax at the rate of four *per cent* on the total value of the works executed in respect of contracts involving transfer of property in goods.

During test check of records of DETC, Gurgaon (West), it was noticed in July 2006 that a works contractor, received payment of Rs.1.37 crore for execution of works contract between April 2003 and March 2005. While finalising the assessments for the years 2003-04 and 2004-05 in December 2005 and March 2006, the AA erroneously levied tax at the rate of two *per cent* instead of four *per cent*. This resulted in short levy of tax of Rs.2.74 lakh.

After this was pointed out in July 2006, the AA intimated in April 2007 that the case had been sent to the revisional authority for taking suo motu action. Final reply had not been received (August 2007).

The matter was referred to Government in September 2006; reply had not been received (August 2007).