CHAPTER-II
TAXES/VAT ON SALES, TRADE

CHAPTER II: TAXES/VAT ON SALES, TRADE

2.1.1 Tax administration

Sales Tax/Value Added Tax (VAT) laws and rules framed thereunder are administered at the Government level by the Additional Chief Secretary (Excise and Taxation). The Excise and Taxation Commissioner (ETC) is the head of the Excise and Taxation Department who is assisted by nine Additional ETC, 10 Joint ETCs, 50 Deputy ETCs and 203 Excise and Taxation Officers (ETOs). They are assisted by Excise and Taxation Inspectors and other allied staff for administering in the relevant Tax laws and rules.

2.1.2 Results of audit

In 2014-15, test check of the records of 41 (Revenue units: 32 and expenditure unit: 9) relating to VAT/Sales tax assessments and other records showed underassessment of tax and other irregularities involving ₹ 2,328.72 crore, in 1,438 cases, which fall under the following categories in **Table 2.1.**

Table-2.1

(₹ in crore)

Sr. No.	Categories	Number of cases	Amount
1	**Performance Audit on "System of Assessment under VAT"**	**1**	**310.48**
2.	Underassessment of Tax	723	379.84
3.	Acceptance of defective statutory 'Forms'	52	7.05
4.	Evasion of tax due to suppression of sales/purchase	67	14.72
5.	Irregular/Incorrect/Excess allowance of ITC	168	28.41
6.	Other irregularities	427	1,588.22
	Total	**1,438**	**2,328.72**

During the year, the Department accepted underassessment and other deficiencies amounting to ₹ 308.00 crore in 83 cases, out of which ₹ 290.74 crore involved in 11 cases were pointed out during the year and the rest in earlier years. The Department recovered ₹ 1.14 crore in 42 cases, out of which ₹ 0.13 crore involved in nine cases relates to the year 2014-15 and the rest to earlier years.

One Performance Audit on **"System of Assessment under VAT"** and other important cases involving tax effect of ₹ 327.94 crore are discussed in the following paragraphs:

2.2 System of Assessment under VAT

2.2.1 Highlights

- Absence of provision for finalisation of assessments besides cancellation of registration certificate led to non realisation of revenue of ₹ 17.52 crore in two cases.

(Paragraph 2.2.8)

- Failure of the Department to put in place a system of exchange of inter departmental data base from unregistered works contractors resulted in non realisation of tax of ₹ 35.66 crore besides penalty of ₹ 35.66 crore in 605 cases.

(Paragraph 2.2.9)

- Incorrect application of rate of tax of four/five *per cent* on unclassified items valuing ₹ 235.50 crore, against the applicable rate of 12.5 *per cent,* resulted in underassessment of tax of ₹ 14.98 crore, in 49 cases, besides irregular refund of ₹ 92 lakh.

(Paragraph 2.2.11.1)

- Assessing Authorities (AAs) allowed nil/concessional rate of tax on sale/transfer of goods against fake declaration forms C, F and H, which resulted in non levy of tax of ₹ 4.41 crore and penalty of ₹ 13.23 crore in 16 cases.

(Paragraph 2.2.11.2)

- Assessing Authorities levied the differential amount of tax for not submitting the proof of movement of goods sold on C Forms and submitting false returns/VAT C-4 certificates but failed to levy mandatory penalty of ₹ 18.07 crore in 13 cases.

{Paragraphs 2.2.11.3 (i) and (ii)}

- Assessing Authorities had wrongly calculated carry forward of tax, deduction of tax concession and did not levy interest and surcharge of ₹ 55 crore in 90 cases.

(Paragraph 2.2.11.4)

- Despite issue of instructions/guidelines on March 2006/February 2007/ July 2013 regarding preparation of check lists, obtaining accounts of declaration forms, proof of payment of tax, cross verification of sales/purchases and checking of movement of goods, the same were not being followed by the AAs while scrutinizing the cases.

(Paragraph 2.2.12.2)

- Provisions relating to levy of penalty for non-filing of returns, obtaining refund application in proper proforma (VAT A-4), mentioning the nomenclature of the items sold/purchased in Form 'C', accepting complete C-4, VAT D-2/H Forms, were not complied with. Further, non-maintenance of demand and collection register, late serving of assessment orders/demand notices and delay in re-assessment of cases, resulted in short realisation of tax of ₹ 16.46 crore.

{Paragraph 2.2.12.2(a-e) and 2.2.12.3}

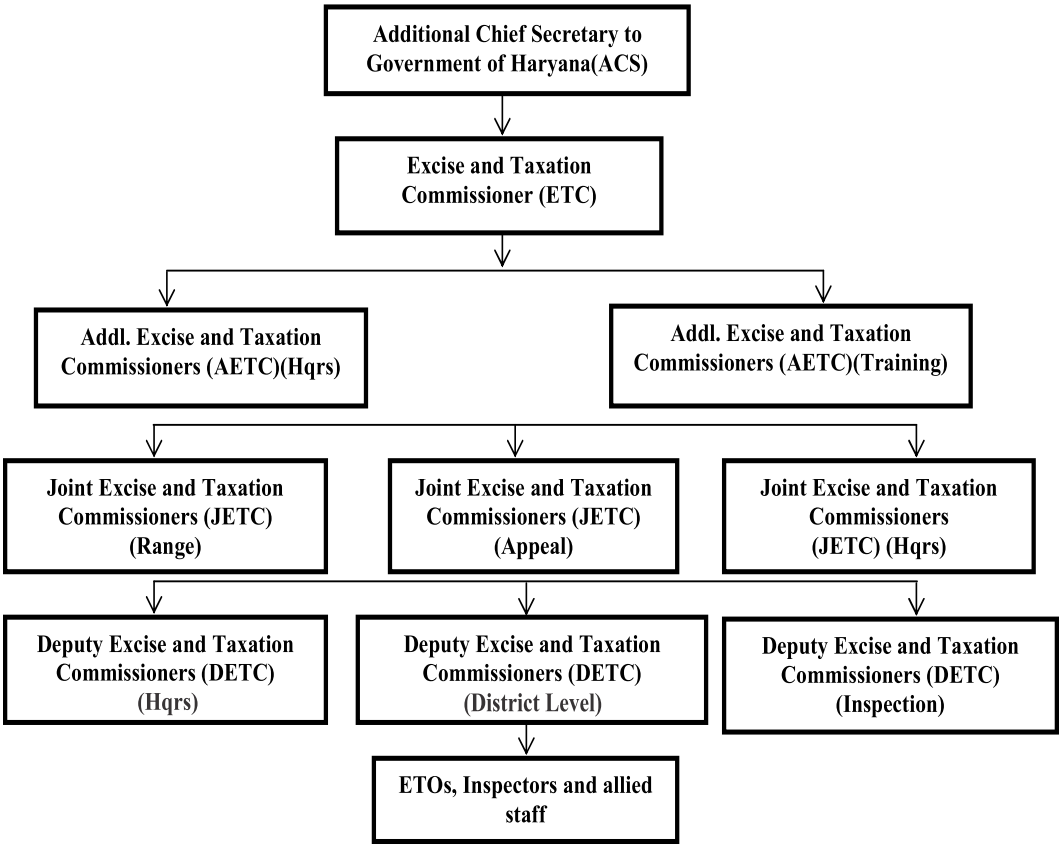
2.2.2 Introduction

Government of Haryana introduced Value Added Tax (VAT) with effect from April 2003. The Haryana Value Added Tax (HVAT) Act, 2003 and Rules made thereunder (HVAT Rules, 2003) govern levy and collection of value added tax (VAT) in Haryana at every point of sale. VAT is a multi-stage tax levied at each stage of the value addition chain, with a provision to allow input tax credit (ITC) on tax paid at an earlier stage, which can be appropriated against the VAT liability on subsequent sale. VAT constitutes major portion of State revenue. Assessment of tax has a direct bearing on the tax collection and quality of tax administration. Criteria for assessment of cases have been fixed by State Government.

