Chapter-II: Taxes on Sales, Trade etc.

2.1. Results of Audit

Test-check of sales tax records, conducted in audit during the year 2002-2003, revealed under-assessments, etc. of tax amounting to Rs.13.16 crore in 260 cases, which broadly fall under the following categories:

(In crore of rupees)

Sr. No.	Category	Number of cases	Amount
1	Non/short levy of sales tax	195	3.65
2	Incorrect grant of exemption	28	2.17
3	Non/short levy of penalty	6	0.27
4	Non/short levy of purchase tax	10	0.44
5	Other Irregularities	21	6.63
	Total	**260**	**13.16**

During the year 2002-2003, the Excise and Taxation Department accepted under-assessment of Rs.0.11 crore in 21 cases and recovered Rs.0.09 crore in 20 cases pertaining to the previous years.

A few illustrative cases highlighting important irregularities involving financial effect of Rs.9.14 crore are given in the following paragraphs.

2.2. Incorrect allowance of deduction

Under the Punjab General Sales Tax Act (PGST) and Rules made thereunder, a registered dealer is allowed deduction on account of sales made to another registered dealer if the purchasing dealer furnishes prescribed declarations in ST XXII form that the goods purchased are meant for resale in the State or for sale in the course of inter-State trade or commerce or in the course of export out of the territory of India or for use in the manufacture of goods, the sale of which is taxable in the State. Departmental instructions issued in 1983 further require that such sales should be cross-checked with the account books of the purchasing dealer. The dealer furnishing incorrect or false declaration is liable to pay in addition to tax due, a minimum penalty of fifty per cent but not exceeding twice the amount of tax.

During test check of records of two Assistant Excise and Taxation Commissioners (AETCs), it was noticed in audit that five dealers were allowed between February 1999 and July 2000 deduction of Rs.48.55 lakh during the years 1993-94 and 1997-98 on account of sales made against ST XXII forms without cross verifying with the account books of purchasing dealers. This resulted in short levy of tax of Rs.8.67 lakh including minimum penalty as tabulated below:

(in lakh of rupees)

Sr. No	Name of AETC	No of dealers	Year of assessment	Inadmissible deduction	Short levy of tax	Penalty	Total	Nature of irregularity
1	Ludhiana-II & Ludhiana-III	4	1993-94 to 1996-97	46.69	5.53	2.77	8.30	Sale of goods to non-existent dealers
2	Ludhiana-III	1	1997-98	1.86	0.25	0.12	0.37	Short accountal of goods by the purchasers
	Total	**5**		**48.55**	**5.78**	**2.89**	**8.67**	

On this being pointed out, the Department stated in March and May 2003 that in one case of Ludhiana-II an additional demand of Rs.0.48 lakh had been created and in two cases suo-motu action initiated. No reply was received in the remaining cases.

The matter was referred to the Government between August and October 2002; no reply was received (November 2003).

2.3. Non-levy of tax on sale of import replenishment licence

It has been judicially held* that REP Licences/Exim scrips are goods and the premium or price received by the holders by transfer thereof to another person is liable to sales tax at the prescribed rate.

During test-check of the assessment records of AETCs, Jalandhar-II, Ludhiana-II and Ropar, it was noticed that while finalising between August 2000 and March 2002 the assessments of three dealers for the years 1992-93, 1997-98 and 1998-99, the Assessing Authorities had not included receipts of Rs.50.55 lakh on account of sale of import replenishment licence in the turnover of the dealers resulting in non-levy of tax amounting to Rs.4.45 lakh.

On this being pointed out, the Department stated in May 2003 that in one case of Jalandhar-II, an additional demand of Rs.3.84 lakh had been created and in another case, AETC, Ropar stated that the tax was not leviable as the receipts were received out of the State. The reply is not tenable since the dealer was assessed to sales tax in the State and the receipt should have been included in the turnover for the purpose of sales tax.

The matter was reported to the Government in September 2002; no reply was received (November 2003).

2.4. Non-levy of purchase tax

Under the Central Sales Tax Act, 1956, the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of territory of India is exempt from tax. However, it has been judicially held$ that the purchase of paddy used for manufacture of rice to be exported out of India indirectly, is liable to purchase tax in the hands of Rice Miller notwithstanding that rice procured out of it is exported out of India.

During test check of records of AETCs, Gurdaspur and Hoshiarpur, it was noticed that while finalising between September 2000 and March 2002 the assessment of fifteen dealers for the years 1996-97 to 1999-2000, the Assessing Authorities allowed deduction of Rs.15.80 crore from the purchase turnover of paddy. Since the paddy out of which rice was manufactured and exported was liable to purchase tax in view of the above judicial pronouncement, the deduction allowed was not correct and resulted in non-levy of purchase tax of Rs.63.22 lakh.

