

CHAPTER 2 SALES TAX

2.1. Results of audit

Test check of records relating to Sales Tax assessments and other records, conducted in audit during 2001-2002, revealed short assessment of tax amounting to Rs. 9.70 crore in 193 cases, which broadly fall under the following categories:-

(Rupees in crore)		
	Number of cases	Amount
1. Evasion of tax as a result of suppression of purchases/sales	73	0.98
2. Non-levy/short levy of penalty	8	0.49
3. Under-assessment of tax	96	1.52
4. Other irregularities	15	0.46
5. Working of Multipurpose check posts	1	6.25
Total	193	9.70

During 2001-2002, the department accepted under-assessments etc., of Rs. 14.91 crore involved in 142 cases, of which 3 cases involving Rs. 1.54 lakh had been pointed out in audit during the year and rest in earlier years. A few illustrative cases highlighting important observations involving financial effect of Rs. 6.76 crore are given in the following paragraphs.

2.2. Working of Multipurpose Check Posts

2.2.1 Introduction

To check the evasion of sales tax by dealers in the course of inter-State trade, the State Government has established check posts/ barriers at such places in the State, as considered necessary under the Himachal Pradesh General Sales Tax Act, 1968.

The owner or person incharge of goods carriage entering or leaving the limits of the State is required to submit in triplicate a declaration in form ST XXVIA of the goods carried, to the officer incharge of the check post which form the basis for assessment of registered dealer as well as help in the identification of registrable dealers and their tax liabilities in the corresponding districts. For goods carriages bound for outside the State and passing through Himachal Pradesh, form ST XXVII in duplicate is to be submitted by the person incharge of a goods carriage. The incharge of the check post/ barrier can levy and collect the penalty.

2.2.2 Organisational set-up

Subject to the overall control of the Excise and Taxation Commissioner, the administration of check post is entrusted to an Excise and Taxation Officer. He works under the direction and control of the Assistant Excise and Taxation Commissioner/Deputy Excise and Taxation Commissioner (North Zone)/Additional Excise and Taxation Commissioner (South Zone) and Deputy Excise and Taxation Commissioner (Central Zone) stationed at Palampur, Shimla and Mandi respectively. Checking of goods transported in goods carriers through barriers/check posts or through escape routes is also conducted by Flying squads headed by the Deputy Excise and Taxation Commissioners, North, South and Central Zones, with headquarters at Palampur, Shimla and Una respectively.

2.2.3. Scope of Audit

A review on “Working of Multipurpose Check Posts” pertaining to the year 1996-97 to 2000-01 was conducted during May 2001 to March 2002. The working of 17 out of 39 check posts/ barriers and 10 out of 11 district offices was observed with a view to ascertaining the effectiveness and efficacy of check posts in checking the evasion of sales tax.

2.2.4. Highlights

(i) Test check of 10 barriers revealed that 2,68,529 goods vehicles carrying bricks, sand and bajri worth Rs. 62.64 crore and Katha valued Rs. 1.16 crore, were allowed to cross the barriers without obtaining the declaration forms, which resulted in loss of revenue of Rs. 5.13 crore. Resultantly, the department also failed to register these dealers under the Sale Tax Act.

[Para 2.2.6 (i) & (ii).]

(ii) In 309 cases, goods valued at Rs. 5.20 crore on which a minimum penalty of Rs. 78.01 lakh was leviable, crossed the State without handing over of the ST-XXVII forms by the owners of vehicles at the exit barriers.

(Para 2.2.7.)

(iii) 186 declaration forms submitted by unregistered dealers were pending verification. As such these dealers were not registered and brought under tax net.

[Para 2.2.9 (i)]

2.2.5. Trend of revenue

The revenue collected at the barriers during five years ending March 2001 is shown below:-

(In crore of rupees)	
Year	Revenue collected at the barriers under Sales Tax
1996-97	0.65
1997-98	0.66
1998-99	1.14
1999-2000	1.22
2000-2001	1.20

2.2.6. Loss of revenue due to non obtaining declaration forms

(i) Under the Himachal Pradesh Taxation (On Certain Goods Carried by Road) Act, 1991 and Himachal Pradesh Taxation (Passengers and Goods Taxation) (Amendment) Act, 1996, tax is to be paid on certain goods carried by road. Besides, under the Himachal Pradesh General Sales Tax Act, 1968, tax is also leviable on taxable goods imported from outside the State. For this purpose, the owner or the person incharge of a goods carriage entering or leaving the limits of the State, is to give a declaration form (ST-XXVI-A) in

triplicate at the barrier which is sent to concerned district for use at the time of assessment of a dealer.