2.2.3 Organisational Set up

The ETC, Haryana is responsible for the control and implementation of the Act and Rules at Departmental level and Additional Chief Secretary (ACS) to Government of Haryana, Excise and Taxation Department at Government level. The ETC is assisted by nine AETCs, JETCs, DETCs at Headquarters as well as district level, ETOs, Taxation Inspectors and other officers/officials.

Organogram of Excise and Taxation Department



2.2.4 Audit Objectives

The performance audit was conducted to assess whether:-

- the assessment criteria has been prescribed by State Government for selection of cases, if so, the selection was made as per the prescribed criteria;
- the assessments are done according to provisions of the Act, Rules and orders; and
- there exists an adequate system of internal control mechanism in the department.

2.2.5 Scope and Methodology

Out of 23 Deputy Excise and Taxation Commissioners (Sales Tax) {DETC (ST)} offices in the State, the records relating to assessments framed during the period 2009-10 to 2013-14 in eight DETC (ST)[1] offices were test checked between December 2014 and May 2015 which were selected on the basis of probability proportional to size method with replacement. Besides this, results of checking of refunds issued during 2012-13 to 2014-15 in respect of 11 DETC (ST)[2] offices and cases noticed during audit of other DETC (ST) offices have also been included in the Performance Audit. As desired by the department during entry conference, some cases assessed during 2014-15 have also been test checked under the new scrutiny criteria[3].

An entry conference was held (January 2015) with the Additional Chief Secretary (ACS) to Government of Haryana, Excise and Taxation Department wherein audit objectives, audit criteria and methodology adopted for selection of districts were explained/discussed. The draft Performance Audit Report was sent for comments to the Department and Government in August 2015. An exit conference was held on 28 October 2015 with the ACS to Government of Haryana, Excise and Taxation Department, ETC, AETCs and other officers. Further, a discussion was also held on 26 November 2015. The views of the Department/Government wherever received have been appropriately incorporated in the Performance Audit. We acknowledge the co-operation of Excise and Taxation department in providing necessary information and records for facilitating audit.

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1 Ambala, Faridabad (West), Gurgaon (West), Jagadhri, Jhajjar, Jind, Sirsa and Sonipat.

2 Ambala, Faridabad (East), Faridabad (West), Fatehabad, Gurgaon (East), Gurgaon (West), Kurukshetra, Kaithal, Karnal, Sirsa and Sonipat.

3 To streamline the work and make scrutiny assessment effective the department reduced (16 July 2013) the number of scrutiny cases to 5000 after excluding certain categories as given in Rule 27 of HVAT Rules.

2.2.6 Audit Criteria

The audit criteria were derived from the following sources:

- HVAT Act and Rules, 2003 and amendments made there under;
- CST Act, 1956 and the Rules framed there under;
- Orders/notifications issued by the Government/ Department from time to time; and
- Judgments/orders of the Hon'ble Courts/Tribunal.

Systems deficiencies

2.2.7 Computerisation

Introduction of VAT envisaged computerisation of tax records, registration details and issue of declaration forms etc. for better tax administration. It was noticed in audit that even a minimum level of computerisation did not exist within the department even after 12 years of introduction of VAT in the State. Computerisation in the Department is limited to administrative work, maintaining database of dealers, contractors, and traders etc, whereas the primary work relating to assessment i.e. verification of sale/purchase transactions, tax deposited, detect invalid ITC etc. were being done manually through issuing letters to other districts/States. As a result, ETC Haryana has to issue instructions in March 2006 and July 2013 for manual cross verification of all purchase/sale transactions totaling more than ₹ one lakh from a single VAT dealer in a year. This could have been avoided if a computerised system had been introduced for uploading of information relating to sales/purchase, issue of declaration forms and cancellation of registration certificates etc., to verify the genuineness of transactions/ declaration forms through connectivity to national network Tax Information Exchange System (TINXSYS). Lack of such computerised system has restricted the Department in effective tax management and administration. ***The issue was also pointed out in the Report of the Comptroller and Auditor General of India for the year ended 31 March 2014.***

During test check of records of offices of eight DETCs (ST)[4] between December 2014 and May 2015, it was noticed that in 77 cases, benefit of ITC of ₹ 40.59 crore on purchase of ₹ 740.32 crore from VAT dealers was allowed during the years 2009-10 to 2013-14 without cross verification of sale/purchase transactions.

Though computerisation was essential after introduction of VAT, the departmental machinery failed to dispose of the cases promptly, locate bogus/non-existing dealers, invalid sale/purchase transactions, verify tax deposited, detect fraudulent claim of ITC and bogus forms etc as discussed in succeeding paragraphs, primarily due to inadequate computerisation.

During exit conference, the department stated that the work on computerisation is going on and would be completed shortly.

[4] Ambala, Faridabad (West), Gurgaon (West), Jagadhri, Jhajjar, Jind, Sirsa and Sonipat.

2.2.8 Absence of provision for finalisation of assessment besides cancellation of Registration Certificate (RC)

Rule 14 of HVAT Rules, provides for procedure of cancellation of RC and the dealer is required to surrender RC, used and unused declaration forms obtained from the department along with application for cancellation. However, there was no provision in the Act regarding finalisation of assessment besides cancellation of RC.

During test check of records of the office of DETC (ST) Sirsa in April 2015, it was noticed that two dealers closed down their business w.e.f. 31 March 2014 and 1 November 2014 respectively and applied for cancellation of RC (April 2014/November 2014). The AA cancelled the RCs (November 2014/ February 2015) without getting the unused declaration forms surrendered or finalising the assessments. It was further noticed that during 2013-14, the dealers had filed their returns involving turnover of sale of Cigarettes worth ₹ 83.45 crore. Non finalisation of assessments besides cancellation of RCs resulted in non realisation of tax of ₹ 17.52 crore (at the rate of 21 *per cent*). Had the provision for finalisation of assessments besides cancellation of RC been made, the amount of ₹ 17.52 crore could have been recovered from the dealers.

During exit conference, the department admitted the audit observation and stated that assessment would be finalised at the earliest possible and necessary provision would be made in the Act. The department also stated that instructions would be issued to the assessing authorities in due course.

2.2.9 Non registration of works contractors

Under Section 48 of HVAT Act the assessing authority may call for information/database from other departments/Corporation/persons relevant to any proceedings or useful for tax administration and Section 16 provides for levy of tax and penalty equivalent to tax determined during assessment of unregistered dealers.

During test check of records of offices of five DETCs (ST)[5], it was noticed that the department had not established any system for cross verification of information available with other departments to detect unregistered dealers and evasion of tax.