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* **M/s Vikas Sales Corporation V/s Commissioner of Commercial Taxes (STI-1996-SC-100).**

$ **M/s Veeru Mal Monga & Sons V/s State of Haryana and Others (STI-2000-Punjab & Haryana High Court-52).**

On this being pointed out, the Department stated in December 2002 that in one case an additional demand of Rs.1.35 lakh had been created and in remaining cases, the Department stated in December 2002 that in the above Judicial pronouncement, the court had allowed maintenance of the status quo. The reply was not tenable in view of the judgement* of the Supreme Court that purchase tax was leviable in such cases.

The matter was referred to the Government between August and November 2002; their reply was not received (November 2003).

2.5. Short levy of tax

Under the PGST Act, no provision exists for change in the rate of tax with retrospective effect, as such tax is levied on goods at the rate applicable at the time of actual sale unless exempted.

Contrary thereto, State Government vide notification dated 11 September 1997 read with 29 October 1997 exempted the sale of dhoop and agarbaties, and pens and ball pens from levy of sale tax with effect from 1 April 1996. Similarly, rate of sales tax on tractor parts was reduced vide notification dated 9 July 1997 from 8 to 2 *per cent* with effect from 1 April 1996.

During test check of records of seven# AETCs, it was noticed that while finalising assessments between May 1999 and June 2001 for the years 1996-97 and 1997-98 in respect of twenty five dealers engaged in the business of resale of dhoop and agarbaties, and pens and ball pens, the Assessing Authorities exempted from tax the sale turnover of dhoop and agarbaties, and pens and ball pens amounting to Rs.1.07 crore and assessed the sale turnover of tractor parts amounting to Rs.5.33 crore at the reduced rates of tax under the aforesaid notifications. As the goods were taxable at the rates applicable at the time of sale actually made, allowance of exemption/reduction in rate of tax with retrospective effect, resulted in short levy of tax amounting to Rs.46.99 lakh.

On this being pointed out, the Department stated that assessments were finalised in view of notifications referred to above. The reply is not tenable as under the provisions of the Act, dealers were required to pay the tax as applicable at the time of sale actually made.

The matter was referred to the Government between August 2002 and January 2003; no reply was received (November 2003).

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* **M/s Satnam Overseas (Export) etc. V/s State of Haryana (STI-2002-SC-67)**

\# **Amritsar-I (ward-3&7), Gurdaspur (ward 11), Jalandhar-II (ward-4& 11), Ludhiana-I (ward-1&14), Ludhiana-II (ward-11, 12, 13, 15& 18), Ludhiana-III (wards 28, 28-A & 29) and Sangrur (ward-1A&5A).**

2.6. Non-levy of tax at first stage of sale

Under the PGST Act and Rules made thereunder, tax is leviable at the first stage on the sale of paper of all kinds, ball bearings, combine parts, auto parts, paints and sanitary goods.

During test check of records of eight[$] AETCs, it was noticed that while finalising between July 2000 and February 2002 the assessments of ten dealers, for the years 1997-98 to 2000-2001, the Assessing Authorities allowed deduction of Rs.1.89 crore from the gross turnover on account of sale of craft paper, ball bearings, combine parts, auto parts, paint and sanitary goods made to registered dealers in the State against the prescribed declarations. Since the goods were taxable at the first stage of sale, the deduction allowed against these declarations was not correct. Incorrect allowance of deduction resulted in non-levy of tax of Rs.13.43 lakh.

On this being pointed out, the Department stated in April and May 2003 that assessments in case of Ludhiana-I, Ludhiana-III and Sangrur districts had been taken up for suo-motu action whereas in one case of Bathinda district an additional demand of Rs.0.48 lakh had been created. Final replies in respect of other cases and position of recovery were awaited (November 2003)

The matter was referred to the Government between August 2002 and January 2003; no reply was received (November 2003).

2.7. Inadmissible availing of exemption from payment of tax

Under the PGST (Deferment and Exemption) Rules 1991, exemption from payment of sales/purchase tax is admissible to a unit for manufacturing and sale of products mentioned in the eligibility certificate. In case of any addition in the products other than originally mentioned in the eligibility certificate, the benefit of exemption is admissible from the date of such addition in the eligibility certificate.

