

CHAPTER II SALES TAX/VALUE ADDED TAX

2.1 Tax administration

Value Added Tax (VAT) is a tax on value addition. It is a multi-point tax, which is levied at every stage of sale. It is collected at the stage of manufacture/resale and contemplates rebating of the tax paid on inputs and purchases, thereby providing revenue to the Government on value addition at every stage.

The receipts from VAT are administered by the Commissioner of Department of Trade and Taxes (DTT) assisted by four Special Commissioners. There are ten zones each headed by the Joint Commissioners/Deputy Commissioners who work under the Additional Commissioners and supervise the work of the Value Added Tax Officers (VATOs) and the Assistant Value Added Tax Officers (AVATOs) and the Inspectors working in the wards under their control. Delhi has been divided into 107 wards headed by the VATOs.

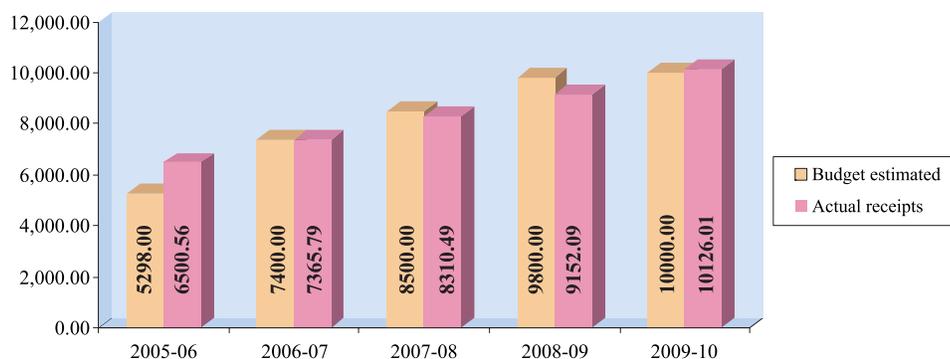
2.2 Trend of receipts

Actual receipts from VAT during the last five years 2005-2006 to 2009-10 along with the total tax receipts during the same period is exhibited in the following table and graph.

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual VAT receipts vis-a-vis total tax receipts
2005-06	5,298.00	6,500.56	(+) 1,202.56	(+) 22.70	8,939.28	72.72
2006-07	7,400.00	7,365.79	(-) 34.21	(-) 0.46	10,155.80	72.53
2007-08	8,500.00	8,310.49	(-) 189.51	(-) 2.23	11,782.80	70.53
2008-09	9,800.00	9,152.09	(-) 647.91	(-) 6.61	12,180.70	75.14
2009-10	10,000.00	10,126.01	(+) 126.01	(+) 1.26	13,447.86	75.30

TREND OF RECEIPTS



It is seen that the variation between BEs and actual receipts which was as high as 23 per cent during 2005-06 came down to one per cent during 2009-10.

2.3 Analysis of arrears of revenue

The arrears of revenue as on 31 March, 2010 amounted to ₹ 9944.38 crore of which ₹ 8635.87 crore were outstanding for more than five years. The following table depicts the position of arrears of revenue during the period 2005-06 to 2009-10:

(₹ in crore)

Year	Opening balance of arrears	Additions during the year	Amount	Closing balance of arrears
			collected during the year	
2005-06	8635.87	1926.36	946.85	9615.38
2006-07	9615.38	23.65	385.59	9253.44
2007-08	9253.44	193.23	982.71	8463.96
2008-09	8463.96	534.79	324.63	8674.12
2009-10	8674.12	2060.95	790.69	9944.38

It is seen from the given table that the arrears of revenue have decreased during the year 2006-07 and 2007-08 but increased during the year 2008-09 and 2009-10. The Department stated that the major part of arrears of ₹ 7784.28 crore related to the DST regime. The fact remains that the cases are pending recovery and should be collected before they become irrecoverable.

2.4 Assessee profile

The total number of dealers registered during 2009-10 was 219902 out of which monthly, quarterly, half yearly and yearly dealers were 12787, 90858, 61209 and 55048 respectively. 1018 dealers were large tax payers based on tax deposited of more than one crore and 93096 dealers were small dealers based on tax deposited of less than one lakh. 221898 dealers were required to file the returns as on 31st March, 2010 out of which 176268 dealers filed their returns.

2.5 Cost of VAT per assessee

The VAT per assessee during the year and the preceding two years is shown below:

(₹ in lakh)			
Year	Total number of assessees	Cost of collection	Cost of VAT per assessee
2007-08	186346	4645.00	0.02
2008-09	203358	4761.00	0.02
2009-10	219902	5097.00	0.02

It may be seen from the given table that the cost of VAT per assessee is same during the last three years.

