

CHAPTER -II: SALES TAX

2.1 Results of audit

Test check of records relating to sales tax assessments and other records, conducted in audit during the year 2004-05, revealed short assessment of tax amounting to Rs. 46.99 crore in 172 cases, which broadly fall under the following categories:-

(Rupees in crore)			
		Number of cases	Amount
1.	Evasion of tax due to suppression of sales/purchase	34	2.75
2.	Non levy of tax due to non registration of dealers	4	0.09
3.	Non levy/short levy of penalty/interest	34	1.57
4.	Under assessment of tax	79	3.23
5.	Other irregularities	20	2.91
6.	Review on Assessment and collection of Sales Tax	1	36.44
	Total	172	46.99

During 2004-05, the Department accepted under assessments of Rs. 3.16 crore involved in 88 cases which had been pointed out in audit in earlier years. A few illustrative cases highlighting important observations involving financial effect of Rs. 36.47 crore are given in the following paragraphs.

2.2 Review: Assessment and collection of Sales Tax

2.2.1 Highlights

Incorrect grant/claim of exemption in respect of 18 dealers, resulted in non levy/ non realisation of sales tax of Rs. 23.57 crore.

(Paragraph 2.2.7 and 2.2.8)

Evasion of tax of Rs. 2.16 crore due to suppression of purchases/ sales by the registered dealers, in eight AETCs.

(Paragraph 2.2.9)

Incorrect classification of 16 industrial units as manufacturing units, resulted in short levy of sales tax of Rs.1.22 crore.

(Paragraph 2.2.10)

Sales tax of Rs.6.59 crore was not levied by the assessing authorities on rental charges of electric meters and service line worth Rs. 60.51 crore.

(Paragraph 2.2.12)

Sales tax of Rs.1.10 crore was not levied due to non registration of dealers in five AETCs.

(Paragraph 2.2.13)

Purchase tax of Rs.43 lakh was evaded on khair wood/ katha allowed as branch transfer to two dealers.

(Paragraph 2.2.15)

Incorrect exclusion of purchases from taxable turnover resulted in non levy of tax of Rs. 31 lakh.

(Paragraph 2.2.16)

Application of incorrect rate of tax and non levy of tax on the sale of tender papers resulted in evasion of sales tax (including interest) of Rs. 90.37 lakh.

(Paragraph 2.2.11 and 2.2.17)

2.2.2 Introduction

Sales Tax is a major source of revenue of the State. The administration of sales tax is governed by the Himachal Pradesh General Sales Tax (HPGST Act) Act, 1968 and Himachal Pradesh General Sales Tax Rules, 1970. The dealers dealing in inter state trade are governed by the Central Sales Tax Act, (CST Act) 1956. Under the HPGST Act, no dealer who is liable to pay tax, can carry on business as a dealer unless he possesses a certificate of registration issued by the assessing authority under whose jurisdiction he conducts business. For this purpose, the HPGST Act and the instructions issued thereunder in April 1978 provide for carrying out survey in the first two months of each year by the departmental authorities. The above instructions also require the assessing authorities to cross check data collected from the Government offices such as income tax, civil supplies, public works and industries etc. to satisfy themselves that all purchases and sales made by the dealers have been properly accounted for. Dealers importing goods from other States are required to furnish a declaration in form ST XXVI-A at the barriers fixed at the entry point of the State. Thereafter, these forms are required to be despatched to the respective assessing authorities to enable them to take cognizance at the time of assessment. However, in case any offence is detected at the barrier, penalty can be imposed by the assessing authority at the barrier.

In accordance with an amendment made to the HPGST Act in 1985, transfer of property in goods by corporation/ Government Department involved in the execution of work contract amounts to sales. The Department making such sales is required to be registered under the HPGST Act. Each dealer is required to furnish a true and correct account of his sale in quarterly returns accompanied by a copy of challan in support of payment of advance tax by him in the treasury. The assessments are finalised by the respective assessing authority in district office and copy of assessment order is forwarded to the Joint Excise and Taxation Commissioner (Inspection) Shimla. From February 1987, annual internal audit of the records relating to sales tax had been introduced. For delay in payment of tax the dealer is liable to pay interest at the rate of one *per cent* per month for a period of one month and at the rate of one and a half *per cent* per month thereafter till the default continues. If a dealer has maintained false or incorrect accounts with a view to suppressing his sales or purchases, he is liable to pay penalty in addition to the tax payable by him.