An industrial unit in Patiala district engaged in the manufacture and sale of 'boneless buffalow meat' was issued exemption certificate in June 2000 for the period April 1995 to March 2002 based on the eligibility certificate issued by the Industry Department on 24 December 1998. Subsequently, by-products viz the bone meat/meals, hides, animal fats etc. were added in the eligibility certificate on 10 August 2000.

During test check of records of AETC, Patiala, it was noticed that while finalising the assessment for the year 2000-2001 in March 2002, the Assessing Authority allowed the benefit of tax exemption on the sale of above

[$] **Amritsar-I (ward-3), Amritsar-II (ward-10), Bathinda (ward-6 Rampuraphool), Jalandhar-II (ward-8), Ludhiana-I (ward-13), Ludhiana-III (ward-29-A), Ropar (ward-3) and Sangrur (ward-4 Malerkotla and ward-5A Ahmedgarh) .**

products (added in the eligibility certificate subsequently) valued at Rs.2.01 crore during the period 1 April 2000 to 9 August 2000 and debited the tax to the exemption limit instead of collecting the same from the purchasers. Inadmissible availing of exemption from payment of tax on the sale of these products prior to 10 August 2000 resulted in loss of tax of Rs.8.57 lakh.

On this being pointed out, the Department stated in April 2003 that the Industry Department amended the eligibility certificate by allowing the addition of above items with effect from 1 April 1995 vide orders dated 10 August 2000. The reply was not tenable as benefit of exemption from tax on these products could be available only from 10 August 2000 in view of the existing provision.

The matter was referred to the Government in October 2002; no reply was received (November 2003).

2.8. Non-recovery of tax and penalty from closed units

Under the PGST (Deferment and Exemption) Rules, 1991, the deferment/exemption certificate granted to a unit, is liable to be cancelled, if the unit discontinues its business at any time for a period exceeding six months or closes business during the period of deferment/exemption. On cancellation of exemption/eligibility certificate, the entire amount of tax deferred/exempted shall become recoverable immediately in lump sum and the provisions of levy of interest and imposition of penalty under the Act would also be applicable in such cases.

Test check of records of six AETCs, revealed that 12 units after having availed partial tax exemption closed their business between April 1997 and March 2002 and in the case of 8 units, exemption certificates were cancelled between June 1999 and December 2002 before expiry of exemption period. However, no action was taken to recover the amount of exempted tax of Rs.2.85 crore including penalty, as per details given below:

(In crore of rupees)

Sr.No.	Name of the district	Number of units which closed their business before expiry of exemption period.	Number of units where the exemption certificates had been cancelled	Amount of exempted tax (including penalty)
1.	Amritsar-I	3	5	0.60
2.	Amritsar-II	1	--	0.02
3.	Hoshiarpur	1	--	0.01
4.	Ludhiana-II	2	--	1.74
5.	Ludhiana-III	2	1	0.24
6.	Patiala	3	2	0.24
	Total	**12**	**8**	**2.85**

Failure on the part of the Department to initiate any action against the above units resulted in non-recovery of revenue of Rs.2.85 crore.

On this being pointed out in audit, AETC, Patiala stated in May 2003 that the whereabouts of the dealers were not known. No reply was received from remaining AETCs (November 2003).

The matter was brought to the notice of the department and referred to the Government in April 2003; no reply was received (November 2003).

2.9. Cancellation of registration certificate before realisation of demand of tax.

The PGST Act and Rules made thereunder provide that before the registration certificate of a dealer is cancelled, the Assessing Authority should satisfy himself that the dealer is not liable to pay any tax or tax due has been paid.

2.9.1. In the case of eleven units of three districts Jalandhar-I, Ludhiana-II and Ludhiana-III, original assessments involving tax of Rs.24.24 lakh were framed between January 1983 and March 2001. On appeal the Appellate Authorities remanded the assessments to the Assessing Authorities concerned between September 1998 and February 2002. While the reassessments in these cases were still pending, registration certificates of these units were cancelled between December 1995 and December 2001 as the units had already closed their business.

2.9.2. On appeal against the assessment orders for the year 1983-84 of a dealer of Ludhiana-I district the Appellate Authority remanded the case for de-novo proceedings in November 1998. Reassessment was finalised in August 1999 by the Assessing Authority creating additional demand of Rs.2.14 lakh. It was, however, noticed that the Department had already cancelled the registration certificate of the dealer in July 1992, though the appeal was still pending with Appellate Authority.

2.9.3. An appeal against the orders issued in February 1998 creating demand of Rs.1.21 lakh relating to the assessment year 1986-87 filed by a dealer of Hoshiarpur district was decided in August 1999 upholding the demand. It was, however, noticed that the registration certificate of the dealer was cancelled in July 1999 before the case was finalised.

