

## CHAPTER-II

### EXECUTIVE SUMMARY

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**Trend of receipts** The contribution of Gujarat Value Added Tax (GVAT) in total tax receipts was 73.22 *per cent* in 2012-13.

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**Revenue Impact of Audit Reports** During the last five years, through the Audit Reports we have pointed out cases of 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 ₹ 5,411.52 crore in 99 paragraphs. Of these, the Department/Government had accepted audit observations in 85 paragraphs involving ₹ 158.58 crore and had recovered ₹ 9.46 crore.

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**Results of Audit** We test checked the records of 86 units relating to Commercial Tax Offices during 2012-13 and noticed underassessment of tax and other irregularities involving ₹ 316.94 crore in 705 cases.

During the course of the year, the Department accepted underassessment and other irregularities of ₹ 54.88 crore in 194 cases and recovered ₹ 2.62 crore. Out of these cases, 130 cases involving revenue implication of ₹ 50.89 crore were pointed out in audit during the year 2012-13 and the rest in earlier years.

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**What we have highlighted in this Chapter** A Performance Audit on **Claim and admittance of Input Tax Credit** revealed the following:

- Harmonised System of Nomenclature (HSN) codes for identification of commodities were not finalised by the Department even after seven years since Gujarat introduced Value Added Tax Act in 2006. In absence of codes, the authenticity of input tax credit (ITC) availed by the dealers could not be ascertained.
  - Allowance of ITC on purchases made from dealers whose registration certificates were cancelled resulted in irregular utilisation of ITC to the extent of ₹ 11.78 crore.
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- Non/short reduction of ITC on fuel consumptions resulted in excess allowance of ITC of ₹ 1.79 crore.
  - Allowance of ITC on ineligible capital goods resulted in incorrect/excess allowance of ITC of ₹ 6.77 crore.
  - Irregular remission of tax and refund of ITC amounting to ₹ 5.73 crore was made to the manufacturing dealers of Khadi and Village industries.

A Performance Audit of “**Revenue recovery action under Land Revenue Code for accumulated arrears of Sales Tax/Value Added Tax**” revealed the following:

- In 27 assessment units, the Assessing Authority (AA) either did not issue notices for recovery of the Government dues under the Gujarat Land Revenue Code, 1879 or issued it belatedly. This resulted in non-realisation of revenue of ₹ 271.22 crore from 172 dealers.
- Lack of co-ordination within the Commercial Tax Department (CTD) resulted in non-realisation of arrears of revenue of ₹ 129.07 crore from 42 dealers in 17 assessment units.
- The CTD attached the properties of 50 tax defaulters for recovery of arrears of ₹ 1,055.65 crore during September 2004 to February 2013. In absence of a prescribed time line to auction the properties so attached, the arrears of revenue remained to be recovered.
- The CTD did not take serious initiatives in pursuing the Revenue Recovery Certificates issued to other State in case of 261 assessments involving dues of ₹ 389.56 crore.
- It was noticed that though, the provisions of the Gujarat Land Revenue Code, 1879/Gujarat Value Added Tax Act, 2003 provides for creation of first charge in favour of the State for recovery of tax dues, the CTD failed to invoke the provisions therein and take legal action against the banks/financial institutions to recover its arrears of ₹ 78.24 crore.

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- In four cases, non-filing/belated filing of claims with the Official Liquidator resulted in non-realisation of dues of ₹ 73.20 crore.
  - Reassessment in two cases remanded by the Gujarat Value Added Tax Tribunal involving dues of ₹ 10.59 crore was not done even after a lapse of three years from the date of passing orders led to an impasse in recovery proceeding.
  - Tax Monitoring Committee appointed by the Government to monitor recovery of outstanding dues of the State proved ineffective as the Committee did not meet regularly as per the norms. Further, no mechanism was evolved by the CTD to speed up the recovery process.

Interest in six cases aggregating to ₹ 21.12 crore was either not levied or was levied short on unpaid/delayed payment of tax by five Assessing Authorities (AAs).

In four cases, purchase tax was either not levied or was levied short though the purchases were made from unregistered dealer. This resulted in non/short levy of purchase tax of ₹ 13.79 crore.

A dealer was incorrectly assessed under lump-sum tax and ready mix concrete taxable at the rate of 12.5 *per cent* was taxed at 0.06 *per cent* resulting in short levy of tax of ₹ 5.27 crore.

Application of incorrect rate of tax resulted in short realisation of revenue of ₹ 1.83 crore.

## **CHAPTER II**

### **VALUE ADDED TAX/SALES TAX**

#### **2.1 Tax administration**

The tax administration of the Commercial Tax Department of the State is governed by the Gujarat Value Added Tax (GVAT) Act, 2003 and the Central Sales Tax (CST) Act, 1956. The GVAT Act was made effective in the State from 1 April 2006 and on its implementation, the Gujarat Sales Tax Act, 1969, the Bombay Sales of Motor Spirit Taxation Act, 1958 and the Purchase Tax on Sugarcane Act, 1989 were repealed. However, assessments, appeals, recovery etc., pertaining to the period prior to the implementation of GVAT Act continued to be governed under the provisions of these repealed Acts. The Commercial Tax Department (Department) is headed by the Commissioner of Commercial Tax (Commissioner), who is assisted by a Special Commissioner and an Additional Commissioner. The Department is geographically organised into seven administrative divisions, each headed by an Additional/Joint Commissioner (Addl./JC). A division has 'ranges', each headed by a Deputy Commissioner (DC); there are 23 ranges in the State. A range has assessment units each headed by Assistant Commissioner/Commercial Tax Officer (AC/CTO); there are 104 units in the State. In addition, there are 11 permanent, two seasonal/temporary check posts headed by AC/CTO. Besides, there are staff positions in the Department's head office for administration, audit, legal, appeal, enforcement, e-governance, internal inspection *etc.*, headed by Addl./JC or DC.

#### **2.2 Analysis of budget preparation**

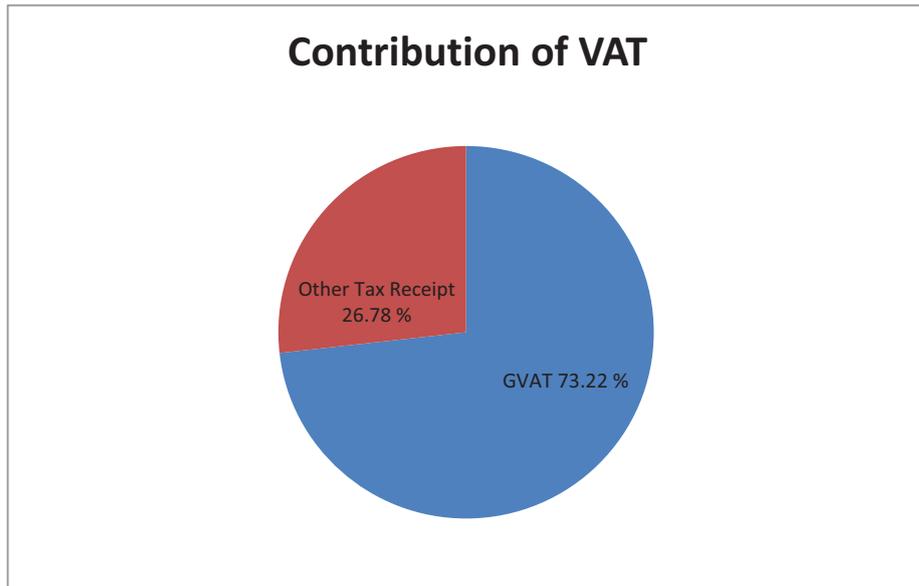
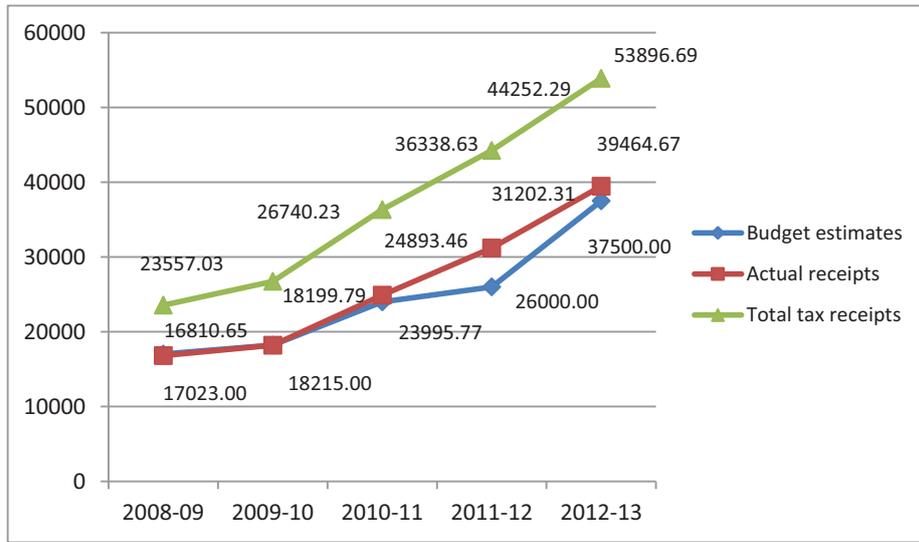
The Budget Estimates are furnished by the Commissioner in the prescribed format to the Finance Department. While preparing the budget estimates, the Commercial Tax Department considered growth in receipts of various taxes during the last five years, receipts in the first four months, changes proposed in the slab rates by the empowered committee on Value Added Tax (VAT) of the Central Government, existing market condition/growth rate of the State/inflation rate, changes proposed in the slab rates/tax rates by the State Government, pending Central Sales Tax (CST) compensation to be received from the Central Government for reduction in CST rates and liability of refund/ pending refunds of previous years.

#### **2.3 Trend of revenue**

Actual receipts from Sales Tax/VAT during the last five years 2008-09 to 2012-13 alongwith 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 receipt of the State	Percentage of actual Sales Tax/VAT receipts vis-a-vis total tax receipts
2008-09	17,023.00	16,810.65	(-) 212.35	(-) 1.25	23,557.03	71.36
2009-10	18,215.00	18,199.79	(-) 15.21	(-) 0.08	26,740.23	68.06
2010-11	23,995.77	24,893.46	(+) 897.69	(+) 3.74	36,338.63	68.50
2011-12	26,000.00	31,202.31	(+) 5,202.31	(+) 20.00	44,252.29	70.51
2012-13	37,500.00	39,464.67	(+) 1,964.67	(+) 5.24	53,896.69	73.22



The contribution of GVAT in total tax receipts increased from 70.51 *per cent* in 2011-12 to 73.22 *per cent* in 2012-13. The variation between the budget estimates and the actuals during the year 2012-13 was only 5.24 *per cent* indicating that the budget estimates were framed on realistic basis.

The pie chart indicates the dominance of contribution of GVAT over the other tax receipts in Gujarat.

## 2.4 Analysis of arrears of revenue

(₹ in crore)

Year	Opening balance of arrears	Demand raised	Amount collected during the year	Closing balance of arrears
2008-09	7,939.50	2,019.07	1,104.67	8,853.90
2009-10	8,853.90	6,428.33	4,084.70	11,197.53
2010-11	11,197.53	5,238.54	1,929.99	14,506.08
2011-12	14,506.08	3,059.10	998.73	16,566.45
2012-13	16,566.45	2,670.42	1,119.85	18,117.02

The arrears of revenue as on 31 March 2013 amounted to ₹ 18,117.02 crore, of which ₹ 12,402.43 crore were outstanding for more than five years. Further, the total outstanding amount of ₹ 18,117.02 crore *inter alia* included ₹ 7,725.87 crore, the recovery of which has been stayed by the High Court of Gujarat and other judicial authorities, ₹ 1,877.01 crore, the recovery of which was stayed by the Departmental appellate authorities, ₹ 7,999.64 crore was outstanding at 'other stages' (the details of which was not provided by the Department), recovery of ₹ 514.50 crore was held up due to filing of liquidation/writ petition by the dealers.

## 2.5 Assessee profile

The number of registered dealers was 4,08,822 at the end of March 2013. Out of them, 3,617 dealers paid tax more than ₹ 20 lakh and the rest 4,05,205 dealers paid less than ₹ 20 lakh during the year. The dealers were required to file 23,90,840 monthly/quarterly returns. Out of which 75,244 returns were not filed during the year. In all the cases, the Department initiated necessary action against the defaulted dealers.

## 2.6 Cost of VAT per assessee

Number of live dealers during the year 2012-13 and during the preceding three years with expenditure incurred on collection of revenue and cost of collection of tax per assessee are given below:

(₹ in lakh)

Year	No. of dealers	Expenditure on collection of revenue	Cost of collection of tax per assessee
2009-10	3,77,093	12,907.00	0.03
2010-11	3,99,455	14,937.00	0.04
2011-12	4,17,016	16,249.00	0.04
2012-13	4,08,822	14,907.00	0.04

Thus, the cost of collection of tax per assessee during the four years ranged between ₹ 0.03 lakh and ₹ 0.04 lakh.

## 2.7 Arrears in assessment

The number of assessments pending at the beginning of the year 2012-13, assessments due during the year, assessments done during the year and pending at the end of the year along with the figures for the preceding four years as furnished by the Commercial Tax Department<sup>8</sup> are given below:

(No. of cases)

Year	Opening balance as on 1 April	Additions during the year	Total (2+3)	Assessments done during the year	Closing balance at the end of the year (4-5)	Percentage of column 6 to 4
1	2	3	4	5	6	7
2008-09	3,46,922 <sup>9</sup>	1,08,174	4,55,096	1,27,315	3,27,781	72
2009-10	3,27,781	1,22,180	4,49,961	1,80,159	2,69,802	60
2010-11	2,69,802	90,666	3,60,468	1,75,050	1,85,418	51
2011-12	1,85,418	69,109	2,54,527	79,044	1,75,483	69
2012-13	1,38,317 <sup>10</sup>	91,157	2,29,474	95,525	1,33,949	58

Thus, the percentage of closing balance at the end of each year during 2008-09 to 2012-13 to total cases which became due for assessment ranged between 51 and 72 per cent.

The Commissioner of Commercial Tax, for the purpose of selection of cases for audit assessments, grouped all the live dealers in various categories on the basis of GVAT paid with returns by the dealers during the year, ITC claimed in the returns, claim of refund in the returns, nature of business like works contracts, dealers who opted to pay lump sum tax, dealers having high turnover, return/challan defaulters, dealers whose TINs were cancelled during the year, enforcement cases/search/seizure cases, incentive certificate holders, dealers holding certificates issued by Khadi and Village Industries Commissioner, exporters claiming provisional refunds, and randomly selected self assessments. Tasks (assessments) of the selected dealers were generated in the name of selected assessing officers.

Status of assessment under GVAT Act, as reported by the Department is mentioned in the following table:

<sup>8</sup> In respect of sales tax/GVAT and profession tax

<sup>9</sup> Differs from the closing balance of 7,12,775 reported by the Department for 2007-08.

<sup>10</sup> Differs from the closing balance of 1,75,483 reported by the Department for 2011-12.

Year	Opening balance as on 1 April	Additions during the year	Total (2+3)	Assessments done during the year	Closing balance at the end of the year(4-5)	(No. of cases)
						Percentage of column 6 to 4
1	2	3	4	5	6	7
2010-11	1,15,530	60,365	1,75,895	79,978	95,917	54.53
2011-12	95,917	61,067	1,56,984	43,985	1,12,999	71.98
2012-13	68,372	79,680	1,48,052	50,856	97,196	65.65

Section 34 of GVAT Act authorises the Commissioner to audit the self-assessment made under Section 33. The above figures represent only the cases selected by the Department for audit assessment under Section 34 of GVAT Act. The remaining cases are considered self-assessed. The details regarding extent of scrutiny of these self-assessed cases were not made available to audit.

It would be seen from the above that the percentage of audit assessment pending finalising ranged between 55 per cent to 72 per cent. It is recommended that the Government may take necessary steps for speedy disposal of these audit assessment.

## 2.8 Cost of collection

The gross collection in respect of major revenue receipts, expenditure incurred on collection and the percentage of such expenditure to gross collection during the periods from 2008-09 to 2012-13 alongwith the relevant all India average percentage of expenditure on collection to gross collection for the preceding years is shown below:

Heads of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	(₹ in crore)
					All India average percentage of cost of collection of the preceding years
GVAT/Sales Tax	2008-09	16,810.65	99.51	0.59	0.83
	2009-10	18,199.79	129.07	0.71	0.88
	2010-11	24,893.45	149.37	0.60	0.96
	2011-12	31,201.97	162.49	0.52	0.75
	2012-13	39,464.67	149.07	0.38	0.83

The cost of collection in respect of GVAT/sales tax was lower than the all India average of respective previous year.

## 2.9 Analysis of collection

The break-up of the total collection at the pre-assessment stage and after regular assessment of sales tax/GVAT and the corresponding figures for the preceding two years as furnished by the Department is mentioned in the following table:

(₹ in crore)

Heads of revenue	Year	Amount collected at pre-assessment stage	Amount collected after regular assessment (additional demand)	Amount refunded	Net collection	Percentage of column 4 to 3
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Sales tax/ GVAT	2010-11	24,246.45	1,253.81	2,394.64	23,105.62	5.17
	2011-12	32,157.73	998.73	1,954.49	31,201.97	3.11
	2012-13	41,592.37	271.26	2,398.94	39,464.69	0.65

Source: The figures as furnished by the Department.

Thus, the percentage of collection of revenue after assessment (additional demand) with reference to pre-assessment stage ranged between 0.65 and 5.17 per cent under sales tax/GVAT during the years 2010-11 to 2012-13.

### 2.10 Impact of Audit Reports-Revenue impact

During the last five years, the Audit Reports have pointed out cases of 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 ₹ 5,411.52 crore in 99 paragraphs. Of these, the Department/Government had accepted audit observations in 85 paragraphs involving ₹ 158.58 crore and had recovered ₹ 9.46 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Paragraph accepted		Amount recovered	
	No	Amount	No	Amount	No	Amount
2007-08	12	134.90	10	21.81	8	1.55
2008-09	17	5,013.96	12	24.62	8	2.85
2009-10	15	34.38	13	26.83	7	0.75
2010-11	22	76.38	22	59.40	10	3.84
2011-12	33	151.90	28	25.92	7	0.47
<b>Total</b>	<b>99</b>	<b>5,411.52</b>	<b>85</b>	<b>158.58</b>	<b>40</b>	<b>9.46</b>

The above table indicates that the recovery, even in accepted cases, was very low (6 per cent of the accepted money value). The Government may advise the Department for taking suitable steps for speedy recovery.

### 2.11 Working of internal audit wing

Internal Audit Wing of Commercial Tax Department, headed by Joint Commissioner (JC) Audit, conducts audit of all offices dealing with the assessment and collection of Sales Tax/Value Added Tax. JC (Audit) is assisted by seven Dy. Commissioner (Audit), one each in every Division. The Dy. Commissioner (Audit) has a monthly target of 125 assessment cases. The concerned Dy. Commissioner (Audit) submits monthly statement to JC (Audit) giving particulars, such as offices audited, number of dealers covered

and objection raised. The JC (Audit) offers his comments on such statements. During the year 2012-13, seven Dy. Commissioners (Audit) audited 5,476 cases as against yearly target of 10,500 cases. Hence, there was shortfall of 48 per cent in terms of target set vis-à-vis achievement thereof. Out of 5,476 cases audited, revision orders involving an amount of ₹ 18.43 crore were passed in 133 cases.

The Department attributed the non-achievement of target to shortage of manpower and distance of assessing units from audit wings.

The internal audit wing needs to put in more concerted efforts to achieve the target fixed so that better tax compliance is ensured.

## 2.12 Results of audit

We test checked the records of 86 units of Commercial Tax Department during 2012-13 and noticed underassessment of tax and other irregularities involving ₹ 316.94 crore in 705 cases which fall under the following categories:

Sl. No.	Categories	Number of cases	Amount (₹ in crore)
1.	Claim and admittance of Input Tax Credit	1	31.62
2.	Revenue recovery action under Land Revenue Code for accumulated arrears of Sales Tax/Value Added Tax	1	117.56
3.	Incorrect rate of tax and mistake of computation	38	4.88
4.	Incorrect grant of set-off	9	0.64
5.	Incorrect concession/exemption	15	5.36
6.	Non/short levy of interest & penalty	126	44.61
7.	Other regularities	43	14.48
8.	Irregular/excess grant of Input Tax Credit	207	37.51
9.	Non/short levy of tax	239	50.62
10.	Non/short levy of Purchase Tax	6	0.68
11.	Professional Tax	4	0.02
12.	Expenditure Audit	16	8.96
	<b>Total</b>	<b>705</b>	<b>316.94</b>

During the course of the year, the Department accepted underassessment and other irregularities of ₹ 54.88 crore in 194 cases and recovered ₹ 2.62 crore in 70 cases. Out of these cases, 130 cases involving revenue implication of ₹ 50.89 crore were pointed out in audit during the year 2012-13 and the rest in earlier years.

Two Performance Audit reports vis-a-vis “Claim and admittance of Input Tax Credit” and “Revenue recovery action under Land Revenue Code for accumulated arrears of sales tax/value added tax” involving ₹ 149.18 crore and few illustrative audit observations involving ₹ 55 crore are mentioned in the succeeding paragraphs:

## 2.13 Performance Audit on 'Claim and admittance of Input Tax Credit'

### Highlights

- Harmonised System of Nomenclature (HSN) codes for identification of commodities were not finalised by the Department even after seven years since Gujarat introduced Value Added Tax Act in 2006. In absence of codes, the authenticity of input tax credit (ITC) availed by the dealers could not be ascertained.  
**(Paragraph 2.13.7)**
- Allowance of ITC on purchases made from dealers whose registration certificates were cancelled resulted in irregular utilisation of ITC to the extent of ₹ 11.78 crore.  
**(Paragraph 2.13.11)**
- Non/short reduction of ITC on fuel consumptions resulted in excess allowance of ITC of ₹ 1.79 crore.  
**(Paragraph 2.13.13)**
- Allowance of ITC on ineligible capital goods resulted in incorrect/excess allowance of ITC of ₹ 6.77 crore.  
**(Paragraph 2.13.19)**
- Irregular remission of tax and refund of ITC amounting to ₹ 5.73 crore was made to the manufacturing dealers of Khadi and Village industries.  
**(Paragraph 2.13.21)**

### 2.13.1 Introduction

The Government of Gujarat introduced Value Added Tax (VAT) with effect from 1 April 2006 in place of Gujarat Sales Tax, 1969. The Gujarat Value Added Tax (GVAT) Act, 2003 and Rules made there under (GVAT Rules, 2006) govern the levy and collection of value added tax (VAT) in Gujarat at every point of sale. The tax payable by a dealer under the Act on sale is called output tax while the tax paid by the dealer on purchases is called input tax. To avoid cascading effect of multiple taxations under VAT, credit of tax paid on inputs i.e., ITC is allowed for utilising the said credit towards discharging the tax liability on outputs. The dealer is thus liable to pay net tax<sup>11</sup> after such adjustments. The Act provides that ITC can be claimed only on purchases of taxable goods against the tax invoices, made locally i.e., within the State and both the purchasing and the selling dealers should be registered under the GVAT Act. Section 29 of the GVAT Act, 2003 read with Rule 19 of GVAT Rules, 2006, provides for submission of monthly/quarterly/half yearly returns by the dealers for claiming the ITC. Further, every dealer shall be deemed to

<sup>11</sup> (Output tax – input tax)

have been assessed to tax based on the return filed by him under Section 33 of the GVAT Act. The Department generates tasks for selection of cases for detailed assessments of the cases by the Assessing Authorities (AAs) under Section 34(2). The criteria for selection of the cases are fixed by the Commissioner of Commercial Tax (CCT). The details of purchases made by a dealer for which he claims ITC under Section 11 of the GVAT Act are enclosed with the return in Form 201B.

