

## 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 2003-04 revealed under-assessments of sales tax amounting to Rs.213.30 crore in 890 cases, which broadly fall under the following categories:

Sl. No.	Particulars	Number of cases	Amount (Rupees in crore)
1.	Incorrect computation of turnover	34	5.34
2.	Application of incorrect rates	161	5.03
3.	Non-levy of interest	91	6.39
4.	Non-levy of penalty	28	7.60
5.	Under-assessment of turnover under CST Act	50	1.35
6.	Other irregularities	525	41.19
7.	Review on Delay in assessments and their impact on revenue collection	1	146.40
	<b>Total</b>	<b>890</b>	<b>213.30</b>

During the year 2003-04, the Department accepted under-assessments of tax of Rs.1.79 crore involved in 93 cases of which 81 cases involving Rs.1.65 crore had been pointed out in audit during 2003-04 and the rest in earlier years. An amount of Rs.0.76 crore had been recovered in 54 cases during the year 2003-04, of which Rs.0.13 crore recovered in 12 cases related to earlier years.

A few illustrative cases involving Rs.10.23 crore and a review on “Delay in assessments and their impact on revenue collection” involving Rs.146.40 crore highlighting important cases are mentioned in this chapter. Of these, the Department accepted 51 audit observations involving Rs.5.03 crore.

## **2.2 Delay in assessments and their impact on revenue and collection of sales tax demands**

### *Highlights*

**Delay in finalising assessments resulted in non-recovery of tax of Rs.63.69 crore in 232 cases.**

*(Paragraph 2.2.6)*

**Sales tax arrears amounting to Rs.440.49 crore were outstanding as on 31 March 2003..**

*(Paragraph 2.2.7)*

**Non-pursuance of cases where recovery certificates were issued to Collectors resulted in blockade of revenue of Rs.35.29 crore in 563 cases.**

*(Paragraph 2.2.8)*

**Delay in revising assessments resulted in non raising/delay in raising of demands for Rs.1.56 crore in 78 cases.**

*(Paragraph 2.2.12)*

**In 41 cases, issue of demand notices amounting to Rs.2.68 crore were delayed from 39 to 297 days.**

*(Paragraph 2.2.13)*

### *Introductory*

**2.2.1** In Haryana, Sales Tax is levied and collected under the Haryana General Sales Tax (HGST) Act, 1973 and the Central Sales Tax (CST) Act, 1956 and the rules made thereunder. Every registered dealer, under the Acts, is required to submit a return on the prescribed dates. If the Assessing Authority is satisfied about the correctness of the returns furnished by the dealer, he shall assess the amount of tax due from the dealer. Where the Assessing Authority is not satisfied with the returns he shall ask such dealer to produce or cause to be produced any evidence on which such dealer may rely in support of his returns. In case, the dealer fails to comply with the notice issued, the Assessing Authority shall, within five years after the expiry of such period, proceed to assess, to the best of his judgment the amount of tax due from the dealer. However, no time limit has been fixed for assessments where the dealers comply with the notice served by the Assessing Authority. For the demand created as a result of assessment, a notice called Demand Notice is served upon the dealer asking him to make the payment within thirty days from the date of issue of notice. As per instructions issued in September 1983 by Excise and Taxation Commissioner demand notice is required to be issued within 15 days of the date of assessment order.

### ***Audit Objectives***

**2.2.2** Detailed analysis of delay in assessments and their impact on revenue and collection of sales tax demands during the period 2000-2001 to 2002-2003 was conducted with a view to:

- ascertain whether there is any lacunae in the Act/Rules and procedures.
- ascertain the extent of loss of revenue blocked in assessments.
- ascertain whether there exists internal control mechanism to ensure timely disposal of assessment cases.

### ***Scope of Audit***

**2.2.3** Out of 21 district units, records in respect of 11\* districts for the years 2000-01 to 2002-03 were test checked between August 2003 and March 2004.

### ***Organisational set up***

**2.2.4** The monitoring and control at Government level is done by the Financial Commissioner and Secretary to Government Haryana, Excise and Taxation Department. The overall control and superintendence of the sales tax organisation vests with the Excise and Taxation Commissioner (ETC) who is assisted by Deputy Excise and Taxation Commissioners (DETCs), Excise and Taxation Officers (ETOs), Assistant Excise and Taxation Officers (AETOs), Taxation Inspectors and other allied staff in the administration of HGST Act, and CST Act. AETOs and ETOs have been vested with the powers of Assistant Collectors and DETCs as Collectors under section 27 of Punjab Land Revenue (PLR) Act, 1887 for effecting recoveries of tax, interest and penalty imposed under the Acts which remained unpaid by due dates as arrears of land revenue.

### ***Monitoring and control of assessments***

**2.2.5** As per Rule 32 of HGST Rules, a “Demand and Collection Register” (DCR) was required to be maintained by each Assessing Authority. This register contains the details of levy, assessment and collection of tax from each dealer. No time limit has been fixed for the disposal of assessment cases once the proceedings are initiated.