Further, audit cross verified the information collected from 11 offices[6] and found that 605 unregistered dealers (Works Contractors) had exceeded the threshold limit of taxable turnover for registration as they had received payments for execution of works contracts during 2009-10 to 2013-14, but did not get themselves registered under HVAT Act. Failure to put in place a system for collection of information from other departments, which would help facilitate the process of identifying, registering and assessing unregistered

[5] Faridabad (West), Gurgaon (West), Jagadhri, Jhajjar and Sonipat.

[6] Municipal Council/Corporation (MC): Bahadurgarh, Faridabad, Gurgaon, Sonipat, Yamunanagar; Executive Engineer (XEN), Haryana State Marketing Board (HSAMB): Bahadurgarh, Faridabad, Gurgaon, Sonipat, Yamunanagar and XEN Housing Board: Gurgaon.

dealers which resulted in non realisation of tax of ₹ 35.66 crore besides penalty of ₹ 35.66 crore.

During exit conference, the department admitted the audit observation and stated to make registration of works contractors mandatory in consultation with other contractee departments.

2.2.10 Selection criteria of scrutiny cases

(i) The State Government has prescribed the criteria for assessment under Rule 27 read with Section 15 of HVAT Act. Cases are to be taken for scrutiny having gross turnover exceeding ₹ 500 lakh in a year, claim of ITC exceeding ₹ 10 lakh, claim of refund exceeding ₹ three lakh, claim of sales made in the course of interstate trade and export of goods exceeding ₹ 25 lakh in a year, cases of industrial units availing any tax concession, cases of fall in gross turnover, claim of sale/purchase or consignment of goods not matching with the accounts, cases based on definite intelligence about evasion of tax and cases of cancellation of RC etc. All other cases will be deemed to have been assessed under Section 15 (1) of the Act.

In eight DETC (ST)[7] offices, 103020 cases were selected as per criteria for scrutiny for the assessment years 2006-07 to 2010-11 and assessed during 2009-10 to 2013-14, as detailed below:

Sr. No	Categories	2009-10 (2006-07)	2010-11 (2007-08)	2011-12 (2008-09)	2012-13 (2009-10)	2013-14 (2010-11)	Total
1.	GTO More than ₹ 500 lakh	1,913	2,087	1,704	2,699	2,935	11,338
2.	Claim of Input Tax exceeding ₹ 10 lakh in a year	1,522	1,492	1,415	1,896	2,177	8,502
3.	Claim of Refund exceeding ₹ three lakh	84	27	22	62	60	255
4.	ISS exceeding ₹ 50 lakh in a year	2,474	2,790	2,225	3,343	3,780	14,612
5.	More than 20% Fall in GTO or in payment of tax	2,341	1,989	1,798	1,587	1,455	9,170
6.	Dealer engaged in trading of Iron and steel	769	551	364	881	799	3,364
7.	Non completion of returns	3,672	4,052	5,047	3,677	4,807	21,255
8.	Others	5,102	5,612	10,520	6,327	6,963	34,524
Total		**17,877**	**18,600**	**23,095**	**20,472**	**22,976**	**1,03,020**

Out of 1,03,020 scrutiny cases, 2,275 cases were test checked between December 2014 and May 2015 from all the categories and findings are incorporated in the succeeding paragraphs:

(ii) Reduction in number of scrutiny cases

Upto the assessment year 2010-11, an average of 50,000 cases were being assessed under scrutiny every year. To streamline the work and make scrutiny assessment effective, the department decided (16 July 2013) to reduce the

[7] Ambala, Faridabad (West), Gurgaon (West), Jagadhri, Jhajjar, Jind, Sirsa and Sonipat.

number of cases for scrutiny by excluding categories viz.; (a) gross turnover (GTO) exceeding five hundred lakh rupees in a year, (b) claim of input tax exceeding ten lakh rupees in a year, (c) claim of sales made in the course of inter-State trade and commerce or in the course of export of goods out of the territory of India or in the course of import of goods into the territory of India exceeding twenty five lakh rupees in a year, (d) cases selected at random, (e) cases in which the dealer fails to complete the returns in material particulars after being given an opportunity for the same and cases of cancellation of RC. State Government capped the maximum number of cases for scrutiny to 5,000 annually for whole state, besides the AAs could select 10-15 cases of its choice. District-wise cases were to be selected by a committee headed by DETC of each district. Besides, each assessing authority could select 10-15 cases of his choice. Further, ITC was to be allowed after 100 *per cent* verification upto the stage of actual payment of tax. It was emphasised that the scrutiny cases were to be dealt with strictly in accordance with instructions dated 14 March 2006 and 16 July 2013.

Audit observed that selection criteria was not proper because the selection could not be fair as the selection of 10-15 cases was to be made by AAs as per their choice and a committee headed by DETC of each district. Thus, it was left at the discretion of AAs and DETCs to select or not to select any case. No objective criteria were laid down to enable the selection and this pick and choose method was fraught with risk of misuse of discretion. Scrutiny of 105 cases of offices of six DETCs (ST)[8] showed no effectiveness and improvement in quality of scrutiny assessment as per irregularities tabulated below:-

Irregularities in assessment of scrutiny cases assessed during 2014-15

(₹ in lakh)

Sr. No	Name of DETC	Tax/interest			Nature of irregularities/Remarks
		Leviable	Levied	Short levied	
1	Jagadhri	12.20	0	12.20	In one case ₹ 12.20 lakh were deposited voluntarily against due tax for the assessment year 2012-13 and the same amount of tax deposited on same bank challans was found adjusted against the tax assessed for the assessment year 2011-12.
2	Gurgaon (West) and Jagadhri	29.26	0	29.26	In three cases {Gurgaon (West) (1); Jagadhri (2)} interest of ₹ 29.26 lakh was not levied on short payment of tax.
3	Gurgaon (West) and Jagadhri	159.87	131.56	28.31	In three cases tax of ₹ 28.31 lakh was short assessed due to application of incorrect rate of tax.
4	Jagadhri	3.82	0	3.82	Surcharge at the rate of five *per cent* of tax was leviable w.e.f. 2 April 2010.The surcharge was not levied in two cases.
5	Gurgaon (West), Jagadhri and Sonipat	90.58	0	90.58	In seven cases, the AAs had short reversed ITC on stock transfer/tax free sale.
6	Jagadhri	39.52	0	39.52	In two cases, the AA failed to levy tax on miscellaneous income of ₹ 1.67 crore and surrendered income of ₹ 1.35 crore.
7	Ambala, Faridabad (West), Gurgaon (West), Jagadhri, Jhajjar and Sonipat	0	0	0	Despite clear guidelines/instructions for 100 *per cent* verification of purchases/sales upto the stage of actual payment of tax, the AAs allowed benefit of ITC in 41 cases without cross verification of purchases/sales.

[8] Ambala, Faridabad (West), Gurgaon (West), Jagadhri, Jhajjar and Sonipat.

Under the earlier system, out of 2275 test checked cases, audit observations were raised in 182 cases (eight *per cent*) whereas out of 105 test checked cases (pertaining to assessment year 2011-12 assessed during 2014-15), audit observations were raised in 48 cases (46 *per cent*). Thus, even after reducing the number of assessment from 50,000 to 5000, no improvement was noticed in the assessment. Moreover, audit observations noticed in the new system were similar to the observations in the previous system of selection.

During exit conference, the department agreed to issue instructions to all the field offices to cross verify the purchases/sales and payment of tax in all the cases.