2.2.3 Organisational set up

Sales tax law and rules are administered at Government level by the Secretary Excise and Taxation. The Excise and Taxation Department is headed by the Excise and Taxation Commissioner who is assisted by one Additional Excise and Taxation Commissioner for the south zone, one Deputy Excise and Taxation Commissioner for the north zone and one Deputy Excise and Taxation Commissioner for the central zone. At the district level, there are 10 Assistant Excise and Taxation Commissioners (AETCs) and 38 Excise and

Taxation Officers. They are assisted by taxation inspectors and other allied staff for administering the relevant tax laws and rules.

2.2.4 Audit objectives

The review seeks to:

- determine whether adequate provisions and rules exist and are being followed by the Department for assessment and collection of tax revenue;
- examine system for monitoring and collection of tax to safeguard against incorrect exemptions, non levy of tax and levy of incorrect/ concessional rate of tax;
- ascertain whether a suitable internal control mechanism exists in the Department.

2.2.5 Scope of Audit

Records of all 11 district offices of the state and 18 barriers out of 39 barriers for the period 1999-2000 to 2003-04 were test checked from April 2004 to March 2005.

2.2.6 Trend of revenue

The revenue realised on account of taxes on sales, trade etc., during 1999-2000 to 2003-2004 was as under:

(Rupees in crore)

Year	Budget estimates	Actuals	Variation	Percentage of variation
1999-2000	210.00	233.07	(+) 23.07	11
2000-2001	285.00	302.05	(+) 17.05	5
2001-2002	329.93	355.08	(+)25.15	8
2002-2003	397.16	383.34	(-)13.82	(-)3
2003-2004	448.00	436.75	(-)11.25	(-)3

It would be seen from the above that percentage of variation between budget estimates and actuals decreased from 11 *per cent* to (-) 3 *per cent* during 2003-04.

2.2.7 Delay in finalising assessments

Under HPGST ACT, no time limit for finalisation of assessment has been fixed for the assessing authority.

The position of assessments finalised during the years 1999-2000 to 2003-04 as supplied by the Department was as under :

Year	Opening balance	Cases received for assessment during the year	Total	Cases finalised during the year	Balance at the close of the year	Percentage of cases finalised during the year to total no. of cases.
1999-2000	77,428	48,972	1,26,400	48,162	78,238	38
2000-01	78,238	48,056	1,26,294	43,093	83,201	34
2001-02	83,201	47,007	1,30,208	37,101	93,107	28
2002-03	92,849 ^s	53,562	1,46,411	49,140	97,271	34
2003-04	97,271	58,390	1,55,661	49,492	1,06,169	32

The order in which assessments were finalised during the above period was not made available to audit, as such promptness in disposal of old cases could not be ascertained. No system was developed by the Department to monitor the disposal of old cases. This was evident from huge accumulation of cases pending finalisation as on 31.03.2004. The year wise break up of 1,06,169 cases pending finalisation was as under:

Year	No. of cases
1993-1994	73
1994-1995	396
1995-1996	1,122
1996-1997	2,559
1997-1998	4,350
1998-1999	6,925
1999-2000	10,795
2000-2001	15,279
2001-2002	24,997
2002-2003	<u>39,673</u>
Total	1,06,169*

Age wise pendency of cases as on 31 March 2004 was as under:

Cases pending finalisation for:

• more than seven years	=	1,591
• more than five years but less than seven years	=	6,909
• more than three years but less than five years	=	17,720
Total	=	26,220
• less than three years	=	79,949
	=	1,06,169

It was noticed that there was a delay of one to nine years in issuing first notice for assessment. In nine cases, no notice was served on the assessees. This indicated that the cases were not being pursued vigorously to finalise the assessments.

^s Excludes 258 assessment cases which pertained to passengers and goods tax

* In details of 1,06,169, cases upto 2002-03 have been shown because these were due for assessment in 2003-04. Cases for 2003-04 have not been included as these are due for assessment in 2004-05

Thus it would be seen from the above that there is a need for fixation of time limit for finalisation of each assessment.

In Kangra, a dealer was entitled for exemption for a period of seven years i.e. 16 August 1993 to 15 August 2000. His assessment was not finalised and the dealer claimed irregular exemption of Rs. 2.27 crore from 16 August 2000 to 31 March 2004 as revealed from returns. Failure of the Department to finalise assessment resulted in irregular exemptions being claimed by the dealer.