During the course of audit, it was noticed that the DCR was not maintained properly. The details of the returns/assessments were not recorded in the register. The Department did not have any record to indicate the opening balance, receipts and clearance of the assessment during a particular year/quarter. Thus, the correctness of the returns sent to the higher authority

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\* Ambala, Bhiwani, Faridabad (E), Faridabad (W), Gurgaon (East), Gurgaon (West), Hisar, Karnal, Rewari, Sirsa and Sonipat.

could not be ascertained in audit. As per the information received from ETC, 2,57,286 cases were pending finalisation as on 31 March 2003. Year-wise position of assessments in arrears as furnished was as under:

Year	Number of cases pending/instituted at the beginning of the year	Number of cases disposed off during the year	Number of cases pending at the close of the year	Percentage of 4 to 2
1	2	3	4	5
2000-01	3,91,643	2,02,855	1,88,788	48.20
2001-02	4,02,406	1,30,586	2,71,820	67.55
2002-03	4,47,041	1,89,755	2,57,286	57.55

It would be seen from the above that assessments pending finalisation at the end of each financial year ranged between 48.20 and 67.55 *per cent*. The reason for such huge pendency though called for has not been received (September 2004).

#### ***Absence of provisions for finalizing assessments***

**2.2.6** In accordance with the instructions issued by ETC in January 1982, a limitation period of three years was fixed for finalisation of the assessments. However, no such provision was made in the Act.

It was noticed in 10\* district units that 232 assessments of 177 dealers pertaining to the period from 1991-92 to 2000-01 were finalized between 1997-98 and 2002-03 i.e. after a delay of more than one year as detailed below:

Assessments finalized	No. of cases	Amount (Rupees in crore)
After 12 months but upto 24 months	32	6.13
After 24 months but upto 36 months	39	6.67
After 36 months but upto 48 months	50	5.26
After 48 months but upto 60 months	46	9.56
After 60 months	65	36.07
<b>Total</b>	<b>232</b>	<b>63.69</b>

It would be seen from the above that 161 assessments were finalized after a lapse of three years. Further it was revealed that 15 dealers involving tax of Rs.2.94 crore had closed their business during the pendency of assessments. A test check of 68 cases involving a tax effect of Rs.47.72 crore revealed that

\* Ambala, Faridabad (East), Faridabad (West), Gurgaon (East), Gurgaon (West), Hisar, Karnal, Rewari, Sirsa and Sonipat.

interest and penalty of Rs.13.71 crore though leviable was not levied/collected. A few instances indicating the impact of delay on collection of tax are indicated as under :

Sr. No.	Name of DETC	Assessment year/Date of order	Number of cases	Delay involved	Amount involved (Rupees in crore)
1.	Kaithal	1997-98/ November 2002	1	4 years	Tax: 0.17 Interest: 0.04 Penalty: 0.24
A dealer after submitting his returns for the year 1997-98 had closed his business and his Registration Certificate was cancelled w.e.f. April 1998. Demand for tax was raised in November 2002 i.e. four years and six months after cancellation of Registration Certificate. Interest and penalty was not levied. Recovery was pending (September 2004).					
2.	Hisar	1997-98 and 1998-99/ March 2002	2	5 years / 4 years	Tax: 0.32 Penalty: 0.54
A dealer filed incorrect returns and evaded tax during the years 1997-98 and 1998-99. By the time demand for tax of Rs.31.73 lakh was raised in March 2002 the dealer had already closed his business and his whereabouts were not known. As such demand notice for tax could not be served and penalty could not be levied.					
3.	Panchkula	1993-94 to 1995-96/ March 2002	3	8 years / 6 years	Tax: 1.29
Assessments of a dealer for the years 1993-94 to 1995-96 were framed ex parte in March 2002 creating demands amounting to Rs.1.29 crore. By the time assessments were framed the dealer had already closed his business after filing the last quarterly return in April 1999. Recovery was pending (September 2004).					
4.	Rewari	2000-01/ August 2001	1	--	Tax: 0.46 Penalty: 0.93
A dealer suppressed his sales during the period April 2000 to September 2000 and thereafter closed its business in October 2001. Though the Assessing Authority raised demand of tax of Rs.46.59 lakh in August 2001 on best judgement basis, penal action as stated in the order was not taken till July 2004. However, Rs.one lakh had been recovered.					
5.	Sirsa	1990-91 to 1992-93/ November 1995, March 1996 and October 2000	3	5 years/ 4 years	Interest: 0.18
Additional demands of Rs.23.54 lakh for the years 1990-91 to 1992-93 were recovered in October 2000 i.e. late by four to five years but no interest was levied.					

There was nothing on record to indicate that there was any monitoring at the ETC level to watch the finalizations of assessments within the prescribed period of three years.

It is evident from the above that there is a need for making provision in the Act for specifying the period during which an assessment should be finalized.