2.6 Arrears in assessment/scrutiny

The number of cases pending assessment/scrutiny at the beginning of the year, becoming due during the year, disposed during the year and pending at the end of the each year during 2007-08 to 2009-10 as furnished by the Department of Trade and Taxes on Sales/VAT etc. are as mentioned below:

Year	Opening balance		Cases which become due for assessment/scrutiny		Total		Cases disposed during the year		Cases pending at the end of the year	
	DST Regime	DVAT Regime	DST Regime	DVAT Regime	DST Regime	DVAT Regime	DST Regime	DVAT Regime	DST Regime	DVAT Regime
2007-08	7277	134796	2469	23248	9746	158044	3457	40911	6289	117133
2008-09	6289	117133	1325	65576	7614	182709	2055	102650	5559	80059
2009-10	5559	80059	390	105185	5949	185244	1004	94131	4945	91113

2.7 Cost of collection

The gross collection in respect of the value added tax revenue receipts, expenditure incurred on their collection and the percentage of such expenditure to gross collection during the years 2007-08 to 2009-10 along with the relevant all India average percentage of expenditure on collection to gross collection for the year 2008-09 are mentioned below:

(₹ in crore)					
Head of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage for the year 2008-09
Taxes on sales, trade etc.	2007-08	8,310.49	46.45	0.56	0.88
	2008-09	9,152.09	47.61	0.52	
	2009-10	10126.01	50.97	0.50	

From the above table, it is evident that the percentage of expenditure on collection of taxes on sales, trade etc. was less than the all India average percentage for all the years 2007-08 to 2009-10.

2.8 Analysis of collection

The collection of revenue on taxes on sales, trade etc. has increased from ₹ 8310.49 crore during 2007-08 to ₹ 10126.01 crore during the year 2009-10 whereas the percentage of expenditure on collection has decreased from 0.56 per cent to 0.50 per cent during the same period.

2.9 Revenue impact

During the last five years (including the current year's report), audit through its audit reports had pointed out non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc., with revenue implication of ₹ 2984.22 crore in 60 paragraphs. Of these, the Department/Government has accepted audit observations involving ₹ 154.32 crore and has since recovered ₹ 36.88 lakh. The details are shown in the following table:

Year of Audit Report	Paragraphs included		Paragraph accepted*	Amount recovered*
	No	Amount	Amount	Amount
2004-05	16	218.42	55.51	0.04
2005-06	11	69.80	11.52	0.11
2006-07	12	59.71	16.54	0.08
2007-08	9	929.83	70.75	0.14
2008-09	12	1706.46	0	0
Total	60	2984.22	154.32	0.37

Note: *A review has been considered as one paragraph. Therefore, only amounts accepted by the Deptt. have been taken into the 'Paragraph accepted' figure.

2.10 Internal audit

The DTT has an Internal Audit Cell (IAC) under the charge of the Joint Commissioner (Audit). This cell was to conduct test check of cases of assessment as per the approved action plan and in accordance with the criteria decided by the Steering Committee so as to ensure adherence to the provisions of the Act and Rules as well as Departmental instructions issued from time to time. In addition, the Directorate of Audit under the Finance Department is entrusted with the internal audit of all offices/Departments of the Government.

On this being pointed out by Audit, the DTT stated that it had submitted an Action Plan in October 2009 for the IAC for 2009-10 deciding the criteria for selection of the cases.

2.11 Results of audit

We noticed during the test check of the records of 68 units relating to VAT an underassessment of tax and other irregularities involving ₹ 2672.43 crore in 2579 cases which fall under the following categories:

(₹ in crore)			
Sl. No.	Categories	No. of cases	Amount
1.	Irregular claim of exemption/ concessional rate of tax on statutory forms	1029	1268.83
2.	Application of incorrect rate of tax	34	20.20
3.	Excess claim of input tax credit	47	8.41
4.	Non-payment of tax on sale of capital assets	37	4.35
5.	Allowance of credit of payment of tax to the dealers without verifying challans from bank scroll	15	4.47
6.	Short payment of out put tax	11	3.08
7.	Irregular deduction claimed on account of TDS	13	1.30
8.	Irregular claim of refund/reduction of tax through revised return	10	2.31
9.	Incorrect claim of exemption on 'F' forms containing multiple month transactions	10	1.83
10.	Double claim of exemption on F form against same bills of transactions	1	1.07
11.	Irregular claim of exemption of tax on branch transfer/consignment sale to places not mentioned in the R.C.	2	0.29
12.	Others	1370	1356.29
Total		2579	2672.43

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 49.51 crore in 104 cases which were pointed out in audit during the year 2009-10. An amount of ₹ 8.07 lakh was realised in 18 cases during the year 2009-10.

Few illustrative audit observations involving ₹ 1,296.83 crore are mentioned in the succeeding paragraphs.