### **2.13.2 Reasons for selecting the topic**

As ITC is an important component in determination of tax liability and during the last three years the percentage of ITC allowed to the ITC claimed in the cases assessed in detail by the Department under Section 34(2) of GVAT Act, ranged between 88 *per cent* and 95 *per cent*. We noticed that only a small portion<sup>12</sup> of dealers were assessed in detail indicating a potential risk in allowing ITC. We had during our local audit inspection found a number of discrepancies in allowing ITC. We found it appropriate to conduct a performance audit on the topic “Claim and admittance of input tax credit”.

### **2.13.3 Organisational set up for tax administration**

The Commercial Tax Department of Gujarat functions under the control and supervision of the Additional Chief Secretary, Finance Department. The Commissioner of Commercial Tax (CCT) is the head of the Department. The Department is geographically organised into seven administrative divisions, each headed by an Additional/Joint Commissioner (Addl/JC) of Commercial Tax. Division have ‘ranges’, each headed by a Deputy Commissioner (DC); there are 23 ranges in the State. A range has assessment units each headed by an Assistant Commissioner/Commercial Tax Officer (AC/CTO); there are 104 units in the State. In addition, there are 11 permanent, two seasonal/temporary check posts headed by AC/CTO. Besides, there are staff positions in the Department’s head office for administration, audit, legal, appeal, enforcement, e-governance and internal inspection *etc.*, headed by Addl/JC or DC.

### **2.13.4 Admittance of ITC claims**

As per the information furnished by the Department, the ITC claimed by the dealer and allowed by the AA during finalisation of audit assessments<sup>13</sup> under Section 34(2) for the period 2006-07 to 2008-09 is mentioned in the following table:

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<sup>12</sup> 25.27 *per cent* (2006-07), 7.22 *per cent* (2007-08) and 9.23 *per cent* (2008-09)

<sup>13</sup> Under section 34(2) of GVAT Act, the CCT selects cases for detailed assessments.

Year	Total number of live dealers	No of dealers claimed ITC and also assessed	Percentage of dealers assessed to total dealers.	Gross tax credit (₹ in crore)	Deduction in ITC (₹ in crore)	Net tax credit admissible (₹ in crore)	Percentage of allowance of ITC to ITC claimed
2006-07	3,68,855	93,240	25.27	15,477.73	1,166.63	14,311.10	92.46
2007-08	3,66,676	26,456	7.22	11,678.80	1,410.73	10,268.07	87.92
2008-09	3,73,426	34,469	9.23	8,368.31	442.19	7,926.12	94.72
<b>Total</b>				<b>35,524.84</b>	<b>3,019.55</b>	<b>32,505.29</b>	

Note : The period of limitation of assessment is four years as such the details up to 2008-09 were only furnished. The selection of cases for the year 2009-10 and onwards was neither furnished nor was found on record to have been made to audit

As could be seen from the table, there was steep fall in deduction of ITC made during 2008-09, though the number of dealers assessed was higher as compared to 2007-08. The reasons for the same though called for were not intimated.

It would also be seen that task generated for detailed assessment of cases during 2006-07 was the highest. The generation of fewer tasks during subsequent years was because of one parameter (ITC claims exceeding rupees two lakh in each case) prescribed for 2006-07 had been removed for the subsequent years.

### 2.13.5 Audit Objectives

The objectives of the performance audit were to get a reasonable assurance that:

- the provisions existing in Act/Rules were adequate enough to safeguard interest of the Department in the process of admitting the claims and allowing ITC;
- the notifications and instructions issued by the Department relating to grant of ITC were in conformity with GVAT Act/Rules and facilitated the implementation of provisions of GVAT Act/Rules;
- the Act/Rules and notifications/circulars issued there under were being adhered to at the field level; and
- the internal control mechanism was adequate enough to prevent any loss of revenue and misuse of the provisions of GVAT Act/Rules related to claim and admittance of ITC.

### 2.13.6 Scope and methodology of audit

The Performance audit covered aspects relating to ITC claims/refunds allowed by the Department for the assessments periods from 2006-07 to 2008-09 finalised till March 2012.

We selected 18<sup>14</sup> out of 104 assessment units under the seven jurisdictional Divisions. The selection of audited units was based on the highest ITC<sup>15</sup> availed by the dealers. The total amount of ITC admitted by these 18 selected units was ₹ 19,068.86 crore, which was 59 per cent of ₹ 32,505.29 crore of total ITC claim allowed. Further, the amount of refund allowed by these units was ₹ 216.66 crore (which was 51 per cent of ₹ 424.16 crore of the total refunds made). The sample size was selected in such a manner so as to represent the entire State.

In addition to the above, we selected Office of the Commissioner of Commercial Tax and four<sup>16</sup> Range Offices having jurisdiction over these 18 units. We selected all the audit assessment cases finalised under Section 34(2). In addition to this in respect of deemed assessment cases we selected 100 highest revenue earning dealers in each of the audited units.

We held an entry conference on 21 January 2013 at the level of Additional Chief Secretary, Finance Department and Commissioner of Commercial Tax during which we explained our audit objectives and methodology. An exit conference was held on 27 August 2013 at the level of Principal Secretary (Finance Department) and Commissioner of Commercial Tax during which we discussed the audit findings. The replies/responses received during the exit conference and from the department have been suitably incorporated in the relevant paragraphs.

We acknowledge the co-operation extended by the Finance Department and the Commercial Tax Department in providing the necessary information and records during the course of our audit.

## **Audit findings**

### **2.13.7 Non-finalisation of HSN code**

Section 2(13A) of GVAT Act, 2003 defines 'HSN code' as Harmonised System of Nomenclature code assigned to the goods specified in the Schedule for proper identification of goods. Further, under Section 7A of the Act *ibid*, the State Government is required to formulate rules for assigning the HSN code to each of the goods specified in the Schedule and different codes to different goods covered under same entry in the Schedule.

HSN code is essential to identify whether ITC availed on purchases of commodities made by the dealer is related to the nature of the business being dealt by him and to ascertain whether any undue benefit of ITC has not been availed by the dealer. Further, HSN codes would serve as a road map for the Goods and Service Tax (GST).

<sup>14</sup> ACCT: 5, 7, 8, 11 and 21 Ahmedabad, 57 Ankleshwar, 77 Bhavnagar, 56 Bharuch, 24 Gandhinagar, 104 Gandhidham, 58 and 68 Surat, 91, 93 and 94 Rajkot, 40, 41 and 46 Vadodara

<sup>15</sup> As per the data collected from the Department

<sup>16</sup> DCCT: 2 Ahmedabad, 14 Bharuch, 7 Gandhinagar, 25 Gandhidham

We noticed that though the States of Kerala and Uttar Pradesh had assigned HSN codes to the goods, the State Government in Gujarat had not yet evolved HSN code as stipulated in the Act. In absence of the HSN code, it would not be possible for the Government to safeguard its interest against the possibilities of availing undue ITC on the purchases of commodities not related to their business by the dealers. Besides, even after seven years of implementation of GVAT Act, the Department is yet to finalise the HSN codes.

We pointed out (July 2012) this aspect to the Department. The Department stated (October 2013) that the HSN code is under finalisation and awaiting introduction of Goods and Service Tax (GST) as HSN would be required for goods as well as service tax.

After we reported (July 2013) the matter, the Government confirmed (October 2013) the reply of the Department.

**Government may formulate HSN code at the earliest so as to ensure that no undue ITC claims of dealers are admitted.**

### **2.13.8 Incorrect generation of tasks**

The Department had framed guidelines for selection of cases for audit assessment for the period 2006-07, 2007-08 and 2008-09 based on the earmarked parameters like turnover, exemption/deferment scheme beneficiaries, exporters, return defaulter etc. In addition to this, factors like tax paid by the dealers i.e. from ₹ 20 lakh to ₹ 50 lakh (2007-08), from ₹ 25 lakh to ₹ 50 lakh (2008-09) were the other additional criterion in selection of the cases for audit assessment. As per Section 33(3)(b) of GVAT Act, 2003, the Commissioner is required to satisfy himself with the correctness and completeness of the returns filed.

(i) We noticed in 16<sup>17</sup> out of 18 selected offices that 167 out of 308 cases had not been selected for audit assessment though these fell under the earmarked criteria of selection for audit assessment purpose, such as turnover limit, payment of taxes etc. This reveals that the Department did not have an effective system to ensure that those dealers who fulfill the criteria are invariably selected for audit assessment.

We pointed out (July 2012) these cases to the notice of the Department/Government. The Department/Government stated (October 2013) that as per the settled policy all dealers cannot be assessed and sampling has to be made for audit assessments with reference to the criteria earmarked for task generation. The reply is not correct as the Department was required to

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<sup>17</sup> 5, 7, 8, 11 and 21 Ahmedabad, 77 Bhavnagar, 24 Gandhinagar, 104 Gandhidham, 91, 93 and 94 Rajkot, 58 and 68 Surat, 40, 41 and 46 Vadodara. The other two audited units comprised of dealers majority of whom were engaged in export activity and as such were assessed to audit assessment.

generate task of all the cases which fell under the earmarked criteria for audit assessment.

After we reported (July 2013) the matter, the Government confirmed (October 2013) the reply of the Department.

(ii) Further, in 263 out of 308 cases, the mandatory Form 201 (Monthly return), Form 205 (Annual return), Form 217 (VAT Audit report) and annual accounts were not available in the respective dealer's file maintained by the audited units. Hence, the provision regulating deemed assessment was not satisfied. In absence of these records, it could not be ascertained how the Department vouchsafed the authenticity of the claim of ITC amounting to ₹ 191.85 crore made by the dealers.

We pointed out (July 2012) these cases to the notice of the Department/ Government. The Department stated (October 2013) that the assessing units are instructed to maintain the required documents with assessment file.

After we reported (July 2013) the matter, the Government confirmed (October 2013) the reply of the Department.

### 2.13.9 Absence of a time limit for claiming refund of ITC

As per Rule 15(7) of the GVAT Rules, 2006, in case of sales made in the course of export outside the territory of India and the amount of carried forward tax credit admissible under items (iv) and (v) of Section 11(3)(a) of GVAT Act, 2003 remains unadjusted, such amount of ITC shall be refunded within the period of three months next following the end of the month in which such purchases were made. Section 37 stipulates that a registered dealer who has filed return which shows any amount refundable to him then the dealer may file form 306 as prescribed under Rule 37 for the grant of provisional refund pending assessment. Further, as per Section 32, returns or revised returns furnished by the dealer in accordance with Section 29 shall be subject to scrutiny by the Commissioner.

The GVAT Act and the Rule 15(7) framed there under stipulate that in the case of exports, registered dealers were to be given the refund within a period of three months from the end of the month of purchases. Thus, a time limit has been prescribed for the Department to pay interest on the refund of ITC. We found that since the Department was not finalising assessments on concurrent basis, the Department has to pay

interest on the refunds arising out of such assessments so finalised at the time of their finalisation under Section 34(2).

In eight<sup>18</sup> offices, we noticed in 17 assessment cases of 15 dealers for the period between 2006-07 and 2008-09 finalised between July 2010 and March

<sup>18</sup> ACCT :9 Ahmedabad, 30 Mehsana, 80 Surendranagar, 41 and 46 Vadodara, 74 Vapi  
CTO : Sidhpur  
DCCT: 4 Ahmedabad

2012 that the dealer had exported goods and AAs in assessments had granted refunds of ₹ 347.45 lakh and interest thereon of ₹ 69.83 lakh. The Department by virtue of assessments finalised by them or when approached by the dealers refunded the unadjusted tax credits along with interest rather than refunding it through its own self as per extant provision of Rule 15(7).

The Department stated (September 2013) that according to the provisions of the Rule 15(7) if the dealer exports the goods and if, any tax credit remains unadjusted, it should be refunded to the dealer within a period of three months from the date of purchase. However, as per Rule 37 the dealer has to apply for the provisional refund and submit the evidence of export. If the dealer has not applied for refund, it is to be paid at the time of assessment.

We observed that the Department had not put a system in place to ensure that the refunds arising out of exports are made within the prescribed period of three months. Besides, no time limit had been prescribed for the dealers for making claims towards refunds. In absence of such provisions, the Department had to pay interest of ₹ 69.83 lakh.

**Thus, it would be in the interest of revenue to make a provision binding the dealer to apply for the provisional refund in the month of exports, so that refunds are finalised within the stipulated period of three months.**

After we reported (July 2013) the matter, the Government confirmed (October 2013) the replies of the Department in all the cases.

#### **2.13.10 Monitoring of refunds under Rule 15(6) of GVAT Rules, 2006**

We examined Rule 15(6) of the GVAT Rules, 2006 with reference to Section 38 of GVAT Act, 2003 and found that the Rules stipulates that refund shall be made within a period of two years provided that the dealer claims the refund to the satisfaction of the AA. The Department makes refund along with interest thereon under Section 34(2) read with Section 38.

Rule 15(6) of the GVAT Rules, 2006: where the ITC admissible in a year remains unadjusted against the output tax as per Section 11 of GVAT Act, 2003, such amount shall be refunded not later than expiry of two years from the end of the year in which such ITC become admissible.

In the office of DCCT - Petro I Ahmedabad, in assessment of one dealer for the period 2007-08 finalised in February 2012, we noticed that the AA had granted refund of

₹ 5.72 crore and allowed payment of interest of ₹ 1.31 crore (from the date of closure of such accounting year up to the date of assessment) thereon. If refund had been granted within a period of two years, then excess payment of interest of ₹ 0.62 crore could have been avoided.

After we reported (July 2013) the matter, the Government's reply for delay in finalisation of the case is awaited (December 2013).

**It is recommended that the Department may devise a system by way of close monitoring of returns ensuring that the refunds are made within the stipulated period.**

### **2.13.11 Irregular utilisation of ITC**

GVAT Act stipulates that ITC may be claimed by a purchasing dealer on the purchases made by him from the selling dealer. However, both the selling and purchasing dealer should be registered while entering into the transactions.

We cross checked the purchase details (Form -201/B) of purchasing dealers with the sales details (Form-201/A) of the selling dealers in the VATIS<sup>19</sup> e-system. We found that 63 purchasing dealers have made purchases from those selling dealers who were not registered at the time of sale by virtue of cancellation of their registration either by the Department or the dealers had themselves opted for the cancellation of their registration certificates. This resulted in incorrect grant of ITC of ₹ 11.78 crore including interest of ₹ 2.57 crore and penalty of ₹ 5.35 crore as discussed in the following paragraphs:

#### **ITC availed incorrectly by dealers in Self assessment cases**

Section 11(1)(a)(i) of the GVAT Act, 2003: a registered dealer who has purchased the taxable goods (i.e. purchasing dealer) shall be entitled to claim ITC equal to the amount of tax collected from the purchasing dealer by a registered dealer from whom he has purchased such goods or the tax payable by the purchasing dealer to a registered dealer who has sold such goods to him during the tax period.

Section 33: If a dealer has filed all the returns along with annual return and Commissioner is satisfied with the returns/annual return and no notice for audit assessment under Section 34 has been issued to the said dealer then such dealer shall deemed to have been assessed under Section 33.

In 12<sup>20</sup> offices, we noticed in 50 self-assessment cases of 45 dealers relating to assessment period 2006-07 and 2008-09, that the dealers had made purchases valued at ₹ 81.77 crore from the selling dealers whose registration was cancelled either by the Department or the dealers had opted for the cancellation. Though the information was available in the

VATIS, the Department did not make any effort to verify these transactions. As such, though the dealers were not entitled to ITC, they availed the same

<sup>19</sup> VATIS – 'Value Added Tax information system' an application software developed by TCS

<sup>20</sup> ACCT: 11 Ahmedabad, 77 Bhavnagar, 24 Gandhinagar, 104 Gandhidham, 100 Jamnagar, 91, 93 and 94 Rajkot, 58 and 65 Surat, 40 and 46 Vadodara

resulting in incorrect grant of ITC of ₹ 3.56 crore. Besides, the dealers were also liable to pay interest of ₹ 2.38 crore and penalty of ₹ 5.20 crore.

We pointed out the above cases to the Department between November 2012 and April 2013. The Department accepted (October 2013) all audit observations and raised demand in 25 cases and recovered the amount of ₹ 12.32 lakh in five cases. The Department while accepting the audit observation in eight cases replied that as the cases had become time barred, therefore no remedial action could be taken resulting in loss of revenue of ₹ 1.33 crore to the Government. In 17 cases, the Department had initiated reassessment/revisional proceedings. The details of recovery in the remaining cases have not been received (December 2013).

After we reported (July 2013) the matter, the Government confirmed (October 2013) the replies of the Department in all the cases.

#### **ITC availed incorrectly by dealers in audit assessment cases**

Section 34 provides for finalisation of audit assessment after scrutiny of the books of accounts of the dealer.

(ii) In nine<sup>21</sup> offices, for the assessment year 2006-07 to 2008-09 finalised by the AAs between December 2010 and June 2012, we cross verified the details of the purchases made by the purchasing dealers with the corresponding selling dealers and found that in 19 assessments, 18 dealers had made purchases valued at ₹ 7.51 crore from the selling dealers whose registration certificates were cancelled by the Department at the time of making transactions. Though, the information was available with the VATIS e-system and the cases were selected for detailed check, the Department did not make any effort to verify the registration certificates of the selling dealers before allowing the ITC claims. This resulted in incorrect grant of ITC of ₹ 29.49 lakh. Besides, the dealers were liable to pay interest of ₹ 18.90 lakh and penalty of ₹ 15.58 lakh.

We pointed out the above cases to the Department between July 2011 and April 2013. The Department accepted (October 2013) all the audit observations and raised demand in four cases and recovered amount of ₹ 0.16 lakh in two cases. In 12 cases, the Department had initiated reassessment/ revisional proceedings. The details of recovery in the remaining cases have not been received (October 2013).

After we reported (July 2013) the matter, the Government confirmed (October 2013) the replies of the Department in all the cases.

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<sup>21</sup> ACCT: 2, 5, 6 and 11 Ahmedabad, 103 Bhuj, 104 Gandhidham, 45 Vadodara  
DCCT: Range-7 Gandhinagar, Range-25 Gandhidham

**2.13.12 Short reduction of ITC to the extent of branch transfer**

Section 11(3)(b) of the GVAT Act, 2003: the amount of ITC in respect of a dealer shall be reduced by the amount of tax calculated at the rate of four *per cent* of taxable turnover of the purchases within the State.

We noticed in 16 assessments of 15 dealers that though ITC was required to be reduced to the extent of the goods which were consigned or transferred to other State, it was not done proportionately<sup>22</sup>. This resulted in incorrect/excess grant of ITC of ₹ 1.79 crore including interest of ₹ 70.93 lakh and penalty of ₹ 6.79 lakh were also payable as mentioned in the following paragraphs:

- (i) In 14<sup>23</sup> offices, we noticed in 14 assessments of 13 dealers for the period between 2006-07 and 2008-09, that the AAs while finalising the assessments between August 2010 and June 2012, either did not reduce ITC proportionately or made less reduction of ITC. The AA had either not considered at all or had worked out the branch transfers incorrectly. This resulted in less reduction of ITC by ₹ 88.11 lakh. Besides, interest of ₹ 63.42 lakh and penalty of ₹ 6.79 lakh was also leviable.

We pointed out the above cases to the Department between April 2012 and April 2013. The Department accepted (October 2013) audit observations in 13 cases and raised demand in eight cases and recovered ₹ 7.33 lakh in three cases. The details of recovery in the remaining cases have not been received. In five cases, the Department had initiated reassessment/revisional proceedings. In remaining one case, the Department replied (October 2013) that dealer's branch transfer of trading/manufactured goods constituted 90 *per cent* of the total turnover and ITC availed on purchases had been reduced to that extent.

The reply is not correct as in the assessment purchases on which ITC had been availed by the dealer was reduced considering branch transfer of manufactured goods only whereas no reduction had been made on account of branch transfer of trading goods.

After we reported (July 2013) the matter, the Government confirmed (October 2013) the replies of the Department in all the cases.

- (ii) Further, in two<sup>24</sup> offices, we noticed in two self-assessment cases for the assessment period 2007-08 and 2008-09 that the total taxable purchases for the purpose of reduction of ITC was ₹ 3,643.00 lakh. As per the ratio of the branch transfer ITC of ₹ 102.87 lakh was required to be reduced but the AA reduced only ₹ 88.88 lakh. This resulted in short reduction of ITC of ₹ 13.99 lakh. Besides, interest of ₹ 7.51 lakh was also leviable.

<sup>22</sup> (Branch Transfer/Total Turnover)\*4% of value of the purchases made

<sup>23</sup> ACCT: 7, 8 and 21 Ahmedabad, 57 Ankleshwar, 104 Gandhidham, 33 Kadi, 58 and 68, Surat, 41 Vadodara

DCCT: Corp-cell-1 Ahmedabad, 7 Gandhinagar, 25 Gandhidham, 13 Nadiad, 22 Rajkot

<sup>24</sup> ACCT: 68 Surat and 41 Vadodara

We pointed out the above cases to the Department and the Department raised demand (September 2013) in one case. In the other case, the Department stated (October 2013) that after verification of the facts outcome would be intimated.

After we reported (July 2013) the matter, the Government confirmed (October 2013) the replies of the Department in all the cases.

### **2.13.13 Non/short reduction of ITC on use of fuel**

Section 11(3)(b)(iii) of the GVAT Act,2003: the amount of ITC in respect of a dealer shall be reduced by the amount of tax calculated at the rate of four *per cent* of taxable turnover of the purchases of fuels used for the manufacture of goods.

In four<sup>25</sup> offices, we noticed in seven assessment cases of six dealers for the assessment period 2007-08 and 2008-09 finalised between March and April 2013 that coke, coal and gases were used in the

manufacture of cement, pipes and fittings, dyeing and printing etc. Since, these commodities were not used as raw material but as fuel, the ITC to the extent of four *per cent* was required to be reduced. This was not done while finalising the assessment resulting in irregular/excess grant of ITC of ₹ 60.51 lakh. Besides, interest of ₹ 33.43 lakh and penalty of ₹ 85.34 lakh was also leviable.

We pointed out the above cases to the Department between March and May 2013. The Department accepted (September 2013) the audit observations in all the cases and raised demand in two cases and recovered ₹ 2.57 lakh in one case. The details of recovery in the other case have not been received. In five cases, the Department initiated reassessment/revisonal proceedings (October 2013).

After we reported (July 2013) the matter, the Government confirmed (October 2013) the replies of the Department in all the cases.

### **2.13.14 Excess ITC carried forward**

As per column No.22 of PART-V of Annual Return in Form 205 and Assessment order in Form-304, amount of excess tax paid and/or excess ITC, which remains after adjustment against tax payable, is carried forward to the subsequent year. The amount carried forward in the annual return/monthly return of April of subsequent year is accepted as correct and allowed in the assessment order. In case, carried forward tax/ITC is less in assessment than claimed in the return of April of subsequent period, the deficit amount along with interest is treated as demand.