### **Collection of sales tax demands**

**2.2.7** Position of sales tax demands in arrears showing various stages of action as on 31 March 2003 was as under:

(Rupees in crore)

Sr. No.	Stage	2000-01	2001-02	2002-03
1	Arrears under stay	72.14	92.39	120.71
2	Arrears under liquidation	38.57	38.83	97.40
3	Interstate arrears	29.45	34.06	45.61
4	Inter districts arrears	3.93	3.24	5.50
5	Property attached	6.81	10.68	8.27
6	Pending for write off	11.98	11.75	15.36
7	Arrears free from any litigation	116.71	199.90	147.64
	<b>Total</b>	<b>279.59</b>	<b>390.85</b>	<b>440.49</b>

It would thus be seen that-

- arrears of sales tax increased from Rs.279.59 crore during the year 2000-01 to Rs.440.49 crore during the year 2002-03 i.e. increase by *57.55 per cent*. Year-wise break up of arrears was not made available by the Department.
- arrears free from any litigation had increased from Rs.116.71 crore to Rs.147.64 crore during these years. i.e. by *26.50 per cent*. The Department neither furnished reasons for increase in arrears nor intimated the steps taken to liquidate the arrears.
- arrears under liquidation increased from Rs.38.57 crore in 2000-01 to Rs.97.40 crore in 2002-03 registering an increase of *152.52 per cent* resulting in accumulation of arrears of Rs.58.83 crore under liquidation.

### **Recovery Certificates**

**2.2.8** HGST Act provides that the amount of any tax, interest and penalty levied under the Act, which remains unpaid after the due date, shall be recoverable as arrears of land revenue under PLR Act. Position of recovery

certificates as supplied by 11 district officers was as under:

Year	Opening balance		RC issued during the year		Cases finalised during the year		Cases pending at the end of year	
	No.	Amount (Rupees in crore)	No.	Amount (Rupees in crore)	No.	Amount (Rupees in crore)	No.	Amount (Rupees in crore)
2000-01	481	24.00	37	1.03	14	0.24	504	24.79
2001-02	504	24.79	25	4.53	8	0.31	521	29.01
2002-03	521	29.01	48	6.38	6	0.10	563	35.29

In all the 563 recovery certificates issued upto 2002-03 tax amounting to Rs.35.29 crore had not been recovered.

**2.2.9** In Karnal, demands amounting to Rs.4.63 lakh for the years 1991-92 and 1992-93 were created in February 1998 and March 1998 against a dealer. The dealer did not pay the same and his property was attached in August 1998. Thereafter no action to sell the property was taken to recover the amount. The Department did not give any reasons for not selling the property. This was pointed out in March 2004; reply had not been received (September 2004).

**2.2.10** Test-check in Gurgaon (E), Sirsa and Sonipat districts revealed that six cases involving Rs.2.46 crore were finalized between November 2001 and April 2002. However, the dealers did not pay the amount within the period specified in the demand notice and action to recover the same as arrears of land revenue was initiated between July 2002 and March 2003 after a delay of 194 to 676 days. This resulted in non-realization of the government dues to that extent.

#### ***Absence of provision for finalisation of remand cases***

**2.2.11** There is no provision under the Act/Rules for monitoring the receipt and disposal of remand cases at ETC level. However, instructions issued by the ETC in July 1997 emphasized for taking decision in the remand cases within six months from the date of receipt of the copy of remand order.

During the course of audit, it was noticed that no separate register was maintained by the ETOs. Year-wise position of receipt and disposal of remand cases was not made available. However, the position of outstanding remand cases as furnished by the sales tax circles as on 31 March 2003 was as

under:

Year	Opening Balance	Remand cases received during the year	Total	Cases decided	Balance
2002-03	299	282	581	337	244

A few cases depicting inaction on the part of the Department in finalizing the remand cases are discussed below:

Sr. No.	Name of DETC	Assessment year/Date of order	Nature of objection	Amount involved (Rupees in crore)
1.	Sirsa	1994-95/ April 2002	Case was remanded in June 2003 by the Appellate Authority with the directions to give one more opportunity and also directed the appellant to appear before Assessing Authority within a week of the receipt of order. But no action to decide the remand case was taken till date (September 2004).	0.14
2.	Sirsa	1987-88/ January 1995/ August 2001	The case of the dealer was decided ex-parte. The Appellate Authority remanded the case in January 1995. However on appeal it was again remanded in March 2002 with the direction to make fresh assessment after issuing statutory notice. No action to decide the remand case was taken till date (September 2004).	0.02
3.	Panchkula	1992-93 and 1993-94/ 15 March 1996	The Revisional Authority remanded cases of the dealer in January 1999 for framing denovo assessments. The remand cases were decided by the Assessing Authority ex-parte in September 2002 i.e. after three years and nine months of the remand order creating demands for Rs.0.06 crore.	0.06
		<b>Total</b>		<b>0.22</b>

***Delay in taking suo motu action***

**2.2.12** Test-check of records of Ambala, Faridabad (E), Sirsa and Sonapat districts revealed that 78 cases were pending revision as on 31 March 2003. Of these, 33 cases were sent to Revisional Authority between January 2000 and September 2002 and in 45 cases dates on which the cases were sent to Revisional Authority were not made available. Delay in revising assessments resulted in non raising of demands of Rs.1.56 crore.