Failure of the Department to satisfy itself before cancellation of registration certificate that the dealers were not liable to pay tax, resulted in loss of tax of Rs.27.59 lakh.

The matter was brought to the notice of the Department and referred to the Government in April 2003; no reply was received (November 2003).

2.10. Application of incorrect rate of tax

2.10.1. Under the PGST Act, tax is leviable on acrylic/polyester tops, paper cones, corrugated boxes, plastic goods and oxygen gas at the rate of 8.8 *per cent* (including additional tax).

During the course of audit of records of four[*] AETCs, it was noticed that while finalising the assessment between July 2001 and March 2002 for the years 1998-99 and 2000-2001 of four dealers engaged in the business of manufacture and sale of acrylic/polyester tops, paper cones, corrugated boxes, plastic goods and oxygen gas and availing the benefit of exemption from payment of tax, the Assessing Authorities levied tax on the sale of these goods valued at Rs.10.77 crore at the rates of 4 and 4.4 *per cent* instead of correct rate of 8.8 *per cent*. Application of incorrect rate of tax resulted in short levy of tax of Rs.46.94 lakh.

On this being pointed out, the Department in case of Sangrur district stated in April 2003 that necessary proceedings against the dealer had been initiated, and in the case of Patiala and Fatehgarh Sahib additional demand of Rs.7.25 lakh had been created and adjusted against exemption limit. In case of Ludhiana-III, suo-motu action had been taken.

The matter was referred to the Government between September 2002 and March 2003; no reply was received (November 2003).

2.10.2. Rate of tax on the sale of PVC pipe and oxygen gas was enhanced from 8 to 12 *per cent* with effect from 25 January 2000.

During the course of audit of records of the AETCs, Patiala and Fatehgarh Sahib, it was noticed that while finalising the assessment between July and November 2001 for the years 1999-2000 and 2000-2001 of two dealers engaged in the manufacturing of PVC pipes and oxygen gas, and availing the benefit of exemption from the payment of tax, the Assessing Authorities levied tax on the sale of these goods valued at Rs.3.56 crore at the rate of 8.8 *per cent* instead of at correct rate of 12 *per cent*. Application of incorrect rate of tax resulted in short levy of tax of Rs.11.50 lakh.

On this being pointed out, the Department stated between December 2002 and April 2003 that in both the cases additional demand had been created and adjusted against the exemption limit.

The matter was referred to the Government in October 2002; no reply was received (November 2003).

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[*] **Fatehgarh Sahib (ward-2), Ludhiana-III (ward-30A), Patiala (ward-8) and Sangrur (ward-5 Malerkotla).**

2.10.3. Tax on sale of transformers and soap is leviable at the rate of 13.2 and 8.8 *per cent* (including additional tax) with effect from 25 September 1998 and 1 April 1999 respectively.

During test check of records of the AETC, Bathinda, it was noticed that while finalising the assessment in April 2001 for the year 1999-2000 of two dealers engaged in the business of manufacture and sale of transformers and soap, and availing the benefit of exemption from payment of sales tax, the Assessing Authority levied tax at the rate of 8.8 and 6.6 *per cent* instead of correct rate of 13.2 and 8.8 *per cent* respectively, on the sale of these goods valued at Rs.1.61 crore. Application of incorrect rate of tax resulted in short levy of tax of Rs.5.80 lakh.

On this being pointed out, the Department stated in May 2003 that the additional demand had been created and adjusted against the exemption limit.

The matter was referred to the Government in March 2003; no reply was received (November 2003).

2.10.4. Tax on the sale of maaza, maaza tetra pack and ready syrup is leviable at the rate of 12 *per cent* with effect from 25 January 2000.

During the course of audit of records of the AETC, Ludhiana-1, it was noticed that while finalising the assessment in November 2001 for the year 2000-2001 of a dealer engaged in the business of manufacture and sale of soft drinks, fruit juice etc; the Assessing Authority levied tax at the rate of 8 *per cent* instead of correct rate of 12 *per cent* on the sale of maaza, maaza tetra pack and ready syrup valued at Rs.2.39 crore in the first quarter of the assessment year. Application of incorrect rate of tax resulted in short levy of tax of Rs.9.55 lakh.

On this being pointed out, the Department stated in April 2003 that the case had been taken up for suo-motu action. Final reply was awaited (November 2003).

The matter was referred to the Government in January 2003; no reply was received (November 2003).