Compliance deficiencies

The AAs were required to assess the cases with reference to extant rules and regulations. Scrutiny of records showed that while finalising assessments provisions of the Acts/Rules were not adhered to as discussed below:

2.2.11.1 Underassessment/irregular refund of tax due to application of incorrect rate of tax

The rates under HVAT Act, 2003 have been prescribed as per Schedule A to G. However, under Section 7(1) (a) (iv) of the Act, any commodity other than the commodities classified in any of the schedules, is taxable at the rate of 12.5 *per cent* w.e.f. 1 July 2005. Surcharge at the rate of five *per cent* of the tax was also leviable w.e.f. 2 April 2010. Further interest is also leviable under Section 14 (6) in case of default of payment of tax.

Under Section 20 of the Act refund of Input tax shall be admissible to a VAT dealer in respect of the tax relating to the goods which have been sold in the course of export of goods out of the territory of India or on account of difference of rate of tax on the goods sold at lower rate within state or inter-state trade or commerce.

Audit noticed (between January 2013 and May 2015) that in 49 cases in 16 DETCs (ST)[9], the dealers sold unclassified items i.e. Building Materials, Machinery Parts, Paneer, Hospital equipments, Soap, Noodles etc. valuing ₹ 235.50 crore between 2008-09 and 2012-13. While finalising assessment between February 2012 and December 2014, the AAs levied tax at the rate of zero to four/five *per cent* instead of applicable rate of tax of four/five and 12.5 *per cent*. This resulted in underassessment of tax of ₹ 14.98 crore. In addition irregular refund of ₹ 92 lakh had been issued in seven cases.

During exit conference, the department admitted the audit observation in all the cases.

[9] Ambala, Faridabad (East), Faridabad (West), Gurgaon (East), Gurgaon (West), Jagadhri, Jhajjar, Jind, Hisar, Kaithal, Karnal, Panchkula, Panipat, Palwal, Sirsa and Sonipat.

2.2.11.2 Underassessment due to allowing benefit against fake forms

Section 5 (3), 6 A and 8 (4) of the CST Act provides for levy of nil/concessional rate of tax on sales made against declaration forms H, F and C respectively. Under section 38 of HVAT Act penalty is leviable for submitting wrong documents to evade payment of tax.

Audit noticed that in nine DETCs (ST)[10] offices, 16 dealers claimed (2006-07 to 2011-12) concessional rate of tax on sale/transfer of goods against declaration forms C, F and H valuing ₹ 37.91 crore and the same were allowed by the AAs while finalising assessments between September 2009 and March 2014 without verification of transactions/forms as required vide instructions issued in March 2006. On cross verification by audit, from TINXSYS and the issuing offices, forms valuing ₹ 37.91 crore involving tax of ₹ 4.41 crore were not found issued by the said offices. Thus, allowing benefit against fake C, F and H declaration forms resulted in under assessment of tax of ₹ 4.41 crore besides penalty of ₹ 13.23 crore leviable under Section 38 of HVAT Act.

During exit conference, the department admitted the audit observation and assured to take necessary action as per provisions of the Act.

2.2.11.3 Evasion of tax due to suppression of sales/purchases and failure to levy penalty thereon

Section 38 of HVAT Act provides that if any dealer maintains false accounts or submit wrong accounts, returns or document to evade payment of tax the AA may levy penalty (three times) in addition to the tax evaded/avoided.

(i) Audit noticed (between March 2011 and December 2014) from the records of offices of DETCs (ST) Sirsa and Bhiwani that seven dealers of district Sirsa paid tax at concessional rate on sale against declaration in form C valuing ₹ 13.11 crore. On enquiry, the department found that actual movement of goods had not taken place. Consequently, the RA levied full rate of tax on the said sales and created additional demand of ₹ 2.49 crore but failed to levy penalty of ₹ 7.47 crore. Further, two dealers of district Bhiwani had suppressed the sale of ₹ 22.48 crore by undervaluing the goods sold. While finalising the assessment in March 2010, the AA levied tax on suppressed value of sale but failed to levy penalty of ₹ 8.43 crore and nothing was mentioned in the order for non-levy of the penalty.

(ii) Audit noticed (April 2015), that four dealers under DETCs (ST) Fatehabad, Faridabad (West) and Gurgaon (West) had claimed benefit of ITC valuing ₹ 72.28 lakh on invalid purchases of ₹ 10.51 crore by submitting false returns/VAT C-4 certificates during 2005-06 to 2010-11. While finalising assessment between March 2012 and March 2014, the AAs disallowed the claim of ITC but failed to levy penalty of ₹ 2.17 crore.

[10] Ambala, Faridabad (East), Gurgaon (West), Jhajjar, Jind, Hisar, Karnal, Sirsa and Jagadhri.

(iii) Audit noticed that six dealers under four DETCs (ST)[11], had suppressed the sales/purchases valuing ₹ 22.37 crore and evaded the payment of tax of ₹ 1.25 crore. While finalising assessment between March 2011 and November 2013, the AAs failed to levy tax of ₹ 1.25 crore besides penalty of ₹ 3.75 crore even though the information of suppression was available on the file.

During exit conference, the department admitted the audit observation and assured to take action as per provisions of the Act.

2.2.11.4 Underassessment due to non levy of tax/interest/surcharge and allowing excess benefit of tax concession

Under Section 8 of HVAT Act, a registered dealer is entitled to benefit of ITC on purchase of goods after payment of tax from VAT dealers of Haryana. ITC involved in closing stock at the end of the year is carried forward to next year. Input tax (carried forward) and closing stock should commensurate to each other.

Government clarified that w.e.f. 8 April 2011 tax on Knitted & Embroidered Fabrics is leviable at the rate of 12.5 *per cent*. Pipes of all varieties are taxable at the rate of four *per cent* upto 14 February 2010 and five *per cent* thereafter. Section 14(6) of HVAT Act provides for levy of interest for late/short payment of tax. The Government had clarified on 10 February 2014 that the contractors who had opted to pay lump sum in lieu of tax are also liable to pay surcharge under Section 7A. Under Section 61 read with Rule 69(2) of HVAT Rules an industrial unit if it makes payment of fifty *per cent* of tax due along with returns will be treated as full payment of tax and benefit availed.

Audit noticed that the AAs had wrongly calculated the carry forward of tax, allowed wrong deduction of tax free sale, excess benefit of tax concession and did not levy interest and surcharge of ₹ 55 crore besides irregular refund of ₹ 0.04 crore as tabulated below:

Sr. No.	Number of DETCs	Number of dealers	Assessment years	Amount	Nature of irregularities
1	6[12]	54	2008-09 to 2013-14	₹ 20.48 crore	Due to submission of wrong accounts by the dealers the AA calculated wrong carry forward of tax and failed to levy tax and penalty u/s 38. This resulted in non levy of tax and penalty of ₹ 20.48 crore.
2	5[13]	6	2010-11 to 2012-13	₹ 3.47 crore	The AA allowed wrong deduction of tax free sale and failed to levy tax on sale of Embroidered Fabrics and HDPE pipes resulting in non levy of tax of ₹ 3.47 crore.

[11] Ambala, Faridabad (East), Sirsa and Sonipat.
[12] Faridabad (East), Fatehabad, Kaithal, Karnal, Kurukshetra and Sonipat.
[13] Ambala, Gurgaon (West), Hisar, Jhajjar and Sonipat.