***Delay in issue of demand notice***

**2.2.13** As per instructions issued (September 1983) by ETC, Haryana, all the assessing authorities would issue tax demand notice and challan immediately



after the pronouncement of the assessment order or the imposition of penalty etc. and in all circumstances within 15 days of the date of orders.

During test-check of records of six\* offices of DETC's, it was noticed between July and December 2003 that in 41 cases relating to the assessment years between 1995-96 to 2001-02, demand notices of Rs.2.61 crore were issued between July 2000 and July 2003 late by 39 to 297 days from the dates of assessment orders. The amount has not been recovered so far. This resulted in non-realization of tax of Rs.2.61 crore and loss of interest of Rs.6.90 lakh.

### ***Delay in finalisation of assessment***

**2.2.14** In the case of a dealer of Ambala, assessments for the years 1994-95 to 1996-97 were finalized in December 2000 i.e. after three to five years from the closure of the assessment years and demands amounting to Rs.9.51 crore were raised which were stated (May 2004) to be under stay by Supreme Court in September 2002. Similarly, assessment for the year 1997-98 was framed in August 2003 i.e. after five years of the closure of the assessment years and demand of Rs.6.60 crore was created of which Rs.0.50 crore only had been recovered by the Department and for the balance amount stay application of the dealer was stated to be pending before the Tribunal. Delay in finalisation of assessments resulted in non/delayed realization of Government revenue of Rs.15.61 crore. No reasons for delay in assessments were made available by the Department.

### ***Conclusion/Recommendations***

**2.2.15** Abnormal delays in finalization of assessment and not taking effective steps to recover the arrears resulted in non-realization of revenue. Government should take remedial measures for speeding up assessment work; monitor the steps taken for early recovery and timely disposal of revision and remand cases. It should develop strong internal control system to ensure compliance of the instructions/Rules.

The State Government may consider taking following steps to improve the effectiveness of the system.

- Provisions may be made in the Act/rules for time bound assessment of cases.
- The State Government should develop a strong internal control system to ensure compliance with instructions issued by the Government/Department.
- The State Government should prescribe time limit for communication of orders passed by the Assessing Authority and demand notices to enable timely realisation of Government dues.

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\* Ambala: 2; Faridabad (W): 17; Gurgaon (E): 13; Gurgaon (W):3; Karnal:5; Rewari:1.

The matter was referred to the Department/Government in May 2004; final reply had not been received (September 2004).

### **2.3 Under-assessment of notional sales tax liability due to incorrect deduction**

As per provisions of the HGST Act, gross turnover means the aggregate of the amount of sales and purchases and in the case of exemption granted under 28 A/28 B of the HGST Rules, the benefit availed of by the dealer shall be worked out on gross turnover which includes sale proceeds of goods exported out of India. Further, a dealer is liable to pay purchase tax on goods purchased from within the State (other than declared goods) without payment of tax and used in the manufacture of taxable and tax-free goods.

During test-check of records of DETCs<sup>\*</sup>, it was noticed between July 2002 and February 2003 that 18 dealers availing the benefit of exemption during the year 1998-99 to 2001-02 were under assessed. This resulted in short determination of notional sales tax liability by Rs.1.63 crore as detailed below:

#### **2.3.1 Non-inclusion of sale proceeds of goods exported out of India in the gross turnover**

In two cases it was noticed that sales tax liability was short assessed due to non inclusion of sale proceeds of goods exported out of India in gross turnover by the exempted units. This resulted in short account of notional sales tax liability to the tune of Rs.1.11 crore as detailed below.

Sr. No.	Name of DETC/ Number of cases	Assessment year and date of assessment	Value of raw material consumed (Rupees in crore)	Rate of tax (In percentage)		Tax leviable (Rupees in crore)
				leviable	levied	
1.	Bhiwani/ 1	2001-2002/ July 2002	22.97/Guar	4	-	0.92
<b>Remarks:</b> After this was pointed out in May 2003, the Department replied in June 2003 that the case was sent to Revisional Authority in June 2003 for taking suo motu action. Final action taken was awaited (September 2004).						
2.	Sonipat/ 1	2001-02/ February 2003	4.77/Rubber/ 1/1	4	-	0.19
<b>Remarks:</b> After this was pointed out in audit in March 2004 the assessing authority admitted the objection and sent the case to Revisional Authority in March 2004 for taking suo motu action. Final action was awaited (September 2004).						
<b>Total</b>						<b>1.11</b>

\* DETCs/ETO Ambala City, Bahadurgarh, Bhiwani, Hisar, Jagadhari, Jhajjar, Narnaul, Rohtak, Rewari, and Sonipat.

The matter was referred to Government in July 2003/March 2004; reply had not been received (September 2004).