System lapses in assessments

2.2.8 Incorrect exemption of sales tax

As per instructions of April 1978 issued under HPGST Act, the assessing authorities while finalising the assessments are required to ascertain the correctness of the accounts shown in the returns with reference to all records submitted with the returns.

During test check of records of four AETCs it was noticed that assessing authorities failed to verify the correctness of the returns with reference to the declaration forms, trading accounts etc; while finalising the assessments. This resulted in non levy of tax of Rs. 21.30 crore between 2000-01 to 2003-04 as detailed below:

(Rupees in crore)

Sr. No.	Name of district	No. of cases	Year/ date of assessment	Nature of observation	Amount of tax involved
1.	Solan	3	1998-99, 2000-01 and 2001-02 April 2000 and October 2003	Three electronic units were allowed exemption from tax though value addition in production was not more than 25 per cent of the material consumed as required under item number 66 of schedule 'B' of the HPGST Act. The assessing authorities failed to cross check the entries in the returns with the books of accounts furnished by the dealers and did not exclude profit element and other duties paid to the Government while working out value addition.	19.71
2.	Bilaspur, Shimla, Sirmour and Solan	12	1995-96 to 2002-03 February 2001 to June 2004	The exemption of sales tax on subsequent sales of good valued at Rs.941.35 lakh was allowed without production of STXXV forms, which was incorrect. The assessing authorities were silent about the production of STXXV forms in the assessment orders finalised by them.	1.35

(Rupees in crore)

Sr. No.	Name of district	No. of cases	Year/ date of assessment	Nature of observation	Amount of tax involved
3.	Solan	1	2000-01 November 2003	The exemption of sales tax on SIM Card sale value of Rs. 16.55 lakh was not withdrawn even though STXXV forms produced in support of tax paid at first stage were found bogus by the Department in January 2004.	0.03
4.	Solan	1	2002-03 April 2004	The exemption on inter state sale worth Rs.188.27 lakh was incorrectly allowed even when the mandatory 'C' forms were not produced by the dealers. In the assessment orders there was no mention of forms being verified by the assessing authority [#] .	0.21
Total					21.30

The above facts were pointed out to the Department between October 2004 and March 2005, however, no reply has been received.

It would be seen from the above that the assessing authorities need to strengthen their scrutiny/ checks while finalising the assessments.

2.2.9 Incorrect assessment due to non-linking of connected records

Under the HPGST Act, "turnover" includes aggregate of amounts of sales and purchases actually made by a dealer during the given period. The assessing authority at the time of finalising the assessment is required to check the accounts of the dealer to satisfy himself that all purchases and sales made by him have been properly accounted for. Further according to departmental instructions of April 1978, the assessing authorities while examining accounts of the dealers are required to cross check purchases on barrier chits (ST XXVI A), on the strength of "C" forms and any data collected from Government offices.

Cross verification of records of eight AETCs with information collected from Himachal Pradesh State Forest Corporation, Shimla, accounts filed with the Income Tax Department, barrier chits and "C" forms available on record revealed underassessment of Rs. 2.16 crore as detailed below:

(Rupees in crore)

Name of Circle(s)	Nature of observation	Amount
AETC, Kangra 1996-97	Assessing authority finalised assessment of Divisional Forest Officer, Dharamsala in August 2000 on a turnover of Rs. 2 lakh as disclosed by him. However, cross verification of records with those of Himachal Pradesh State Forest Corporation, Shimla revealed that he had sold taxable goods (timber and resin) valued at Rs. 2.28 crore during the year 1996-97 to a dealer. This resulted in suppression of turnover of Rs. 2.26 crore and consequent evasion of tax of Rs. 1.28 crore including interest and minimum penalty.	1.28

(Rupees in crore)

Name of	Nature of observation	Amount
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[#] Furnishing of 'C' forms was mandatory from 2002 even when rate of tax is less than four per cent

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Circle(s)		
AETC, Solan	Assessing authority registered a dealer in October 1996 with liability to pay tax from January 1996. Cross check of accounts filed with the Income Tax Department, however, revealed that he had disclosed net sales of Rs. 4 lakh and Rs. 24 lakh during 1993-94 and 1994-95 respectively. However, while assessing the dealer in March 2002, the assessing authority ignored the sales made by the dealer during 1993-94 and 1994-95 resulting in evasion of tax of Rs. 6 lakh.	0.06
Remarks: After this was pointed out in audit, the Department assessed the dealer in March 2002 by raising an additional demand of Rs. 6 lakh.		
AETCs Eight [§]	Assessing authorities finalised assessments for the years 1999-2000 to 2002-2003 in 32 cases between April 2002 and March 2004. Cross check of barrier chits (ST XXVI A forms) and details of "C" forms, placed on record, however, revealed that during these years the dealers actually purchased goods valued at Rs. 21.13 crore against Rs. 14.96 crore shown in their returns. Thus, the dealers suppressed the purchases and consequent sales valued at Rs. 6.51 crore after adding incidentals towards profit, freight etc. from the turnover. The Department's failure to cross check the barrier chits and "C" forms which was available on record resulted in non levy of tax of Rs. 82.02 lakh including minimum penalty and interest.	0.82
Total		2.16