During test check of the monthly/quarterly and annual returns in four<sup>26</sup> offices, we noticed in assessments of nine dealers for the period between 2006-07 and 2009-10, that the dealers had

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<sup>25</sup> ACCT: 93 Rajkot, 69 Surat, 46 Vadodara  
DCCT: 23 Rajkot

<sup>26</sup> ACCT :1 Anand, 100 Jamnagar, 93 Rajkot  
DCCT: 8 Mehsana

carried forward ITC of ₹ 80.34 lakh instead of ₹ 45.08 lakh resulting in excess carried forward ITC of ₹ 35.26 lakh. Besides, interest of ₹ 17.78 lakh was also leviable.

We pointed out the above cases to the Department between March 2011 and March 2012. The Department accepted (September 2013) the audit observations in eight cases, raised demand in three cases and recovered ₹ 0.31 lakh in one case. The details of recovery in the remaining cases have not been received. In five cases, the Department had initiated reassessment/revisonal proceedings. In remaining one case, the Department stated (September 2013) that the dealer had correctly brought forward the ITC in the VAT audit report. However, we noticed that the ITC was not reduced in the subsequent returns, which needs to be filed by the dealer.

After we reported (July 2013) the matter, the Government confirmed (October 2013) the replies of the Department in all the cases.

### 2.13.15 Incorrect availment of ITC on transitional closing stock

Under Section 12 of the GVAT Act, 2003 read with Rule 16 of the GVAT Rules, 2006, all the dealers who are deemed to have been registered under Section 23, shall furnish in Form 108 to the authority a prescribed statement of such taxable goods under this Act held in stock on 31 March 2006, which were purchased during the period 2005-06 for which the dealer intends to claim ITC. Rate of tax as per the Gujarat Sales Tax Act, 1969 on bullion was 0.25 *per cent* and applicable to the stock as on 31.3.2006.

(i) In two<sup>27</sup> offices, we noticed in assessments of three dealers for the period 2006-07 finalised between March 2010 and March 2011 that AAs had allowed ITC of ₹ 9.70 lakh on closing stock of 2005-06 of gold and silver jewellery at the rate of one *per cent*

as against admissible ITC of ₹ 2.43 lakh on bullion at the rate of 0.25 *per cent*. This resulted in excess allowance of ITC of ₹ 7.28 lakh besides interest of ₹ 5.16 lakh and penalty of ₹ 14.55 lakh was also leviable.

We pointed out these cases to the Department between March and April 2013. The Department accepted (September/October 2013) our observations in all the cases and raised demands, but particulars of recovery have not been received.

After we reported (July 2013) the matter, the Government confirmed (October 2013) the replies of the Department in all the cases.

<sup>27</sup> ACCT: 8 Ahmedabad and 3 Rajkot

Section 11(3)(b)(i) & (ii) of the GVAT Act, 2003: the amount of ITC in respect of a dealer shall be reduced by the amount of tax calculated at the rate of four *per cent* of taxable turnover of the purchases, of taxable goods which are used as raw material in the manufacture, or in the packing of goods which are dispatched outside the state in the course of branch transfer or consignment or to his agent outside the State.

(ii) In four<sup>28</sup> offices, we noticed in assessment of four dealers for the period 2006-07 finalised between November 2010 and April 2011 that the AAs in assessment of dealers allowed ITC admissible on

the goods held in closing stock valued at ₹ 35.78 crore. The dealers had made branch transfer or consigned the goods valuing ₹ 2.98 crore outside the State. The Department did not proportionately reduce ITC availed on closing stock. This resulted in excess availment of ITC of ₹ 11.92 lakh besides interest of ₹ 8.72 lakh was also leviable.

We pointed out these cases to the Department between November 2010 and April 2011. The Department accepted (October 2013) the observation in two similar cases and raised demand in one case but particulars of recovery has not been received. In other case revision proceedings had been initiated. In the remaining two cases the Department did not accept audit observations stating that there will be no effect if the ITC is not reduced in the closing and opening stock as effect would be nullified. The reply is not in consonance with Section 12 of GVAT Act, which stipulates allowance of ITC on the transitional closing stock subject to proportionate reduction of ITC to the extent of branch transfers.

After we reported (July 2013) the matter, the Government confirmed (October 2013) the replies of the Department in all the cases.

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<sup>28</sup> ACCT: 7 Ahmedabad and Enforcement Div-3 Gandhinagar  
DCCT: 6 Ahmedabad and 8 Mehsana

### 2.13.16 Purchases not eligible for ITC

Section 11(5) of the GVAT Act, 2003 stipulates that ITC shall not be allowed for purchases:

- of the goods which are used in manufacture of goods specified in Schedule I, or the goods exempt from the whole of the tax by a notification under sub-section (2) of section (5) or in the packing of goods so manufactured;
- of petrol, high-speed diesel, crude oil and lignite unless such purchase is intended for resale; and
- of goods which remain unsold at the time of the closure of business.

In three<sup>29</sup> offices, we noticed in assessments of three dealers for the period 2006-07 and 2007-08 finalised between October 2009 and March 2013 that the AAs in the assessments had incorrectly allowed ITC of ₹ 4.58 lakh. The ITC was incorrectly allowed on (i) lignite (ii) unsold stock on closure of business and (iii) manufacture of tax free goods. Further, on the incorrect allowance of ITC, interest of

₹ 3.22 lakh and penalty of ₹ 3.25 lakh were also leviable.

We pointed out these cases to the Department between July 2012 and April 2013. The Department accepted (September 2013) all audit observations and raised demand in two cases but the details of recovery has not been received. In the other case revision proceedings had been initiated.

After we reported (July 2013) the matter, the Government confirmed (October 2013) the replies of the Department in all the cases.

### 2.13.17 Incorrect grant of tax credit

Section 11(8)(a) of GVAT Act, 2003 states that if the goods purchased were intended for the purposes specified under sub-section (3) and are subsequently used fully or partly for purposes other than those specified and in the circumstances described in sub-section (5), the ITC availed shall be reduced on account of such use, from the ITC being claimed for the tax period during which such use has taken place and such reduction shall be done in the manner prescribed.

In nine offices, we noticed in assessments of eight dealers for the period 2006-07 and 2007-08 finalised between December 2010 and March 2012 and self-assessed cases of two dealers for the period 2007-08 and 2008-09 that the dealers had availed ITC for the

purposes as enumerated in Section 11(3)(a) but subsequent events proved that the dealers had made exports of tax free goods, job work, etc. for which ITC

<sup>29</sup> ACCT: 104 Gandhidham and 93 Rajkot  
CTO : 54 Petlad

was not admissible and ITC to that extent had not been reduced by AAs in assessment. This resulted in non-reduction of ITC of ₹ 70.56 lakh, besides, interest and penalty of ₹ 79.64 lakh are also leviable as detailed below:

Sl. No.	Number of dealers	Name of office	Period of Assessment Date of Assessment	Nature of observation	Amount of ITC involved (₹ in lakh)	Short levy of tax including interest and penalty (₹ in lakh)
1	1	ACCT, Unit-22, Ahmedabad	2006-07 22/12/10	The ITC is admissible on raw material in the manufacture of taxable goods, but not on non-manufacturing activity. 'Reduction in thickness of SS sheets' being a non manufacturing activity <sup>30</sup> . ITC availed on raw material/ processing material/ consumables and capital goods was not proportionately reduced by the AA in the assessment.	10.14	16.88
The Department accepted (September 2013) our observation and raised demand of ₹ 47.76 lakh. The particular of recovery has not been received (December 2013).						
2	1	ACCT, Unit-91, Rajkot	2006-07 03/03/11 2007-08, 2008-09. Self assessed	Dealer availed ITC on purchases of lubricants. The dealer had neither shown sales or closing stock of lubricants in his accounts as such claim of ITC on lubricant was not admissible.	3.90	6.54
The Department for the period 2006-07 accepted (September 2013) our observation and stated that revision proceedings have been initiated. The replies in the remaining assessments though pertaining to the same dealer and having identical issues have not been received (December 2013).						
3	1	DCCT, Range-2, Ahmedabad	2007-08 29/08/11	Dealer is ice cream manufacturer and from the sales turnover reduced damaged goods (Ice creams) worth ₹ 13.39 lakh. AA in the assessment did not reduce ITC proportionately to the extent of damaged goods.	1.49	4.79
The Department while not accepting our observation, stated (September 2013) that the ice cream was damaged due to failure of electricity which was beyond the control of the dealer. However, the divisional authority has been instructed to verify the facts and if facts are not matching to initiate revisional proceedings. The reply of the department is not acceptable as there is no provision in the GVAT Act which stipulates non-reduction of ITC in respect of damaged goods.						
4	1	ACCT, Unit-21, Ahmedabad	2007-08 22/10/11	In Inter-State transactions, the dealer made free supply sales of ₹ 62.43 lakh. In the assessment order, AA had made short reduction of ITC to the extent of ₹ 0.32 lakh.	0.32	0.55
The Department accepted (September 2013) our audit observation and raised demand of ₹ 0.35 lakh only. The particular of recovery has not been received (December 2013).						
5	1	ACCT, Unit-104, Gandhidham	2007-08 30/03/12	Dealer had made intra-unit transfer of TMT bars worth ₹ 10.74 crore from the sales turnover of ₹ 1,047.06 crore for captive consumption. Further, no intra unit purchase transfer was shown in the assessment order and ITC reduction had not been made by the AA. The intra unit transfer of TMT bar had been made to its steel plant. The raw material used in this transaction was required to be disallowed proportionately which had not been done.	24.09	41.18
The Department accepted (September 2013) our audit observation and stated that revision proposal has been initiated.						

<sup>30</sup> The Supreme Court judgement in case of CCE Chandigarh Vs. Steel Strips Ltd.(1995)(77) ELT-248(SC)

6	1	ACCT, Unit-11, Ahmedabad	<u>2007-08</u> 20/12/11	ITC is admissible on taxable goods and not on tax-free goods. AA in assessment of the dealer did not proportionately reduce ITC to the extent of exports of tax free fabrics made during the year.	4.90	8.38
The Department accepted our observation and stated (September 2013) that dealer had filed appeal and audit observation has been forwarded to the appellate authority for revision proceedings.						
7	1	ACCT, Unit-11, Ahmedabad	<u>2007-08</u> 11/09/11	ITC is not admissible on job work under Section 11(3)(A). Income of ₹ 314.27 lakh was received by the dealer for job work activity carried out by him. In assessment AA did not proportionately reduce ITC to the extent of utilisation of goods in the job work.	6.85	11.71
The Department accepted the fact that the capital goods and other consumable goods used in the job work are not entitled for ITC, but it stated that all the goods were not used in job work. As such, a portion of this is to be allowed as ITC. However, the exact amount to be disallowed/allowed was not indicated.						
8	1	ACCT, Unit-104, Gandhidham	<u>2007-08</u> 22/09/11	ITC is admissible on taxable goods and not on tax-free goods. ITC on capital goods can be availed on manufacture of taxable goods. Tax free sale of goods valued ₹ 140.26 lakh was allowed but ITC availed on capital goods had not been proportionately reduced in the assessment by the AA.	0.62	1.05
The Department accepted our observation and stated (September 2013) that revisional proceeding has been initiated.						
9	1	DCCT, Range-18, Valsad	<u>2006-07</u> 28/01/2011	Cess payable under Motor Sprit Act does not fall within the definition of tax under GVAT Act. However, the AA incorrectly allowed ITC of ₹ 2.69 lakh on the cess paid.	2.69	4.60
The Department accepted our observation and stated (September 2013) that revisional proceeding has been initiated.						
10	1	ACCT, Unit 4, Rajkot	<u>2006-07</u> 09/11/2010	Form 19 was prescribed under the erstwhile GST Act for purchase of goods at concessional rates. This Form is not prescribed under GVAT Act and no ITC is admissible under the Act. However, the AA allowed the ITC of ₹ 5.60 lakh which was incorrect.	5.60	17.58
The Department accepted our observation and stated (September 2013) that reassessment proceedings has been initiated.						
11	1	ACCT, Unit 1, Anand	<u>2007-08</u> Self assessment	The ITC is to be limited to the amount certified in the VAT Audit Report. However, this was not done at the time of receipt of annual return in one case. This resulted in incorrect allowance of ITC of ₹ 9.96 lakh.	9.96	36.94
The Department accepted our observation and stated (September 2013) that reassessment proceedings has been initiated.						
<b>Total</b>					<b>70.56</b>	<b>150.20</b>

After we reported (July 2013) the matter, the Government confirmed (October 2013) the replies of the Department in ten cases; the reply in the remaining one case has not been received (December 2013).

### 2.13.18 Excess grant of ITC

Section 11 of the GVAT Act, 2003: a registered dealer who purchased taxable goods shall be entitled to claim ITC equal to the amount of tax paid. The ITC shall be allowed on his purchase of taxable goods in the State.

We noticed in nine assessments finalised between June 2010 and November 2011 for the period 2006-07 and 2007-08 and one self-assessed case of 2007-08, that the AAs had allowed excess ITC of ₹ 29.05 lakh, besides, interest of ₹ 19.32 lakh and

penalty of ₹ 6.53 lakh was also leviable as detailed below:

Sl No.	Name of the office	Assessment year Date of assessment	Nature of observation	Excess grant of ITC including interest and penalty (₹ in lakh)
1	ACCT-22, Ahmedabad	2006-07 25/08/10	i) AA did not reduce ITC at the rate of four <i>per cent</i> availed on purchase of LPG which was used as fuel. ii) Reduction of ITC proportionate to the extent of its utilisation in job work had not been done by AA.	2.51
The Department accepted (October 2013) our observation and recovered ₹ 2.94 lakh.				
2	ACCT-100, Jamnagar	2006-07 25/02/11	ITC was availed other than on tax invoices which was not in consonance with the provisions of Section 11(4).	10.60
The Department accepted (September 2013) our observation and initiated revision proceedings.				
3	DCCT-18, Valsad	2006-07 28/12/10	AA in assessment incorrectly allowed ITC on oxygen, acetylene gas used as fuel, computer/vehicle parts, and purchases from such dealers whose RC numbers were either not furnished or were furnished incorrectly.	5.16
The Department accepted our observation and stated (September 2013) that as the case is before the appellate authority instruction have been issued to consider the same while adjudicating the matter.				
4	ACCT-6, Vadodara	2006-07 16/12/10	AA did not disallow ITC to the extent of goods used for the composition scheme opted by the dealer under Section 14(3)(1)(a) of GVAT Act, 2003 which prohibits claim of tax credit.	2.84
The Department accepted (September 2013) our observation and raised demand, the particulars of recovery have not been received (December 2013).				
5	ACCT-20, Ahmedabad	2006-07 9/06/10	Purchase as per the Balance Sheet was ₹ 13.33 crore, AA considered purchase of ₹ 13.42 crore as per the VAT return and allowed ITC on the same without reconciling the difference between the two, resulting in excess grant of ITC.	4.14
The Department accepted (September 2013) our observation and raised demand, the particulars of the recovery have not been received (December 2013).				
6	ACCT-69, Surat	2007-08 5/09/11	Dealer availed ITC on entire purchases but reversal of the same on account of credit received for damaged goods had not been considered by the AA in the assessment of the dealer.	8.80

The Department stated (October 2013) that the trade discount has been deducted first and thereafter liability has been considered for tax. The reply of the Department is not acceptable as it could be ascertained from the tax invoices issued by the seller that discount was inclusive of tax element.				
7	CTO Kapadvanj	2007-08 Self-assessed	Dealer had incorrectly brought forward ITC though he had received the refund of the ITC in the previous assessment year.	4.97
The Department accepted (September 2013) our observation and reduced ITC from the balance ITC of the subsequent year i.e. 2008-09.				
8	ACCT-93, Rajkot	2006-07 18/03/11	AA did not reduce ITC proportionate to the extent of its utilisation in job work, which resulted in excess grant of refund and interest thereon to the dealer.	1.63
The Department accepted (September 2013) our observation and raised demand, the particulars of recovery have not been received (December 2013).				
9	ACCT-56, Bharuch	2007-08 12/02/11	Under Section 11(10) of GVAT Act on purchase return of goods, ITC to that extent had not been reduced resulting in excess availment of ITC by the dealer.	2.24
The Department accepted (September 2013) our observation and raised demand, the particulars of recovery have not been received (December 2013).				
10	ACCT-104, Gandhidham	2007-08 26/11/2011	AA incorrectly allowed ITC brought forward from the previous assessment period of the dealer.	11.99
The Department accepted (September 2013) our observation and initiated revision proceedings.				

After we reported (July 2013) the matter, the Government confirmed (October 2013) the replies of the Department in nine cases; the reply in the remaining one case has not been received (December 2013).

### 2.13.19 Incorrect/excess grant of ITC on capital goods

Section 2(5) of GVAT Act, 2003: capital goods means plant and machinery other than second hand plant and machinery meant for use in manufacture of taxable goods and accounted as capital assets in the books of accounts. Under Section 11 of GVAT Act, 2003, the ITC shall be allowed on the purchase of taxable goods in the State and used as capital goods meant for manufacture of taxable goods.

(i) In two<sup>31</sup> offices, in case of three assessments of two dealers finalised between March 2011 and October 2011 for the period between 2006-07 and 2007-08, we noticed that:

- In one case, the dealer for the assessment year 2006-07 had availed ITC on cement, steel and paint supplied by the contractor, who had shown these items separately in his bill. The AA had granted ITC though the dealer had not executed the work himself but had acquired immovable property. This resulted in excess grant of ITC of ₹ 5.00 crore including interest of ₹ 1.31 crore and penalty of ₹ 2.21 crore.

<sup>31</sup> ACCT: 5 Ahmedabad  
DCCT: 15 Surat

- Further, in the assessment for the period 2007-08 of the same dealer the AA allowed ITC on capital goods like vehicle, furniture and kitchen utensils etc., which were not used in the manufacture of goods. This resulted in excess availment of ITC of ₹ 1.33 crore including interest of ₹ 0.55 crore.
- In case of another dealer, it was noticed that in 2006-07 and 2007-08 he had purchased Plant Machinery and Air conditioner parts worth ₹ 4.43 crore and for both the years claimed ITC of ₹ 0.30 crore. Further, in the schedule of fixed assets to the financial statements plant & machinery of ₹ 0.82 crore acquired in 2006-07 and ₹ 0.68 crore in 2007-08 had been capitalised. The aggregate value of asset capitalised for the period 2006-07, 2007-08 was ₹ 1.49 crore vis-à-vis purchases of capital goods valued ₹ 4.43 crore on which ITC had been claimed by the dealer. Thus, considering the amount of assets capitalised i.e. ₹ 1.49 crore as compared to vatable purchase of capital goods made of ₹ 4.43 crore, the ratio of assets capitalised works out to 33.73 per cent and thereby the claim of ITC was required to be restricted to the extent of ₹ 0.10 crore. This resulted in excess availment of ITC of ₹ 0.20 crore besides interest of ₹ 0.18 crore was also leviable.

After these were pointed out the Department in two cases of the same dealer stated (September 2013) that the divisional authority is instructed to verify the actual invoices and the use of material shown in the head of capital goods. In other case, the Department did not accept the audit contention and cited the provision of Section 2(5) of capital goods and stated that the dealer had capitalized the purchases of Plant Machinery and Air conditioner parts in the books of account which were for manufacturing purposes. Further, as the dealer has received tax invoices in the tax period he was entitled to claim ITC in the particular tax period. Tax period is on monthly basis while the installation and erection of plant and machinery is a continuous process and capitalisation has been done as per the accounting norms. The reply of the Department is not correct as in the audited statement of accounts the asset under the head plant and machinery capitalized was 33.73 per cent only, whereas ITC of ₹ 0.30 crore had been availed on purchase of capital goods valued ₹ 4.43 crore. Thus, to the extent of 66.27 per cent of the capital goods that had not being capitalised, ITC of ₹ 0.38 crore including interest of ₹ 0.18 crore was required to be disallowed.

After we reported (July 2013) the matter, the Government confirmed (October 2013) the replies of the Department in all the cases.

(ii) We noticed in three offices<sup>32</sup>, in case of assessments of three dealers finalised between October 2011 and January 2012 for the period 2007-08 that in one case dealer availed ITC on capital goods that had not been booked in balance sheet and in other two cases, dealers availed ITC on commodities (Weighing scale, Effluent treatment plant), which did not fall under the head plant and machinery. This resulted in excess availment of ITC by the dealers

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<sup>32</sup> ACCT: 56, Bharuch, 58 Surat,  
DCCT: 7 Gandhinagar

to the tune of ₹ 2.54 lakh. Besides, interest of ₹ 1.83 lakh and penalty of ₹ 1.96 lakh was also leviable.

We pointed out the above cases to the Department between March 2012 and February 2013. The Department stated (October 2013) in two cases that the dealers have filed appeal before the appellate authority and the audit observation was forwarded to them for necessary action. In another case, regarding the purchase of goods for which no addition was made in the schedule of fixed assets as plant and machinery, the Department accepted our audit observation and stated that the reassessment order was passed and ITC of ₹ 0.59 lakh was reduced.

After we reported (July 2013) the matter, the Government confirmed (October 2013) the replies of the Department in all the cases.

### **2.13.20 Irregular refund of ITC on capital goods**

Section 11(3)(a)(vii) of GVAT Act, 2003:ITC shall be allowed on purchase of taxable goods within the State and intended for use as raw material in the manufacture of taxable goods and for use as capital goods meant for use in manufacture of taxable goods.

The GVAT Act, 2003 and the Rules made there under do not provide for refund of ITC on capital goods.

In one<sup>33</sup> office, we noticed in assessment of two dealers for the period 2007-08 finalised between October and December 2011, that the AAs in assessment granted refund of ₹ 1.93 lakh on capital goods (machinery) which

was irregular as capital goods was required to be used continuously for the period of five years, and granting of refund violated the said condition. This resulted in irregular benefit of ₹ 1.93 lakh besides interest of ₹ 1.36 lakh was also leviable.

We pointed out the above cases to the Department in January 2013. The Department accepted (September 2013) our audit observations in both the cases and raised demand in one case but the particular of recovery has not been received. In another case the Department recovered ₹ 0.41 lakh.

After we reported (July 2013) the matter, the Government confirmed (October 2013) the replies of the Department in all the cases.

<sup>33</sup> ACCT: 11 Ahmedabad

### 2.13.21 Incorrect grant of remission and consequent irregular refund of ITC

Paragraph no.1 of notification no (GHN-9) VAT-2009/S.41(1)(11)-TH dated 27/02/2009 states that a registered dealer who is a manufacture of specified goods and has obtained eligibility certificate prior to 1<sup>st</sup> April 2006 from Khadi and Village Industries Commission (KVIC) or Gujarat Rajya Khadi Gramodhyog Board (GRKGB) as well as exemption certificate from the commissioner under the provision of earlier law would be eligible for remission of tax on the sales of specified goods from April 2006 subject to the period as (i) specified in eligibility certificate or (ii) till the sales of specified goods does not exceed the quantity whichever event occurs earlier. Further, as per notification no. (GHN-8) VAT-2009/S.40(1)(5)-TH dated 27-02-2009, Government granted refund of the amount of tax separately charged on purchases of goods w.e.f. 01-04-2006. The extant provision of the said notification was further reiterated vide public circular no Gujka/Vat/16/2008-09/ja.69/62 dated 7/03/2009.