### 2.3.2 Short determination of sales tax liability due to application of incorrect rate of tax

In 11 cases, notional sales tax liability of Rs.0.24 crore was assessed short due to application of incorrect rate of tax as detailed below :

Sr. No.	Name of DETC/ Number of cases	Assessment year and date of assessment	Value of raw material consumed (Rupees in crore)	Rate of tax (In percentage)		Tax leviable (Rupees in crore)
				leviable	levied	
1.	Jagadhari/ 1	2001-2002/ March 2003	2.67 Non-ferrous metal	4	2	0.05
<b>Remarks:</b> After this was pointed out in September 2003, the Assessing Authority rectified the assessment order in October 2003 and created an additional demand of Rs.5.34 lakh.						
2.	Rohtak and ETO Ambala City/ 2	1999-2000 and 2001-02/ May 2002 and October 2002	149.98/ Oil seeds	4 and 7	1 and 4	0.05
<b>Remarks:</b> After this was pointed out in October and November 2003, the assessing authorities sent the cases to the revisional authority in December 2003 and January 2004 for taking suo motu action. The Revisional Authority decided (March 2004) one case and created a demand of Rs.1.91 lakh. Final outcome of other case was not intimated.						
3.	Hisar/ 2	1999-2000/ August 2002 and 2000-01 March 2003 2000-2002/ February 2003	1.00/ HDPE Plywood	12 and 12	5 and 10	0.04
<b>Remarks:</b> After this was pointed out in April 2003, the Revisional Authority created in August 2003 additional demand of Rs.3.98 lakh.						
4.	Hisar and Rewari/ 3	2001-2002 September 2002 November 2002 February 2003	7.23/Iron and steel	3 and 4	4 and 3	0.06
<b>Remarks:</b> The total short levy of tax after adjustment of tax paid in excess worked out to Rs.6.28 lakh. After this was pointed out, the Revisional Authorities rectified the orders and increased the notional sales tax liability by Rs.6.28 lakh.						
5.	Ambala, ETO Bahadurgarh and Narnaul/ 3	1998-99/ May 2000 2001-2002/ January 2003 1999-2000/ November 2002 2000-2001/ June 2001	1.77 4/4 Auto parts, plastic buttons and cement	10, 12 and 12	4, 10 and 4	0.04

Sr. No.	Name of DETC/ Number of cases	Assessment year and date of assessment	Value of raw material consumed (Rupees in crore)	Rate of tax (In percentage)		Tax leviable (Rupees in crore)
				leviable	levied	
<p><b>Remarks:</b> After this was pointed out in audit between February 2002 and December 2003 the assessing authorities referred two cases between May 2002 and December 2003 to the Revisional Authorities for taking suo motu action. In two cases, one each of Ambala and Narnaul, the Assessing Authorities rectified the orders in March and June 2003 and created demand of Rs.2.17 lakh. In the case of Bahadurgarh, the Revisional Authority stated that buttons had been rightly assessed. The decision of the revisional authority is not tenable as 'plastic buttons' are taxable at 12 per cent.</p>						
<b>Total</b>						<b>0.24</b>

The cases were referred to the Government between April 2003 to February 2004; reply had not been received (September 2004).

### 2.3.3 Short determination of notional sales tax liability due to non-levy of purchase tax

Under the HGST Act, cotton being declared goods when purchased within the State are taxable at last stage of purchase. In five cases, notional sales tax liability was assessed short due to non-levy of purchase tax of Rs.0.28 crore as detailed below:

Sr. No.	Name of DETC/ Number of cases	Assessment year and date of assessment	Value of raw material consumed (Rupees in crore)	Rate of tax (In percentage)		Tax leviable (Rupees in crore)
				Leviable	levied	
1.	Sonipat/ 1	2001-02/ February 2003	3.86/Cotton	4	-	0.15
<p><b>Remarks:</b> After this was pointed out in February 2004, the assessing authority admitted the objection and stated in March 2004 that the case was being sent to Revisional Authority for taking suo motu action. Further report on action taken was awaited (September 2004).</p>						
2.	Jhajjar/ 4	2000-2001/ January and February 2002	3.19/Rubber	4	-	0.13
<p><b>Remarks:</b> Dealers purchased raw material from within the State without payment of tax and used it in the manufacture of tax free goods (Chappal). The proportionate purchase tax on purchases was not levied. This was pointed out to the Assessing Authority in February and March 2003, who sent these cases to the Revisional Authority.</p>						
<b>Total</b>						<b>0.28</b>

The cases were referred to the Government between April 2003 and March 2004; reply had not been received (September 2004).

## 2.4 Under-assessment due to incorrect deduction at first stage

Under the HGST Act, non-ferrous metal products, compressed asbestos fibre sheets, plastic resin/plastic polymer, timber and its products are taxable at first stage of sale.