2.10.5. Tax on the sale of bicycle and its parts is leviable at the rate of 6 *per cent*.

During the course of audit of records of the AETC, Fatehgarh Sahib, it was noticed that while finalising the assessment in January 2002 for the year 2000-2001 of a dealer engaged in the manufacture and sale of cycle parts and availing of the benefit of exemption from the payment of tax, tax was levied on the sale of cycle parts amounting to Rs.2.84 crore at the rate of 5.5 *per cent* instead of correct rate of 6 *per cent*. Application of incorrect rate of tax resulted in short levy of tax of Rs.1.42 lakh.

On this being pointed out, the Department stated in March 2003 that the additional demand had been created. Further, reply was awaited (November 2003).

The matter was referred to the Government in September 2002; no reply was received (November 2003).

2.10.6. Under the PGST Act, tax on sales made to Government of India or any State Government where the rate of tax is more than 4 *per cent* shall be levied at the rate of 4 *per cent* subject to the production of prescribed certificate.

During test check of records of two AETCs, Muktsar and Ropar, it was noticed that while finalising the assessment between September 1998 and October 2001 for the years 1994-95 and 1999-2000 of two dealers, Assessing Authorities levied tax at the rate of 4.4 *per cent* instead of at correct rate of 8.8 *per cent* on the sale of unspecified goods valued at Rs.40.78 lakh made to a Co-operative Consumer Store and an autonomous body treating them as Government departments. Thus, application of incorrect rate of tax resulted in short levy of tax of Rs.1.79 lakh.

The matter was brought to the notice of the Department and referred to the Government in March 2003; no reply was received (November 2003).

2.11. Incorrect computation of taxable turnover

Under the PGST Act, taxable turnover means that part of gross turnover during any period, which remains after deducting admissible deductions and the amount of sales tax included in the gross turnover.

During scrutiny of records of AETC, Ludhiana-II, it was noticed that while finalising the assessments between May 2000 and February 2002 for the years 1990-91 to 1999-2000 of six dealers engaged in the business of manufacturing yarn and food products and availing the benefit of exemption from the payment of tax, Assessing Authorities computed the turnover after reducing the element of sales tax incorrectly though the assessees did not collect the same being exempted units. This resulted in short levy of tax of Rs.22.67 lakh.

On this being pointed out, the Department stated between March and May 2003 that the assessments in cases of five dealers had been taken up suo-motu for revision whereas in the case of one dealer it was stated in May 2003 that no tax had been charged, the sale was inclusive of tax and the Assessing Authority had rightly calculated the tax. The reply was not tenable as the assessee being an exempted unit neither charged nor collected tax from purchasers, and as such the entire turnover was to be taken for calculating the tax liability for adjustment against exemption limit.

The matter was referred to the Government between August 2002 and March 2003; no reply was received (November 2003).

2.12. Non-levy of tax

2.12.1. Under the PGST Act and Rules made thereunder, tax at the rate of 5.5 *per cent* (including additional tax) is leviable on the sale of bakery goods.

During the course of audit of records of the AETC, Gurdaspur, it was noticed that while finalising the assessment in May 2001 for the year 1999-2000 of a dealer engaged in the business of manufacture and sale of bakery goods and availing the benefit of exemption from payment of tax, the Assessing Authority exempted the sale of bakery goods valued at Rs.39.19 lakh treating the sale as tax free. This resulted in non-levy of tax amounting to Rs.2.16 lakh.

On this being pointed out, the Department stated in April 2003 that the case had been reopened for reassessment. Final reply was awaited.

The matter was referred to the Government in January 2003; no reply was received (November 2003).

2.12.2. Tax on the sale of de-oiled cake is leviable at the rate of 4.4 *per cent* (including additional tax) with effect from 25 January 2000.

During test check of records of AETC, Gurdaspur, it was noticed that while finalising the assessment in December 2001 for the year 1999-2000 of a dealer engaged in the business of sale of de-oiled cake and availing the benefit of exemption from payment of tax, the Assessing Authority exempted the sale of de-oiled cake valued at Rs.37.16 lakh made during the months of February and March 2000 from payment of sales tax resulting in non-levy of tax amounting to Rs.1.63 lakh.

On this being pointed out, the Department stated in May 2003 that an additional demand of Rs.1.63 lakh had been created and adjusted against exemption limit.

The matter was referred to the Government in December 2002; no reply was received (November 2003).

2.13. Short levy of Central Sales Tax

Under the Central Sales Tax Act 1956, tax on inter-State sale of goods, other than declared goods, made to unregistered dealers is levied at the rate of 10 *per cent* or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher.