In three<sup>34</sup> offices, we noticed in case of three dealers for the assessment periods between 2007-08 and 2009-10 finalised between May 2011 and February 2012 that the dealers were in possession of eligibility certificate issued by appropriate authority KVIC and GRKGB as well as exemption certificate from the Commissioner under the provisions of the erstwhile Gujarat Sales Tax Act, 1969. Two out of three dealers were granted exemption certificate for the period from 1.4.2002 to

31.3.2007 and it was renewed from 1.4.2007 to 31.3.2012. As such the dealer was entitled to the benefit up to 31.3.2007 only, the benefit granted after this period was irregular and required to be recovered. This resulted in irregular grant of remission of ₹ 4.43 crore including interest of ₹ 1.84 crore and payment of refund of ITC of ₹ 1.09 crore.

Similarly, in the other case the eligibility certificate was granted up to 21.12.2006 and this was renewed up to 21.12.2009. So the dealer was entitled to the benefit of KVIC up to 21.12.2006. The grant of remission benefit of ₹ 0.13 crore including interest of ₹ 0.05 crore and payment of refund of ITC availed of ₹ 0.08 crore after 21.12.2006 was irregular and was required to be recovered.

After this was pointed out the Department accepted (September/October 2013) audit observations in all the three cases, raised demand in one case and initiated revision proceedings in the remaining two cases.

After we reported (July 2013) the matter, the Government confirmed (October 2013) the replies of the Department in all the cases.

<sup>34</sup> ACCT: 11 Ahmedabad, 24 Gandhinagar and 40 Vadodara

### 2.13.22 Excess availment of ITC on closing stock

Explanation under Section 11 of GVAT Act, 2003 stipulates that the amount of ITC on any purchase of goods shall not exceed the amount of tax actually paid or payable under this Act, *ibid*, in respect of the same goods.

In one<sup>35</sup> office, for the period 2006-07 finalised in March 2011 we noticed in the case of the dealer that he had purchased Mild steel scrap and availed ITC thereon at the

rate of 12.5 *per cent* instead of the applicable rate of four *per cent* on the said commodity. The dealer to the extent of closing stock carried forward ITC at the rate of 12.5 *per cent* to the subsequent year. Similarly, in two self assessed cases of the same dealer for the period 2007-08 and 2008-09, ITC had been carried forward. Thus, considering the value of stock in hand at the end of each year, the excess carried forward ITC aggregated to ₹ 54.78 lakh as under:

(₹ in lakh)

Year	Closing balance	ITC carried forward	ITC admissible as per the applicable rate	Excess ITC availed
2006-07	7.80	10.82	0.31	10.51
2007-08	26.75	18.35	1.07	17.28
2008-09	58.76	33.34	6.35	26.99
<b>Total</b>	<b>93.31</b>	<b>62.51</b>	<b>7.73</b>	<b>54.78</b>

We pointed out these cases to the Department in July 2012. The Department accepted (October 2013) our observations for all the three years and raised demand for two assessment periods; but particulars of recovery have not been received. The reassessment proceedings were initiated for the period 2008-09.

After we reported (July 2013) the matter, the Government confirmed (October 2013) the replies of the Department in all the cases.

### 2.13.23 Conclusion

During the Performance audit, we noticed system as well as various compliance deficiencies in claim and admittance of ITC. HSN codes were not finalised by the Department even after seven years since inception of the GVAT Act. This has affected effective disposal of ITC claims. There was no mechanism to ascertain that ITC was not allowed on the purchases made from those selling dealers whose registration certificates were cancelled by the Department. There was no uniformity in selection of cases for audit assessments with reference to the earmarked criteria for task generation. Further, non-finalisation of refund cases in time lead to payment of interest. Lastly, instances of excess/incorrect/short adjustment of ITC were also noticed.

<sup>35</sup> ACCT: 7 Ahmedabad

#### **2.13.24 Summary of recommendation**

Apart from the recommendations made under individual paragraphs, the Government may consider:

- strengthening internal control mechanism for effective checking up of payment of ITC; and
- put in place effective procedures, processes that adequately ensure compliance to the provisions of Act/Rules framed.

## 2.14 Performance Audit on ‘Revenue recovery action under Land Revenue Code for accumulated arrears of Sales Tax/Value Added Tax’

### Highlights

- In 27 assessment units, the Assessing Authority (AA) either did not issue notices for recovery of the Government dues under the Gujarat Land Revenue Code, 1879 or issued the same belatedly. This resulted in non-realisation of revenue of ₹ 271.22 crore from 172 dealers.  
**(Paragraph 2.14.8)**
- Lack of co-ordination within the Commercial Tax Department (CTD) resulted in non-realisation of arrears of revenue of ₹ 129.07 crore from 42 dealers in 17 assessment units.  
**(Paragraph 2.14.9.2)**
- The CTD attached the properties of 50 tax defaulters for recovery of arrears of ₹ 1,055.65 crore during September 2004 to February 2013. In absence of a prescribed time line to auction the properties so attached, the arrears of revenue remained to be recovered.  
**(Paragraph 2.14.10)**
- The CTD did not take serious initiatives in pursuing the Revenue Recovery Certificates issued to other State in case of 261 assessments involving dues of ₹ 389.56 crore.  
**(Paragraph 2.14.11.1)**
- It was noticed that though, the provisions of the Gujarat Land Revenue Code, 1879/Gujarat Value Added Tax Act, 2003 provides for creation of first charge in favour of the State for recovery of tax dues, the CTD failed to invoke the provisions therein and take legal action against the banks/financial institutions to recover its arrears of ₹ 78.24 crore.  
**(Paragraph 2.14.12)**
- In four cases, non-filing/belated filing of claims with the Official Liquidator resulted in non-realisation of dues of ₹ 73.20 crore.  
**(Paragraph 2.14.13)**
- Reassessment in two cases remanded by the Gujarat Value Added Tax Tribunal involving dues of ₹ 10.59 crore was not done even after a lapse of three years from the date of passing orders led to an impasse in recovery proceeding.  
**(Paragraph 2.14.16)**
- Tax Monitoring Committee appointed by the Government to monitor recovery of outstanding dues of the State proved ineffective as the Committee did not meet regularly as per the norms. Further, no mechanism was evolved by the CTD to speed up the recovery process.  
**(Paragraph 2.14.17.1)**

### **2.14.1 Introduction**

Gujarat Value Added Tax (VAT) is the major source of the State revenue and contributed 70.51 *per cent* (₹ 31,202.31 crore) of the total tax revenue (₹ 44,252.29 crore) to the State exchequer during the year 2011-12. The assessment, levy and collection of the Sales Tax in Gujarat was governed under the Gujarat Sales Tax Act, 1969 (GST Act) and the rules framed there under upto 31 March 2006. Thereafter, it is governed by the Gujarat Value Added Tax Act, 2003 (GVAT Act) and the rules made there under. The transactions relating to inter-state sales are governed by the Central Sales Tax Act, 1956 (CST Act) and the rules made there under.

As per Section 46(1)(i)<sup>36</sup> of the GVAT Act read with Section 9 of the CST Act, for the purpose of effecting recovery of the amount of tax, penalty, interest and amount forfeited, which is due and recoverable from any dealer as arrears of land revenue, the Commissioner of Commercial Tax (CCT) shall have and exercise all the powers and perform all the duties under the Gujarat Land Revenue Code, 1879 (GLRC) which *inter-alia* includes the process of arrest and imprisonment of the defaulters.

Every dealer is required to deposit the tax either monthly or quarterly within a specified period. If these dues are not paid by the dealer within the time specified in the demand notice or the extended period, the assessing authority (AA) may take steps for recovery of dues as arrears of land revenue. For those dealers who had property within the jurisdiction of the assessing officers, the assessing officers initiated action under GLRC directly. In these cases no separate Revenue Recovery Certificates (RRC) were issued. While the assessing officers issued RRC in respect of those dealers who possessed properties under jurisdiction of another assessing authority within the State and District Collectors of other States where the dealers had shifted or possessed the properties.

The District Collector of the other States were required to take necessary steps for the recovery of dues under Revenue Recovery Act, 1890 as arrears of land revenue by attaching the defaulter's movable/immovable property.

### **2.14.2 Organisational set up**

The Commercial Tax Department (CTD) of Gujarat functions under the control and supervision of the Additional Chief Secretary, Finance Department. The Commissioner of Commercial Tax (CCT) is head of the Department. The Department is geographically organised into seven administrative divisions, each headed by an Additional/Joint Commissioner (Addl/JC) of Commercial Tax. Division have 'ranges', each headed by a Deputy Commissioner (DC); there are 23 ranges in the State. A range has assessment units each headed by an Assistant Commissioner/Commercial Tax Officer (AC/CTO); there are 104 units in the State. In addition, there are 11 permanent, two seasonal/temporary check posts headed by AC/CTO. Besides,

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<sup>36</sup> Previously under Gujarat Sales Tax Act 1969, similar powers were given to CCT vide Section 47 A of the Act *ibid*.

there are staff positions in the Department's head office for administration, audit, legal, appeal, enforcement, e-governance, internal inspection *etc.*, headed by Addl/JC or DC.

### 2.14.3 Reasons for selection of topic

We had during our local audit noticed that the department was not paying adequate attention for recovery of arrears of revenue. The arrears had increased from ₹ 7,939.50 crore to ₹ 16,566.45 crore during the period 2007-08 to 2011-12 which was 53 per cent of the total revenue of Sales Tax/VAT of the state as on 31 March 2012. This topic was not covered since the last 10 years. Therefore we considered appropriate to conduct this Performance Audit to ascertain the adequacy and effectiveness of the steps taken by the Department for safeguarding the Government revenue.

### 2.14.4 Audit objectives

We conducted this Performance Audit to get a reasonable assurance that:

- adequate provisions/rules exist to safeguard the Government revenue;
- the procedural/codal provisions and executive instructions are effectively complied to ensure the timely collection of arrears;
- the Department is effectively using the powers available to collect the arrears of revenue; and
- adequate internal control and monitoring mechanism exists for prompt realisation of arrears of revenue.

### 2.14.5 Scope and methodology of Audit

We conducted the audit for the period from 2007-08 to 2011-12 during October 2012 to March 2013. We scrutinised the records maintained at the Finance Department, CCT office and 30<sup>37</sup> units out of 104 units (29 *per cent*) covering seven divisions of CTD in the State.

We called for unit wise and dealer wise information on arrears of revenue from CCT but the same was not furnished. The Department provided us only with the unit wise information of Revenue Recovery Certificate (RRC)<sup>38</sup> cases. We found that out of 104 units, RRCs were issued by 62 units. These, 62 units had issued 657 RRCs and out of these we selected 30 units covering 389 RRC cases in such a way so as to cover all seven divisions of the State as well as maximum number of RRCs issued by these units. Besides, in these selected units, we have also verified all the arrear cases where Department was required to take action under GLRC/Revenue Recovery Act, 1890 for recovery of dues.

<sup>37</sup> North Gujarat - ACCT:30 and 33, South Gujarat- ACCT: 58, 59, 63, 65, 74 and 75: Central Gujarat -ACCT: 2, 5, 6, 7, 8, 11, 40, 41, 42, 45, 46, 47 and 57 Saurashtra - ACCT: 78, 80, 81, 85, 88, 93, 99 and 102: Kutch ACCT:104

<sup>38</sup> A statement of accounts of the dealer certified by the Collector or by an Assistant or Deputy Collector under Section 149 of GLRC, 1879.

We held an entry conference on 21 January 2013 at the level of Additional Chief Secretary (ACS), Finance Department and Commissioner of Commercial Tax (CCT) during which we explained our audit objectives and methodology. The draft performance audit report was issued to the Department/Government in August 2013 for their comments. We held an exit conference on 19 December 2013 at the level of ACS and CCT during which we discussed the major audit findings. Replies/responses received from the Department during the exit conference have been suitably incorporated in the relevant paragraphs.

We acknowledge the co-operation extended by the Finance Department and the Commercial Tax Department in providing the necessary information and records during the course of our audit.

### Audit findings

#### 2.14.6 Arrears of revenue

As per the information furnished by the CTD for the year 2007-08 to 2011-12, the arrears of revenue is shown as under:

(₹ in crore)

Year	Opening balance of arrears	Arrears added during the year	Arrears collected during the year	Cumulative arrears at the end of the year	Sales Tax/VAT receipts	Percentage of cumulative arrears to the revenue of the year
1	2	3	4	5	6	7
2007-08	8,352.53	2,326.70	2,739.73	7,939.50	15,104.54	52.56
2008-09	7,939.50	2,019.07	1,104.67	8,853.90	16,810.65	52.67
2009-10	8,853.90	6,428.33	4,084.70	11,197.53	18,199.79	61.53
2010-11	11,197.53	5,238.54	1,929.99	14,506.08	24,893.46	58.27
2011-12	14,506.08	3,059.10	998.73	16,566.45	31,202.31	53.09

(Source: The Statistical Profile of Commercial Tax Department)

The above table indicates that:

- The arrears almost doubled from ₹ 8,352.53 crore as on 1 April 2007 to ₹ 16,566.45 crore (198 per cent) as on 31 March 2012;
- The arrears during the year 2009-10 had substantially increased compared to the previous year as the Department during the year had finalised the last assessment (2005-06) under the Sales Tax regime. The assessments of dealers who did not furnish the details were also completed on ex-parte basis;
- The percentage of arrears to total GST/GVAT collection ranged between 53 and 62 per cent.

- The pace of recovery process was very slow in comparison to the mounting arrears. During the period 2007-08 to 2011-12, the Department could recover on average only 21 *per cent* arrears of revenue to the cumulative arrears.

### Arrears relating to GST and VAT

We requested for the detailed breakup of the arrears relating to GST and VAT regime from the Department. But the information was not available with the Department, as such we could not ascertain the efforts made by the Department to recover the arrears pertaining to GST and VAT regime.

### Break up/correctness of the arrears of revenue

We called for the information regarding the break-up of arrears of revenue for the year ended 31 March 2012. The CTD initially submitted the figures on 16 August 2012. Later on it furnished another set of revised figures on 16 March 2013. In addition to this, the CTD had featured another set of figures in their statistical profile published by the Department in January 2013. All the three sets were different as mentioned below:

(₹ in crore)

Sl. No.	Particulars	Information furnished in August 2012	Information furnished in March 2013 (Revised)	Information published in Statistical profile by CTD in January 2013
1	2	3	4	5
1	Stages of Action:			
(a)	Demand covered by recovery certificates	382.32	382.32	Not mentioned
(b)	Recovery stayed by -			
	(i) High Court & other judicial authorities	6,948.79	6,948.79	6,948.79
	(ii) Government i.e. departmental appellate authority	1,187.51	1,187.51	1,187.51
(c)	Recovery held-up due to-			
	(i) Rectification/ review of application	52.40	0.00	Not mentioned
	(ii) Dealers being insolvent	463.27	0.00	1,710.53 <sup>39</sup>
(d)	Amount likely to be written off	6,878.28	0.00	52.40
(e)	Other stages	653.88	3,159.27	Not mentioned
2	Current recoveries (other than recoveries)	--	--	6,667.22 <sup>40</sup>
	<b>Total</b>	<b>16,566.45</b>	<b>16,566.45</b>	<b>16,566.45</b>

<sup>39</sup> Figure includes liquidation.

<sup>40</sup> Figure includes recovery pending under scheme of sugar factories and installment.

Three sets of figures were found at variance indicates a major systemic lacunae in compilation of data. This entails a serious risk of important cases being wrongly categorised which would inadvertently benefit the dealers. The reasons for the three sets of different figures were not furnished despite being requested (May 2013).

**Correctness of the figures in respect of RRC cases:-**Further, during test check of recovery files in the selected 30 Units, we noticed that there was arrears of revenue of ₹ 518.63 crore in RRC cases while the information furnished by the Department states of ₹ 382.32 crore only under RRC cases. Thus, prima facie, the figures of RRC cases furnished by the Department seems to be incorrect and needs to be reconciled.

It would be seen from the above table that the data was not reliable and dependable.

During the exit conference, the Department agreed (December 2013) that there is an urgent need to reconcile the data and promised to do it at the earliest.

#### Analysis of age wise arrears

We have called for the information of age wise analysis of arrears of revenue, however, the Department furnished only two categories of age wise details i.e. more than five years old recovery and less than five years old recovery.

The age wise analysis of the pending arrears with the cumulative total arrears of the Department is as shown below:

(₹ in crore)

Year	Pending arrears		Cumulative total arrears	Percentage of arrears more than five years old to cumulative total arrears
	Less than five years old	More than five years old		
1	2	3	4	5
2007-08	6,100.49	1,839.01	7,939.50	23.16
2008-09	6,014.84	2,839.06	8,853.90	32.07
2009-10	7,019.51	4,178.02	11,197.53	37.31
2010-11	10,458.26	4,047.82	14,506.08	27.90
2011-12	11,677.89	4,888.56	16,566.45	29.51

The percentage of arrears for more than five years old increased from 23 per cent as on 31 March 2008 to 30 per cent as on 31 March 2012, with a steep rise of 37 per cent in 2009-10. Looking to the increasing trend of old arrears, it seems that the Department did not deal with the problem effectively.

The Department replied (November 2013) that they had implemented from time to time *Vechan Vera Samadhan Yojanas* wherein interest and penalty were waived so as to recover pending dues from the defaulting dealers. Further, unit offices were taking various steps to recover the outstanding dues which were directly monitored by the Joint Commissioner concerned. In addition, instructions were being issued to the Unit heads in the monthly meetings to speed up the recovery of outstanding arrears. However, the

accumulation of arrears proves that the monitoring system of the Department needs to be geared up.

**We recommend that the Department may pay special attention to old arrears and set up a system for its time bound recovery.**

#### **2.14.7 Absence of separate recovery machinery**

The AAs were responsible for effecting the recovery of arrears in respect of the GST/GVAT. In respect of the seven divisions throughout the State, JCCTs were responsible for monitoring the recoveries under the control of the Addl. CCT. However, keeping in view the accumulation of the arrears it was evident that affecting the recoveries through the AAs along with their other works had proved ineffective, which are discussed in subsequent paragraphs

The Department replied (November 2013) that the departmental officials such as JCCT and DCCT regularly monitor the recovery proceedings initiated by the AAs for recovering the outstanding arrears. The fact remains that the arrears have increased during 2007-08 to 2011-12 from ₹ 8,352.53 crore to ₹ 16,566.45 crore, which indicates that the recovery proceedings initiated by the AAs over and above their regular tasks is not effective.

**Government may consider putting in place machinery for focusing on recovery of arrears under the repealed/current Acts.**

#### **2.14.8 Not invoking provisions under GLRC**

The GST/GVAT Act, empower the AA to recover the tax dues as arrears of land revenue as per the provisions of GLRC. If the payment of dues is not made within 10 days of the receipt of notice issued under Section 152 of GLRC, the action could be taken to distraint and sell the defaulters' movable and immovable property as per Section 154 and 155 of GLRC. After giving seven days' notice under Section 200 of GLRC, the premises of the defaulters could be visited for compiling the required details of his property.

During the scrutiny of the recovery files of 27<sup>41</sup> units, we observed that 172 dealers in 245 assessment cases had not paid the dues of ₹ 271.22 crore within the period specified in the demand notices. However, the department either did not issue notices under GLRC at all or issued it belatedly as mentioned in the following paragraphs:

#### **Notices not issued under GLRC**

Government dues aggregating to ₹ 34.30 crore were not paid by 40 dealers in 43 assessments for the period from 1997-98 to 2007-08, finalised between March 2004 and March 2012. The concerned AAs did not issue notices under

<sup>41</sup> ACCT 8, 11, 21, 30, 33, 40, 41, 42, 45, 46, 47, 57, 58, 59, 63, 65, 74, 75, 78, 80, 81, 85, 88, 93, 99, 102, 104

Section 152 and under section 200 of GLRC. Thus, the amount could not be recovered till date.

After this being pointed out, the Department stated (November 2013) that notices have been issued in 15 cases and in two cases the amounts have been recovered. The reply in the remaining cases has not been received.

### **Notices issued belatedly under GLRC**

Government dues aggregating to ₹ 236.92 crore were not paid by 132 dealers in 202 assessments for the period from 1995-96 to 2011-12 finalised between September 2005 and March 2012. The AAs issued notices under Sections 152/200 of GLRC belatedly with delays ranging from six to 24 months. Further, no subsequent action was initiated like creation of charge on the immovable/movable properties of the defaulters, attachment of properties etc. for recovery of the dues. This resulted in non recovery of dues.

After this being pointed out, the Department stated that in 29 cases, the recovery action such as creation of charge and attachment of property was initiated by the Department at our instance, 25 cases were remanded by the appellate authorities and the amounts were paid by the dealers.

Further, in 35 cases, the replies given by the Department were not relevant to our observations.

## **2.14.9 Lack of co-ordination amongst units within the Department**

**2.14.9.1** As per the provision made in Department's GST Manual based on Section 149 of the GLRC, if the property of the defaulting dealer is situated outside the jurisdiction of AA, the AA may issue the RRC to the concerned AA under whose jurisdiction the dealer's property situates. Further, as per the Manual, each division is required to maintain a register in Form 18 showing the details such as the name of the defaulting dealer, Registration Certificate (RC) number, dues, details of recovery action taken etc., in order to watch the progress of recovery of all cases including the cases for which RRCs were issued inside/outside the State.

However, we observed that no such register was maintained in any test checked unit. The total amount of RRC cases for the entire State as furnished by the Department was ₹ 382.32 crore while in the selected 30 Units, we found that the total amount of RRC cases was ₹ 518.63 crore. This indicated that the information furnished was incorrect. The discrepancies could have been avoided had the RRC register No.18 been maintained.