During test-check of three DETCs\*, it was noticed between June 2001 and November 2003 that in seven cases involving four dealers the assessing authorities allowed deduction of Rs.29.11 crore incorrectly from the gross turnover, which resulted in under-assessment of tax of Rs.2.92 crore as detailed below:

Sr. No.	Name of DETC	Assessment year and date of assessment	No. of dealer/cases and name of goods sold	Amount of incorrect deduction (Rupees in crore)	Rate of tax (In percentage)	Tax/penalty (Rupees in crore)
1.	Hisar	2001-02/ March 2003	<u>1/1</u> <u>Aluminum</u> <u>Caps</u>	0.47	10	0.05
<b>Remarks:</b> Aluminum caps valued at Rs.46.79 lakh being non-ferrous products though taxable at first stage were incorrectly deducted from the taxable turnover of the dealer. After this was pointed out in April 2003, the Revisional Authority created additional demand of Rs.4.68 lakh in August 2003.						
2.	Faridabad (East)	1997-98 to 1999-2000/ September 2002  2000-01/ August 2002	<u>1/2</u> <u>Compressed</u> <u>Asbestos</u> <u>Sheets</u>	15.52	8	1.55
<b>Remarks:</b> Compressed Asbestos fibre sheets valued at Rs.15.52 crore though taxable at first stage were incorrectly deducted from taxable turnover of the dealer. This was pointed out to the Assessing Authority between August and September 2002, who intimated that the case was sent to the Revisional Authority in December 2003 for taking suo motu action. Final reply had not been received (September 2004).						
3.	Hisar	2001-02/ May 2002  2002-03/June 2003	<u>1/2</u> <u>Polyster</u> <u>Resin</u>	12.82	10	1.28
<b>Remarks:</b> Polyster resin valued at Rs.12.82 crore was incorrectly deducted from the taxable turnover of the dealer. After this was pointed out in May 2002 and June 2003 the Department stated in May 2003 that unsaturated polyster resins is covered under PVC compound and granules (HDPE/LDPE) and are not taxable. The reply of the Department is not tenable as ETC in May 2002 clarified that PVC resins and polyester resins are taxable at first stage.						
4.	Kaithal	1999-2000/ June 2003  2000-01/ January 2003	<u>1/2</u> wooden boxes	0.30	8	0.04

\* DETCs Faridabad (East), Hisar and Kaithal.

Sr. No.	Name of DETC	Assessment year and date of assessment	No. of dealer/cases and name of goods sold	Amount of incorrect deduction (Rupees in crore)	Rate of tax (In percentage)	Tax/penalty (Rupees in crore)
<b>Remarks:</b> Wooden boxes though taxable were not taxed. After this was pointed out in October 2003, the assessing authority stated that the dealer sold scientific goods. Reply was not tenable as the dealer was a manufacture of wooden boxes as such it was taxable at first stage.						
<b>Total</b>						<b>2.92</b>

The cases were referred to the Government between October 2002 and February 2004; reply had not been received (September 2004).

## 2.5 Under-assessment due to incorrect deduction

Under the HGST Act, the poultry feed supplements/vitamin feed supplements being general goods when sold outside the State without Form-C are taxable at the rate of 10 *per cent*. Further, the vitamin feed supplements is taxable at the rate of 10 *per cent* and D-oil cake at the rate of four *per cent* from 1998-99 to 2001-02.

During test-check of records of DETC Ambala, Hisar and ETO Ambala City, it was noticed between June 2001 and February 2003 that six dealers sold vitamin feed supplements and de-oil cake for Rs.9.55 crore during the years from 1998-99 to 2001-02. The Assessing Authority, while finalizing the assessments, erroneously allowed the deduction treating the sales as tax free. The omission resulted in under-assessment of tax of Rs.0.93 crore including interest as detailed below:

Name of DETC/Number of cases	Assessment year and date of assessment	Amount of incorrect deduction (Rupees in crore)	Rate of tax (In percentage)	Tax/penalty (Rupees in crore)
Ambala Cantt./ 1	2000-01/ June 2001	1.00	10	0.10
<b>Remarks:</b> This was pointed out to the Assessing Authority in February 2003 who referred the case to the revisional authority in June 2003 for taking suo motu action. Final action taken had not been intimated (September 2004).				
Hisar/ 2	1999-2000/ October 2001  2000-01/ December 2001	4.73	10	0.47
<b>Remarks:</b> This was pointed out to the Assessing Authority in May/June 2003. Final reply had not been received so far (September 2004).				

Name of DETC/Number of cases	Assessment year and date of assessment	Amount of incorrect deduction (Rupees in crore)	Rate of tax (In percentage)	Tax/penalty (Rupees in crore)
ETO Ambala City/ 3	1998-99/ December 2002	0.33	4	0.36
	2000-01/ April 2002	0.12	10	
	2001-02/ February 2003	2.57	10	
		0.56	10	
		0.44	4	
<b>Remarks:</b> After this was pointed out between December 2001 and February 2003 in audit, the Assessing Authority, Ambala referred in December 2003 the two cases to revisional authority for taking suo motu action.				
<b>Total</b>				<b>0.93</b>

The cases were referred to the Government and the Department between August and December 2003; reply had not been received (September 2004).