Sr. No.	Number of DETCs	Number of dealers	Assessment years	Amount	Nature of irregularities
3	8[14]	14	2006-07 to 2011-12	₹ 4.05 crore	The AAs failed to levy interest on short payment of tax {u/s 14 (6)} and late payment of additional demand {u/s 23 (1)} resulting in non levy of interest of ₹ 4.05 crore.
4	8[15]	15	2010-11 to 2011-12	₹ 0.31 crore	The AAs failed to levy surcharge of ₹ 0.31 crore and allowed irregular refund of ₹ 0.04 crore additionally.
5	1[16]	1	2007-08 and 2008-09	₹ 26.69 crore	The AA accounted for fifty *per cent* of benefit of tax concession against hundred *per cent* of ₹ 53.38 crore resulting in excess benefit of tax concession of ₹ 26.69 crore to the dealer.
	Total	**90**		**₹ 55.00 crore**	

During exit conference, the department admitted the audit observations and assured to take action as per provisions of the Act.

2.2.11.5 Underassessment/Excess refund due to non/incorrect reversal of ITC

Under Section 8 (1) of HVAT Act, if a dealer uses the goods (VAT paid) in manufacturing of taxable/tax-free goods or partly disposes of the goods manufactured otherwise than by way of sale, input tax credit is allowable on pro-rata basis.

(i) Audit noticed that during 2008-09 to 2011-12, 28 dealers under 10 DETCs (ST)[17], purchased goods after payment of VAT of ₹ 1,864.41 crore and manufactured taxable & tax free goods or disposed of manufactured goods otherwise than by way of sale. Accordingly, ITC of ₹ 15.49 crore was to be reversed proportionately against which the AAs, while finalising assessments between November 2011 and July 2014 reversed ITC of only ₹ 9.88 crore. This resulted in less reversal of ITC and inadmissible refund of ₹ 5.61 crore.

(ii) ITC is admissible on purchases made from VAT dealers within the state after payment of VAT paid to the State by the selling dealers. The purchases are adopted as per the books of accounts/returns and reconciliation statement filed by the dealers.

[14] Ambala, Faridabad (West), Gurgaon (East), Gurgaon (West), Jind, Rohtak, Sirsa and Sonipat.
[15] Ambala, Jhajjar, Jagadhri, Faridabad (East), Kaithal, Karnal, Kurukshetra and Sirsa.
[16] Gurgaon (East).
[17] Ambala, Faridabad (West), Fatehabad, Gurgaon (East), Gurgaon (West), Jind, Kaithal, Karnal, Sirsa and Sonipat.

Audit noticed that five dealers under four DETCs (ST)[18], claimed ITC of ₹ 1.40 crore as per annual return (R-2) filed by the dealers, but while finalising assessment between October 2010 and March 2014, the AAs allowed ITC of ₹ 2.36 crore on the basis of certificate of purchases (VAT/C 4) against admissible ITC of ₹ 1.40 crore which resulted in excess benefit of ITC of ₹ 96 lakh.

(iii) As per guidelines issued by ETC on 21 March 2013, ITC on evaporation loss of Petrol/Diesel was to be reversed.

Audit noticed that 98 dealers under six DETCs (ST)[19] purchased Petrol and Diesel during 2009-10 to 2011-12 and 3.16 lakh liters Petrol and 6.23 lakh liters Diesel valuing ₹ 3.63 crore was claimed as evaporation loss by the dealers. While finalising assessments between March 2013 and March 2014, the AAs had not reversed the ITC of ₹ 0.50 crore. This resulted in excess benefit of ITC of ₹ 0.50 crore on evaporation loss of ₹ 3.63 crore.

During exit conference, the department admitted the audit observation and assured to take action as per provisions of the Act/gulidelines.

2.2.11.6 Underassessment/Irregular refund due to misuse of form VAT D-1/VAT D-2

Under Rule 21 of HVAT Rules, a VAT dealer may purchase goods against Form VAT D-2 (without payment of tax) for exporting these out of India. Further under section 7(5) of HVAT Act, if any dealer fails to make use of goods purchased for the specified purpose, additional tax and penalty not exceeding to one and a half times of the tax, is leviable.

(a) Audit noticed that 11 dealers under six DETCs (ST)[20], purchased Paddy and utensils during 2008-09 to 2012-13 valuing ₹ 196.15 crore against Form VAT-D2 for the purpose of exporting them, but failed to do so and sold the said Rice/Utensils to the local dealers for further export against VAT-D2, valuing ₹ 79.28 crore thereby becoming liable for penal action under Section 7 (5). However, while finalising assessments between March 2012 and August 2014, the AAs allowed the deduction of export against VAT D-2 and failed to levy additional tax of ₹ 3.58 crore and penalty of ₹ 5.37 crore leviable under Section 7 (5). This resulted in irregular refund of ₹ 3.08 crore.

(b) Audit noticed that eight dealers of Kaithal and Karnal during 2009-10 to 2012-13 purchased Paddy valuing ₹ 254.97 crore against form VAT D-2 for export of Rice out of India but Paddy valuing ₹ 161.75 crore was still lying in stock at the end of the year. The dealer had also exported Rice out of Paddy/Rice purchased after payment of VAT and were allowed refund of ₹ 5.75 crore. The dealers were required first to export Rice out of Paddy/Rice purchased against form VAT D-2 and then out of VAT paid Paddy/Rice. Due to non compliance, the dealer was liable for penal action under Section 7(5) of HVAT Act. While finalising assessments (June 2012 and July 2014), the AAs failed to levy additional tax of ₹ 7.54 crore besides leviable penalty of

[18] Ambala, Gurgaon (West), Jhajjar and Jind.
[19] Fatehabad, Hisar, Jind, Kurukshetra, Narnaul and Sirsa.
[20] Ambala, Kaithal, Karnal Kurukshetra, Sirsa and Sonipat.

₹ 11.31 crore, as the copies of the purchase orders from the foreign buyers were not found on record and further allowed irregular refund of ₹ 5.75 crore.

During exit conference, the department admitted the audit observation and assured to take action as per provisions of the Act.

2.2.11.7 Non-consideration of stock of Paddy/Rice purchased against form VAT-D2

Audit noticed that nine dealers under three DETCs (ST) (Kaithal, Karnal and Kurukshetra) purchased Paddy/Rice during 2010-11 to 2012-13 against form VAT D-2 and also after payment of VAT. The dealers exported Rice out of VAT D-2 purchases and VAT paid purchases. The dealers claimed and were allowed refund of ₹ 4.31 crore against export of Rice out of VAT paid purchases. The dealers had closing stock of purchases made against VAT D-2 Forms valuing ₹ 169.10 crore involving tax of ₹ 8.14 crore (presumed) and VAT paid stock valuing ₹ 69.87 crore involving tax of ₹ 3.12 crore. The dealers were required to export the Rice out of VAT D-2 stock first. Accordingly, while allowing refund, tax (presumed) involved in VAT D-2 stock was to be retained, as the copies of the purchase orders from the foreign buyers were not found on record. While finalising assessments between June 2012 and December 2014, the AAs did not retain the presumed tax involved in Paddy of VAT D-2 stock which resulted in excess refund of ₹ 3.14 crore.

During exit conference, the department admitted the audit observation and assured to get the cases re-examined.