The cases were reported to the Department between August 2004 and October 2004; however, no reply has been received (September 2005).

2.2.10 Short levy of tax on manufacturing units

According to notification issued in January 1997, the Himachal Pradesh Government levied sales tax at the rate of one *per cent* in respect of goods manufactured and sold by the existing industrial units and new industrial units. Under the HPGST Act, the word manufacture has not been defined. The Hon'ble Supreme Court of India; has held that retreading* of tyres, crushing** of stones into grits and sand and cutting*** of marble blocks into slab and tiles does not amount to manufacture as no new and distinct article is formed.

Test check of records of six AETCs[§], revealed that nine industrial units engaged in the business of crushing of stones, six units engaged in tyre retreading and one unit engaged in cutting of marble were incorrectly allowed concessional rate of tax during the years 1997-98 to 2002-03 by treating these units as manufacturing units. Allowance of concessional rate of tax resulted in short levy of sales tax of Rs.1.22 crore including interest.

2.2.11 Levy of incorrect /concessional rate of tax

Under the HPGST Act, rate of tax leviable on different kinds of goods has been prescribed. Goods on which higher rate of tax is leviable have been

[§] Hamirpur, Kangra, Kullu, Mandi, Shimla, Sirmour, Solan and Una

* Tamil Nadu State Transport Corporation Ltd. V/s Commissioner of Income Tax (1999) 239 ITR 375

** Commissioner of Sales Tax, Uttar Pradesh V/s Lal Kunwa Stone Crusher Pvt. Ltd STR No.656 of 1993

*** M/s Aman Marble Industries V/s CCE Jaipur

[§] Kangra, Kullu, Mandi, Shimla, Solan and Una

prescribed in Schedule 'A' whereas goods on which no tax is leviable have been prescribed in Schedule 'B' of the Act *ibid*. However, goods not prescribed specifically in any schedule are leviable at the general rate of eight *per cent*. If a dealer fails to pay the tax due by the prescribed date, he becomes liable to pay interest on tax due at the prescribed rates.

Test check of records of 10 *AETCs, revealed that the assessing authorities while finalising assessments between June 2001 and April 2004 of 41 dealers for the year 1995-96 to 2002-03 applied incorrect rate of tax on their taxable turnovers. Application of incorrect rate of tax resulted in short levy of sales tax of Rs. 53 lakh. A few instances are given below:

(Rupees in lakh)

Sr. No.	Name of District	Period involved and date of assessment	Number of dealers	Description of goods sold	Value of goods	Rate applied	Rate applicable	Tax effect
1.	Solan	2001-02 and 2002-03 April and August 2003	2	Boroplus and soap	196.64	8%	12%	10.43
2.	Sirmour	1996-97 and 1997-98 December 2003	1	Cement	70.88	1%	4.5%	5.70
3.	Bilaspur, Chamba, Kangra, Kullu, Shimla and Una	1998-99 to 2002-03 between August 2002 and March 2004	17	Plastic goods, crockery, soap, sunmica, sanitary goods, PVC fittings, cosmetics, T.V. trolley, fire works	59.91	8%	12%	3.87

Evasion of revenue due to non observance of procedure

2.2.12 Non payment of tax on rental charges of electric meters and service lines

Himachal Pradesh State Electricity Board (HPSEB) supplies meters and service lines to consumers for supplying electric energy for which it collects rental charges, which constitute sales and the Board is a dealer under section 2(c) of the HPGST Act. Supplying of electric meters and service lines is transfer of right to use the goods within the meaning of sale under section 2(j)(iv) of the Act *ibid*.