During test check of records of the AETC, Amritsar-I, it was noticed that while finalising the assessment in January 2002 for the year 2000-2001 of a dealer enjoying the benefit of exemption from payment of tax, the Assessing Authority levied tax at the concessional rate of 4 *per cent* instead of 10 *per cent* on inter-State sale of goods valued at Rs.67.10 lakh made to unregistered dealers. This resulted in short levy of tax of Rs.4.03 lakh.

On this being pointed out, the Department stated in December 2002 that the inter-State sale was made to registered dealers. The reply of the Department was not tenable as the statement appended to the assessment records revealed that sales were made to unregistered dealers.

The matter was referred to the Government in December 2002; no reply was received (November 2003).

2.14. Loss of revenue due to short deposit of 'deemed fees'

Under the PGST Act and Rules made thereunder, a registered dealer opting for deemed assessment is required to deposit a fee of Rs.100 per lakh of the gross turnover for the relevant assessment year subject to minimum of Rs.500. 'Turnover' as defined in the Act includes the aggregate amount of sales and purchases made by a dealer during the given period.

During test check of records of the AETC, Jalandhar-II, it was noticed that a dealer engaged in the business of rice shelling opted for deemed assessment for the years 1994-95 and 1995-96 and deposited fee of Rs.3.45 lakh on the sales turnover of Rs.34.39 crore. The dealer had also purchased goods valued at Rs.13.83 crore which were not included in the gross turnover. This resulted in loss of revenue of Rs.1.38 lakh due to short deposit of deemed fees on the purchase turnover.

On this being pointed out, the Department stated in April 2003 that tax was exigible either on sale of goods or purchase of goods but not on both. The reply of the Department was not tenable in view of the definition of turnover contained in the Act which includes purchase turnover as well.

The matter was referred to the Government in September 2002; no reply was received (November 2003).

2.15. Loss of revenue on account of time barred demands due to delay in finalisation of assessments

Under the PGST Act, the Assessing Authority is required to finalise the assessment within a period of three years from the last date prescribed for furnishing the last return.

2.15.1. In four* districts, the assessment in respect of 10 dealers relating to the years 1986-87 to 1995-96 were finalised between June 1993 and March 2000 creating additional demands of Rs.17.68 lakh. On appeal, the Appellate Authority quashed these demands between April 1997 and December 2000 holding that demands so created were time barred, as the assessments in these cases were finalised after the prescribed period. Non-finalisation of assessments within the prescribed period resulted in loss of revenue of Rs.17.68 lakh.

The matter was brought to the notice of the Department and referred to the Government in March 2003; no reply was received (November 2003).

2.15.2. Assessments for the years 1989-90 to 1992-93 in respect of a firm of Hoshiarpur district were finalised between March and December 1998, creating additional demand of Rs.1.82 crore when the unit had already been declared sick in November 1993. The demand so created had become time barred due to delay in finalisation of assessments. Further, the Department also failed to lodge the claim in time with BIFR because the BIFR had already settled the claims of different parties in October 1995. This resulted in loss of revenue of Rs.1.82 crore.

On this being pointed out, the concerned AETC in reply stated in April 2003 that the unit was granted eligibility certificate by the Department of Industries for exemption from payment of tax. Reply was not tenable as the unit was not granted exemption certificate by the Department under Deferment and Exemption Rules, 1991.

The matter was brought to the notice of the Department and referred to the Government in March 2003; no reply was received (November 2003).

2.16. Loss of revenue due to delay in finalisation of assessments

Test check of records of three AETCs, Ludhiana I, Ludhiana II and Ludhiana III revealed that 28 sales tax assessments for the years 1990-1991 to 1997-1998 were finalised between April 1999 and February 2002 after the prescribed period of three years creating additional demands of Rs.1.04 crore which were also deposited by the dealers. However, due to delay in finalising the assessments within the prescribed period, State Government suffered loss on account of interest amounting to Rs.76.04 lakh.

The matter was brought to the notice of the Department and referred to the Government in March 2003; no reply was received (November 2003).

* **Bathinda (7 dealers), Ferozepur (1 dealer), Hoshiarpur (1 dealer) and Jalandhar–I (1 dealer).**

2.17. Non-levy of penalty

The PGST Act provides that if a dealer fails to pay tax due alongwith the returns, penalty not exceeding one and a half times but not less than fifty percent of tax due shall be levied. This provision shall, however, also apply mutatis-mutandis in the case of sales made in the course of inter-State trade or commerce.