2.12 Audit observations

During scrutiny of assessment records of value added tax (VAT), we observed several cases of claim of concession/exemption without production of prescribed statutory forms/or on defective forms, excess claim of deduction, irregular claim of exemption etc. which resulted in short levy of tax as mentioned in the succeeding paragraphs. These cases are illustrative and are based on the cases noticed during the test check carried out by us. We pointed out such omissions on the part of Assessing Authorities (AA) each year; but not only do the irregularities persist but they remain undetected till an audit is conducted. There is need for the Government to improve the internal control system so that occurrence of such cases can be avoided, detected and corrected.

2.13 Irregular claim of exemption/concessional rate of tax on statutory forms

Under the provisions of CST Act and Rules, a dealer may claim exemption/concessional rate of tax for the goods under the Inter State Trade:

(a) in respect of any goods on the ground that the movement of goods was occasioned by transfer of such goods by him to any other place of his business or to his branch or to his agent or principal as the case may be;

(b) sale of goods by one registered dealer if the dealer furnishes a declaration in form 'C' covering all the transactions of sales;

(c) where sale of any goods has been effected by a transfer of documents of title to such goods during their movement from one state to another (sale in transit) to the Government or to a registered dealer;

(d) in the case of export sale or sale made to a unit situated in a Special Economic Zone, exemption is admissible subject to the furnishing of 'H' forms or 'I' forms, as the case may be.

For claiming the exemption/concessional rate of tax, the dealer is required to furnish the prescribed statutory forms, like Forms F, C, EI, EII, H & I as prescribed under the CST Acts and Rules.

In case of default in submission of the forms, the transactions needed to be assessed at the rate applicable in the State.

2.13.1 We noticed during the test check of the dealer files of DTT between April 2009 and March 2010 that in 1013 cases, during the assessment years 2006-07 and 2007-08, the dealers claimed exemption/concessional rate of tax on ₹ 14,574.01 crore on account of branch transfer/ consignment sale, concessional rate of tax of three *per cent*, transit sales, sales to SEZ and export out of India disclosed by them in Form I and in Form DVAT-51. Our scrutiny indicated that the dealers had not submitted the required statutory forms by the dates prescribed by the Department for the said cases. We also noticed that some of the dealers have sought extension for submission of the statutory forms. However, even after expiry of the extended date the dealers failed to

submit the forms. The Department has not taken action to assess these dealers and disallow the exemption sought by them. This had resulted in irregular exemption of tax of ₹ 1019.87 crore. Besides, interest of ₹ 242.39 crore was also leviable for non payment of tax. The details are given in the following table:

(₹ in crore)

Sl. No.	Transaction details	Number of cases	Transaction value	Tax payable	Interest leviable	Total
1.	In 83 wards ¹ the dealers did not submit prescribed F forms in support of branch transfer/ consignment sale	334	8702.22	614.08	145.62	759.70
2.	In 97 wards ² the dealers did not submit prescribed C forms	504	3304.61	202.59	47.65	250.24
3.	In 65 wards ³ the dealers did not submit prescribed EI/EII forms	139	2334.23	194.61	47.11	241.72
4.	In 18 wards ⁴ the dealers did not submit prescribed H forms	31	219.41	7.71	1.80	9.51
5.	In five wards ⁵ the dealers did not submit prescribed I forms	05	13.54	0.88	0.21	1.09
	Total	1013	14574.01	1019.87	242.39	1262.26

After we reported the matter, the Department accepted the audit observations and stated that in 79 cases involving ₹ 47.95 crore demand has been raised and in 14 cases involving ₹ 7.98 lakh recovery has been made. Further, report and reply on the remaining cases has not been received.

We reported the matter to the Government in June, 2010 but have not received any reply (December 2010).

¹ Ward Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 13, 14, 19, 20, 21, 24, 25, 27, 28, 30, 32, 34, 35, 36, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 53, 54, 56, 57, 58, 59, 62, 63, 64, 65, 66, 68, 70, 73, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 106, KCS I, KCS II, KCS III, KCS-IV, KCS-V, KCS-VI and Spl. zone.

² Ward 1 to 6, 8, 9, 11, 12, 14 to 21, 23 to 25, 28 to 33, 35, 36, 38 to 41, 43 to 54, 56, 57, 58, 61 to 73, 76 to 97, 99 to 102, 104 to 107, KCS-I to KCS-VI

³ Ward 2, 4 to 9; 11, 13 to 15; 21, 24 to 28; 30, 35, 38 to 41; 43, 44, 46, 49 to 51; 53 to 56, 58; 61, 62, 64, 65, 68 to 70; 72, 73, 77, 78, 80; 83 to 86, 88, 89, 90, 91, 96, 97, 99, 100, 101, 103, 107, KCS I to KCS III, KCS-V and KCS-VI