**2.14.9.2** We observed from the records of 17 units<sup>42</sup> that the RRCs involving dues of ₹ 129.07 crore were issued by the AAs in respect of 42 dealers to the other AAs within the State under whose jurisdiction the dealer's properties were situated. However, the AAs who received RRCs neither acknowledged the receipt of RRCs nor took any effective steps to proceed

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<sup>42</sup> ACCT : 5, 6, 7, 21, 30, 33, 42, 46, 57, 63, 65, 78, 80, 81, 85, 93, 104

towards recovery of arrears. The officers who initiated the cases also did not follow the cases for recovery. This has resulted in non-realisation of arrears of ₹ 129.07 crore in 125 assessment cases. A few illustrative cases are mentioned below:

(₹ in crore)			
Sl. No.	Name of the dealer/ RC/TIN No.	Assessment Period	Demand raised
1	M/s. Ambic Agro Oils /12852088	1991-92 to 1993-94	12.47
<p><b>Nature of observation:</b> The assessments of the dealer were finalised by the Assistant Commissioner of Commercial Tax (ACCT) 5, Ahmedabad in May 1998. RRC was issued to ACCT Kadi in February 2000 after a lapse of one year and seven months. After a delay of six years i.e., June 2006, the ACCT 30, Kadi created charge on the property under Section 155 of GLRC and intimated (December 2009) the ACCT 5, Ahmedabad regarding the same. The ACCT 5 issued reminders to ACCT 30, Kadi during September 2010 to February 2012 in order to ascertain the subsequent actions taken by him for recovery of the dues, but we found that no action was taken by ACCT 30, Kadi.</p> <p>When this was pointed out, the Department stated (November 2013) that the ACCT, Kadi had published notification for sale of assets and also mentioned that the property of the dealer is not sold till date. However, the reply given by the Department was incomplete as nothing was mentioned regarding fixation of upset price, dates of notification for sale of assets, reason for non disposal of properties till date etc.</p>			
2	M/s. Jigar Trading Company/ 24080600235	2009-10	6.91
<p><b>Nature of observation:</b> The assessments were finalised by ACCT 1, Surendranagar under Section 32 (2) (b) of GVAT Act in August 2010 and RRC was issued to ACCT 11, Ahmedabad in June 2011. However, no action was taken after receipt of RRC by the ACCT 11.</p> <p>When we pointed this out, the Department stated (November 2013) that the ACCT 1, Surendranagar had issued a reminder to the ACCT 11, Ahmedabad in October 2013.</p>			
3	M/s. Decora Frits and Colors Pvt. Ltd/ 63114138	1995-96 to 1998-99	3.45
<p><b>Nature of observation:</b> The ACCT 1 Surendranagar finalised the assessments and RRC was issued to ACCT 4, Rajkot in May 2004. Thereafter, the case was not pursued by ACCT 1, Surendranagar. However, at the instance of audit, ACCT 1, Surendranagar issued reminder in April 2013, but no reply was received from the ACCT 4 Rajkot regarding action taken for creation of charge and disposal of properties. The matter was also not brought to the notice of higher authorities by the ACCT 1 Surendranagar.</p> <p>When we pointed this out, the Department stated (November 2013) that claim was booked with Recovery officer in July 2013.</p>			
4	M/s. Govardan Oils Pvt. Ltd/ 27813976	1995-96 and 1996-97	1.65
<p><b>Nature of observation:</b> The assessments were finalised by ACCT 33, Kadi between February 2001 and November 2008 and issued RRCs to ACCT 1, Ahmedabad in August 2001 and ACCT 56, Bharuch in February 2002. Subsequently, reminders were issued to ACCT 1 Ahmedabad between September 2001 and January 2013. In the case of ACCT 56, Bharuch, reminders were issued between February 2002 and June 2010. However, no replies were received from both the units.</p> <p>When we pointed this out in audit, the Department stated (November 2013) that the progress report was called from Bharuch and Ahmedabad. Further, a new RRC was also issued to ACCT 4, Vadodara in January 2013.</p>			

5	M/s. Ganapati Textiles/ 27805331	1983-84 to 1990-91	1.04
<p><b>Nature of observation:</b> The assessments were finalised by the ACCT 33, Kadi and RRC was issued to ACCT 4 Ahmedabad in September 1996, ACCT 7, 14 Ahmedabad and 24 Gandhinagar in April 2013. However, no reply regarding the action taken for recovery of dues was received from the above offices.</p> <p>When we pointed this out in audit, the Department reiterated (November 2013) the facts mentioned in our observation instead of ascertaining the present status of the case.</p>			
6	M/s. Mangalia Tex Chem Pvt. Ltd./ 27904203	1998-99 and 1999-2000	0.42
<p><b>Nature of observation:</b> The ACCT 33, Kadi finalised the assessments in October 2001 and issued RRC to ACCT 5 Vadodara in April 2002. Subsequent reminders were also issued between August 2002 to June 2003. The ACCT 5 Vadodara replied (September 2004) that the dealer's property was not falling under his jurisdiction. But, the ACCT 33, Kadi after a gap of four years again wrote a letter in October 2008 to ACCT 5 Vadodara to ascertain the exact location of the dealer's property. No reply was received from ACCT 5 Vadodara and no further action to recover the dues was initiated by the ACCT 33, Kadi.</p> <p>When we pointed this out in audit, the Department stated (November 2013) that at the instance of audit, the ACCT 33, Kadi had issued reminders to ACCT 5, Vadodara in September 2013.</p>			

It can be inferred from the above that there was lack of co-ordination amongst the units within the Department which negates the chances of recovery of dues.

Apart from the Department's reply in the individual cases mentioned in the table above, in 36 cases the Department reiterated our observations and did not give any specific reply regarding the progress of recovery effected in co-ordination with the AAs.

**We recommend that the CCT may set up a system for strengthening the co-ordination amongst the units for recovery of arrears in the interest of revenue.**

#### **2.14.10 Non-disposal of properties attached**

Under section 150 of GLRC arrears of land revenue may be recovered by serving a written notice of demand, by forfeiture of the property by distraint and sale of the defaulter's movable and immovable properties and by arrest or imprisonment of the defaulter.

The Commissioner of Commercial Tax is competent to fix the upset price of the property attached, auction the same and adjust the sale proceeds against the tax dues.

Though the procedures for disposal of the attached property of the defaulters through auction such as issue of proclamation, fixing of upset price/ reserve price, obtaining quotations, inviting tenders or by way of public auction has been prescribed in the GLRC, the Department has not prescribed a time limit for each stage of disposal of properties attached from

the defaulters of Sales Tax/VAT.

We observed that in 23<sup>43</sup> units, 50 dealers related to 139 assessment cases had not paid the dues of ₹ 1055.65 crore. In the absence of any time line, there is absence of pressure on the Department to take any action for sale of the defaulters' properties which were attached during the period from September 2004 to February 2013. A few illustrative cases are discussed below:

(₹ in crore)

Sl. No.	Name of the dealer/ RC/TIN No.	Assessment Period	Demand raised
1	M/s. Biotor Industries/ 24191601037	2006-07 to 2009-10	854.51
<p><b>Nature of observation:</b> The assessments were finalised and demand notice was served to the dealer in April 2010. Notices under Section 152 and 200 of GLRC were issued in June 2010 and charge was created on various properties of the defaulter on August 2010 and September 2010. Meanwhile, dealer filed (March 2010) an appeal with appellate authority and Board for Industrial and Financial Reconstruction (BIFR) and both were disallowed (February 2012) by respective authorities. The Joint Commissioner Division 4, Vadodara had categorically instructed (March 2011) the concerned ACCT to take immediate action for auction of the defaulter's property and to report for the same within 10 days. We noticed that the ACCT did not take any coercive steps for auctions of the properties to recover the dues during the period from September 2010 to July 2012, resulting in blocking up of revenue of ₹ 854.51 crore.</p>			
2	M/s. Deepak Petrochem Ltd./ 24171100252	2006-07 to 2008-09	25.33
<p><b>Nature of observation:</b> As the dealer was a defaulter for non-payment of ₹ 34.97 lakh for the assessment year 2004-05 and 2005-06, the ACCT 47, Godhra created a charge on the dealer's property in July 2009. Further, the Enforcement Wing conducted (5 May 2009) raid on the dealer's premises and issued provisional assessments orders in September 2010. The ACCT issued (October 2010) notices to the dealer under Section 152 and 200 of GLRC and also finalised assessments under Section 32(4) of GVAT Act for the period from 2006-07 to 2008-09 between March 2011 and June 2012. We observed that the ACCT had not taken any action for auctioning the property of the dealer for which charge was created in July 2009.</p>			
3	M/s. Patel Ranchchod Hiraji/ 68490473	1994-95 to 1998-99	10.53
<p><b>Nature of observation:</b> The ACCT 93, Rajkot assessed the dealer in March 2001 and issued demand notice. Notices under Section 152 and 200 of GLRC were issued to the dealer in March 2003. Though the ACCT after a gap of six years attached the property in September 2009, but no further action found to have been taken to dispose off the property to recover the dues.</p>			
4	M/s. Bell Granito Ceramic Ltd./ 1924004034	2003-04 to 2006-07	10.06
<p><b>Nature of observation:</b> Assessments were carried out by the ACCT 46, Vadodara between February 2006 and December 2010. Notices under Section 152 and 200 of GLRC were issued in August 2008 but the property of the dealer was attached only in December 2010 after a lapse of two years and four months. Further the dealer filed (February 2010) appeal in BIFR and the same was dismissed as 'non maintainable' in September 2010. Subsequently in 2010, the dealer filed appeal in High Court and the Court appointed Official Liquidator. We noticed that the ACCT's laxity in attachment of property of the dealer had resulted in blockage of revenue.</p>			

<sup>43</sup> ACCT: 6, 11, 21, 30, 33, 42, 45, 46, 47, 57, 58, 59, 65, 69, 75, 79, 80, 81, 85, 93, 99, 102, 104

5	M/s. Jercon Plastics Pvt. Ltd./ 0746000403	2001-02	1.13
6	M/s. Jai Decor/ 24074700065	2006-07	1.92

**Nature of observation:** The assessments in respect of Sl.No.5 was finalised by the ACCT 11 Ahmedabad in April 2006 and in respect of Sl.No.6 was finalised in March 2011. Notices under section 152/200 of GLRC were issued in July 2008 and July 2011, respectively. Attachment was made on the dealer's properties in October 2008 in the case of Sl.No.5 after a lapse of two years and in January 2012 in the case of Sl.No.6 after a lapse of one year.

Though the properties were attached, the ACCT failed to take necessary action for fixing the upset price and auction of the properties to recover its dues.

When we pointed this out, the Department stated (November 2013) that in nine cases it had initiated necessary action for fixing upset price and in two cases, the recovery is in auction level. In other 33 cases, the Department's replies were not relevant to our observations. In six cases, it stated that either the case was decided/remanded by the appellate authorities or dealer filed appeal with Appellate Authority for Industrial and Financial Reconstructions (AAIFR). However, no documents in support of the Department's replies were furnished to us.

## 2.14.11 Revenue recovery from RRC cases sent to other State

### 2.14.11.1 Non-pursuance of RRCs issued to other States

Section 3 of Revenue Recovery Act, 1890 provides that where an arrear of land revenue or a sum recoverable as an arrear of land revenue is payable to a Collector by a defaulter being or having property in a district other than that in which the arrears accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate containing the name and such other particulars as may be necessary for the identification of the defaulter and the amount payable by him.

Our test check of the records of 20 units<sup>44</sup> revealed that 63 dealers in 261 assessment cases involving dues of ₹ 389.56 crore had not paid the dues within the prescribed time. These dealers were having their properties in other State or were conducting their

business in those States. We noticed that in the case of 50 dealers, no reply was received from the District Collector of other States to whom the RRCs were issued and in the remaining cases though initial replies like acknowledgement were received, the Department did not pursue the cases further. Thus, non-pursuance of RRCs issued to other States resulted in non-recovery of dues of ₹ 389.56 crore.

The Department accepted the facts in 51 cases indicating weak monitoring controls in watching the disposal of RRCs sent to other State(s). In other two cases, the Department replied that the RRCs issued were returned by the District Collectors stating that the dealer was not traceable and no further

<sup>44</sup> ACCT: 2, 5, 21, 33, 40, 41, 42, 45, 47, 57, 59, 63, 74, 75, 80, 81, 93, 99, 102, 104

action was taken in this regard. In the remaining cases specific replies to our observations were not received.

### 2.14.11.2 RRCs issued to outside the State though the dealer's property was available within the State

In four units<sup>45</sup>, we observed that four dealers in 14 assessment cases had not paid the dues of ₹ 33.27 crore by the date as specified in the notices for the payments. The dealers registration records maintained in the Units indicated that the dealers were having properties within the State. However, the Department instead of issuing RRCs to the jurisdictional authorities for attaching the dealer's properties within the State, issued RRCs to outside the State that too without correctly ascertaining the whereabouts of the dealers properties. In these cases, the Department's failure resulted in non-attachment of dealers properties situated within the State and also consequential non-realisation of arrears of ₹ 33.27 crore. The cases are discussed below:

(₹ in crore)

Sl. No.	Name of the dealer/ RC/TIN No.	Assessment Period	Demand raised
1	M/s. Baron Telecommunication/ 073403840	2001-02 to 2004-05	26.97
<b>Nature of observation:</b> The Department finalised ex-party assessments between September 2008 and December 2008 under Section 41(4) of GST Act, 1969. All the Demand notices in Form 35 and notices under Section 152 and 200 of GLRC were issued to New Delhi during September to December 2008 as one of the branches of the company was situated in Delhi. The Department records indicated that one of the Directors of the Company was having property in Ahmedabad, but, the Department did not serve notice to the said Director. On the contrary, RRC letters were issued to Collector, New Delhi on 6 June 2009 and the Collector office replied on 10 June 2010 that the defaulter dealer's Company did not exist in the given address.			
2	M/s. Ircon International/ 1707014709	2003-04 to 2005-06	5.47
<b>Nature of observation:</b> The assessment of the dealer was finalised by the Department and demand notices were issued to the dealer in September 2008 and notice under Section 152 issued in November 2008. The Department did not issue any notice for attachment of property at dealer's factory premises located in plot No.102, Gujarat Industrial Development Corporation, Godhra, Gujarat. On the contrary it had issued letter intimating the dues of the dealer to his branch office in Delhi on 18 November 2010 instead of issuing RRC to the concerned Collector, Delhi. In case of other branch of the dealer situated in Dhule, Maharashtra, the RRC was issued to the Collector on 9 April 2012 after a delay of 41 months for which, no reply was received.			
3	M/s. S.D.C. Polyuretin Pvt. Ltd./ 0409001465	1993-94, 1995-96, 2000-01 to 2003-04	0.32
<b>Nature of observation:</b> After completion of assessments during February 2001 to March 2008, the Department issued notice under Section 152 of GLRC to all Directors at Ahmedabad and Mumbai. Further, the Department had issued letter to Mamlatdar, Kadi on 9 September 2008 for creation of charge on the company's property at GIDC, Kadi but the same was returned back on 16 September 2008 by the Mamlatdar with a remark that the details of the property including the survey number were not given in the AA's letter. However, till the date of our audit, the Department had not issued any letter to GIDC authorities asking for the details as sought by the Mamlatdar. Accordingly the charge was not created on the property. Further, RRC letter to Collector, Mumbai Suburban District was also issued belatedly on 20 June 2012 for initiating recovery action against the property of director situated in Mumbai. There was nothing on record to indicate that Department has taken any action for recovery of the arrears till July 2012.			

<sup>45</sup> ACCT: 8, 33, 45, 47

4	M/s. Kaldair Ltd./ Guj. 8C 6699	9/2000 to 3/2001/ 28.02.03 (FS branch)	0.79
<b>Nature of observation:</b> As per the ration card and other documents available in the file of the dealer, the Company's nominated administrative authority was residing in Vadodara. However, Department issued RRC to Collector, Mumbai on 1 March 2012 without ascertaining the correct whereabouts of the dealer's property. Thus, the Department failed to utilise the information available in the dealer's records for speedy recovery of the arrears.			

### 2.14.12 Non-recovery of arrears from the dealers who had mortgaged their properties with the Financial Institution

As per Section 48 of the GVAT Act, any amount payable by a dealer or any other person on account of tax, interest or penalty for which he is liable to pay to the Government shall be a first charge on the property of such dealer. Further, under Section 137 of GLRC, the claims of State Government to have precedence over any other debt, demand, or claim, whatsoever, whether in respect of mortgage, judgement decree, execution or attachment, or otherwise howsoever, against any land or the holder thereof.

Test check of records of five <sup>46</sup>units revealed that seven dealers in 42 assessment cases did not pay the dues of ₹ 78.24 crore. We noticed in these cases that the dealers' properties mortgaged with the banks/financial institutions (FIs) were taken over by the banks/FIs on default of repayment of loan by the dealers and subsequently sold to the purchasers for

appropriation of sale proceeds.

The banks/FIs have sold the properties of the defaulters by invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI).

We noticed that though the statutory first charge created in favour of the State would have primacy over the right of the bank to recover its dues as being held (27-02-2009) by the Supreme Court in the case of Central Bank of India vs State of Kerala, the Department did not invoke the provisions of the Act and take legal action against the banks/FIs for recovering the dues. The Department's inaction in these cases led to non-realisation of arrears of ₹ 78.24 crore which is discussed in the following table:

<sup>46</sup> ACCT: 33, 45, 74, 88, 93

(₹ in crore)

Sl. No.	Name of the dealer/ RC/TIN No.	Assessment Period	Demand raised
1	M/s. Ankur Agrochem Private Limited/ 47750555 (CST-Guj. 18L 4776)	1995-96 to 1999-2000	17.36
<p><b>Nature of observation:</b> The assessments were carried out by the Department in September 2000 and notices were issued (November 2000) under Section 152 and 200 of GLRC to the dealer. The Dealer filed (date not available on record) first and second appeal against the assessment orders that was dismissed (August 2003 and February 2007) by the appellate authority. Simultaneously, the dealer filed a petition with the BIFR, New Delhi which was also dismissed (December 2000). Though, the BIFR had dismissed the case in December 2000, the Department came to know about the fact only in August 2009 i.e. after a lapse of nine years. It was also found that the Bank of Baroda (BoB), the Mortgagee of the dealer's property informed the AA on 26 June 2001 to attend the joint meeting to be held on 3 July 2001 at Surat for the claims recoverable from the dealer. But, the records made available to audit did not confirm that the said meeting was attended by the officials of the Department. BoB after taking over possession (17 November 2005) of the defaulter's premises in the industrial estate of Gujarat Industrial Development Corporation (GIDC) transferred (April 2009) the premises to M/s.Netmatrix Ltd with the approval of GIDC. However, BoB did not pass on any consideration received to the Department on account of the sales tax arrears of the dealer.</p> <p>We noticed that the Department had failed to keep a track on the progress of recovery action initiated by BoB. Even it had not created a charge on the property so that the Government dues could be safeguarded. The Department needs to ascertain the stage at which lapse occurred, fix the responsibility and devise a monitoring system so that such lapse do not occur in future.</p>			
2	M/s. Aditya Polymers Private Limited/ 27905161	1996-97 to 2001-02	12.54
<p><b>Nature of observation:</b> The business of the dealer was closed and BIFR case No.119/03 filed by the dealer was also dismissed (September 2005). The Department created charge on dealer's properties on 8 February 2005. Bank of Maharashtra had taken over possession of the property and also sold (September 2006) it to M/s Santa Cotton Industries and subsequently M/s Santa Cotton Industries had also sold it to M/s Avi Oil Industries during December 2006.</p> <p>We noticed that the Department did not file a case against the transactions invoking the provision of Section 137 of GLRC read with the Supreme court judgement dated 27/2/2009 wherein the Supreme Court has clarified that the statutory first charge created in favour of a state has primacy over the right of bank to recover the dues.</p>			
3	M/s. Jeet Cotton Mills Private Limited/ (69011047) 24192600457	1999-2000 to 2007-08 (deferment dues)	2.85
<p><b>Nature of observation:</b> The Department assessed the dealer in March 2008 to January 2010 and issued demand notices under VAT/Sales Tax Acts to the dealer. Though, Small Industrial Development Bank of India (SIDBI) had taken over possession of the dealer's property in September 2007 for failure to repay their loan, the Department came to know the debts of the dealer against SIDBI in February 2010 and requested the Mamlatdar, Jasdán on 11 February 2010 for creation of charge on the properties of the dealer. It also intimated SIDBI on 17 February 2010 regarding the tax dues of the defaulter. A suitable entry regarding the creation of charge on the properties of the dealers was made in Village Form 6 (Record of Rights) and 7/12 in the name of the Department on 4 March 2010.</p> <p>On 9 April 2010, SIDBI intimated the Department that it had sold (1 February 2010) the defaulter's property to M/s.Ghanshyam Ginning Mill (Purchaser) and also handed over the possession of the land on 10 March 2010. Thereafter, on the appeal made by the Purchaser, the Mamlatdar, Jasdán cancelled the entry made in favour of the Department in the village records. Further, the Dy. Collector, Rajkot also disallowed (4 February 2011) the appeal of the Department made against the cancellation of entry citing the reason that the Department</p>			

<p>though aware of the SIDBI's proceedings<sup>47</sup> of auction of the defaulter's property, it did not take any serious consideration of the facts. We noticed that the possession of the property was given on 10 March 2010 to M/s Ghanshyam Ginning Mill while the Department created charge of the property on 11 February 2010 i.e. earlier than the date of handing over of possession. Thereafter, there was nothing on record to indicate that the Department had filed an appeal against this sale invoking the provisions of Section 47 of GVAT Act, where under the transaction could have been declared null and void. Further, no claim was raised by the Department with reference to Section 137 of GLRC read with Supreme Court judgement dated 27.02.2009 for recovery of the consideration received by SIDBI on account of auction of the defaulter's property.</p>			
4	M/s. Micro Forge (India) Limited/ 24092500040	1995-96 to 2002-03 (deferment dues)	2.02
<p><b>Nature of observation:</b> The Department issued demand notices to the dealer during June 2007. The dealer registered (2008) a case with BIFR and the same was disallowed by BIFR on 9 June 2010. Further, the dealer's appeal<sup>48</sup> made against the BIFR decision was also disallowed. The Department created a charge on the dealer's property on 29 June 2011. Meanwhile, State Bank of India (SBI) had taken over (2010) the possession of the dealer's property as the Company being defaulter of its loan. The Department intimated (29 June 2011) SBI regarding its claim from the dealer. SBI sold the dealer's property to M/s Imperial Techno Forge Pvt. Ltd. on 24 February 2012 with the condition that if any dues outstanding by the defaulter towards Government dues should be borne by the purchaser. However no claim was raised by the Department against the bank/purchaser.</p> <p>The Department's lack of co-ordination with the bank and its subsequent failure to effectively pursue the purchaser of the properties to pay the Government dues led to non-realisation of arrears. The department did not file a case against the transaction invoking the provision of section 137 GLRC read with the Supreme Court judgement dated 27/2/2009 cited above.</p>			
5	M/s. Haldar Paper Mills Limited/ 64906895	1998-99 & 1999-2000 (deferment dues)	2.06
<p><b>Nature of observation:</b> The dealer was availing benefit of deferment scheme and had committed breach of conditions for which the department cancelled the deferment certificate of the dealer effectively from December 2001 and raised a demand of ₹ 2.06 crore against the dealer. Thereafter, notices u/s 152 and 200 (December 2003) of GLRC was issued to the dealer. However, the Gujarat State Finance Corporation (GSFC) took over possession of the dealer's properties and sold it to M/s C.M. Corporation (Purchaser) on 11 September 2004 for ₹ 1.60 crore. The Department came to know the sale of properties while seeking the details of the dealer from GSFC in 13 March 2007. On pursuance with GSFC, the department could recover only ₹ 0.44 crore out of the total dues of ₹ 2.06 crore.</p> <p>We noticed that as per Section 137 of the GVAT Act, 2003, the first charge on the property would accrue to the Government rather than GSFC. However, the Department failed to recover the entire consideration of ₹ 1.60 crore realised on account of sale of the property by GSFC.</p>			
6	M/s. Jai Agro Chemical Limited/ 279008896	1993-94 to 1997-98	41.66
<p><b>Nature of observation:</b> Though the Department finalised the assessments in April 2003 and raised demand on the dealer during May 2003, the charge on the property of the dealer was created only in July 2010. Further, the OL of Gujarat HC sold (date of sale was not on the Department's record) the said property to M/s Gajanand Enterprises. We noticed that the Department's failure to keep track of the case and also its delay in initiating the recovery action had led to non-realisation of arrears of ₹ 41.66 crore.</p>			

<sup>47</sup> SIDBI had given public notices through advertisements on 15 November/7 December 2008, 5 September 2009 and 1 January 2010 regarding taking over their possession/auctioning of the property of the defaulter.

<sup>48</sup> The appeal was made to Appellate Authority for Industrial and Financial Reconstruction.

We noticed that the Department did not file a case against the transaction invoking the provision of section 137 GLRC read with the Supreme Court judgement dated 27/2/2009 cited above.