Information collected from HPSEB relating to 12 circles* revealed that rental charges of Rs.60.51 crore were collected by the Board for electric meters and service lines during the years 2000-2001 to 2003-04 for supply of electric energy to consumers. However, neither the dealer paid sales tax on rental charges nor the Sales Tax Department made any efforts to levy/collect the same. As rental charges on account of electric meters and service lines collected from consumers for supply of electrical energy is sale within the meaning of the HPGST Act, non payment of tax on this account resulted in evasion of sales tax of Rs.6.59 crore (including interest) as detailed below:

* Bilaspur, Chamba, Hamirpur, Kangra, Kullu, Mandi, Shimla, Sirmour, Solan and Una

* Bilaspur, Dalhousie, Hamirpur, Kangra, Kullu, Mandi, Nahan, Rampur, Rohru, Shimla, Solan and Una

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(Rupees in lakh)

Year	Meter and service line charges	Sales tax at general rate of eight per cent	Interest leviable	Total Amount
2000-01	778.22	62.26	43.58	105.84
2001-02	1,194.44	95.56	49.69	145.25
2002-03	2,041.95	163.36	55.54	218.90
2003-04	2,036.03	162.88	26.06	188.94
Total	6,050.64	484.06	174.87	658.93

2.2.13 Non levy of tax due to non registration of dealers

Under the HPGST Act, a dealer includes any Department, or subordinate office of the Government, which, in the course of business buys, sells, supplies or distributes goods for commission, remuneration or other valuable consideration. A dealer liable to pay tax can carry on business only after he has been registered under the Act. Registration is compulsory for dealers whose gross turnover exceeds the prescribed taxable quantum of Rs. 4 lakh. Departmental instruction dated April 1978 provides that circle inspectors are required to carry out every year, a comprehensive survey in first two months of the financial year. The assessing authority is required to check 30 per cent entries of survey register and the district incharge of the office is required to ensure that survey is completed by the end of June.

During test check of records of 11 district offices, it was noticed that in two district offices of Shimla and Solan, no survey for detection of unregistered dealers was carried out by the inspectors inspite of the directions issued by the respective AETCs. Besides, in other three districts viz. Bilaspur, Kangra and Kinnaur though survey was conducted by the offices of AETC, yet eight dealers escaped registration. This resulted in non registration of 23 dealers who were contractors and received payment of Rs. 7.93 crore from Governments departments. No tax at source was deducted by the departments. Consequently, there was escapement of tax of Rs. 1.10 crore as detailed below:

(Rupees in lakh)

Sr. No.	Name of district AETCs	No. of dealers involved	Period involved Date of assessment	Nature of observation	Amount of tax involved
1.	Shimla	13	1995-96 to 2002-03 Between October 2000 and June 2003	Thirteen divisions of Public Works, Irrigation cum Public Health and Housing Board supplied material valued at Rs. 650.52 lakh to contractors on which tax was not charged	89.71
2.	Kinnaur	6	1998-99 to 2003-04 Between May 2002 to August 2004	Six divisions of Public Works and Irrigation cum Public Health departments supplied material valued at Rs. 42.16 lakh to contractors on which tax was not charged.	4.77
3.	Solan	2	1997-98 to 2002-03 Between September 2003 to March 2004	No tax was charged on material valued at Rs. 51.03 lakh supplied by PWD to the contractors.	8.27
4.	Bilaspur	1	1995-96 to 2002-03 September 2003	A Public Works division supplied material valued at Rs. 46.16 lakh to a	6.53

				contractor on which tax was not charged	
5.	Kangra	1	2000-01 to 2001-02 July 2003	No tax was charged on first stage on material worth Rs. 1.93 lakh supplied to contractors by Irrigation cum Public Health Division.	0.22
	Total				109.50

There was nothing on record to suggest that the process of conducting survey was monitored at apex level at any stage.

2.2.14 Non verification of declaration form

The officers incharge of multipurpose barriers are required to collect declaration forms (ST XXVI-A) in respect of imports/exports made by unregistered dealers and send the same to the concerned assessing authorities to register such dealers. The Department has neither fixed a time limit for verification of such cases nor does there exist any system to monitor their timely verification in order to register the unregistered dealers.

Information supplied by the AETCs Chamba, Kangra, Kullu and Solan revealed that during the years 2001-02 and 2002-03, 2,104 barrier chits (form ST XXVI-A) valued at Rs. 8.41 crore, relating to unregistered dealers received from barriers were handed over to inspectorate staff for verification. The inspectorate staff verified only 249 chits valued at Rs. 22 lakh, and the remaining 1,855 chits valued at Rs. 8.19 crore were not verified till March 2005. As a result the dealers could not be registered.