⁴ Ward Nos. 2, 18, 24, 31, 41, 46, 47, 50, 57, 61, 66, 73, 90, 99, 101, 105, KCS III and KCS-VI

⁵ Ward Nos. 33, 43, 67, KCS-VI & Spl. Zone

2.13.2 We noticed during the test check of the records of 13 wards⁶ of DTT between April 2009 and March 2010 that in 16 cases dealers claimed exemption on branch transfer of ₹ 109.99 crore in the year 2007-08. Such claims were not supported by valid statutory forms or transactions mentioned in the forms relating to the previous year. The assessing authority did not scrutinise the statutory forms submitted by the dealers to ascertain the correctness of claims of exemption on branch transfer made by the dealers in their returns. This resulted in under assessment of tax of ₹ 5.32 crore. Besides, interest of ₹ 1.25 crore was also leviable.

After we reported the matter, the Department accepted the audit observations and stated that in two cases involving ₹ 72.99 lakh demand has been raised. Further, report and reply on the remaining cases has not been received.

We reported the matter to the Government in June 2010 but have not received any reply (December 2010).

2.14 Irregular claim of exemption of tax on branch transfer/consignment sale to places not mentioned in the registration certificate (RC)

Sub-section (1) of the Section 7 of the CST Act stipulates that every dealer has to declare his places of business in other States at the time of seeking registration. Further, Sub-section(1) of Section 6-A read with Rule 12(5) of the CST (R&T) Rules provides that a declaration in form 'F' has to be submitted by the dealer for transfer of goods to other places of business or to his agent or principal. Otherwise, the transactions are to be treated as interstate sale and taxed accordingly. Interest at prescribed rate is also leviable

We noticed during the test check of records of two wards⁷ of DTT between April 2009 and March 2010 that in two cases the dealers claimed exemption on the basis of form 'F' on stock transfer amounting to ₹ 1.88 crore to places other than those specified in the RC during the assessment year 2007-08. As the stock was not transferred to the declared branches,

claim of exemption was irregular. The assessing authority did not scrutinise the forms and the RC to verify the correctness of the claim. This resulted in irregular claim of exemption of ₹ 1.88 crore with consequent undercharge of tax of ₹ 23.55 lakh. Besides, interest of ₹ 5.05 lakh was also leviable.

We reported the matter to the Department and to the Government in June, 2010 but have not received any reply (December 2010).

⁶ Ward nos 4, 44, 64, 68, 76, 83, 99, 100, 101, 102, 103, KCS-II & KCS-VI

⁷ Ward Nos. 84 and 101

2.15 Application of incorrect rate of tax

The DVAT Act specifies tax rates payable by a dealer in respect of the goods or classes of goods mentioned in the various schedules appended to the Act. If any person furnishes incorrect return, the Commissioner may assess or reassess the amount of tax due for a tax period. Short payment of tax attracts penalty at the rate of one *per cent* of tax deficiency per week or ₹ 100 per week for the period of default, whichever is higher and interest at prescribed rates.

We noticed during the test check of the records of 17 wards⁸ of the DTT between April 2009 and March 2010 that in 34 cases relating to the year 2007-08, the dealers paid tax on sale valued at ₹ 160.35 crore at lower rates than those prescribed. The assessing authority did not scrutinise the returns of the dealers to

ascertain the correctness of rate at which tax was paid. This resulted in short payment of tax of ₹ 7.59 crore. Besides, interest of ₹ 2.82 crore and penalty of ₹ 9.79 crore were also leviable. A few illustrative cases are as given below:

(₹ in lakh)

Sl. No.	Dealer's name & TIN No.	Business	Ward	Rate applicable/applied (%)	Total tax effect	Observation
1	Vardhman Polytex Ltd. 07680103791	yarn excluding wool	56	<u>4</u> 0	414.60	Under DVAT Act, entry nos.05, 84(177) and 84(178) of schedule-III, yarn is liable to tax @ 4% whereas AA did not levy tax on sale of yarn excluding wool.
2	Spentex Industries 07580280580	yarn excluding wool	91	<u>4</u> 0	225.74	Under DVAT Act, entry nos.05, 84(177) and 84(178) of schedule-III, yarn is liable to tax @ 4% whereas AA did not levy tax on sale of yarn excluding wool.
3	Shri Shakti Agencies 07190132045	motor cycle, scooter & parts	79	<u>12.5</u> 0	169.50	Under section4(1)(c) of DVAT Act, motor cycle, scooter parts are taxable @ 12.5% where AA did not levy tax on sale of motor cycle, scooter & parts.
4	Intercity Traders 07810308535	readymade garments	91	<u>4</u> 0	163.95	Under entry No.57 of schedule-III, readymade garments are liable to tax @ 4% whereas AA did not levy tax on sale of readymade garments
5	Ram Shankar & Co. 07500003592	yarn excluding wool	16	<u>4</u> 0	142.53	Under DVAT Act, entry nos.05, 84(177) and 84(178) of schedule-III, yarn is liable to tax @ 4% whereas AA did not levy tax on sale of yarn excluding wool.