7	M/s. Duck Tarpaulins Ltd.	1994-95 to 2000-01	0.52
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**Nature of observation:** The Department issued demand notices to the dealer in March 2004. But no subsequent recovery action by way of issuance of notices/RRC (under GLRC) and creation of charge on the dealer's property was undertaken by the Department. However, Kotak Mahindra Bank had taken over possession (July 2006) of the dealers property situated at GIDC, Por Ramangamdi, Vadodara and sold the property to M/s.Teckno Steels & Forgings Pvt. Ltd. in October 2007.

We noticed that the Department failed to take requisite action to create charge on the dealer's property and by not remaining in touch with the bank for recovering the tax arrears of the dealer led to non-realisation of arrears of ₹ 0.52 crore.

### 2.14.13 Lack of pursuance with Official Liquidator

The Official Liquidators (OL) are appointed by the Central Government under Section 448 of the Companies Act, 1956 and are attached to the High Courts. The OL has to dispose the assets and realise the debts and distribute the same to the creditors and shareholders of the Company under liquidation and finally dissolve the Company. As per section 530(i)(a) of Act *ibid* priority is given to all revenues, taxes, etc., due from the Company to the Central, State or local authorities.

During test check of records, in seven units<sup>49</sup> we noticed that the Companies of 10 dealers were under liquidation. The arrears of ₹ 274.50 crore in 31 assessment cases were held up due to the liquidation proceedings. Out of

above 10 cases we scrutinised cases of four dealers involving tax arrears of ₹ 73.20 crore. There was considerable delay in finalising the assessment of the dealers who were in defaults. Further, there was delay in filing of claims with the OL and the Department also failed to follow the prescribed norms for filing claims with the OL. These cases are discussed in the following paragraphs:

**2.14.13.1** In the case of M/s. Mahendra Mills Ltd., Ahmedabad, the Department raised demand of ₹ 23.12 crore after finalising (between June 2000 and June 2001) the assessment for the period 1992-93 to 1999-2000 (up to 31 October 1999). RRC was issued to ACCT, Kalol on 2 February 1998 for the assessment period 1992-93 to 1997-98 for the dues of ₹ 1.39 crore calculated on the basis of returns filed by the dealer. Further action taken to recover the amount of ₹ 1.39 crore was not found on record.

BIFR declared (5 April 2000) the Company as sick unit and the Gujarat High Court issued winding up order and also appointed an OL for the Company in 2000. The Department intimated the OL regarding the Sales Tax dues of the dealer on 4 October 2001. But duly notarised affidavit was filed by the Department with OL only on 27 July 2009. The OL informed the Department in May 2010 that the property of the dealer was sold (excluding land) in

<sup>49</sup> ACCT: 6, 21, 33, 58, 80, 81, 88

September 2003 and the proceeds were distributed among the workers of the Company.

Thus, the above facts revealed that though the Department was aware of the status of the defaulter in 1998, it did not take timely action to recover the dues and filed the notarised affidavit claiming the dues with OL after a delay of nine years from the date it was declared sick.

**2.14.13.2** In the case of M/s. Bindal Proteins Pvt. Ltd., Kadi, there was arrears of tax of ₹ 13.27 crore for the period 1998-99 to 2002-03. The Department had finalised the assessment for the above period in March 2003. As the dealer's property was in Ahmedabad, ACCT, Kadi issued RRC in December 2005 to the ACCT-7, Ahmedabad for recovery of the dues from the dealer. Meanwhile, the Gujarat High Court appointed OL in March 2007. Though, the Department kept on informing the OL in June 2007, August/October 2008 and October 2012 regarding the Government claims against the dealer, it had not registered its claim with the OL by filing the notarised affidavit. Thus, the non-adherence to the prescribed procedures further led to non-realisation of dues of ₹ 13.27 crore.

**2.14.13.3** M/s Point Plast Private Limited, Ahmedabad was in arrears of tax of ₹ 1.98 crore for the period 1998-99 to 2000-01. The Department issued (August 2005) demand notices under Section 152 of the GLRC. The dealer's company went into liquidation and Gujarat High Court appointed OL in April 2006. The Department intimated the details of dues to OL through letters during July 2006 to July 2011 instead of filing the notarized affidavit. Only after the OL asked to file an affidavit in notarised format, the Department filed the same in August 2011.

**2.14.13.4** The Department while issuing (March 2006) notices for assessment of M/s Mardia Chemicals Limited, Surendranagar for the period 2003-04, came to know that the company went into liquidation in August 2005. However, the Department neither finalised the assessment immediately on Ex-parte basis u/s 41(4) of GST Act nor filed the notarised affidavit with OL for claiming the tax dues. The Department finalised the assessment for the period 2003-04 in March 2008 u/s 41(4) of GST Act and raised demand of ₹ 34.83 crore. The Department then filed the notarised affidavit with OL only in June 2008. As the Department was aware of the fact that dealer was under liquidation its dues should have been assessed immediately but Department finalized the assessment with delay of two years and filing the claim with OL. This indicated the laxity on the part of the Department to safeguard the financial interest of the government.

**Department may put in place a system in respect of dealers under liquidation to ensure that concerned AA register their claims of arrears of tax promptly in proper format with the OL and ensure follow up action of the cases with the OL.**

### 2.14.14 Failure to proceed against successors of the defaulting dealers

Section 73 of GST Act (Section 47 of GVAT Act) states that if a dealer who has not paid tax dues creates a charge on or parts with the possession by any mode of transfer his property in favour of any person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any tax claim payable by the dealer.

During the course of test check of records in the office of the ACCT 6, Ahmedabad, we noticed in the case of M/s. Bhagyoday International that the Department finalised (September 2004) the assessments of 2002-03 and 2003-04 (up to August 2003) and raised demand of ₹ 28.07 crore.

The Registration Certificate of the dealer was cancelled effective from 28 August 2003 due to closure of business. The Department issued a RRC against the dealer through the Collector, Mumbai on 16 November 2005 for recovery of the dues.

The dealer filed an appeal before the GVAT Tribunal. As per the Tribunal's judgment (April 2006), all the dues were set aside and the matter was referred to the concerned AA for reassessment. The AA completed reassessment on 31 January 2008 and issued demand notice to the dealer. RRC was also issued to the Collector, Mumbai on 16 August 2008 which was forwarded to the Assistant Commissioner of Sales Tax (ACST), Mumbai. ACST, Mumbai replied on 20 October 2008 that the dealer was untraceable as he had sold out the property to another person in August 2005. We noticed that the Department did not take necessary action since October 2008 to ascertain the successor of the property of the dealer and also did not invoke the provision of Section 73 of the GST Act to make the sale void. This led to non-realisation of dues of ₹ 28.07 crore.

### 2.14.15 Delay in finalisation of the departmental appellate cases

A dealer aggrieved by an order passed by the AA/appellate authority may file an appeal to the appellate authority/higher appellate forum. The appellate authority/forum may reject or accept the appeal and allow the relief sought for or remand back to the AA for the reassessment.

As per CCT Circular No.188 dated 3 June 2010 the pre-audit of appeal cases should be completed within a month from the date of its receipt.

(i) In case if an appellate authority finds that an appellant gets relief in payment of tax beyond ₹ 5 lakh limit, the case is required to be referred to next higher authority for pre-audit for verification of the correctness of the relief to be given.

The position of receipt, disposal and closing balance of the appeal cases pending with the

Departmental appellate authorities as on 31 March 2012, furnished by the Department is as follows:

Details of cases	(Number of cases)				
	2007-08	2008-09	2009-10	2010-11	2011-12
Opening Balance	6,621	6,807	8,522	8,439	8,220
Addition	4,925	6,665	4,291	4,207	7,374
Total	11,546	13,472	12,813	12,646	15,594
Disposal	4,739	4,950	4,374	4,426	4,037
Closing Balance <sup>50</sup>	6,807	8,522	8,439	8,220	11,557
Money value involved in closing balance (approx.) (₹ in crore)	414.90	626.71	467.66	778.91	1,187.51

(Source : The Statistical Profile of the Commercial Tax Department)

The pendency of appeal cases have increased from 6,621 in 2007-08 to 11,557 in 2011-12 showing an increase of 74.55 per cent. Similarly, in the case of appeal cases the amount involved have increased from ₹ 414.90 crore in 2007-08 to ₹ 1,187.51 crore in 2011-12 registering an increase of 186.22 per cent.

Thus, 11,557 appeal cases involving revenue of ₹ 1,187.51 crore were pending with the Departmental appellate authorities as on 31 March 2012.

(ii) As per above mentioned circular dated 3.06.2010, pre-audit of appeal cases are required to be done within one month from the date of its reference made to audit by the appellate authority. We observed that out of 11,557 appeal cases, 365 appeal cases were pending at pre-audit stage, however, age wise pendency of pre-audit case were not furnished by the Department.

Our analysis of pending cases of appeals pertaining to 23 units<sup>51</sup> revealed that 125 assessments of 51 dealers involving dues of ₹ 240.04 crore were not realised as the cases were pending for disposal with Departmental appellate authority for a period ranging from one to eight years as shown in following table:

Pendency of appeal cases	Number of dealers	Amount of arrears (₹ in crore)
More than 5 years old	14	21.99
4 to 5 years old	09	13.54
3 to 4 years old	06	18.18
2 to 3 years old	02	28.35
1 to 2 years old	20	157.98
<b>Total</b>	<b>51</b>	<b>240.04</b>

The long pendency in finalisation of the appeal cases indicates the need for prescribing a time limit for finalisation of the appeal cases. Further, with passage of time, the prospects of recovery of dues from the dealers becomes remote with delay in finalisation of the cases.

The Department replied (November 2013) that wherever stay orders were issued by appellate authorities or where cases were pending with BIFR/AAIFR/DRT, it could not effect recovery of dues. The fact remains that

<sup>50</sup> The Closing balance includes cases pending due to stay.

<sup>51</sup> ACCT: 7, 21, 30, 33, 40, 41, 42, 45, 46, 47, 57, 58, 59, 65, 74, 75, 78, 80, 81, 85, 88, 99, 104

the cases mentioned above are long pending and are lying with the Departmental appellate authorities in absence of prescribed time limits for finalisation of appeal cases.

**The Department may put in place a system by way of fixing target for finalisation of the appeal cases and time limit for prompt disposal of the appeal cases by the appellate authority.**

#### **2.14.16 Non-assessment of remanded cases**

As per proviso under Section 42 of Gujarat Sales Tax Act, 1969 re-assessment, in pursuance of any order under Section 65, 67 and 69 or in pursuance of any order of any court or authority, shall be made at any time within three years from the date of such order.

We called for the information of remanded cases but the Department did not furnish the detailed report. During test check of the records in two<sup>52</sup> units, we noticed in the case of two dealers

assessed for the period from 1996-97 to 2002-03 that the Gujarat VAT Tribunal had passed orders between March 2009 and June 2009 remanding the cases for re-assessment by the concerned AAs. As per the provisions mentioned above, the AAs were required to reassess the cases before March and June 2012, respectively as per the details given below:

Sl. No.	Name of Unit	Name of the dealer	Assessment year	Arrears (₹ in crore)	Date of Tribunal order	Remarks
1.	ACCT 5 Ahmedabad	M/s.Phil Corporation, Ahmedabad	1996-97 to 1998-99	8.37	23.03.2009	Three years lapsed on 22.03.2012
2.	ACCT 58 Surat	Surat Induction Pvt. Ltd, Surat	2000-01 to 2002-03	2.22	19.06.2009	Three years lapsed on 18.06.2012

We, however, noticed that the reassessment was pending even after lapse of three years from the date of orders of the Tribunal (March 2013) leading to an impasse in the recovery proceedings initiated in these RRC cases. It indicated that there was no watch on the appeal cases which were remanded to AA for re-assessment.

#### **2.14.17 Internal Audit and Monitoring mechanism**

##### **2.14.17.1 Tax Monitoring Committee**

Government of Gujarat appointed (15 April 2005) a Tax Monitoring Committee<sup>53</sup> (the Committee) for preparing action plan for regular and close

<sup>52</sup> ACCT : 5 Ahmedabad and 58 Surat

<sup>53</sup> Principal Secretary (Finance) is the Chairman of the Committee and the remaining 11 members of the Committee are the Secretaries/HoD of various departments of the State Government.

monitoring of various tax receipts along with recovery of outstanding tax dues of the State on a monthly basis.

We noticed that though repeated instructions were given to the CCT during the meetings to take up the recovery of outstanding dues on an urgent basis, nothing was on record to indicate the progress made in collection of the arrears. The committee during the period from April 2005 to March 2012, was required to conduct 83<sup>54</sup> meetings against which only seven meeting were conducted. There was nothing on record to indicate that any monitoring mechanism was evolved to watch or to ascertain the extent of compliance made by the CCT as such there was no reduction in accumulated arrears.

#### **2.14.17.2 Internal audit**

The Internal Audit Wing (IAW) is headed by a JCCT stationed at Ahmedabad who is assisted by DCCTs at division level. The IAW is required to audit accounts, assessments, recovery, remittances etc. In the recovery cases, as per the Department's Internal Audit Inspection check list, IAW is required to examine the adequacy of recovery actions taken by the Department in regard to lodging of claims with the proper authority, auctioning of the attached property of defaulting dealers, etc.

However, the department intimated that no system was put in place for audit of RRC cases. Besides, there was nothing on record to indicate that IAW was conducting any review of cases of arrears of Sales Tax/VAT. As such the efficiency in recovery of the arrears could not be ascertained at apex level and their arrears continued to be outstanding without any monitoring.

#### **2.14.18 Efforts made by the Department for recovery of arrears including waiver of tax in RRC cases**

##### **2.14.18.1 Lack of response for Vechan Vera Samadhan Yojana Scheme (the Scheme)**

Government of Gujarat (GoG) declared (February 2012) Vechan Vera Samadhan Yojana-2012 effective from 01 April 2012 to 30 September 2012 for immediate clearance of outstanding sales tax of the dealers as on 31 March 2012 related to the assessment period up to 2005-06. The dues of dealers involving tax element up to ₹ 20,000, the entire dues (tax, interest and penalty) were to be waived and for the dues of the dealers involving the tax element between ₹ 20,000 and ₹ 1 crore, the interest and penalty amount were to be waived if these dues were paid by the dealers on or before 30 September 2012.

The Department announced the Scheme with expectation to collect the tax arrears from ₹ 80 crore to ₹ 100 crore. Regarding this Scheme, the Commercial Tax Department submitted (15 July 2011) a proposal to Finance Department (FD) of GoG. As per the details in the proposal, as on June 2011, the

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<sup>54</sup> Year 2005 - eight meetings, Year 2006 to 2011- six years X 12=72 meetings, Year 2012- three meetings

outstanding sales tax arrears was ₹ 13,019.61 crore<sup>55</sup> from 1,03,562 cases.

The details of tax recovered and waived after the implementation of the Scheme as per the information furnished by the Department to the FD as on 30 September 2012 are as given below:

Particulars	Benefit availed (In number of cases )	Tax recovered (₹ in crore)	Tax waived (₹ in crore)	Interest waived (₹ in crore)	Penalty waived (₹ in crore)	Total amount waived (₹ in crore)
Tax element not exceeding ₹ 20,000	45,474	--	16.23			16.23
Tax element involving between ₹ 20,000 and ₹ one crore	419	22.24		21.30	16.32	37.62
<b>Total</b>	<b>45,893</b>	<b>22.24</b>	<b>16.23</b>	<b>21.30</b>	<b>16.32</b>	<b>53.85</b>

Against the targeted clearance of 1,02,724 cases and the collection of tax of ₹ 80 crore to ₹ 100 crore under the Scheme, only 45,893 cases with a recovery of arrears of tax amount of ₹ 22.24 crore resulted. In the past, similar *Samadhan Yojanas* were implemented and the arrears of tax were collected from the dealers i.e. ₹ 123.34 crore in 2005, ₹ 86.21 crore in 2006 and ₹ 122.27 crore in 2007.

We observed that the scheme was not applicable to 838 cases (dues of ₹ 9,297.06 crore) as the tax element involved in each case was in excess of ₹ one crore. As such, large amount of arrears remained outside the scope of the scheme.

**We recommend that the Department may consider taking suitable action for recovery in these 838 cases.**

#### 2.14.18.2 Irregular grant of benefit under the Scheme

Government of Gujarat had given (December 2003) the benefit of postponement of recovery of purchase tax on sugarcane to M/s. Vadodara District Co-operative Sugarcane Growers Union Ltd (Society) for a period of five years. The purchase tax dues shall be recovered in five annual installments from the sixth year from the commencement of production subject to conditions that the Society shall not be entitled to and should not have availed of any other incentives or relief under any other scheme.

M/s. Vadodara District Co-operative Sugarcane Grower's Union Limited, a dealer under the jurisdiction of ACCT-46, Vadodara, had an outstanding dues of ₹ 1.21 crore under GST (i.e., sales tax ₹ 0.55 crore plus interest of ₹ 0.66 crore) as on 31 March 2012.

<sup>55</sup> Inclusive of ₹ 1,295.64 crore related to both ex-parte assessment cases and RRC cases. The detailed break up of number of RRC cases and the amount involved was not made available to us.

We noticed that the dealer was not eligible to avail the Scheme as he was already availing another benefit as per the GR dated 17 December 2003. In view of this reason, even the Secretary (Economic Affairs) did not agree (August 2012) for extending the benefit of the Scheme to the dealer. However, the dealer paid the outstanding tax amount of ₹ 55 lakh on 25 September 2012 and the Department had given the benefit by waiver of the arrear interest of ₹ 66 lakh under the Scheme to the dealer. Thus, irregular grant of benefit to the dealer resulted in loss of revenue of ₹ 66 lakh.

This was brought to the notice of Department (December 2012), concerned AA replied that before extending the benefit, the CCT office was consulted and as per their views only the benefit was given to the dealer.

The reply is not correct in view of the fact that as per GR dated 17 December 2003, the beneficiary of the Scheme is not entitled for any other incentive scheme announced by the Government.

#### **2.14.19 Conclusions**

During the Performance audit of recovery process, we observed that the Department did not adequately monitor the arrear cases, thereby defeating the very purpose for which the legislature had given adequate powers to the Department for recovery of the sales tax demand. No separate machinery was set up for pursuance of the RRC cases and the Departmental machinery was lackadaisical in its approach in absence of any targets being set for them for recovery in RRC cases. RRCs were either not issued or delayed by several years by the AAs. RRCs issued to other States were not pursued, properties of dealers were not attached or attached properties were not auctioned off in time to realise dues. We saw lack of co-ordination within the Department. In the absence of targets, the recovery was slow. These aspects reflected weakness in the system which necessitates the establishment of strong and separate machinery for collection of arrears with effective monitoring at the Commissioner's level.

#### **2.14.20 Summary of recommendations**

Apart from the recommendations made under individual paragraphs, the Government may consider:

- Creating a mechanism for effective and regular pursuance of sales tax dues, prompt disposal of cases in appeal and putting in place separate recovery machinery for focusing on recovery of arrears under the repealed Acts, due to the introduction of the new VAT regime.
- Evolving a system for issuing RRCs in time, issuing RRCs outside the State selectively after exhausting all the remedies towards properties available in the State and regularly co-ordinating with their counterparts in other State to whom RRCs have been issued;
- Devising a system for regular liaisoning with the OL and banks/Financial Institutions who have attached the properties of the defaulting dealer so that claims lodged with them are not lost sight of and recovery affected;
- Reviewing and reconciling the position of dues so that arrears are reported correctly.

## 2.15 Audit observations

*For the year 2012-13, we have planned and carried out compliance audit of 86 offices of the Commercial Tax Department which included 56 unit offices of the Assistant Commissioner of Commercial Tax (ACCT), 23 range offices of the Deputy Commissioner of Commercial Tax (DCCT), three offices of DCCT (Corporate Cell), two offices of DCCT (Petro), office of the Joint Commissioner of Commercial Tax (JCCT), Flying Squad apart from the office of the Commissioner of Commercial Tax, Gujarat. During the course of audit, we test checked the audit/ provisional assessments finalised under Section 32/34/35 of the Gujarat Value Added Tax Act, 2003 by the respective Assessing Authority (AA). In addition to above, self assessment cases under Section 33 of the Act were also selected for audit in the cases of top 100 dealers in terms of gross turnover falling under the respective unit, dealers having gross turnover above ₹ five crore and dealers paying lump-sum tax under Section 14A/14B/14C/14D of the Act. Our scrutiny of the assessment records revealed several cases of non-compliance with the provisions of the Gujarat Sales Tax Act 1969, the Gujarat Sales Tax Rules 1970, the Central Sales Tax Act 1956, the Central Sales Tax (Registration and Turnover) Rules 1957, the Gujarat Value Added Tax Act 2003, the Gujarat Value Added Tax Rules 2006 etc., and Government notifications and other cases as mentioned in the succeeding paragraphs in this Chapter. Such omissions on the part of the Departmental officers are pointed out by us each year; however, the irregularities not only do persist, but also remain undetected till our audit conducted. There is need for the Government to improve the internal control system and internal audit.*

## 2.16 Non/short levy of interest (VAT)

Section 42(6) of GVAT Act, provides that the dealer shall pay simple interest at the rate of 18 per cent per annum on the amount of assessed tax remained unpaid over the tax amount already paid by him. By virtue of Section 9 (2) of the CST Act, the above provisions apply to the assessments under the CST Act as well.

**2.16.1** During test check of the records of five<sup>56</sup> offices, we noticed<sup>57</sup> in the assessments of six dealers<sup>58</sup> that the AAs did not levy interest on the amount of unpaid tax. This resulted in non/short levy of interest of ₹ 21.12 crore as detailed below:

- A dealer [Essar Steel (Hazira) Limited of DCCT 15 Surat] applied for exit from SEZ (28 September 2010) and agreed to pay all taxes and duties payable under different Acts. The Department raised a demand on account of VAT/ CST/ Entry Tax amounting to ₹ 108.15 crore which was paid by the dealer. However, the Department did not raise demand for interest of ₹ 19.10 crore.

<sup>56</sup> ACCT: Dhangandhra, 2 Nadiad, 66 Surat and 41 Vadodara  
DCCT: 15 Surat

<sup>57</sup> Between September 2011 and January 2013

<sup>58</sup> For the period from 2006-07 to 2009-10 finalized between July 2010 and March 2012

- Similarly, in case of another dealer (Hazira Plate Limited of DCCT 15 Surat) who had also applied for exit from SEZ (4 February 2009) and paid ₹ 14.45 crore as demanded by the Department. But interest of ₹ 1.55 crore on this demand was not levied.

We pointed out this to the department in May 2013. The Department did not accept (October 2013) the observations stating that when purchase tax was not leviable, it did not become payable. Hence, interest on late payment of purchase tax/CST was also not leviable.

Reply of the Department is not acceptable since the Department itself had levied purchase tax in the assessment orders of the dealers. Hence, interest for late payment of purchase tax/ CST/ Entry Tax was leviable.

- While four other dealers either made short/late payment of tax or did not pay tax till finalisation of assessments, but the AAs omitted to levy interest for such non/short/late payment of tax. This resulted in non/short levy of interest of ₹ 47.54 lakh.

We pointed out this to the department between January and April 2013. The Department accepted (September 2013) our observations in all the cases and raised demand of ₹ 47.54 lakh.

We reported the matter to the Government (July 2013). The Government confirmed the reply of the Department in all the cases (September/ October 2013).

**2.16.2** During test check of the records of two<sup>59</sup> offices, we noticed<sup>60</sup> in the assessments of two dealers<sup>61</sup> that AAs levied interest for 36 months (1080 days) instead of 1438 days on the amount of unpaid tax of ₹ 4,461 lakh. This resulted in short levy/payment of interest of ₹ 8.85 lakh.