In addition, barrier chits for the year 2003-04 received were not kept in the store and were not sorted out by seven* AETCs. Consequently, the assessments for the year 2003-04 were finalised without verification of purchases from barrier chits. The barrier chits of unregistered dealers could also not be forwarded to the inspectors to enable the Department to register the dealers under the Act. Such information was, however, awaited from the District Office of Shimla, Sirmour and Kinnaur.

Information supplied by the AETC Chamba, Kangra, Kullu and Una revealed that 5,823 barrier chits (ST XXVI-A) for the period 2001-02 to 2003-04 relating to other districts were lying unattended as these were not sent to the concerned districts for verification. Out of these, 1,596 barrier chits were valued at Rs. 8.87 crore. Value of remaining chits was not made available. Assessments in these cases, if finalised, were finalised in absence of verification of barrier chits and chances of evasion of tax cannot be ruled out. No returns have been prescribed by the Department for informing Head of the Department that barrier chits received have been sorted out and sent to the quarter concerned for necessary verification.

2.2.15 Defects noticed in purchase tax

* Chamba, Hamirpur, Kangra, Kullu, Mandi, Solan and Una

Under the HPGST Act, if a dealer liable to pay tax under the Act, purchases any taxable goods from any source on purchase of which no tax has been paid and despatches such good or goods, manufactured therefrom for consumption or sale to his branch or commission agent outside the State, he is liable to pay tax on the purchase value of such goods at the rate at which tax is payable on the sale thereof in the State. With effect from 19 April 2002, tax on khair is leviable at the rate of eight *per cent*. However, prior to this, tax on khair timber and converted khair timber was leviable at the rate of 30 *per cent* and 11/12** *per cent* respectively. If a dealer fails to pay the tax due by the prescribed date, he becomes liable to pay interest on the tax due at the prescribed rates.

During audit of AETC, Una, it was noticed that the assessment of a dealer dealing in khair wood and katha for the year 1995-96, was finalised in February 2002 after allowing branch transfer of goods worth Rs. 24 lakh. Audit scrutiny of assessment records/ trading account revealed that the dealer had purchased khair wood valued at Rs.1.32 crore from local dealers, without payment of any tax. The assessing authority while framing the assessment, levied tax on the purchase of only Rs. 28 lakh against the actual purchase of Rs. 1.32 crore. Thus, purchase tax of Rs. 11 lakh, on remaining material valued at Rs.1.04 crore was not levied. Besides, interest of Rs. 14 lakh was also leviable.

After this was pointed out in audit, the Department accepted audit observations and recovered a sum of Rs. 13.62 lakh by raising additional demand of Rs. 13.84 lakh. However, tax was levied at lower rate of eight *per cent* instead of 11/12 *per cent* on the purchase of khair wood. Besides, interest was also leviable on tax due at the prescribed rates on reassessment. The fact that tax has been levied at lower rates has been intimated to the Department. However, final action taken has not been received.

Audit scrutiny of assessment records revealed that a dealer purchased khair wood valued at Rs.1.71 crore and Rs.1.89 crore during the year 1999-2000 and 2000-2001 respectively, from local dealers, without payment of tax and used it in the manufacture of *katha* which was consigned to other states without payment of tax. The dealer was liable to pay purchase tax. The assessing authority while framing assessments in April 2003, did not levy the tax which resulted in non realisation of tax of Rs.18 lakh (including interest).

2.2.16 Short realisation of tax due to non inclusion of purchases

Under the HPGST Rules, certain deductions have been allowed from the gross turnover of the dealer. In case, the material is consumed in construction of colony, hospital, guest house, club or school, no deduction is allowed.

During test check of records of the AETC, Shimla, it was noticed in July 2004 that during the year 1998-99, a Corporation, purchased goods valued at Rs. 2.02 crore from outside the State for construction/ maintenance of the colony of corporation. While finalising the assessment in March 2004, the assessing

** The rate of 11 *per cent* was enhanced to 12 *per cent* w.e.f. 04.08.1998

authority incorrectly excluded the above purchases from levy of tax, which resulted in short realisation of tax of Rs 31 lakh (including interest).

2.2.17 Non levy of tax on sale of tender papers

Under the HPGST Act, sale means any transfer of property in goods for cash or for deferred payment or for any other valuable consideration. Accordingly, sale of tender papers made by Department to the contractors etc. constitutes sale.