We reported the matter to the Department and to the Government in June, 2010 but have not received any reply (December 2010).

⁸ Ward Nos. 11, 15, 16, 40, 44, 49, 50, 56, 64, 67, 68, 79, 83, 84, 88, 91 and KCS-IV

2.16 Excess claim of input tax credit

We noticed during the test check of the records of 27 wards⁹ of DTT between April 2009 and March 2010 that in 47 cases the dealers claimed input tax credit of ₹ 39.31 crore in the year 2007-08 on the purchase of tradable goods as against allowable credit of ₹ 35.95 crore.

Under the DVAT Act, a registered dealer is entitled to a tax credit in respect of the turnover of purchases occurring during the tax period where purchase arises in the course of his activities as a dealer and the goods are to be used by him directly or indirectly for the purpose of making sales which are taxable under the Act or made in the course of interstate trade or export out of the territory of India. Incorrect claim of tax credit attracts penalty at the rate of one *per cent* of tax deficiency per week or ₹ 100 per week for the period of default, whichever is higher and interest at prescribed rates.

This resulted in excess claim of input tax credit of ₹ 3.36 crore with consequent short payment of tax by the like amount. Besides, interest of ₹ 1.13 crore and penalty of ₹ 3.92 crore were also leviable. A few illustrative cases are as given in the following table :

(₹ in lakh)

Sl. No.	Dealer's name & TIN No.	Ward No.	Period	ITC admissible	ITC claimed	Excess claim of ITC	Total tax effect
1	Deepanshu Agencies 07120299623	46	2007-08	15.95	44.12	28.17	81.49
2	Navrang Electronics 07850102097	83	2007-08	221.36	279.58	58.22	139.94
3	S.L. Enterprises 00752000843	107	Aug-07	1.83	25.09	23.26	59.81
4	G B Fashion Pvt. Ltd. 07820291991	99	Dec-07	11.42	31.32	19.90	51.16
5	ANV Foods Pvt. Ltd 07970261596	27	2007-08	12.50	32.51	20.01	48.09

We reported the matter to the Department and to the Government in June, 2010 but have not received any reply (December, 2010).

⁹ Ward Nos. 3, 7, 11, 15, 27, 33, 38, 46, 47, 49, 54, 61, 68, 69, 70, 77, 79, 83, 84, 97, 99, 102, 103, 105, 106, KCS-IV and Spl. Zone

2.17 Non-payment of tax on sale of capital assets

We noticed during the test check of the records of 18 wards¹⁰ of the DTT between April 2009 and March 2010 that in 37 cases the dealers sold capital assets for ₹ 24.58 crore during the year 2007-08.

Under DVAT Act, sale of capital assets is a part of the business of the dealer and, therefore, taxable at the prescribed rate. Non-payment of tax attracts penalty at the rate of one *per cent* of tax deficiency per week or ₹ 100 per week for the period of default, whichever is higher and interest at prescribed rate.

However, they paid no tax on the above sale. The assessing authority did not scrutinise the returns and annual accounts of the dealers to ascertain the sale of assets and levy tax on it. This resulted in non-payment of tax of ₹ 1.81 crore. Besides, interest of

₹ 56.73 lakh and penalty of ₹ 1.97 crore were also leviable. A few illustrative cases are as given below:

Sl. No.	Dealer's name & TIN No.	Ward No.	Capital goods	Amount for which capital goods was sold		Total tax effect
				4%	12.50%	
1	Bata India Ltd. 07810055559	KCS-VI	Plant and machinery, furniture and fixtures, vehicles	572.55	116.10	89.94
2	Liberty Shoes Ltd. 07420147681	KCS-VI	Plant and machinery, furniture and fixtures, vehicles	383.69	69.96	57.92
3	KLG Systel Co. 07540148779	44	Computer, Plant and Machinery, Vehicles	160.15	41.34	27.82
4	Humboldt Wedeg I Pvt Ltd. 07700245691	KCS-VI	Furniture and fitting, scrap vehicles	0	46.15	13.87
5	Brindco Sales Ltd. 07050241441	KCS-VI	Vehicles	0	54.34	16.33

We reported the matter to the Department and to the Government in June, 2010 but have not received any reply (December, 2010).