## 2.6 Non-levy of purchase tax

Under the HGST Act, cotton, paddy and oil seeds are taxable at the stage of last purchase when purchased from within the State. Further, a dealer is liable to pay purchase tax on goods (other than declared goods) purchased within the State and used in the manufacture of tax free goods or taxable goods which are disposed of otherwise than by way of sale. No deduction from dealer's gross turnover is admissible if such goods are indirectly exported out of India.

During test-check of records of the five DETCs, it was noticed between April 2002 and March 2004 that Assessing Authorities did not levy purchase tax of Rs.1.07 crore in 19 cases during the years 1997-98 to 2000-2003 as tabulated below:

Name of DETC/ Number of cases	Assessment year and date of assessment	Value of raw material consumed (Rupees in crore)	Nature of irregularity	Rate of tax (In percentage)	Tax leviable (Rupees in crore)
Jind/ 3	1998-1999 to 2000-2001/ October 2001	1.79 Paddy	Purchased paddy from within the State for extraction of rice exported out of India. Purchase tax was not levied on the value of paddy.	4	0.07

Name of DETC/ Number of cases	Assessment year and date of assessment	Value of raw material consumed (Rupees in crore)	Nature of irregularity	Rate of tax (In percentage)	Tax leviable (Rupees in crore)
<b>Remarks:</b> This was pointed out between April and May 2002. The Department sent the case to the Revisional Authority for taking suo motu action who decided the case in December 2003 and created additional demand of Rs.13.70 lakh. Further report on recovery was awaited.					
Sonipat and Fatehabad/ 2	1998-99 to 1999-2000/ May and July 2001 and March 2002	4.67 Paddy	Purchased paddy from within the State without payment of tax and exported out of India. There was no agreement between the dealers and the foreign buyers for such export.	4	0.19
<b>Remarks:</b> After this was pointed out in audit in November and December 2002, the Assessing Authority, Sonipat stated that purchase of paddy was made by the dealer against the orders of export of rice by the exporter. Reply was not tenable as there was no agreement between the dealer and the exporter as such exemption granted was inadmissible. Reply in respect of other case had not been received (September 2004).					
Panipat/ 12	1997-98 to 2002-03	10.49 Paddy	Purchased paddy from within the State and sold outside the State to the exporters of rice against declaration in Form H.	1	0.66
<b>Remarks:</b> After this was pointed out in November 2003, the Assessing Authorities stated that these cases had been sent to the Revisional Authorities for taking suo motu action between February and March 2004. Final action taken report had not been received (September 2004).					
Sonipat/ 2	1996-97 to 1997-98/ May 2002 and February 2003	7.26 Oil seeds	Purchase tax was not levied on the value of sunflower seeds purchased from within the State without payment of tax.	2	0.15
<b>Remarks:</b> After this was pointed out in audit in February and March 2004, the Department stated in March 2004 that the cases were being sent to the revisional authority for suo motu action. Further report on action taken was awaited (September 2004).					
<b>Total</b>					<b>1.07</b>

The cases were referred to the Government between January 2002 and April 2004; reply had not been received (September 2004).



## **2.7 Non-levy of interest**

Under the HGST Rules, on cancellation of exemption certificate before it is due for expiry, the entire amount of tax exempted shall become payable immediately in lumpsum and interest shall also be levied and recovered.

During test-check of the records of DETC, Kaithal, it was noticed in October 2003 that two units which were granted exemption for Rs.26.16 lakh discontinued their manufacturing process with effect from January 1996 and April 1998 during the currency of the exemption period. Exemption certificates were cancelled by DETC, Kaithal in November 1998 and April 2000 respectively and demand of Rs.20.08 lakh and Rs.10.96 lakh respectively was raised in June and July 2000 for immediate recovery. But interest leviable was not demanded. This resulted in non-levy of interest of Rs.44.78 lakh.

After this was pointed out in October 2003 the Assessing Authority stated that no interest was leviable. Reply was not tenable as interest is leviable under the provisions of Rule 28 A of HGST Rules.

The matter was referred to the Government in January 2004; reply had not been received (September 2004).

## **2.8 Short realization of tax**

Under the HGST Act, sales to the Government department are taxable at the rate of four *per cent* when such sales are supported by declaration(s) in STD-I\*, furnished by duly authorised officer of the Government department. The concession is not admissible in respect of sales made to autonomous bodies or other non-government institutions.

**2.8.1** During test-check of the records of DETC, Panchkula it was noticed in October 2002 that a dealer had sold cement worth Rs.1.52 crore to a non-Government organisation during the period 1994-95 to 1997-98. The Assessing Authority while finalising the assessment in February 2002 levied tax at the rate of four *per cent* treating it as a Government department instead of the correct rate of 12 *per cent*. This resulted in short levy of tax of Rs.11.82 lakh besides interest of Rs.12.01 lakh.