During the course of test check of records, it was noticed that while finalising the reassessment in September 2002 under the Central Sales Tax Act, for the year 1993-94 of a dealer of Jalandhar –I district, the Assessing Authority created demand of Rs.8.30 lakh and mentioned in the reassessment record that penal action would be taken separately but the needful was not done till July 2003. This resulted in non-levy of penalty amounting to Rs.4.15 lakh.

On this being pointed out, the AETC, Jalandhar-I stated in April 2003 that the Assessing Authority had been directed to initiate proceedings for levy of penalty.

The matter was brought to the notice of the Department and referred to the Government in March 2003; no reply was received (November 2003).

2.18. Avoidable payment of interest.

As per PGST Act, 1948, if any amount to be refunded by the Assessing Authority to any person by virtue of an order issued under the Act is not refunded to him within ninety days of the date of the order, the dealer shall be entitled to get simple interest on such amount at the prescribed rates.

2.18.1. A leasing and financial services dealer of Hoshiarpur district deposited excess tax of Rs.1.33 crore in advance during the year 1997-98. After the finalisation of assessment in September 2000, excess tax of Rs.1.28 crore was ordered to be refunded. The Department did not release the refund within ninety days of the order. On the petition filed by the dealer, the State High Court ordered the payment of refund alongwith interest in October 2001. The Department issued the refund of Rs.1.48 crore in November 2001 including interest of Rs.20.41 lakh in favour of the dealer. Delay in payment of refund resulted in avoidable payment of Rs.20.41 lakh on account of interest.

On this being pointed out, AETC, Hoshiarpur stated in April 2003 that interest on delayed refund was allowed as per direction of High Court. Reply is not tenable as loss on account of payment of interest could have been avoided had the Department released the refund of tax in time.

The matter was brought to the notice of the Department and referred to the Government in March 2003; no reply was received (November 2003).

2.18.2. Aggrieved with the assessment orders issued in September 1997 for the years 1996-97 and 1997-98, creating additional demand of Rs.85.70 lakh and Rs.7.40 lakh respectively, a pesticide dealer of Bathinda district went in appeal before the Deputy Excise and Taxation Commissioner (DETC)(Appeal). On the directions of the Punjab and Haryana High Court, the dealer deposited Rs.20 lakh in March 1998 as pre condition to entertain the appeal. The DETC (Appeal) remanded the case in February 2001 to the Assessing Authority who finalised the reassessment in May 2001 with Nil demand on the basis of decision of State Sales Tax Tribunal in another similar case treating the pesticides as tax free goods. However, the refund of Rs.20 lakh deposited by the dealer as pre condition to hear the appeal, was withheld from July 2001 by the Excise and Taxation Commissioner. On appeal, the High Court directed in January 2002 that the amount of refund be released alongwith interest. Delayed action on the part of Department in releasing the refund resulted in avoidable payment of Rs.12.50 lakh as interest.

On this being pointed out, AETC concerned in reply stated in April 2003 that refund was withheld on the orders of Commissioner. Reply was not tenable as had the refund been released in time by the Department, the payment of interest could have been avoided.

The matter was brought to the notice of the Department and referred to the Government in March 2003; no reply was received (November 2003).

2.19. Undue benefit to dealers

It has been judicially held * that a promise or agreement to refund tax which is due and realised in accordance with law would be a fraud on the Constitution and a breach of people's faith in law. Refund of any tax will virtually amount to allowing the dealer unjust enrichment and will not benefit the person from whom the tax has actually been realised.

2.19.1. During test check of records of the AETC, Amritsar-II, it was noticed that a dealer engaged in the business of manufacturing sugar and availing the benefit of exemption from payment of tax, paid tax of Rs.1.91 lakh with the returns on the sale of bagassee, press mud (by product of sugar) and scrap during the years 1996-97 and 1997-98. As exemption from payment of tax on these goods was not available, the tax was rightly paid by the dealer and refund thereof was wrongly allowed in October 2001 by the Assessing Authority. This resulted in undue benefit of Rs.1.91 lakh to the dealer.

On this being pointed out, the Department stated in April 2003 that the case had been taken up for suo-motu revision. Further reply was awaited (November 2003).

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* **M/s Amrit Vanaspati Co-Limited and others V/s State of Punjab and another (STI-1992-52-SC), M/s Amar Nath Om Parkash V/s State of Punjab (1986–61 STC–130-SC) and State of Orissa V/s Orissa Cement Ltd. (1986–61 STC-79 SC).**

The matter was referred to the Government in March 2003; no reply was received (November 2003).