¹⁰ Ward Nos. 2,15,33,41,44,52,54,76,77,87,91,97,98,103,105, KCS-V, KCS-VI and Spl. zone

2.18 Allowance of credit of payment of tax to the dealers without verifying challans from bank scroll

We noticed during the test check of the records of nine wards¹¹ of DTT between April 2009 and March 2010 that in 15 cases relating to the assessment year 2007-08 Assessing Authority allowed the credit of the

Under the provisions of the Act, the dealers are required to deposit the tax and other payments due in form DVAT-20/CST challan in the notified banks. The banks on receipt of the amount issue Parts C and D of the challan to the dealers as proof of payment and forward Parts A and B to the RBI alongwith the bank scroll. The RBI in turn forwards the hard copies of part B to the DTT alongwith the hard copies of the bank scroll. The notified bank branches also forward the soft copy of the bank scroll to the DTT. On receipt of the Part B of the receipted Form DVAT-20/CST challans, the Commissioner shall allow the credit of the amount shown therein, to the dealer against tax, interest or penalty due from him under the Act. Department of Trade & Taxes verifies the soft copy of the data received from the appropriate Government treasury with the Part-B of Form DVAT-20 and CST challan furnished by RBI in case of every individual entry and corrections are made wherever any variations are noticed.

amount of payment of tax to the dealers against Part C of the challans and failed to detect that actual payment as per Part B, as recorded in the bank scroll, was less than what was claimed by the dealers. This resulted in excess allowance of credit for payment of tax of ₹ 1.86 crore. Besides, interest of ₹ 75.46 lakh and penalty of ₹ 1.86 crore were also leviable.

We reported the matter to the Department and to the Government in June, 2010 but have

not received any reply (December 2010).

¹¹ Ward Nos. 16,27,69,70,71,94,98, KCS-II and Spl. Zone

2.19 Irregular deduction claimed on account of TDS

Under the provisions of the DSTWC Act 1999 and the DVAT Act, 2004 and rules made thereunder, any person, not being an individual or Hindu Undivided Family (HUF), who is responsible for making payment to any dealer/contractor for discharge of any liability on account of valuable consideration payable for the transfer of property in goods in pursuance of the works contract for value exceeding rupees twenty thousand, shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by any other mode, whichever is earlier, deduct tax thereon at the rate of two *per cent* and also furnish to the contractor, from whose bills or invoices such deduction is made, a certificate in Form DVAT-43 in original in respect of the amount deducted, the rate at which it has been deducted and the details of deposit into the Government treasury.

We noticed during the test check of records of two wards¹² of DTT between April 2009 and March 2010 that in 13 cases relating to the assessment year 2007-08, the AA failed to detect that the dealers claimed deduction on account of the TDS without furnishing in original the TDS certificates in the form DVAT-43 or by production of photocopies of the same. This resulted in incorrect claim of reduction of tax amounting to ₹ 1.30 crore.

We reported the matter to the Department and to the Government in June, 2010 but have not received any reply (December 2010).

2.20 Irregular claim of refund/reduction of tax through revised return

Section 28 of the DVAT Act, 2004 and Rule 29 thereunder stipulate that, if, within 4 years of the making of an assessment, any person discovers a mistake or error in any of the returns filed by him under this Act and he has as a result of the mistake or error paid more tax than was due under this Act, he may lodge an objection against the assessment in the manner and subject to the conditions stipulated under Section 74 of the Act.

We noticed during the test check of the records of seven wards¹³ of DTT between April 2009 and March 2010 for the assessment year 2007-08 that in 10 cases the dealers revised the returns subsequently and increased the refund

amount or reduced tax demand without lodging an objection against the assessment in accordance with the section 74 of the Act, which was irregular. The assessing authority did not scrutinise the returns of the dealers to disallow such reductions of tax demand or increased refunds made by the dealers in the

¹² Ward Nos. Spl. zone and KCS-II

¹³ Ward Nos. 3, 44, 50, 81, 99, 100 and 103

revised returns. This resulted in incorrect allowance of claims of reduction of tax/refund, amounting to ₹ 98.15 lakh with consequent short payment of tax by the like amount. Besides, interest of ₹ 36.77 lakh and penalty of ₹ 95.96 lakh were also leviable.

We reported the matter to the Department and to the Government in June, 2010 but have not received any reply (December 2010).

2.21 Incorrect claim of exemption on 'F' forms containing multiple month transactions

Under Section 6-A of the CST Act read with Rule 12(5) of the CST (R&T) Rules, dealer may claim exemption of tax by filing a declaration in form 'F' covering transfer of goods effected during a period of one calendar month by a dealer to any other place of his business or to his agent or principal outside the state as the case may be. Otherwise, the transactions are to be treated as inter state sales and taxed accordingly.