2.2.11.8 Non levy of penalty under Section 10A of CST Act

Under Section 8 (3) of CST Act, a registered dealer can purchase goods against declaration Form C for resale, use in manufacturing/ processing/packing of goods for sale etc., but cannot purchase goods for self use i.e. for any purpose other than specified under the said section. Further, Section 10 A provides for levy of penalty not exceeding one and a half times of the tax for non-use of the goods purchased for specified purposes.

Audit noticed cases of dealers under DETCs (ST) {Gurgaon (West), Hisar and Jhajjar}, who had purchased goods valuing ₹ 2.19 crore involving tax of ₹ 0.28 crore during the years 2009-10 to 2011-12, at concessional rate of tax against Form C. Two dealers (Hotelier and manufacturer) had purchased building material and one dealer (contractor) had purchased Truck. These dealers were not entitled to purchase these goods against Form C as the said goods were not used for the purpose for which the dealers were registered. While finalising assessments between November 2012 and March 2014, the AAs failed to levy penalty of ₹ 42 lakh for misuse of forms C.

During exit conference, the department admitted the audit observation and assured to get the cases re-examined.

2.2.11.9 Excess refund due to allowing deduction against invalid documents

Section 5 (3) of the CST Act, provides that the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with the agreement or order for or in relation to such export.

Audit noticed that during 2009-10 to 2012-13, 18 dealers under three DETCs (ST) (Kaithal, Karnal and Kurukshetra) sold Rice valuing ₹ 112.10 crore to exporters of Rice to comply with the orders of Export. While finalising assessments between June 2012 and December 2014, the AAs allowed deduction of ₹ 28.34 crore under Section 5 (3) of CST Act against form VAT D-2. Documents of export submitted by the dealers along with form VAT D-2 were invalid because either the crop year of export of Rice did not tally with the crop year of sale of Rice or the export had already taken place or export was delayed by 5 to 7 months. Hence, allowing deduction against invalid documents resulted in excess refund of ₹ 1.39 crore.

During exit conference, the department admitted the audit observation and assured to get the cases re-examined.

2.2.11.10 Irregular refund to contractors/traders

As per Section 2 (ze) tax is leviable on material transferred in execution of works contract. Government fixed the value of Labour and Services at 25 *per cent* on 17 May 2010. Section 24 read with Rule 33 provides for deduction of TDS (WCT) and allowing benefit after due verification of payment from records.

Audit noticed from the records of assessment of works contractors and traders, in respect of 11 DETCs that tax was incorrectly calculated by applying formula without obtaining any evidence i.e. allowed excess deduction of labour and services, benefit of TDS without verification, refund against sale to self on C Form etc., in assessment and issue of irregular refund of ₹ 54.45 crore to contractors/dealers, as detailed below:-

Irregularities in issue of refund to works contractors and traders (₹ in crore)

Sr. No.	No. of DETCs	No. of Contractors/ dealers	Years of assessment	Nature of irregularities	Amount of irregular Refund allowed
1	10[21]	41	2006-07 to 2012-13	The AAs did not levy additional tax and penalty of ₹7.83 crore (₹ 3.13 tax + ₹ 4.70 penalty) against works contractors for misuse of VAT D-1 and allowed irregular refund of ₹ 5.83 crore.	5.83
2	6[22]	22	2006-07 to 2012-13	The AAs levied tax on works contractors by formula worth ₹ 19.71 crore against leviable tax of ₹ 20.67 crore without obtaining any evidence of inclusion of tax in the gross receipts. This resulted in allowing irregular refund of ₹ 0.96 crore.	0.96

[21] Ambala, Fatehabad, Gurgaon (West), Hisar, Jagadhri, Kaithal, Karnal, Kurukshetra, Panchkula and Sonipat.

[22] Fatehabad, Gurgaon (East), Gurgaon (West), Kaithal, Karnal and Sirsa.

Irregularities in issue of refund to works contractors and traders					(₹ in crore)
Sr. No.	**No. of DETCs**	**No. of Contractors/ dealers**	**Years of assessment**	**Nature of irregularities**	**Amount of irregular Refund allowed**
3	5[23]	23	2008-09 to 2011-12	While framing the assessments of works contractors, the AAs allowed deduction of Labour and Services worth ₹ 414.13 crore against allowable deduction of ₹ 212.24 crore without mentioning any justification. This resulted in allowing excess deduction of ₹ 201.89 crore and irregular refund of ₹ 17.72 crore.	17.72
4	1[24]	1	2010-11 to 2011-12	The AA allowed deduction of fuel of ₹ 3.06 crore against allowable deduction of ₹ 1.61 crore resulting in allowing excess deduction of ₹ 1.45 crore and consequent irregular refund of ₹ 0.13 crore.	0.13
5	10[25]	34	2004-05 to 2012-13	The AA allowed benefit of TDS (WCT) of ₹ 19.80 crore without verification from Daily Collection Register resulting in irregular refund of ₹ 16.32 crore.	16.32
6	3[26]	8	2009-10	The AAs allowed refund to traders which was not covered u/s 20 (2) of HVAT Act resulting in irregular refund of ₹ 0.42 crore.	0.42
7	1[27]	1	2010-11	The AAs allowed refund to dealers who shown sale to self/branch against Form VAT D-1/C resulting in irregular refund of ₹ 3.54 crore.	3.54
8	9[28]	79	2004-05[29] to 2013-14	The AAs failed to levy tax on surrendered income, miscellaneous income, DEPB, allowed wrong ITC on fuel and other invalid purchases, allowed ITC more than claimed in return VAT R-2 etc. and allowed irregular refund of ₹ 9.53 crore.	9.53
	Total				**54.45**

During exit conference, the department admitted the audit observation (Sr. No. 1, 2 and 4 to 8) and assured to take action as per provisions of the Act. As regards Sr. No. 3, the department stated that deduction of labour in excess of 25 *per cent* can be allowed on the basis of proper accounts maintained by the contractor. However, the department assured to issue instructions to field offices for passing speaking assessment orders wherever deduction is allowed in excess of 25 *per cent*.

2.2.11.11 Irregular refund to contractors of DMRC

As per entry 3A of schedule B, with effect from 30 November 2006, no tax was leviable on goods sold to Delhi Metro Rail Corporation (DMRC) for use in Gurgaon Metro Corridor. Further, entry 3 of Schedule G was inserted on 6 April 2010 (with effect from 30 November 2006) and entry 3A of

[23] Ambala, Gurgaon (East), Gurgaon (West), Kaithal and Kurukshetra.
[24] DETC Kaithal.
[25] Ambala, Fatehabad, Gurgaon (West), Jind, Jagadhri, Kaithal, Karnal, Kurukshetra, Sirsa and Sonipat.
[26] Faridabad (East), Gurgaon (East) and Gurgaon (West).
[27] Gurgaon (East).
[28] Ambala, Faridabad (East), Faridabad (West), Gurgaon (East), Gurgaon (West), Karnal, Kurukshetra, Sirsa and Sonipat.
[29] The assessment of the dealer of Gurgaon (East) was finalised on 13 February 2008 but refund was issued on 24 June 2013 without recording any reasons for delay.

Schedule B was omitted simultaneously enabling the dealers to seek refund of tax paid on the purchase of goods sold to DMRC.