2.19.2. During test check of records of AETC, Ludhiana-I, it was noticed in December 2002 that a dealer engaged in the business of manufacturing plastic T.V. cabinets, deposited Central Sales Tax at the rate of 4 *per cent* alongwith periodical returns during the year 1994-95. However, Department of Industries on 21 March 1997, decided to incorporate plastic T.V. cabinets in the list of electronic goods, liable to concessional rate of tax of 1.1 *per cent.* The Assessing Authority while finalising the assessment in March 2001 allowed refund of Rs.10.82 lakh to the dealer in view of the above decision. As the decision to include the plastic T.V. cabinets in the list of electronic goods was taken on 21 March 1997, the concessional rate was applicable from this date. Moreover, as the dealer had collected tax from the purchasers and deposited the same in the treasury; refund thereof was not admissible in view of the Apex Court's decision mentioned above. Thus, the wrong refund given by the Assessing Authority resulted in loss of revenue to the State and undue benefit of Rs.10.82 lakh to the dealer.

The matter was brought to the notice of the Department and referred to the Government in March 2003; no reply was received (November 2003).

2.19.3. During test check of records of AETC, Fatehgarh Sahib, it was noticed that a dealer engaged in the business of manufacturing and sale of iron and steel, and availing the benefit of exemption from payment of tax, deposited Central Sales Tax of Rs.4.18 lakh alongwith periodical returns for the year 1995-96. While finalising the assessment in July 1998, the Assessing Authority wrongly adjusted the amount of the tax against the amount of exemption available and allowed the refund of Rs.4.18 lakh which was not admissible as the dealer had collected the tax from the purchasers and deposited the same in the State treasury. This resulted in loss of revenue and undue benefit to the tune of Rs.4.18 lakh to the dealer.

On this being pointed out, the Department stated in July 2000 that case had been taken up for suo-motu revision.

The matter was referred to the Government in March 2003; no reply was received (November 2003).

2.19.4. A test check of records of AETC, Ludhiana-I, it was noticed between October 2000 and December 2001 that a dealer engaged in the business of resale of lubricants and chemicals deposited tax alongwith periodical returns during the years 1994-95 to 1997-98. The Assessing Authority, while finalising the assessment between March 1999 to December 2000, allowed refund of Rs.17.67 lakh. As the dealer had collected the tax from the purchasers with reference to sales shown in the periodical returns and deposited the same in the State treasury, the refund was wrongly allowed in view of the Apex Court's decision mentioned above. This resulted in loss of revenue and undue benefit to the tune of Rs.17.67 lakh to the dealer.

On this being pointed out, the Department stated in January 2003 that the refund had been allowed to the dealer on the basis of credit notes furnished by the dealer. The reply was not tenable as the dealer had collected the tax from the purchasers with reference to sales shown in the periodical returns so the refund allowed was not admissible in view of the decision mentioned above.

The matter was referred to the Government in November 2002; no reply was received (November 2003).

2.20. Internal Audit System in Sales Tax Department

An Internal Audit Organisation (IAO) was set up in October 1981 as an independent organisation under the State Finance Department, and was entrusted interalia with the internal audit of receipts to safeguard against any loss or leakage of revenue arising under the various revenue heads including sales tax. By a notification of November 1991, however, the focus of internal audit was shifted from revenue to expenditure audit. It was envisaged in the notification that audit of sales tax would not be taken up as a routine activity and could be conducted on a selective basis.

A review of records maintained by IAO, however, revealed that the Department did not conduct internal audit of sales tax after issue of the notification, ibid. Scrutiny of records further disclosed that 818 audit notes containing 4204 paragraphs involving Rs.41.28 crore, pertaining to the period prior to 1991, were outstanding as on 31 March 2003. The IAO attributed in August 2003 the pendency to the non-submission of replies by the Sales Tax Department.

The auditee units were required to take remedial action in respect of the objections raised during internal audit and furnish replies thereto within one month. However, non-submission of replies by Sales Tax Department had led to non-settlement of paras for a period of more than 12 years. Moreover, there existed no mechanism in the IAO to monitor the expeditious settlement of paras relating to Sales Tax Department.

Further, revenue under the head sales tax has increased substantially from Rs.752.71 crore in 1991-92 to Rs.3,072.44 crore in 2002-2003. Thus, not conducting internal audit in the Sales Tax Department may lead to irregularities going unnoticed resulting in loss of revenue to Government. Also, statutory audit in test check during the period 2001-2003 had pointed out under assessment and short levy of tax of Rs.80.33 crore in 841 cases. Government may, therefore, consider the desirability of conducting internal audit of sales tax receipts on regular basis.

On this being pointed out the Government stated in September 2003 that 2 Audit Notes, 41 paras involving Rs.0.44 lakh had been settled.