We pointed this out to the Department in March 2013. The Department accepted (September 2013) the observations in both the cases raised demand of ₹ 1.52 lakh in one case and initiated rectification proceedings in the other case.

We reported the matter to the Government (July 2013). The Government confirmed the reply of the Department in both the cases (September/ October 2013).

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<sup>59</sup> ACCT: 82 Dhangadhra  
CTO: 54 Petlad

<sup>60</sup> Between July and August 2012

<sup>61</sup> For the period 2006-07 and 2007-08 finalised between March 2011 and March 2012

As per sub-section (6) of Section 30 of GVAT Act (read with Section 9(2) of CST Act) if a dealer is liable to pay interest on the tax dues and he makes payment of an amount which is less than the aggregate of amount of tax, penalty and interest, the amount so paid shall be first applied towards the interest, then towards the penalty and the final balance towards the amount of tax.

**2.16.3** During test check of the assessment records in the office of the ACCT 21, Ahmedabad we noticed (February 2013) in an assessment<sup>62</sup> of a dealer that the AA had issued

(26 February 2011) a demand notice to the dealer for paying tax of ₹ 651.98 lakh including interest outstanding under GVAT/CST Act by 10 April 2011. The dealer, however, had paid ₹ 651.98 lakh on 6 July 2011 i.e., after a delay of 88 days. As such, interest at 18 *per cent per annum* for the delayed payment was required to be levied from the dealer.

As per the provisions of the Act, the Department was required to adjust the amount paid by the dealer towards the interest payable for delayed payment and the remaining amount under the tax due. However, the AA adjusted the amount paid by the dealer as tax due and no subsequent demand for interest was raised resulting in non levy of interest of ₹ 32.15 lakh.

After this being pointed out, the AA accepted (February 2013) the observation and stated that the amount of interest would be recovered.

We reported the matter to the Department/ Government (August 2013), we are awaiting their reply (December 2013).

## 2.17 Non/short levy of purchase tax (VAT)

As per Section 9 (1) and (2) of the GVAT Act, on the purchases made from a dealer not registered under the Act *ibid*, the tax shall be levied at the rate specified in Schedule II or III of the Act *ibid*. As per Section-14 (4) a dealer who is permitted to pay lump sum tax is liable to pay purchase tax on the purchases made from a dealer not registered under the Act *ibid*.

During test check of the records of three<sup>63</sup> offices, we noticed<sup>64</sup> in the assessment of four dealers<sup>65</sup> that the AAs either did not levy or short levied the purchase tax leviable on the turnover of purchases from unregistered dealers. This resulted in

total non/short levy of purchase tax of ₹ 1379.27 lakh including interest of ₹ 423.10 lakh and penalty of ₹ 16.31 lakh which is mentioned in the following table:

<sup>62</sup> For the period 2006-07 finalised in February 2011

<sup>63</sup> ACCT: 1 Anand and 96 Jetpur  
DCCT: 15 Surat

<sup>64</sup> Between August 2012 and January 2013

<sup>65</sup> For the period from 2006-07 to 2009-10 finalised between December 2009 and October 2011.

(₹ in lakh)					
Sl. No.	Name of the office	No. of dealers	Assesment year/ Date of assessment	Nature of observation	Non/short levy of tax including interest and penalty
1	ACCT, Unit-1, Anand	1	2007-08/ 30.9.2011	The AA did not levy purchase tax of ₹ 25.48 lakh on dealer's purchases of 'rice bran' worth ₹ 5.99 crore purchased from 24 unregistered dealers resulting in non levy of purchase tax.	25.48
<p>The Departemnt did not accept (September 2013) our observation stating that the purchases were made from registered dealers and as such no purchase tax was leviable.</p> <p>The reply of the Department is not acceptable since the sellers from whom the purchases were made, were not registered with the Department as could be ascertained from the invoices raised by such sellers.</p>					
2	ACCT, Unit-96, Jetpur	1	2006-07/ 31.12.2009	The dealer, who had opted for lump-sum tax purchased goods from unregistered dealers and was required to pay purchase tax. However, he did not pay the tax and the AA also failed to levy the same.	9.95
<p>The Department accepted (September 2013) our observation and raised demand of ₹ 10.42 lakh.</p>					
3	DCCT, Range-15, Surat	2	2008-09 and 2009-10/ 13.10.2011 and 15.10.2011	The AA levied purchase tax without including central excise duty in the purchase price, which was in contravention of Section 2(18) of the GVAT Act. This resulted in short levy of purchase tax.	1343.84
<p>The Departemnt accepted ( September 2013) our observations and agreed to ascertain the actual; excise duty paid by the dealer after exit from SEZ.</p>					

We reported the matter to the Government (July 2013). The Government confirmed the replies of the Department in all the cases (September/October 2013).

## 2.18 Non-deduction of TDS

Section 59-B of the GVAT Act provides for tax deduction at source (TDS) at the time of payment of the whole or part of the specified sale price. In specified works contract where TDS has not been deducted, the amount of TDS shall be payable by the contractor or sub contractor directly. The CCT may levy penalty, not exceeding 25 *per cent* of the amount to be deducted, for non deduction of tax.

During test check of the records of the two<sup>66</sup> offices, we noticed<sup>67</sup> in the assessment of two dealers<sup>68</sup> that the dealers had obtained works contracts related to road, water meter and pipelines projects from Ahmedabad Municipal Corporation (AMC), Gujarat Water Supply

and Sewerage Board (GWSSB), Oil and Natural Gas Corporation of India (ONGC) and National Highway Authority of India (NHAI). The above works contracts were further sub-contracted by the dealers and specified sale price of ₹ 157.61 crore was paid to the sub-contractors. The dealers were required to deduct TDS at prescribed rate of two *per cent* from the specified sale price so paid to the sub-contractors. However, the dealers had not deducted and remitted TDS to the Government treasury. The contractors were liable to deduct TDS of ₹ 3.15 crore which was paid by the sub contractors. Though there was no loss of revenue, there was nothing on record to indicate that discretion of levy of penalty was exercised. The penalty of ₹ 79 lakh could have been recovered.

We have pointed out these cases to the Department between February and May 2013. The Department accepted (August/September 2013) our observations in both the cases and raised demand of ₹ 74.36 lakh in one case while in the other case the Department agreed to pass the order for levy of penalty.

We reported the matter to the Government (July 2013). The Government confirmed (September 2013) the replies of the Department in both the cases.

<sup>66</sup> ACCT: 7Ahmedabad  
DCCT: 8 Mehsana

<sup>67</sup> Between February and July 2012

<sup>68</sup> For the period 2006-07 finalised in March 2011

## 2.19 Short levy of VAT due to irregular grant of lump sum tax benefit

Section 14A of GVAT Act provides for composition of tax on works contract. As per Rule 28 (8) (g) of the GVAT Rules, if the dealer, to whom the permission to pay lump sum tax is granted, contravenes the provisions of the Act/Rules, such permission shall be liable to be cancelled. Consequently, such dealer shall be liable to pay tax under Section 7 from the date of such contravention. In case the amount of lump sum tax for the remaining works contract is more than the amount of tax payable under Section 7, the dealer is required to pay lump sum tax for the remaining work.

**2.19.1** During test check of the records of ACCT, Unit-9, Ahmedabad, we noticed in September 2012 in two assessments, for the year 2007-08 and 2008-09, finalised in March 2011 that a dealer had entered into contract with 25 works contractors for 'supply of Ready Mix Concrete (RMC)'. As per the terms of the

supply, the dealer was not involved in any kind of works contract except the supply of RMC. As such the dealer was not entitled for payment of lump-sum tax under Section 14A. However, the dealer supplied RMC valued at ₹ 9.84 crore to the above works contractors and paid tax at the rate of 0.6 per cent. The AA had also allowed the dealer to pay tax at the rate of 0.6 per cent instead of 12.5 per cent applicable to RMC. This resulted in short levy of tax of ₹ 5.27 crore including interest of ₹ 1.02 crore and penalty of ₹ 2.63 crore.

We brought the above case to the notice of the Department in April 2013. The Department did not accept (September 2013) our observation and stated that 'supply of RMC' was works contract as per determination under Section 80 of the GVAT Act. The reply of the Department is not correct as in this case, the supplier and contractor are different and as such Section 80 is not applicable in this case.

We reported the matter to the Government (July 2013). The Government confirmed (September 2013) the reply of the Department.

Section 14D of the Act provides for composition of tax on sales of eatables by hotels, restaurant, caterers, etc. As per Rule 28C (7) if the dealer, to whom the permission to pay lump sum tax is granted, contravenes the provisions of the Act/Rules, such permission shall be liable to be cancelled. Consequently, such dealer shall be liable to pay tax under Section 7 from the date of such contravention. Further, as per Rule 28C (6) a dealer who is permitted to pay lump-sum tax shall not purchase goods from outside State/ import/ receive goods through branch transfer from outside State.

**2.19.2** During test check of the records of DCCT, Range-22, Rajkot we noticed in November 2012, in one assessment for the year 2007-08 finalised in March 2012 that the AA had allowed the dealer to pay lump-sum tax under Section 14D

though it was recorded in the assessment file that the dealer had made purchases from outside Gujarat. Since, as per the provisions of Act/ Rules, the dealer paying lump-sum tax under Section 14D shall not purchase goods from outside State, the allowance of benefit of payment of lump-sum tax was irregular. This resulted in short levy of tax of ₹ 1.10 crore including interest of ₹ 0.24 crore and penalty of ₹ 0.52 crore.

We brought the above case to the notice of the Department in May 2013. The Department accepted (September 2013) our observation and stated that revision proceedings had been initiated.

We reported the matter to the Government (July 2013). The Government confirmed (September 2013) the reply of the Department.

## 2.20 Non/short levy of penalty under GVAT

Section 34 (7) of GVAT Act, provides for levy of penalty not exceeding one and half times of the tax assessed, if the dealer has employed such method of accounting which does not enable the Commissioner to assess the tax due from him or has knowingly furnished false or incorrect self assessment. Section 31(4) provides for levy of penalty equal to the amount of tax collected in contravention of the provisions of the Act *ibid*. Section 34 (12) provides for levy of penalty not exceeding one and half times of the difference between the tax paid with returns and the amount assessed or reassessed where the tax assessed or reassessed exceeds 25 *per cent* of the amount of tax already paid. By virtue of section 9(2) of the CST Act, the above provisions apply to assessments under the CST Act as well.

During test check of the records of six<sup>69</sup> offices, we noticed<sup>70</sup> in seven assessments of seven dealers<sup>71</sup> that the AA either did not levy penalty though the dealers were liable to pay penalty under the above provisions or the penalty was short levied. This resulted in non/short levy of penalty of ₹ 86.11 lakh as mentioned in the following table:

<sup>69</sup> Addl. Commissioner, Flying Squad, Ahmedbad  
ACCT: 82 Dhangadhra, 50 Nadiad, 94 Rajkot, 45 Vadodara  
CTO: 54 Petlad

<sup>70</sup> Between September 2011 and December 2012

<sup>71</sup> For the period 2006-07 and 2007-08 finalised between March 2011 and December 2012

Sl. No.	Name of the unit/s	No. of dealers	Assessment Year/ Date of assessment	Nature of observation	Penalty not levied or short levied (₹ in lakh)
1	ACCT, Unit-50, Nadiad, ACCT, Unit-45, Vadodara , ACCT, Unit-82, Dhrangadhra ACCT, Unit-94, Rajkot.	5	2006-07 and 2007-08 / Between March 2011 and December 2012	VAT/ CST assessed was ₹ 59.61 lakh while the tax paid with returns was ₹ 7.58 lakh. Hence, tax assessed exceeded the tax paid with returns by more than 25 per cent. However, no penalty was levied.	78.05
The Department accepted (between May and September 2013) our observations in all the five cases and raised demand of ₹ 27.25 lakh in four cases while in one case the Department initiated rectification proceedings.					
2	CTO, Unit-54, Petlad	1	2006-07/ 30.03.2011	The AA had worked out penalty of ₹ 12.65 lakh at the rate of 150 per cent but levied penalty of ₹ 5.06 lakh only in the assessment order. This resulted in short levy of penalty.	7.59
The Department accepted (September 2013) our observation and raised demand of ₹ 12.65 lakh.					
3	Additional Commissioner, Flying Squad, Ahmedabad	1	2007-08/ 09.03.2012	The dealer had evaded tax as the stock and cash as per accounts did not tally with physical quantity as determined during spot visit by the Flying Squad. However, no penalty was levied in the case.	0.47
The Department accepted (September 2013) our observation and raised demand of ₹ 0.47 lakh.					

We reported the matter to the Government (July 2013). The Government confirmed (September/ October 2013) the replies of the Department in all the cases.

### 2.21 Application of incorrect rate of tax (VAT)

Section 7 of GVAT Act, provides for levy of tax on the turnover of sales of goods specified in Schedule II and Schedule III. Further as per entry 87 of Schedule II, tax at the rate of 12.5 per cent is leviable on all goods other than those specified in Schedule II or III.

During test check of the records of five<sup>72</sup> offices, we noticed<sup>73</sup> in assessments of five dealers<sup>74</sup> that the AAs incorrectly assessed tax at lower rates instead of appropriate rates. This resulted in short levy of tax of ₹ 182.60 lakh including interest of ₹ 45.79 lakh and penalty of ₹ 75.61 lakh as mentioned in the following table:

<sup>72</sup> ACCT : 9, 11, 19 Ahmedabad, 25 Kalol, 30 Mehsana

<sup>73</sup> Between December 2011 and January 2013

<sup>74</sup> For the assessment period 2006-07 and 2007-08 finalised between May 2010 and September 2011

(₹ in lakh)

Sl. No.	Commodity (No. of dealers)	Rate of tax in percentage		Short levy of tax including interest and penalty
		leviable	levied	
1	Aluminium foil (1)	12.5	4	76.28
2	Transformer stamping (1)	12.5	4	17.65
3	PU- Foam (1)	12.5	4	77.59
4	Tubes (1)	12.5	4	2.75
5	Valves (1)	12.5	4	8.33
<b>Total</b>				<b>182.60</b>

We pointed out these cases to the Department between March and May 2013. The Department accepted (June/September 2013) our observations in all the cases and raised demand of ₹ 180 lakh in three cases while initiated revision proceedings in the remaining two cases.

We reported the matter to the Government (July 2013). The Government confirmed (September/October 2013) the replies of the Department in all the cases.

### 2.22 Short levy of tax due to incorrect determination of turnover (VAT/CST)

As per Section 2(24) of the GVAT Act, “*sale price*” means the amount of valuable consideration paid or payable to a dealer or received or receivable by a dealer for any sale of goods and includes in relation to a works contract/ the transfer of the right to use any goods, the amount of cash, deferred payment or other valuable consideration paid or payable thereof; after deducting the amount representing labour charges for execution of works contract. Moreover, as per the department’s instructions, while finalising assessment proceedings, assessing officers are expected to take into account the facts and figures contained in annual accounts, VAT audit report and other papers etc, submitted by the dealer apart from the facts and figures furnished by him in the periodical returns.

During test check of the records of 13<sup>75</sup> offices, we noticed<sup>76</sup> in case of 16 assessments<sup>77</sup>, from the VAT Audit Report/ Profit and Loss Account/ Balance Sheet/ Returns filed by the dealers that the AAs either did not include the income/ stock disclosed in Income Tax survey, warranty

<sup>75</sup> ACCT: 2, 7, 8, 18 Ahmedabad, 51 Anand, 57 Ankleshwar, 50 Nadiad, 91, 94 Rajkot  
DCCT: 5 Ahmedabad, 22 and 23 Rajkot, 18 Valsad

<sup>76</sup> Between July 2011 and January 2013

<sup>77</sup> 16 dealers for the period between 2006-07 and 2008-09 finalised between May 2009 and March 2012

claims<sup>78</sup>, amount received from the parent company towards re-imburement of VAT, freight income, sales of plant and machinery etc. in the taxable sales turnover or had not considered highest figure of sales turnover among the various documents furnished by the dealer, incorrectly arrived at deemed sales or irregularly deducted labour charges from the taxable sales turnover etc. This resulted in short realisation of tax of ₹ 1.52 crore including interest of ₹ 0.53 crore and penalty of ₹ 0.20 crore.

We have pointed out these facts to the Department between February 2013 and May 2013. The Department accepted (between June and November 2013) our observation in 15 cases and raised demand of ₹ 1.31 crore in eight cases and initiated reassessment/revision proceedings in seven cases. In one case, the Department did not accept (July 2013) the observation stating that the sale price was decided by the parent company. Such sale price was inclusive of local tax which was subsequently reimbursed by the parent company. Reply of the Department is not convincing, since the dealer had not only collected tax from its customers through retail invoices but also received re-imburement of VAT from the parent company. Since, such re-imburement was in relation to sale, same was to be included in taxable sales turnover. We are awaiting reply in the remaining one case (December 2013).

We reported the matter to the Government (July 2013). Government confirmed replies of the Department in 15 cases (between September and November 2013). We are awaiting their replies in the remaining one case (December 2013).

### **2.23 Short levy of VAT due to misclassification**

The GVAT Act provides for levy of tax at the rates as prescribed in the schedules, depending upon the classification of the goods. However, where the goods are not covered under any specific entry of the Schedule, general rate of tax given in residuary entry is applicable.

During test check of the records of four<sup>79</sup> offices, we noticed<sup>80</sup> that the AA while finalising assessments<sup>81</sup> allowed five dealers in their assessments to pay tax at lower rates due to incorrect classification of goods. This resulted in short levy of VAT

of ₹ 74.30 lakh including interest of ₹ 28.14 lakh and penalty of ₹ 7.43 lakh as given in the following table:

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<sup>78</sup> The Honuorable Supreme Court of India in the case of 'Mohmed Ikram Khan and Sons' has held that amount received from the parent company in respect of warranty claims is to be treated as sale.

<sup>79</sup> ACCT: 11 Ahmedabad, 24 Gandhinagar, 30 Mehsana and 41 Vadodara

<sup>80</sup> Between February 2012 and January 2013

<sup>81</sup> For the period between 2006-07 and 2008-09 finalised between August 2010 and February 2012

(₹ in lakh)

Sl. No.	Commodity	Classification as per assessment			Correct classification			Short levy of tax including interest and penalty
	Number of dealers	Description of goods	Entry No. in Schedule	Rate of tax	Description of goods	Entry No. in Schedule	Rate of tax	
1	Speakers (1)	Communication equipment	Sch.II 23	4	Electronic goods	87 of Sch.II	12.5	2.10
The Department accepted (April 2013) our observation and raised demand of ₹ 2.36 lakh. However, the dealer preferred appeal before GVAT Tribunal against the revision order of the Department.								
2	Mineral water (1)	Loose water	Sch.I 53	0	RO Chilled water	87 of Sch.II	12.5	8.66
The Department accepted (September 2013) our observation and initiated revision proceedings.								
3	Varnish (1)	Chemical	Sch.II 18	4	Colour	87 of Sch.II	12.5	20.79
The Department while not accepting our observation stated (September 2013) that the dealer did not deal in varnish rather he was dealing in colour and thinner. The reply is not acceptable as in the VAT and CST assessment orders 'Varnish and Auto Colour' had been specifically mentioned by the AA.								
4	Battery operated vehicle (1)	Renewable energy device	Sch.II 61	4	Non renewable energy device	87 of Sch.II	12.5	36.03
The Department while not accepting our observation stated (September 2013) that the explanation for levy of tax was introduced w.e.f. 1.8.2009 under entry 61 of the GVAT Act and our para related to 2006-07. The reply of the Department was not in consonance with provisions of the Act as the entry for levy of tax has been in the Act since 2006-07. The explanation has been introduced to remove any doubt regarding its levy.								
5	Husk (1)	<i>Khuski</i> (Rice bran/husk)	Sch.I	0	Husk	37 of Sch.II	4	6.72
The Department accepted (August 2013) our observation and raised demand of ₹ 22.25 lakh.								

We reported the matter to the Government (July 2013). The Government confirmed (September/ October 2013) the replies of the Department in all the cases.

## 2.24 Short levy of tax due to irregular deduction in lump sum works contract

Section 14A of GVAT Act read with Rule 28 (8) (c) of GVAT Rules and notification number GHN-88 dated 17.8.2006 and GHN-106 dated 11.10.2006 provides for payment of lump sum tax by way of composition by a civil works contractor at the rate of two *per cent* (upto 10-10-2006) and 0.6 *per cent* thereafter of the total value of the works contract after deducting amounts paid to sub contractors.

During test check of the assessment orders and connected assessment records of six<sup>82</sup> offices, we noticed<sup>83</sup> that out of eight registered dealers<sup>84</sup> availing benefit of payment of lump-sum tax, seven dealers had availed irregular deductions of ₹ 27.82 crore on account of labour, service charges while one dealer had considered composite contract receipts

lesser by ₹ 18.57 crore than shown in the VAT Audit Report. The omission escaped the notice of the AA while finalising audit assessment between July 2010 and March 2012 in case of seven dealers and in the case of remaining one dealer, the AA accepted the incorrect self-assessment filed by the dealer. This resulted in short levy of tax of ₹ 72.69 lakh including interest of ₹ 28.44 lakh and penalty of ₹ 4.33 lakh.

We pointed out these cases to the Department between October 2012 and May 2013. The Department accepted (between May and September 2013) the audit observations in seven cases and raised demand of ₹ 73.08 lakh. We are awaiting the reply in the remaining one case (December 2013).

We reported the matter to the Government (July 2013). The Government confirmed (September 2013) the replies of the Department in seven cases. We are awaiting their reply in the remaining one case (December 2013).

<sup>82</sup> ACCT: 5, 6, 7 Ahmedabad, 56 Bharuch, 24 Gandhinagar and 100 Jamnagar

<sup>83</sup> Between December 2011 and January 2013

<sup>84</sup> For the assessment period from 2006-07 to 2008-09 finalised between July 2010 and March 2012

## 2.25 Non/short levy of VAT on goods involved in execution of works contract

GVAT Act provides for levy of tax on the taxable turnover of sales in relation to works contract, after deducting the charges towards labour, service and other like charges, at the rate specified in Schedules. Further, as per notification number GHN-87 dated 11.8.2006 sales of goods by a registered dealer, when such goods are purchased from the registered dealer (of Gujarat) and used in the execution of works contract relating to processing of cotton textile fabrics including bleaching, dyeing and printing thereof, are exempt from levy of tax.

During test check of the assessment orders, certified accounts and connected assessment records for the assessment period between 2006-07 and 2008-09 in six<sup>85</sup> offices, we noticed<sup>86</sup> that out of seven cases finalised by the AAs between March 2011 and March 2012, the AA had either not levied or short levied tax on the sales turnover of goods worth ₹ 10.16 crore, involved in the execution of works contracts, due to consideration of lower deemed sales or non consideration of certain sales for levy of tax or irregular

allowance of exemption from sales turnover. This has resulted in non/short levy of tax of ₹ 77.69 lakh including interest of ₹ 25.06 lakh and penalty of ₹ 12.68 lakh as shown below:

(₹ in lakh)

Sl. No.	Name of the unit	No. of dealers	Assessment Year/ date of assessment	Nature of observation	Non/ short levy of tax including interest and penalty
1	ACCT, Unit-94, Rajkot	2	2006-07 and 2007-08/ 26.3.2011 and 19.10.2011	The AA omitted to consider the following item while arriving at deemed sales <sup>87</sup> : <ul style="list-style-type: none"> <li>In the first case purchases from the principal contractor were ignored.</li> <li>In the second case Gross Profit ratio was considered as 20 per cent instead of 31.89 per cent as shown in the Books of Account.</li> </ul>	29.54
The Department accepted (September 2013) our observations and raised demand of ₹ 4.28 lakh in one case while in the other case revision proceedings had been initiated.					