Review of records of 11 barriers for the years between 1996-97 and 2000-01 revealed that though owners of 2,68,529 goods vehicles carrying bricks valued at (Rs. 47.70 crore), sand (Rs. 5.63 crore) and bajri (Rs. 9.31 crore) paid tax under the "On Certain Goods Carried by Road Act, 1991" and "Passengers and Goods Taxation (Amendment) Act 1996", the vehicles were allowed to cross the barriers without submitting declaration forms (ST XXVI-A). Since the goods were imported from outside the state, the dealers were liable to pay tax. Because of not obtaining the declaration forms, the department failed to register these dealers which resulted in non levy of tax under Sales Tax Act despite the fact that Acts viz. "Sales Tax Act", "On Certain Goods Carried by Road Act, 1991" and "Passengers and Goods Taxation (Amendment) Act" are administered by the same department. Thus, State Government had to forgo the revenue worth Rs.5.01 crore under Sales Tax.

(ii) To exercise control over the import/export of Forest produce, the State Government has established forest check posts alongside multipurpose barriers established by the Excise and Taxation Department at all the entry /exit points of the State of Himachal Pradesh. It was noticed that from the Forest Check Posts of Tunnu Hatti (Chamba) and Sansarpur Terrace (Kangra) 29 dealers had exported katha valued at Rs. 1.16 crore involving a tax effect of Rs. 11.62 lakh between 1996-97 and 2000-01. These dealers being manufacturers were registerable under the Sales Tax Act as their turnover had exceeded the taxable quantum of Rs. 40,000 upto March 1999 and Rs.2,00,000 thereafter. Correlation of the records of the Forest check posts with that of Sales Tax Barriers by audit revealed that no declarations in form ST-XXVI-A were obtained from these exporters as a result these dealers remained unregistered.

2.2.7. Incomplete Transit Slip Records

The owner or a person incharge of the goods carriage bound for outside the State and passing through Himachal Pradesh is to furnish in duplicate, a declaration in form (ST-XXVII) to the officer incharge of the barrier/check post, on his entry into the State. One copy of such declaration is to be returned to the owner/incharge of goods carriages which is to be delivered at the exit point of the State within 72 hours. In case of failure, a penalty not exceeding twenty five percent but not less than fifteen percent of the value of goods, is to be imposed by the officer incharge of the barrier at the entry point.

Review of the records of Behral, Dherowal, Kala Amb and Toki barriers showed (May and June 2001) that during the period between 1996-97 to 2000-01, 600 goods carriages carrying goods bound for outside the State of Himachal Pradesh, entered the barriers/check posts. Out of this, owners of 309 goods carriages (Behral:48, Dherowal: 39, Kala Amb: 27 and Toki: 195) did not hand over the declaration forms at the exit barriers for which minimum penalty of Rs. 78.01 lakh on the total value of goods worth Rs. 5.20 crore was leviable but was not levied. The possibility of sale of goods within the State and consequent loss of revenue also could not be ruled out.

Absence of controls to ensure that the barrier at the entry point shall remain in touch with the exit barrier declared for crossing of vehicles bound for outside the State, within the stipulated period could lead to misuse of facility by the unscrupulous vehicle owners.

2.2.8. Non-linking of detection reports

The Excise and Taxation department had from time to time issued instructions that detection reports are to be placed in the dealer's file. It was also stressed that declaration forms collected and the information relating to imposition of penalties be transmitted to the concerned districts so that these may form a part of record of the main file of the assessee. Any adverse information against the dealer to evade the tax is utilised at the time of assessment.

(i) During the review of records of 2 district offices (Sirmour and Una) and 3 barriers (Kala Amb, Mehatpur and Parwanoo), it was noticed that the department had detected 59 cases of under billing worth Rs.15.14 lakh between June 1997 and November 2000 in respect of goods imported from outside the State through goods carriages. Though a penalty of Rs.2.28 lakh was levied and recovered from the dealers on the spot, neither the declaration forms were obtained nor the detection reports sent to the appropriate assessing authorities for placing in the assessment files of the dealers. As a result, the possibility of evasion of tax amounting to Rs.1.33 lakh leviable on the sale of these goods could not be ruled out.

(ii) During test check of records of offices of the Deputy Excise and Taxation Commissioner (Flying Squad), North Zone, Palampur, Assistant Excise and Taxation Commissioner, Una, Kala Amb barrier and Kandwal barrier, it was noticed that in 135 cases detected at barriers and in field checking during the period 1996-97 to 2000-01, penalty of Rs. 24.97 lakh on goods valued at Rs. 1.67 crore was imposed and recovered from the registered dealers on the spot/barriers. However, no declaration form (ST-XXVI-A) was obtained from these dealers and no detection reports were sent to the concerned assessing authorities. Resultantly, possibility of evasion of tax worth Rs.14.71 lakh leviable on the sale of goods could not be ruled out.