We noticed during the test check of the records of five wards¹⁴ of DTT between the period from April 2009 and March 2010 that in 10 cases relating to the assessment year 2007-08, the dealers claimed exemption of tax on account of branch transfer/ consignment sale of ₹ 16.43 crore on the basis of 'F' forms

which covered transactions beyond one calendar month which were thus, liable to be treated as inter state sales not supported by valid declarations. These transactions were however passed as branch transfer by the VATO, which resulted in short realisation of tax of ₹ 1.48 crore. Besides, interest of ₹ 35.06 lakh was also leviable.

After we reported the matter, the Department accepted the audit observations and stated that in three cases involving ₹ 34.66 lakh demands had been raised. Further, report and reply on the remaining cases has not been received.

We reported the matter to the Government in June, 2010 but have not received any reply (December, 2010).

¹⁴ Ward Nos. 7, 49, 63, 96 & KCS-II

2.22 Double claim of exemption on 'F' form against same bills of transactions

Under Section 6A of the CST Act, 1956 and Rules made thereunder, the movement of goods from one state to another is exempt from tax if they are transferred on account of branch transfer or consignment sale, duly covered by a declaration in form 'F', filled and signed by the principal officer of the other place of business or his agent or principal as the case may be, containing prescribed particulars alongwith the evidence of despatch of such goods, description of goods, address and registration number of transferor. Production of 'F' forms in respect of branch transfer/consignment sale was made mandatory with effect from May 2002. Otherwise transactions are to be treated as inter state sale and taxed accordingly.

We noticed during the test check of the records of ward KCS-II of DTT between April 2009 and March 2010 that in one case the dealer claimed exemption on branch transfer of ₹ 7.02 crore in the year 2007-08 and furnished the required 'F' form. Bills of transaction of this form actually pertained to another 'F' form, which he had claimed earlier, resulting in double claim of exemption. The assessing authority did not scrutinise the

statutory forms submitted by the dealer to ascertain the correctness of claim of exemption on branch transfer made by the dealer. This resulted in under assessment of tax of ₹ 87.80 lakh. Besides, interest of ₹ 19.02 lakh was also leviable.

We reported the matter to the Department and to the Government in June, 2010 but have not received any reply (December 2010).

2.23 Short payment of tax

Under the DVAT Act, a person is entitled to rectify a mistake or error, within 4 years of the making of an assessment, in any return filed by him under the Act by revising the return voluntarily and paying tax, interest and reduced penalty thereon. Otherwise, short payment of tax attracts penalty at the rate of 1 *per cent* of the tax deficiency per week or ₹ 100 per week for the period of default whichever is higher and interest at prescribed rates.

We noticed during the test check of the records of six wards¹⁵ of the DTT between April 2009 and March 2010 that in 11 cases, the dealers incorrectly computed their tax liability aggregating to ₹ 9.65 crore during the year 2007-08 as against correct amount of ₹ 10.73 crore. The Assessing Authority did not scrutinise the returns to ascertain the correctness of the payment of tax.

¹⁵ Ward Nos. 39, 96, 99, 101, KCS- II and KCS-VI

This resulted in short payment of tax of ₹ 1.08 crore. Besides, interest of ₹ 44.76 lakh and penalty of ₹ 1.56 crore were also leviable.

After we reported the matter, the Department accepted the audit observations and stated that in one case involving ₹ 13.77 lakh demand has been raised. Further, report and reply on the remaining cases had not been received.

We reported the matter to the Government in June, 2010 but have not received any reply (December 2010).

2.24 Non-reduction of tax credit in respect of goods transferred on 'F' forms

Under Section 10(3) of the DVAT Act, 2004 the dealer is required to reduce the amount of tax credit originally claimed by the prescribed proportion where-

- (a) goods were purchased by a dealer; locally and
- (b) the dealer claimed a tax credit in respect of goods, and did not reduce the tax credit by the prescribed percentage; and
- (c) the goods were transferred from Delhi, other than by way of a sale, to a branch of the registered dealer or to a consignment agent.

We noticed during the test check of the records of three wards¹⁶ of the DTT for the period from April 2009 to March 2010 that in three cases the dealers claimed exemption on stock transfer of readymade garments, computer hardware and software worth

₹ 2.71 crore during the assessment year 2007-08, which were purchased locally. However input tax credit availed on them was not reversed by the dealer. The Department also did not scrutinise the return and disallow the excess claim made by the dealer. This resulted in excess claim of input tax credit of ₹ 10.86 lakh.

We reported the matter to the Department and to the Government in June, 2010 but have not received any reply (December 2010).

¹⁶ Ward Nos. 43, 50 and 100

2.25 Irregular deduction allowed on account of labour and services

As per Rule 3 of DVAT Rules 2005, in case of turnover arising from the execution of the works contract, the amount representing the taxable turnover shall exclude the charges towards labour and services subject to the dealer maintaining proper records evidencing payment of these charges to the satisfaction of the Commissioner. If the amount of charges towards labour and services is not ascertainable from the accounts of the dealer, the same shall be deducted at the percentage prescribed.