<sup>85</sup> ACCT: 57 Ankleshwar, 100 Jamnagar, 94 Rajkot, 41 Vadodara  
DCCT 13 Nadiad, 10 Vadodara

<sup>86</sup> Between January 2012 and January 2013

<sup>87</sup> Sales determined on the basis of gross profit and purchase price/cost of goods transferred during execution of works contract.

2	ACCT, Unit-100, Jamnagar	1	2006-07/ 19.4.2011	Inter-state purchases/ goods received through branch transfer/ retail purchases valued at ₹ 73.02 lakh were not considered to arrive at deemed sales. Hence, deemed sales were arrived at lower side.	2.24
The Department accepted (April 2013) our observation and raised demand of ₹ 2.81 lakh.					
3	DCCT, Range-10, Vadodara; DCCT, Range-13, Nadiad	2	2007-08/ 24.11.2011 and 28.11.2011	Works contract receipts worth ₹ 1.18 crore were not considered for levy of tax. Hence, sales escaped from assessment.	6.18
The Department accepted (June/ August 2013) our observations and raised demand of ₹ 4.12 lakh in one case while in the other case the audit observation was forwarded to the Appellate Authority for verification and decision.					
4	ACCT, Unit-57, Ankleshwar	1	2008-09/ 26.11.2011	The exemption under notification GHN-87 was admissible only if the purchases were made within Gujarat. Since, the dealer had purchased goods valued at ₹ 48.35 lakh from outside Gujarat, as being ascertained from the noting and assessment order, the dealer was not entitled for exemption.	6.31
The Department accepted (June 2013) our observation and raised demand of ₹ 6.79 lakh.					
5	ACCT, Unit-41, Vadodara	1	2008-09/ 22.3.2012	Turnover pertaining to unregistered period was not considered at all and dealer was assessed under Section 14A (lump-sum tax) though no such permission for payment of lump-sum tax was granted to the dealer. Hence, sales escaped from assessment.	33.42
The Department stated (October 2013) that the unregistered period would be dealt with at the time of assessment thereof. As regards assessment under Section 14A, clarification had been sought from the dealer.					

We reported the matter to the Government (July 2013). The Government confirmed (September/October 2013) the reply of the Department in all the cases.

## 2.26 Short levy of tax due to application of incorrect rate of tax (CST)

Section 8 (1) of the CST Act, provides for levy of CST on the inter-State trade. The Act also provides for grant of an exemption through issue of a notification under Section 8(5) of the Act *ibid*. Tyres and tubes have no specific entry under Schedule- II of the GVAT Act, hence it is covered under residuary entry. The Government of Gujarat (GoG) *vide* notification dated 29.04.2006 exempted tax in excess of four *per cent* on sale of tyres and tubes of bicycles falling in entry 6 of Schedule II of GVAT Act. Further, GoG *vide* another notification dated 29.04.2006 decided the rate of tax on parts of bicycle at one *per cent* and on the re-rolled steel products at two *per cent* in respect of sale of such goods made in the course of inter-State trade or commerce. It implies that tyres and tube were not treated as a part of bicycles.

During test check of the records of two<sup>88</sup> offices, we noticed<sup>89</sup> in the cases of two dealers for the assessment<sup>90</sup> that in one case the AA had levied CST at one *per cent* instead of four *per cent* for assessment year 2006-07 and three *per cent* for the assessment year 2007-08, on sales of tyres and tubes of bicycles by classifying such tyres and tubes as parts of bicycles falling under entry 6 of Schedule II of the Act. As tyres and

tubes of bicycles were not covered under parts of bicycle in entry 6 of schedule II of GVAT Act, the concessional rate of one *per cent* was not applicable in this case.

In another case, the dealer resold waste and scrap of stainless steel and levied CST at two *per cent* treating it as re-rolled steel products. Since, scarp cannot be termed as re-rolled steel products, levy of CST at two *per cent* instead of 4 *per cent* was irregular. Thus, incorrect application of concessional rate resulted in short levy of CST of ₹ 76.53 lakh including interest of ₹ 19.79 lakh and penalty of ₹ 34.04 lakh.

We pointed out these cases to the Department between January 2013 and May 2013. The Department accepted (September 2013) our observation in one case and raised demand of ₹ 73.49 lakh for 2006-07 while reassessment proceedings had been initiated for assessment year 2007-08. In the other case, the department did not accept the audit observation and stated (September 2013) that the dealer had sold re-rolled S.S. billets and round bars (cut pieces).

The reply is not correct as the dealer had sold waste iron scrap as could be ascertained from the invoices raised by the dealer.

<sup>88</sup> Addl. Commissioner, Flying Squad, Ahmedabad and ACCT 25 Kalol

<sup>89</sup> Between May and August 2012

<sup>90</sup> For the period 2006-07 and 2007-08 finalised between February 2010 and October 2011

We reported the matter to the Government (July 2013). The Government confirmed (September/October 2013) the reply of the Department in both the cases.

## 2.27 Incorrect allowance of export deduction

Sale during export/import is not taxable. Rule 12(10) of the CST (Registration and Turnover) Rules, 1957, provides that the dealer has to furnish a certificate in Form H, duly filled in with all details as an evidence of deemed export. By virtue of Section 9(2A) of the CST Act, provisions of interest and penalty as per GVAT Act, becomes applicable.

**2.27.1** During test check of the records of two<sup>91</sup> offices, we noticed<sup>92</sup> in the assessment of two dealers<sup>93</sup> that the AAs allowed export sales valued at ₹ 1.58 crore without production of Form H and supporting documents. This resulted

in incorrect deduction of turnover involving tax of ₹ 45.84 lakh including interest of ₹ 10.96 lakh and penalty of ₹ 19.43 lakh.

We brought the above cases to the notice of the Department between April and May 2013. The Department accepted (July and September 2013) our observation in these cases and raised demand of ₹ 62.96 lakh.

We reported the matter to the Government (July 2013). The Government confirmed (September 2013) the replies of the Department in both the cases.

As per Section 11 (B) of the Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 a dealer is eligible for refund of excise duty paid on export sales. As per Section 2(24) of the GVAT Act sale price is inclusive of the excise duty.

**2.27.2** During test check of records of ACCT, Unit-85, Junagadh we noticed in December 2012 in one assessment for the year 2007-08, finalised in March 2012, that the AA had allowed

deduction towards export sale worth ₹ 6.36 crore instead of ₹ 5.62 crore as shown in the Books of Account. This resulted in short levy of tax of ₹ 5.03 lakh including interest of ₹ 2.09 lakh.

We brought the above case to the notice of the Department in May 2013 and to Government (July 2013). The Department while not accepting our observation stated (September 2013) that the difference between the figures of export as shown in the Balance Sheet and that adopted in the assessment was due to element of excise duty which was not considered in the Balance Sheet. The Government (October 2013) confirmed the reply of the Department.

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<sup>91</sup> ACCT: 93 Rajkot  
DCCT: 13 Nadiad

<sup>92</sup> Between June and September 2011

<sup>93</sup> For the period 2006-07, finalised between February and March 2011

The reply is not correct because as per provisions of the Central Excise Act and rules, the element of excise duty involved in exports is refundable to the dealer. Hence, such duty does not form part of sale price as per provisions of GVAT Act. As such, deduction towards excise duty, involved in exports, from gross sales turnover was irregular.

### 2.28 Short levy of VAT due to excess deduction towards labour service etc.

GVAT Act and Rules provide for deduction of labour/service and other charges incurred in relation to works contract, if the dealer maintains true and correct records and also furnish the same to the satisfaction of the assessing authority. In the absence of true and correct records, a lump sum deduction shall be admissible at the rate of 30 *per cent* in case of civil works contract and 10 to 20 *per cent* for other works for levy of tax.

During test check of the records of four<sup>94</sup> offices, we noticed<sup>95</sup> in the assessment of four dealers<sup>96</sup> that AAs allowed deductions for labour, service charges of ₹ 761 lakh from the turnover of ₹ 2,048 lakh. This resulted in short levy of tax of ₹ 50.45 lakh including interest of ₹ 12.21 lakh and penalty of ₹ 21.03 lakh as detailed below:

(₹ in lakh)

Sl. No.	Name of the unit (Number of dealers)	Assessment Year/ date of assessment	Deduction allowable/ Deduction allowed/ Excess deduction	Nature of observation	Non/short levy of tax including interest and penalty
1	ACCT-5, Ahmedabad (1) and ACCT-88, Veraval (1)	2006-07/ 3.3.2011 and 16.3.2011	267.67/ 482.56/ 214.89	The AA had allowed deduction at the rate of 46 <i>per cent</i> and 96 <i>per cent</i> instead of 30 <i>per cent</i> though no true and correct records for labour/service charges were available in the assessment file.	40.50
The Department accepted (June and September 2013) our observations and raised demand of ₹ 23.42 lakh in one case while in the other case revision proceedings had been initiated.					
2	ACCT-85, Junagadh (1)	2007-08/ Self Assessment	130.55/ 165.34/ 34.79	The AA had allowed deduction of ₹ 1.65 crore instead of ₹ 1.31 crore as shown in the Profit and Loss Account.	4.50
The Department did not accept our observation and stated (September 2013) that the dealer was allowed deduction towards consumable purchases on which he had not claimed any ITC. The reply					

<sup>94</sup> ACCT 5 Ahmedabad, 85 Junagadh, 40 Vadodara and 88 Veraval

<sup>95</sup> Between June 2011 and December 2012

<sup>96</sup> For the period from 2006-07 and 2007-08 finalised between March and October 2011

of the Department is not acceptable, as levy of output tax and claim of ITC, if eligible are two different aspects. The dealer was required to be reassessed.

3	ACCT-40, Vadodara (1)	2007-08/ 21.10.2011	75.28/ 112.92/ 37.64	The dealer was engaged in the installation of close circuit cameras. However, the AA had allowed deduction at the rate of 30 per cent applicable to the civil works contract instead of 20 per cent applicable to other works contract.	5.45
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The Department while accepting our observation stated (September 2013) that the Honorable GVAT Tribunal had set aside the reassessment order for fresh assessment. The Department may consider the audit observation in the fresh assessment to safeguard Government revenue.

We reported the matter to the Government (July 2013). The Government confirmed (September/October 2013) the replies of the Department in all the cases.

### 2.29 Non/short levy of entry tax

Gujarat Tax on Entry of Specified Goods into Local Area Act, 2001 provides for levy of tax on the purchase price (inclusive of Central Excise Duty) of specified goods brought into a local area at rates prescribed. The amount of entry tax is to be reduced to the extent of CST or the sales tax paid to the State from where goods have been imported, provided the invoice/declaration in this regard is produced.

During test check of the records of four<sup>97</sup> offices, we noticed<sup>98</sup> in the assessments of six dealers<sup>99</sup> that the dealers had made inter State purchases of specified goods viz. motor vehicles, cement, yarn etc. and were liable to pay entry tax at appropriate rate of 15 per cent (for motor vehicles/cement) or four percent (for

yarn). However, in two cases the AA had not levied entry tax on inter-state purchases of motor vehicles/yarn worth ₹ 90.83 lakh. While in two cases, though required, invoice/declaration were not furnished by the dealers, the AA had reduced amount of CST of ₹ 4.04 lakh from the entry tax leviable, on purchase of yarn. Further, two dealers viz M/s Essar Steel (Hazira) Ltd, and M/s Hazira Plate Ltd, were granted permission (28 September 2010) to exit from the Special Economic Zone (SEZ) by the Development Commissioner of SEZ. However, while working out the entry tax during assessments, the AA had not taken into account the element of excise duty (₹ 6.32 crore) in the purchase price. This resulted in short levy of entry tax of ₹ 43.50 lakh including penalty of ₹ 17.39 lakh.

<sup>97</sup> ACCT : 56 Bharuch, Dahod, 69 Surat and DCCT 15 Surat

<sup>98</sup> Between September 2011 and January 2013

<sup>99</sup> For the period between 2006-07 and 2009-10 finalised between March and October 2011

We brought the above cases to the notice of the Department between March and May 2013. The Department accepted (between June and November 2013) our observation in all the cases and raised demand of ₹ 3.22 lakh in one case.

We reported the matter to the Government (July 2013). The Government confirmed (between September and November 2013) the reply of the Department in all the cases.

### 2.30 Non/short levy of Central Sales Tax on Railway Receipts sales

Section 6 (2) of CST Act, stipulates that in the course of inter-State sale of goods, if the purchasing dealer effects any subsequent sales during movement of goods, no tax is payable. The dealer claiming exemption has to produce a declaration in Form E-I (first interstate sale) or E-II (subsequent sales by the transferors) obtained from his selling dealer and declaration in Form C from his purchaser.

During test check of the records of office of the ACCT, Unit-2, Vadodara, we noticed<sup>100</sup> in the assessment of one dealer<sup>101</sup> that the AA did not levy tax on the transit sales<sup>102</sup> effected by transfer of documents of title to such goods in the course of interstate sale, though the transactions were not

supported by mandatory E-I/E-II and C forms. This resulted in non-levy of tax of ₹ 6.12 lakh including interest of ₹ 1.61 lakh and penalty of ₹ 2.71 lakh.

We brought the above cases to the notice of the Department in February 2013. The Department while accepting our observation stated (September 2013) that the dealer had filed an appeal before DCCT, Appeal and the appellate authority had been intimated to consider the audit observation during appeal proceedings.

We reported the matter to the Government (July 2013). The Government confirmed (October 2013) the reply of the Department.

### 2.31 Short levy of VAT

Section 6(2) of the CST Act provides for exemption from levy of CST in case of RR sale supported by form E-I/ II and form C. In the event of non production of the statutory forms, such sale is to be disallowed and provisions of CST Act or the local VAT Act are attracted.

During test check of the assessment records of office of the ACCT-92, Morbi, we noticed in one case<sup>103</sup> that the dealer had claimed RR sales of ₹ 3.01 crore but did not produce statutory Forms E-I or E-II for the transaction

amounting to ₹ 1.12 crore. The AA disallowed the exemption benefit of RR sale of ₹ 1.12 crore and levied CST treating it as sales during the course of

<sup>100</sup> In April 2012

<sup>101</sup> For the period 2006-07, finalised in March 2010

<sup>102</sup> RR sale' is the abbreviated form of 'Railway Receipt sale. Where a subsequent sale (second and so on) is affected by transfer of documents of title to the goods in the course of inter-state trade or commerce, such sale is termed as RR sale.

<sup>103</sup> Assessment period 2007-08 finalised in October 2011

inter State trade and commerce. We noticed that the dealer had made subsequent sale of goods to the dealers of Gujarat. As the sales were effected within the State of Gujarat, in absence of E-I/E-II Forms, such sales should have been treated as local sales and tax was required to be levied at 12.5 per cent as per GVAT Act. However, the AA had levied CST at 3 per cent treating the sales in the course of inter State trade and commerce. This resulted in short levy of VAT of ₹ 34.14 lakh including interest of ₹ 7.55 lakh and penalty of ₹ 15.96 lakh.

We brought the above case to the notice of the Department in March 2013. The Department while accepting (September 2013) our observation stated that the dealer had filed an appeal before DCCT, Appeal and the appellate authority had been intimated to consider the audit observation during appeal proceedings.

We reported the matter to the Government (July 2013). The Government confirmed (September 2013) the reply of the Department.

### **2.32 Incorrect deduction from sales turnover under GVAT Act**

As per Section 2(30) of the GVAT Act, taxable turnover means the turnover of all sales or purchases of a dealer during the prescribed period in any year after deducting there from the turnover of sales not subject to tax/declared exempted under the Act *ibid*. Section 34 A provides for levy of tax on fair market price of sales transactions.

During test check of the records of office of the ACCT-41, Vadodara we noticed in April 2012 in the assessment of one dealer<sup>104</sup> that the AA assessed tax ex-party and allowed

deduction on account of tax free sales from the sales turnover. As the assessment was finalised under Section 34A i.e. in absence of any records, the grant of deduction from total sales turnover was not justified. This resulted in short levy of VAT of ₹ 7.29 lakh including interest of ₹ 1.61 lakh and penalty of ₹ 3.41 lakh.

We brought the above cases to the notice of the Department in January 2013. The Department accepted (September 2013) our observation and stated that the dealer had filed appeal before DCCT, Appeal and the appellate authority had been intimated to consider audit observation during appeal proceedings.

We reported the matter to the Government (July 2013).The Government confirmed (October 2013) the reply of the Department.

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<sup>104</sup> For the period 2007-08 finalised in July 2010

### 2.33 Non-levy of CST on transporting charges

As per CST Act, sale price is inclusive of the cost of freight in cases where such cost is separately charged. Further as per Honourable Supreme Court's decision in the case of M/s India Meters Ltd. V/s State of Tamil Nadu (Civil Appeal No.1032-33 of 2003), the amount of freight and insurance charges incurred by the dealer forms part of sales price.

During test check of the records of two<sup>105</sup> offices, we noticed (in January 2013) in the assessments of two dealers<sup>106</sup> that AAs did not include sales considerations received on account of

transportation charges. In one case, though the dealer collected CST on total sales including freight charges of ₹ 53.95 lakh, but paid the tax on net of freight. In the other case, there was specific mention of inclusion of transportation charges of ₹ 270 lakh in the value of goods in the invoices raised by the dealer. Further, it was also stated therein that the place of removal is buyer's factory gate. However, the AA did not include the transportation cost in the sale consideration for levy of tax. This resulted in short levy of CST of ₹ 17.72 lakh including interest of ₹ 6.70 lakh and penalty of ₹ 1.57 lakh.

We pointed out this fact to the Department between April and May 2013. The Department accepted our observations in both the cases and raised demand of ₹ 4.49 lakh in one case while in the other case revision proceedings had been initiated.

We reported the matter to the Government (July 2013). The Government confirmed (September 2013) the reply of the Department in both the cases.

### 2.34 Irregular grant of deduction against Form 'I' for sales to SEZ (CST)

As per Section 8(6) of CST Act, read with Rule 12 (11) of CST (Registration and Turnover) Rules, 1957 exemption of tax on sales of goods made in the course of inter State trade or commerce to SEZ units or developers is available to dealers who furnish Form "I" duly filled in and signed by such units or developers. Further, as per Section 5A of GVAT Act, 2003 the sale of goods to Developers or Co-developers of SEZ shall be zero rated sale with effect from 1<sup>st</sup> April 2008.

During test check of the records of office of the ACCT 24 Gandhinagar, we noticed (in January 2013) in one assessment of a dealer<sup>107</sup> that the AA allowed deduction of ₹ 199.10 lakh against Form "I". However, in assessment, "I" forms for the value of ₹ 0.92 lakh only were furnished. The remaining sales of

<sup>105</sup> DCCT: 13 Nadiad, 16 Surat

<sup>106</sup> For the period between 2007-08 finalised in November 2011 and January 2012

<sup>107</sup> For the period 2007-08 finalised in March 2012

₹ 198.18 lakh were not duly supported by Form “I” (on assumption that the same was not required as it had occurred within the State of Gujarat). This was incorrect as VAT was not exempted on sales to SEZ unit up to March 2008. This resulted in incorrect grant of exemption of ₹ 13.55 lakh including interest of ₹ 5.62 lakh.

We brought the above case to the notice of the Department in May 2013. The Department while accepting (September 2013) the observation stated that revision proposal has been forwarded to the concerned authority for verification and further necessary action.

We reported the matter to the Government (July 2013). The Government confirmed (September 2013) the reply of the Department.

### 2.35 Non/short levy of CST due to acceptance of duplicate ‘C’ forms

Section 8 of CST Act, provides for levy of tax at four *per cent* on inter State sale of goods made against Form ‘C’. Where the sale is not supported by Form ‘C’, tax is leviable at the rate of 10 *per cent* or at such higher rate as applicable on such goods within the State. In respect of declared goods where the sale is not supported by Form ‘C’, tax is leviable at twice the rate applicable.

During test check of the records of the office of the ACCT Bhuj, we noticed (in February 2011) in one assessment of a dealer<sup>108</sup> that sales of goods were not supported with the original copy of declaration Form ‘C’. However, AA levied concessional rate of tax at four *per cent* instead of

the appropriate rate of ten *per cent*. This resulted in short levy of CST of ₹ 9.93 lakh including interest of ₹ 2.51 lakh and penalty of ₹ 2.78 lakh.

We brought the above case to the notice of the Department in April 2013. The Department while accepting (September 2013) our observation raised demand of ₹ 11.82 lakh and stated that the dealer had filed appeal before the appellate authority by paying ₹ 3.79 lakh under protest.

We reported the matter to the Government (July 2013). The Government confirmed (September 2013) the reply of the Department.

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<sup>108</sup> For the period 2002-03 finalised in February 2007

### 2.36 Non/short levy of penalty under GST

Section 45(6) of the GST Act, provides for levy of penalty not exceeding one and half times of the difference between the tax paid with returns and the amount assessed or reassessed where the tax assessed or reassessed exceeds 25 *per cent* of the amount of tax already paid. The Commissioner *vide* public circular dated 3 June 1992 has laid down slab rates for levy of penalty. By virtue of section 9(2) of the CST Act, these provisions apply to assessments under the CST Act as well.

During test check of the records of office of the Assistant Commissioner of Commercial Tax (ACCT) 41, Vadodara, we noticed<sup>109</sup> that the difference between tax assessed and tax paid with returns exceeded 25 *per cent* of the amount of tax paid. However, the AAs while finalising the assessments<sup>110</sup> did not levy penalty of ₹ 2 lakh in one case and in other four cases

the AA had levied penalty of ₹ 41 lakh only instead of penalty leviable of ₹ 3.05 crore as per provisions and Commissioner's circular of June 1992. This resulted in non/short levy of penalty of ₹ 2.65 crore.

We brought the above cases to the notice of the Department between January and February 2013. The Department accepted our observations in all the cases and stated (September 2013) that as the dealers had filed appeal before the appellate authority, the appellate authority had been intimated to consider the aspect.

We reported the matter to the Government (July 2013). The Government confirmed (October 2013) the replies of the Department in all the cases.

### 2.37 Turnover escaping assessment (GST)

As per Section 2(29) of the GST Act, 1969 “sale price” includes the amount of consideration paid or payable to a dealer for any sale.

During test check of the records of office of the ACCT Unjha, we noticed (July 2012) in the case of one dealer<sup>111</sup> that the AA did not

include the amount of valuable consideration (i.e. Sale of machinery, vehicles, materials, labour/ service charges) forming part of the sale price as being shown in the returns of the dealer. But, instead relied upon the sales figures as shown under the books of accounts of the dealer without ascertaining the reason for the discrepancies thereon with the returns. This resulted in short realisation of tax of ₹ 29.71 lakh.

<sup>109</sup> In five assessments of three dealers for the assessment period 2004-05 and 2005-06

<sup>110</sup> Between August 2008 and June 2010

<sup>111</sup> For the assessment period 2003-04 finalised in January 2009

We brought the above case to the notice of the Department in April 2013. The Department while accepting our observation reassessed (September 2013) the case and raised demand of ₹ 32.12 lakh.

We reported the matter to the Government (July 2013). The Government confirmed (September 2013) the reply of the Department.