Audit noticed in DETC (ST) Gurgaon (East), that three contractors executed works contract for construction of Gurgaon Metro corridor during 2009-10 to 2011-12 and claimed refund of ₹ 2.22 crore. While finalising assessments between June 2012 and March 2013, the AAs allowed refund of tax to these contractors though the rates quoted by contractors were inclusive of tax. The refund of tax to the contractor was not in order as DMRC had already paid tax to the contractors through running bills. The benefit of tax concession if any, should have been passed on to the DMRC. Hence, no refund was allowable to the contractors. This resulted in irregular refund of ₹ 2.22 crore.

During exit conference, the department stated that entry in schedule G was inserted to allow refund to the contractors. However, the cases had been taken up in revision for further examination.

2.2.12 Internal control mechanism

Internal control is an integral process by which an organisation governs its activities to achieve its objectives effectively. An inbuilt internal control mechanism and strict adherence to codes and manuals provide reasonable assurance to the department about compliance of applicable rules, achieving reliability of financial reporting, effectiveness and efficiency in its operations.

2.2.12.1 Internal Audit

Internal Audit is a tool in the hands of Management to ensure that the prescribed systems are functioning well.

It was noticed that no internal audit of assessment cases was being done by the department.

During exit conference, the department stated to start internal audit of assessment cases in due course.

2.2.12.2 Monitoring

For administration and implementation of the Acts, effective monitoring mechanism is required in the department. Effective monitoring can be done through periodical reports, follow up action and inspection of field offices to ensure maintenance of assessment records in proper form.

Audit noticed that instructions/guidelines issued on March 2006, February 2007 and July 2013 regarding preparation of check lists, obtaining account of declaration forms, proof of payment of tax, cross verification of sales/purchases and checking of movement of goods were not being followed by the AAs while scrutinizing the cases. Further, audit noticed in eight DETCs (ST) that records of assessment cases was not being maintained properly. The irregularities such as non-maintenance of demand and collection register, late servicing of assessment orders and demand notices, delay in

re-assessment of cases and penalty for non filing of return etc., discussed in the following audit paragraphs are indicators of ineffective internal control mechanism.

(a) Non maintenance of Demand and Collection register (DCR) of returns (VAT G-8)

Rule 37 of HVAT Rules provides that the officer in charge of each district shall maintain DCR of returns in form VAT G-8 in respect of dealers registered under the Acts showing the returns filed, assessment framed and payment of tax/additional demand made etc.

Audit noticed in the offices of eight DETCs (ST)[30] that the DCR of returns (VAT G-8) was not maintained properly as details of returns filed, assessment framed and payments made were not found entered therein.

Further, in one case under the office of DETC (ST) Jagadhri, benefit of deposit of tax of ₹ 6 lakh pertaining to the year 2010-11 was allowed in assessment years 2010-11 and 2011-12. In two cases of DETC (ST) Ambala and Gurgaon (West) benefit of deposit of tax of ₹ 2.19 crore was allowed without verification from records. Further, it was noticed that amount of tax deposited was neither entered in VAT G-8 register nor in Demand and Collection Register of tax. This resulted in irregular benefit of tax of ₹ 2.25 crore.

During exit conference, the department admitted the audit observation and the ACS directed the department to maintain the said records properly.

(b) Late servicing of assessment orders and demand notices

As per instructions issued on 14 March 2006, copy of assessment order along with notice of demand was to be served to the dealer (s) within fifteen days of finalisation of assessment.

Audit noticed in 99 cases under DETC (ST), Faridabad (West) that AAs failed to serve copy of assessment orders and demand notices in time involving demand of more than ₹ one lakh each, which were served after delay ranging between 15 to 455 days. Non-monitoring at DETC level resulted in loss of interest of ₹ 1.46 crore as this amount cannot be recovered from the dealers, due to lapse on the part of the department.

During exit conference, the department admitted the lapse and stated to issue instructions for strict compliance of provisions of Act/Rules.

(c) Non examination of assessment cases by DETCs/JETCs

To have an effective internal control, the Department required monthly/ quarterly statements to be furnished by the DETCs to ETC every month/

[30] Ambala, Faridabad (West), Gurgaon (West), Jagadhri, Jhajjar, Jind, Sirsa and Sonipat.

quarter. Out of the cases assessed by the AAs, the Department also prescribed the number of scrutiny cases to be checked by DETCs/JETCs.

There was nothing on record to prove that the DETCs/JETCs had examined the cases assessed by the AAs nor any report was sent to ETC. Thus, the internal control mechanism was weak.

During exit conference, the department accepted the audit observation and stated to issue directions to strengthen the internal control.

(d) Loss of revenue due to delay in re-assessment of the cases

Section 17 of the HVAT Act provides that if the assessing authority discovers that the turnover of the business of a dealer has been under assessed or has escaped assessment or input tax or refund has been allowed in excess in any year, it may reassess the tax liability of the dealer for the assessment year after giving him a reasonable opportunity of being heard.

During analysis of inspection reports (IRs) issued by this office, to the offices of four DETCs (ST)[31] for the years 2009-10 to 2012-13, it was noticed that in 50 cases involving escapement of tax of ₹ 12.75 crore pertaining to the assessment years 2006-07 to 2009-10, the AAs had replied at the time of audit that requisite action was being taken, cases were being re-examined, cases had been sent or being sent to Revisional Authority (RA) for taking suo motu action, but no such requisite action had been taken till date and the cases had become time barred. Thus, control failure at the DETC/JETC level, to ensure timely action by the AAs, resulted in loss of ₹ 12.75 crore towards unassessed cases becoming time barred.

During exit conference, the department agreed to the audit observation and stated to get action initiated now as the limitation period for revision has been enhanced to six years.

(e) Non levy of penalty for non-filing of returns

Section 37 A of HVAT Act provides for levy of penalty for late/non filing of returns. DETC of the district was required to seek report from AAs regarding late/non filing of returns by dealers and levy of penalty thereon.

During test check of records of offices of eight DETCs (ST)[32], it was noticed that during 2009-10 to 2013-14, 5,723 dealers had not filed their returns in time and the AAs failed to levy penalty against these dealers as lack of control at DETC level led to non levy of penalty on return defaulters.

During exit conference, the department admitted the audit observation and stated to issue instructions for levy of penalty.

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31 Ambala, Jagadhri, Jhajjar and Jind.

32 Ambala, Faridabad (West), Gurgaon (West), Jagadhri, Jhajjar, Jind, Sirsa and Sonipat.

(f) Recovery of demand created during the year

Recovery of tax/penalty assessed should be made from the dealers immediately after assessment and should be watched at appropriate level.

On analysis of records of eight selected DETCs (ST)[33], audit noticed that during the years 2009-10 to 2013-14, the AAs created demand of ₹ 4,464.66 crore, demand of ₹ 1,791 crore was dropped and net recoverable remained ₹ 2,673.66 crore as detailed in table below:-

(₹ in lakh)

Sr. No.	Year	Demand created	Deletion/ Dropped	Net recoverable	Recovered during the year	Balance to be recovered	Percentage of recovery
1	2009-10	80,098.97	12,899.40	67,199.57	4,763.56	62,436.01	7.09
2	2010-11	46,653.03	16,642.96	30,010.07	4,498.81	25,511.26	14.99
3	2011-12	46,793.84	17,744.05	29,049.79	4,302.78	24,747.01	14.81
4	2012-13	46,140.05	16,012.68	30,127.37	4,085.31	26,042.06	13.56
5	2013-14	2,26,780.56	1,15,801.49	1,10,979.07	5,618.39	1,05,360.68	5.06
	Total	**4,46,466.45**	**1,79,100.58**	**2,67,365.87**	**23,268.85**	**2,44,097.02**	**8.70**

The average recovery of net recoverable demand during the years 2009-10 to 2013-14 comes to 8.70 *per cent* only, which indicates that lack of control at appropriate level led to slow pace of recovery.