It was noticed from information collected from the HPSEB, Public Works divisions, Irrigation cum Public Health divisions and Corporations, that they had sold tender papers worth Rs.3.09 crore, during the years 1999-2000 to 2003-04, but the sales were not subjected to sales tax. The Department also failed to detect these sales. Non levy of tax on sale of tender papers resulted in evasion of sales tax of Rs. 24.71 lakh. Besides interest of Rs. 12.66 lakh was also leviable as detailed below:

(Rupees in lakh)

Sale of tender paper by the departments								
Year	State Electricity Board	Companies/ Corporation	Irrigation cum Public Health Department	Public Works Department	Total	Sales Tax at the rate of eight per cent	Interest	Grand Total
1999-2000	36.02	6.36	9.02	10.89	62.29	4.98	4.16	9.14
2000-01	28.74	6.79	13.53	13.75	62.81	5.03	3.29	8.32
2001-02	26.19	6.72	18.51	26.96	78.38	6.27	2.98	9.25
2002-03	24.02	10.84	25.32	27.74	87.92	7.03	2.07	9.10
2003-04	--	--	9.80	7.69	17.49	1.40	0.16	1.56
Total	114.97	30.71	76.18	87.03	308.89	24.71	12.66	37.37

The matter was brought to the notice of the Department/Government in August 2003. In the case of HPSEB, the Sales Tax Department stated in January 2004 that sale of electric energy by the Board is outside the ambit of the HPGST Act, and selling of tender papers is an ancillary activity of the same. The reply is not tenable because had the sale of electric energy been outside the ambit of Act *ibid*, the Government would not have declared it a tax free item by including it in Schedule “B” of the Act.

2.2.18 Non enforcement of provision of declaration form

Under the HPGST Act and the Rules framed thereunder, tax is also leviable on taxable goods imported from outside the State. For this purpose, the owner or a person in charge of a goods carriage entering the limit of the State is required to give declaration form (ST XXVI-A) at the barrier, a copy of which is sent to the officer incharge of the district concerned for cross verification from the books of the dealer, at the time of finalisation of assessment.

Review of records of five[§] multipurpose barriers, for the years 2001-02 to 2003-04 revealed that 1,92,588 vehicles carrying 19.11 lakh metric tonne of sand/ bajri valued at Rs.1.91 crore crossed the barriers. The vehicle owners were allowed to cross the barriers without filling declaration forms. Consequently, the Department failed to verify purchases of registered dealers

[§] Kandwal, Marwari, Sansarpur Terrace, Toki and Tunu Hatti

at the time of assessment. It also failed to register the dealers liable for registration on the basis of scrutiny of declaration forms. Sales tax amounting to Rs. 15.31 lakh (at general rate of eight *per cent*) was leviable on the import of sand and bajri as detailed below:

(Rupees in lakh)

Sr. No.	Name of barriers	No. of vehicles which crossed the barrier	Quantity of sand/bajri lifted in metric tons.	Value of sand/bajri lifted	Sales tax at the general rate of eight <i>per cent</i>
1.	Kandwal	28,421	3,19,368	19.90	1.59
2.	Toki	1,43,401	14,34,007	100.38	8.03
3.	Sansarpur Terrace	51	470	0.57	0.04
4.	Tunnu Hatti	20,445	1,53,295	69.07	5.53
5.	Marwari	270	3,596	1.53	0.12
	Total	1,92,588	19,10,736	191.45	15.31

Existence of adequate provisions/ sufficient controls

2.2.19 Loss due to non deposit of Government money in treasury

Himachal Pradesh Financial Rules provide that all money received by or tendered to Government offices on account of revenues or receipts or dues of the Government shall, without any delay, be paid in full in Government accounts. Money received as above shall not be utilised to meet departmental expenditure.

The State Government vide letter of January 2001 increased the price of STXXVI-A form from Re. 1 (in triplicate) to Rs. 5/- (in duplicate) from the date of switching over to computerised STXXVI-A forms. As per instructions issued by the Excise and Taxation Commissioner in February 2001, Re. 1 per form was to be credited to the Government account under the head "0040 Sales Tax" and remaining amount of Rs.4 was to be retained by the Department and deposited in bank account on day to day basis. From this amount, the surplus after meeting the expenses for computerisation and electricity charges, was to be deposited in the receipt head "0040 Sales Tax" on monthly basis

During the period from February 2001 to March 2004, a sum of Rs.135.09 lakh collected by eight[#] multipurpose barriers on account of sale price of STXXVI-A forms was not deposited in the Government account and kept outside the consolidated fund of the State. In addition, the department's instructions for depositing Government receipts in bank account and utilising it for day to day expenses were against the provisions of financial rules.