We noticed during the test check of the records of two wards¹⁷ of DTT for the period from April 2009 and March 2010 that in two cases relating to the assessment year 2007-08, the dealers claimed the deduction at higher than the prescribed percentage of rate

from their Gross Turn Over (GTO) on account of labour and services charges without furnishing separate account which is mandatory for such deduction. The Department also did not scrutinise the return and disallow the deduction made by the dealer. Thus, claim of excess deduction of ₹ 2.70 crore resulted in short payment of tax of ₹ 33.80 lakh as detailed in the following table :

Sl. No.	Ward No.	Type of contract/work	Rate(%) applicable/applied	Total tax effect	Observation
1	Spl. Zone	Civil work	<u>25</u> 30	17.89 lakh	Under Rule 3 of DVAT Rules 2005, deduction of labour and service charges in civil work is allowed @ 25% of the works contract. Whereas, the deduction worked out was upto 30% of the works contract.
2	KCS-IV	Light motor vehicles, parts/accessories of motor vehicles	<u>20</u> 53	15.91 lakh	Under Rule 3 of DVAT Rules 2005, deduction of labour and service charges in motor vehicles is allowed @ 25% of the works contract. Whereas, the deduction worked out was upto 53% of the works contract.

We reported the matter to the Department and to the Government in June, 2010 but have not received any reply (December, 2010).

¹⁷ Wards KCS-IV and Spl. Zone.

2.26 Irregular adjustment to tax credit on account of purchase of second hand goods

As per Rule 9 of DVAT Rules 2005, no input tax credit shall be claimed on second hand goods purchased by a registered dealer from a resident seller who is not registered under the Act, unless the registered dealer has in his possession adequate proof of the amount paid for such goods in the form of an invoice or receipt signed by such resident seller.

As per Section 15 (3) of DVAT Act 2004, where the amount paid by the registered dealer for the goods exceeds two thousand rupees, the tax credit shall be allowed in the tax period when the goods are sold by the registered dealer or the goods into which they have been incorporated are sold by the registered dealer. Incorrect claim of tax credit attracts penalty equal to tax credit so claimed or ₹ 10,000 whichever is greater. The dealer shall also be liable to pay simple interest at the rate of 15 *per cent* per annum computed on a daily basis.

We noticed during the test check of the records of KCS-IV ward of DTT for the period from April 2009 to March 2010 that in one case the dealer adjusted input tax credit amounting to ₹ 23.84 lakh on account of purchase of second hand goods during the year 2007-08 without furnishing an invoice or receipt signed by such resident seller. This resulted in excess claim of input tax credit of ₹ 23.84 lakh with consequent short payment of tax by the like amount. Besides, interest and penalty were also leviable.

We reported the matter to the Department and to the Government in June, 2010 but have not received any reply (December 2010).

2.27 Incorrect claim of input tax credit on purchase of capital goods

Under Section 2(i)(f) of DVAT Act, 2004 'capital goods' mean plant, machinery and equipment used, directly or indirectly in the process of trade or manufacturing or for execution of works contract. The Act also provides that a dealer can claim ITC during the first year only up to the extent of 1/3rd against the purchase of capital goods and rest of it during the subsequent two years. Incorrect claim of tax credit attracts penalty equal to tax credit so claimed or ₹ 10,000 whichever is greater. The dealer shall also be liable to pay simple interest at the rate of 15 per cent per annum computed on a daily basis.

We noticed during the test check of the records of ward No. 99 of the DTT for the period from April 2009 to March 2010 that in two cases the dealers had claimed excess input tax credit of ₹ 7.78 lakh on purchase of capital goods amounting to ₹ 124.29 lakh which was not

admissible. This resulted in incorrect claim of input tax credit of ₹ 7.78 lakh. Besides, interest and penalty were also leviable as detailed in the following table:

(₹ in lakh)

Sl. No.	Ward No.	Assessment year	Purchase value	Tax effect	Observation
1.	99	2007-08	48.92	5.77	The dealer had installed an air conditioner and an electric fitting amounting to ₹ 48.92 lakh in his shop and claimed ITC to the tune of ₹ 5.77 lakh during the year 2007-08 which was not admissible on the capital goods purchased. This resulted in incorrect claim of input tax credit of ₹ 5.77 lakh.
2.	99	2007-08	75.37	2.01	The dealer had purchased capital goods amounting to ₹ 75.37 lakh and claimed full input tax credit to the tune of ₹ 3.01 lakh during the year 2007-08 as against admissible amount of ₹ 1 lakh being 1/3 rd of the ITC. This resulted in incorrect claim of input tax credit of ₹ 2.01 lakh
Total			124.29	7.78	

We reported the matter to the Department and to the Government in June, 2010 but have not received any reply (December 2010).