2.2.9. Evasion due to non-registration of dealers

Any dealer who does not deal exclusively in goods declared to be tax free shall be liable to pay tax under this Act, on the expiry of 30 days after the date on which his gross turnover during any year first exceeds the taxable quantum. In relation to any dealer who imports for sale or use in a manufacturing process any goods in Himachal Pradesh the taxable quantum has been fixed as "nil".

(i) During review, it was noticed (May and June 2001) that in 4 district offices (Bilaspur, Kangra, Solan and Una) 186 declaration forms relating to goods valued Rs. 72.70 lakh imported by the unregistered dealers from outside the State between 1997-98 and 2000-2001, were pending verification. No action was taken by the department to verify these forms and to bring the

dealers under the tax net. The sale value of these goods worked out to Rs. 79.97 lakh on which a tax of Rs. 6.40 lakh was leviable.

(ii) Review of the records of Sirmour and Una district offices along with the records of 7 barriers (Baddi, Dherowal, Gagret, Kala Amb, Mehatpur, Parwanoo and Swarghat) showed that goods worth Rs. 71.84 lakh were imported by 236 unregistered dealers between 1997-98 and 2000-01. A penalty of Rs. 12.88 lakh was levied and recovered from them. These dealers being importers were liable for registration irrespective of their turnover. However, no action to register them was initiated. Sales tax of Rs.5.75 lakh on the sale value of these goods was leviable.

(iii) A review of records of STXXVI-A forms of Kangra District revealed that 7 dealers had exported katha valued at Rs. 18.80 lakh between April and May 1999 by filing declaration forms. Even though the turnover of all these dealers being manufacturers, had exceeded the prescribed limit of taxable quantum, no action had been taken by the concerned district office to register the dealers under the sales tax law. Sales Tax in these cases amounted to Rs. 1.88 lakh.

2.2.10. Non accounting of transactions

Under the Himachal Pradesh General Sales Tax Rules, 1970 and instructions issued by the Excise and Taxation Commissioner from time to time, separate white and pink registers in form ST-XXVI-D and ST-XXVI-E in respect of registered and unregistered dealers respectively are to be maintained at the barriers, separately for each district, in which particulars of each consignment passing through the barrier is recorded. A copy of the white and pink register along with declaration forms is to be sent to the Assistant Excise and Taxation Officers of the concerned district twice a week for cross verification with the books of the dealers at the time of finalisation of assessments.

(i) Cross check of the declaration forms sent by 14 barriers to the district offices at Bilaspur, Chamba, Hamirpur, Kangra, Sirmour and Solan revealed that against 6,84,697 declaration forms for the period falling between 1996-97 and 2000-01 sent from the barriers, only 5,65,376 forms were actually received in the district offices. This resulted into a difference of 1,19,321 forms. No efforts to reconcile the differences were made by the department.

(ii) Delay in submission of ST-XXVI- Forms

According to the records of 22 barriers, 59,22,272 forms were filed by the dealers during the years 1996-97 to 2000-01. It was noticed in audit that their submission to the concerned district officers were delayed, which ranged between 1 week and 110 weeks. This would result in delay in finalisation of assessment or finalisation of assessments without verification.

(iii) Non verification of declaration forms lying in the files of other dealers

According to the departmental instructions (January 1990), every assessing authority while finalising the assessments, is required to verify the transaction noticed in declaration forms received from the barriers from the books of the dealers, to ensure proper accountal and payment of tax.

Review of records of 5 district offices* showed that in case of 42 dealers, 89 declaration forms valued at Rs. 45.12 lakh, were found in the assessment files of other dealers. These were required to be sorted out and handed over to the concerned assessing authorities for verification from the books of the concerned dealers but this was not done and thus these forms remained unverified. Evasion of tax of Rs 3.61 lakh in these cases could not be ruled out.

(iv) Non-verification of declaration forms (ST-XXVI-A) by the Inspectorate Staff

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

Test check of records of Bilaspur district revealed that 18381 declaration forms pertaining to unregistered dealers were handed over to the circle inspectors for verification during the year from 1996-97 to 1999-2000. Of these, only 13,360 forms could be verified. The remaining 5021 forms were pending verification.

2.2.11. Non maintenance of records

Himachal Pradesh General Sales Tax Rules, 1970 provide that bills of lading (declaration forms) are required to be sorted out under the supervision of the assessing authority entered in the dealer-wise register (Form ST-XXVI-F) maintained for the purpose. The bills of lading in respect of registered dealers are to be handed over to the concerned assessing authorities at the end of each month to place in the assessment file of the dealers to ensure cent per cent accounting of declaration forms.