After this was pointed out in October 2002, the Department sent the cases to the Revisional Authority for taking suo motu action. Further action taken had not been received (September 2004).

The matter was referred to the Government in December 2002; reply had not been received (September 2004).

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\* Declaration form STD-1.

**2.8.2** During test-check of the records of DETC, Panchkula, it was noticed in October 2002 that a dealer sold medicines amounting to Rs.60 lakh to a non-government organization during 2000-01. The assessing authority while finalising the assessment in November 2001 levied tax at the rate of four *per cent* treating it as Government department instead of correct rate of 10 *per cent*. This resulted in under-assessment of tax of Rs.3.60 lakh.

After this was pointed out in audit in October 2002, the Department sent the case to revisional authority in February 2004 for taking suo motu action. Final action taken report was awaited (September 2004).

The case was referred to the Government in December 2002; reply had not been received (September 2004).

## **2.9 Under-assessment of tax due to incorrect application of rate of tax**

Under the HGST Act, concessional rate of tax at the rate of four *per cent* on sales to Government departments was not admissible during the period 4 March 2000 to 2 August 2000. Further, tyres and tubes and communication materials were taxable at the rate of 12 *per cent*.

During test-check of records of the DETC, Faridabad (West), it was noticed that two dealers sold tyres and tubes valued at Rs.1.77 crore to Government (Haryana Roadways) during the period from 4 March to 2 August 2000. The Assessing Authority, while finalising assessments in June 2002 and January 2003, erroneously levied tax at concessional rate of four *per cent* instead of 12 *per cent*. This resulted in under-assessment of tax of Rs.14.16 lakh.

After this was pointed out in May 2003; the Revisional Authority rectified the orders of assessment in October and November 2003 and created a demand of Rs.14.16 lakh in November 2003. Further report on recovery was awaited.

The case was referred to Government in September 2003; reply had not been received (September 2004).

## **2.10 Under-assessment due to application of lower rate of tax**

As per HGST Act, aerated water/soft drinks are taxable at the rate of 20 *per cent*. The Punjab and Haryana High Court held in September 2000 that natural juice and natural identical juice fall in the category of soft drinks.

During test-check of the records of DETC, Ambala, it was noticed in February 2004 that while finalising the assessment in May 2003, Assessing Authority levied tax at the rate of 10 *per cent* on sale of fruit juice worth Rs.82.06 lakh during the year 2000-2001 instead of the correct rate of

20 per cent. The omission resulted in under-assessment of tax of Rs.8.20 lakh.

After this was pointed out in February 2004, the Assessing Authority stated that fruit juice (Mango drink) is not covered under aerated water/drinks. The reply of the Assessing Authority was not tenable as fruit juice falls under the category of drinks.

The case was referred to the Government in February 2004; reply had not been received (September 2004).

### **2.11 Irregular availing of exemption**

Rule 28 A (2) and 28 B (3) of HGST Rules, lays down that an industrial unit is eligible for exemption if it is not included in the negative list of industries notified by the Industries Department, Government of Haryana from time to time.

During test-check of the records of the DETC, Ambala, it was noticed that a dealer was granted irregular exemption under Rule 28 B of HGST Rules for Rs.4.61 crore for the period 8 May 1999 to 7 May 2008 for the manufacture of fruit drinks (Frooti). Since fruit drink falls in the category of soft drinks and is covered under negative list, exemption was not admissible. This resulted in irregular availment of exemption of Rs.2.68 crore upto March 2003.

After this was pointed out in February 2004 in audit, the Department stated that fruit juice is not covered under the category of Soft drinks. The reply was not tenable in view of Hon'ble Punjab and Haryana High Court decision dated September 2002.

The case was referred to the Government in February 2004; reply had not been received (September 2004).

### **2.12 Under-assessment due to excess rebate**

Under the HGST Rules, a registered dealer may reduce the amount of tax paid under the Act at the first stage of sale of goods purchased by him from the amount of tax payable by him on the sale of such goods, other than tax free goods manufactured therefrom, which are sold within the State or in the course of inter-State trade or commerce or in the course of export outside the territory of India.

During test-check of records of DETC, Faridabad (East) and Rewari, it was noticed that two dealers, one each from Faridabad and Rewari purchased tax paid material of Rs.7.78 crore during the years 1994-95 and 1999-2000. Of this, material valued at Rs.2.87 crore was utilized in packing of tax free good and as such no rebate was admissible. However, the Assessing Authorities

while finalising the assessments in May 1998 and April 2000, incorrectly allowed a rebate of Rs.4.81 lakh in addition to what was admissible to the dealers. This resulted in excess rebate of Rs.4.81 lakh.

After this was pointed out in September 1999 and July 2003 the cases were sent to the Revisional Authorities for taking suo motu action. Revisional Authority, Faridabad, revised the orders in May 2003 and created an additional demand of Rs.2.64 lakh. Reply in respect of other case from the Revisional Authority, Rewari had not been received (September 2004).

The cases were referred to the Government in January 2000 and August 2003; reply had not been received (September 2004).