2.2.20 Internal Control Mechanism

Ineffective working of Internal audit wing

The Excise and Taxation Department introduced internal audit system for checking records related to sales tax. For this purpose, the Commissioner issued instructions in February 1987 which provide for annual audit of all

[#] Baddi, Barotiwala, Behral, Kala Amb, Mehtpur, Parwanoo, Swarghat and Tunnu Hatti

units, conveying of audit finding to concerned units within 20 days from completion of audit and furnishing of first annotated replies by concerned units within two months from issuance of audit findings.

Information collected from the Internal Audit Wing of the Department revealed that during the years 2001-02 to 2003-04, all the 11 district offices were not audited annually. Out of 30 units audited during these years, only 13 inspection reports were issued on due date and remaining 17 inspection reports were issued late. Out of these 30 inspection reports issued, annotated replies were not received in any case by the due date, reply to 14 inspection reports were received late and in respect of remaining 16 inspection reports, no reply at all was received. Regarding internal audit of 39 sales tax barriers, information was not supplied. A test check of records further revealed that audit of these barriers was not conducted on regular basis.

Above facts revealed that the findings of internal audit wing were not being attended to by the officers of the Department. This defeated the very objective for which the wing was created.

2.2.21 Non utilisation of computerised information

To check the evasion of sales tax by dealers in the course of inter-state trade, the State Government established barriers at entry points in the State. The Department has computerised the working of its major sales tax barriers from the year 2000-01 where computerised ST XXVI-A forms were generated. The information filled in these forms is available dealer wise and can be put to use at a subsequent stage, if required.

During test check of records of 10* AETCs, it was noticed that this information was not being used at the time of assessments of dealers. The assessing authorities did not verify the available information in the form ST XXVI-A received with the computerised data, as a result of which chances of suppression of purchases and consequent evasion of tax cannot be ruled out.

2.2.22 Non reconciliation with treasury

Under the HPGST Rules, every district office shall maintain a daily collection register in form ST XIV where particulars of every challan received in proof of payment of tax or penalty etc. is required to be noted/ recorded. Every month the departmental figures are required to be reconciled with those booked in the treasury.

During test check of records of eight[@] AETCs/ETO, it was noticed that departmental receipts worth Rs. 377.76 crore for the year 2003-04 were not reconciled with the figures booked in the treasury. In the absence of reconciliation, the authenticity of departmental figures cannot be relied upon and chances of embezzlement cannot be ruled out.

* Bilaspur, Chamba, Hamirpur, Kangra, Kullu, Mandi, Shimla, Sirmour, Solan and Una

@ * Bilaspur, Hamirpur, Kangra, Kinnaur, Shimla, Sirmour, Solan and Una

2.2.23 Recommendations

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

- ◆ a time limit for finalisation of assessments may be fixed.
- ◆ the system of conducting annual survey for registration of dealers may be strengthened and monitored at apex level to safeguard Government revenue.
- ◆ Checks may be devised to ensure that purchases available in barrier chits (STXXVI-A) and details of 'C' forms are properly linked at the time of finalising assessment. Besides, information should also be collected from other Government departments i.e. Public Works, Irrigation cum Public Health, Income Tax etc. for purpose of cross checking at the time of assessment.

The above findings were reported to the Department between April 2004 and March 2005 and to the Government in April 2005; their replies had not been received (September 2005).

2.3 Short levy of penalty for late filing of returns

Under the HPGST Act, as amended (vide Act No. 13 of 2000), if a dealer fails to furnish the returns by the prescribed date as required, he shall be liable to pay, by way of penalty, a sum equal to Rs. 25 per day for delay upto 10 days and thereafter Rs. 50 per day till the default continues.

During audit of AETC, Solan, it was noticed in October 2004 that a dealer's assessment for the year 1998-99 was finalised in December 2003 by the assessing authority by imposing a penalty of Rs. 6,000, for late filing of returns. Scrutiny of dealer's case files, however, revealed that he had submitted his returns only at the time of assessment. For late filing of returns, penalty of Rs. 3.56 lakh was short levied by the assessing authority resulting in short realisation of Government revenue to that extent.

After this was pointed out in audit, the Department reassessed the dealer in March 2005 and raised an additional demand of Rs.3.56 lakh. Report of recovery had not been received (September 2005).

The matter was reported to the Government in December 2004; their reply had not been received (September 2005).