Test check of records of Hamirpur, Kullu, Mandi, Sirmour, Solan and Una district offices showed that the dealer wise registers were not maintained in these offices.

* Bilaspur: 16, Hamirpur: 7, Mandi: 1, Shimla: 8 and Solan: 10.

2.2.12. Internal Audit

As a part of internal control mechanism, there exists an internal audit system in the Excise and Taxation Department which inter-alia lays down audit of district offices as also of barriers. During review, it was noticed that there had been a huge shortfall in the internal audit. As against 195 units which were due for audit during the period falling between 1996-97 and 2000-01, only 13 units were audited. No specific reasons were advanced by the department for the shortfall.

2.2.13 Conclusion

It is evident that the functioning of the multipurpose check posts and obtaining declaration forms was beset with operational deficiencies and lapses which defeated the primary purpose of checking evasion of tax. There is no system of monitoring movement of vehicles, coordination between entry and exit check post and quick communication which would have enabled detection of tax evasion. The department failed to register the dealers on the basis of declaration forms obtained from them. There is no system to reconcile whether the declaration forms sent to the respective Assistant Excise and Taxation Officers have been accounted for by them. Urgent action is required to review the functioning of the check posts.

The above points were reported to the department and Government in June 2002; their replies have not been received.

2.3. Short levy of sales tax

As per notification dated 28 July 1978, the Small Scale Industries registered with Industries Department which manufacture goods would be entitled to sale/purchase tax holiday in respect of goods purchased by them and used in manufacture of goods for sale in the State. As per the provisions of the Central Sales Tax Act, 1956, the inter-State sales of declared goods, not supported by declaration form 'C' is leviable to tax at twice the rate applicable to the sale or purchase of such goods inside the State under the State Sales Tax Laws.

During audit of the office of the Assistant Excise and Taxation Commissioner, Nahan, it was noticed that an industrial unit engaged in the manufacturing of hand brite wire (declared goods) transferred the stock valued at Rs.5.01 crore during the year 1996-97 to 1998-99. However, the assessing authority while assessing the dealer (April 2000) exempted the turnover from levy of sales tax treating the sales as inter State whereas the sales was on account of branch transfer. As such the exemption was inadmissible. This resulted in short levy of sales tax of Rs. 40.08 lakh.

On this being pointed out, the department stated (February 2001) that notices have been issued to the dealer. Further report has not been received (August 2002).

This was reported to Government in March 2001; their reply has not been received (August 2002).

2.4. Non levy of tax due to non-registration of dealers

Under the Himachal Pradesh General Sales Tax Act, 1968, 'dealer' includes any department, or subordinate office of a Government which whether or not in the course of business buys, sells, supplies or distributes goods for commission, remuneration or other valuable consideration. If a dealer liable to pay tax, carries on business without getting himself registered, he is liable to penalty not exceeding two thousand rupees and where such failure is continuing one, a daily penalty not exceeding fifty rupees is to be levied during the period of continuance of the contravention or failure.

According to the information collected in audit from the Himachal Pradesh Public Works Division, Sunder Nagar, it was noticed (September 2000) that material worth Rs. 1.25 crore was issued to the contractors for execution of works contracts without charging sales tax during the period between 1994-95 and 1998-99. No action was taken by the department to register the division as a dealer under Sales Tax Act. This resulted in non-levy of tax amounting to Rs.9.17 lakh. Besides, penalty at prescribed rate was leviable.

On this being pointed out (September 2000) in audit, the assessing authority assessed (June 2001) the case and a demand of Rs. 9.17 lakh (excluding penalty) was raised. Report of recovery had not been received (August 2002).

2.5. Short determination of taxable turnover

Under the Himachal Pradesh General Sales tax Act, 1968, 'turnover' includes the aggregate of the amounts of sales and purchases actually made by the dealer during the given period. At the time of finalising the assessment, the assessing authority 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. If a dealer fails to pay the tax due by the prescribed date, he has 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 so long as the default continues.

During audit of the Assistant Excise and Taxation Commissioner, Shimla, it was noticed (October 2001) that assessments of a dealer for the years 1998-99 and 1999-2000 were finalised (March 1995 and November 2000) on the basis of the sales worth Rs 1.89 crore as disclosed by the dealer in the trading accounts. A scrutiny in audit of the assessment records revealed that during these years the dealer had actually sold goods valued at Rs. 2.12 crore. Thus the dealer's taxable turnover amounting to Rs. 23.15 lakh had escaped levy of tax. This resulted in short levy of tax of Rs. 2.46 lakh (including interest).

The matter was pointed out (October 2001) in audit to the department and reported to the Government in November 2001; their replies have not been received (August 2002).