During exit conference, the department accepted the audit observation and stated that efforts would be made to speed up the recovery process.

2.2.12.3 Other deficiencies

In order to have an effective check, the assessment case files should contain the returns, lists of sale/purchase, statutory forms duly filled in and complete in all respects. Following deficiencies were noticed in the assessment files:

- As required under Rule 25 (i) copies of sale/purchase invoices in support of deduction of tax exempted sale was neither being obtained, nor name of items sold/purchased was mentioned in the assessment orders.
- As per provisions contained in Rule 9.3 of Punjab Financial Rules Volume-1, a refund was to be allowed out of original demand or realisation (as the case may be). As such the refund is to be allowed out of the tax paid into treasury by first seller of the goods. It was observed that refunds were being issued out of tax paid by large tax payers other than the sellers of the goods against which refunds had accrued. Refund applications were not being obtained on proper proforma VAT A-4.

[33] Ambala, Faridabad (West), Gurgaon (West), Jagadhri, Jhajjar, Jind, Sirsa and Sonipat.

- In the case of Works Contractors, copy of contract/agreement was not found in the assessment files.

- Name of item sold/purchased was not being mentioned on form C as the list of sale/purchase (LS-2/LP-3) contained narration, 'As per Bill'. Name of item sold/purchased should be recorded on the forms C and in the lists as well.

- VAT C-4 forms did not contain any Sr. No. or printed Sr. No. etc. as required under Rule-20 of HVAT Rules 2003. Further, in majority of the cases, name of items sold/purchased were also not mentioned on VAT C-4. After amendment dated 17 May 2010, particulars of payment of tax etc. had neither been printed on VAT C-4 nor submitted by the issuing dealers.

- Assessment for the years 2010-11, 2011-12 and 2012-13 were framed under Section 15(1) of HVAT Act 2003. No documents pertaining to VAT transactions were obtained at the time of assessment. But at the time of issue of refunds, documents i.e. VAT C-4/VAT D-1 etc. was also not obtained. In the absence of these documents, genuineness of refund issued could not be ascertained in Audit.

- In the case of exporters of Rice, no export orders (from foreign buyers) were available on the file to ascertain the correctness of procurement of Paddy/Rice etc. against declaration in form VAT D-2/ H and purchase order no. and date of foreign buyers and details of export were not found filled in the declarations in form VAT D-2/H. Further, bills of lading (proof of export) did not contain custom clearance certificate in support of goods having left the customs frontier of India.

- Paddy Husk obtained by milling was not being reflected in trading account. It was stated that the same was used in Boiler as fuel. As utilisation of Paddy Husk as Fuel was disposal of goods otherwise than by way of sale, ITC was to be reversed proportionally. This was not being done.

During exit conference, the department admitted the deficiencies pointed out by audit and stated to issue necessary instructions so that such lapses do not re-occur.

2.2.14 Conclusion

Introduction of VAT envisaged computerisation of tax records, registration details and issue of declaration forms etc. for better tax administration, but even a minimum level of computerisation did not exist in the department even after lapse of more than twelve years. Uploading of information relating to

sales/purchase, issue of declaration forms and cancellation of registration certificates etc., through connectivity to national network TINXSYS was not done and verifications was being done manually by issuing letters to other districts/States. No provision exists in the Act for finalisation of assessments besides cancellation of RC, no efforts were made by the department to detect unregistered dealers/contractors by cross verification of information available with other departments. No improvement was noticed in the assessment even after decreasing the cases from 50,000 to 5,000 annually. Instances of under assessment of tax and irregular refunds due to application of incorrect rate of tax, benefit of tax concession on fake forms, non levy of penalty, interest and surcharge, excess benefit of tax concession, short-non reversal of ITC, irregular deductions were noticed which resulted in loss of revenue. In the absence of properly maintained demand and collection registers of returns, details of tax deposited could not be ascertained. After assessment, the assessment order and demand notices were issued late, resulting in loss of interest. Non-compliance of various provisions of the Act/Rules, resulted in inadequate tax management and administration.

2.2.15 Recommendations

It is recommended that the department may consider:-

(i) Devising a system for uploading of details of use of declaration forms on Tax Information Exchange System (TINXSYS) for verification of sales/purchases against declaration forms;

(ii) Implementing hundred *per cent* computerisation, for cross verification of transactions of sale/purchase, forms etc;

(iii) Issuing necessary instructions to finalise the assessment cases at the earliest after the date of cancellation of registration certificates;

(iv) Devising a system of cross exchange of database/information to detect unregistered works contractors/dealers and monitoring the results of exchange of information;

(v) Issuing refunds as per Rule 9.3 of PFR Vol. I out of the tax paid into treasury by the first seller of goods only; and

(vi) Institutionalising effective internal control mechanism to ensure compliance of the provisions of HVAT Act, CST Act and Rules made thereunder and put in place internal audit of assessment cases.

2.3 Incorrect benefit of ITC on goods not sold

Purchase of Duty and Entitlement Pass Book (DEPB)/Import License worth ₹ 95.81 crore, which are to be used for resale, was incorrectly allowed to be adjusted against Custom Duty payable, resulting in incorrect grant of ITC of ₹ 4.84 crore to a dealer.

As per provisions of Section 8 of HVAT Act 2003, ITC on purchase of goods is admissible against tax liability on sale of goods as such or the goods manufactured therefrom in the State or interstate trade and commerce. The Principal Secretary to Government of Haryana, Excise and Taxation Department had also clarified (22 April 2013) that ITC is available only if the Duty Credits Scrips (Scrips) are purchased for resale as such and no ITC would be admissible if these were used for adjustment of Custom Duty.

Audit noticed that a dealer under DETC (ST), Gurgaon (West) purchased Duty Entitlement Pass Book (DEPB)/Import License worth ₹ 95.81 crore after payment of VAT of ₹ 4.84 crore during 2009-10 to 2011-12. The dealer used the same for adjustment of custom duty payable by him. As the goods (Scrips) were not sold by the dealer, therefore, no ITC was admissible. However, while finalising assessments in these cases between March 2013 and March 2014, AA allowed the ITC claims to the dealer resulting in incorrect grant of ITC of ₹ 4.84 crore.

On this being pointed out (September 2014), the DETC (ST) Gurgaon (West) stated in September 2015 that the cases had been sent to the Revisional Authority for taking suo motu action.

The matter was reported to the Government in May 2015; reply has not been received (November 2015).

2.4 Non levy of interest

Action to levy interest was not initiated even after a lapse of 12 months resulting in non levy of interest of ₹ 3.49 crore by the DETC (ST) Panchkula, in one case.

Section 14 (6) of the HVAT Act, inter alia lays down that if any dealer fails to make payment of tax, he shall be liable to pay, in addition to the tax payable by him, simple interest at one *per cent* per month if the payment is made within ninety days, and at two *per cent* per month if the default continues beyond ninety days for the whole period, from the last date specified for the payment of tax till the date he makes the payment. The ETC, Haryana had also issued instructions (September 1993) that it is the duty of every AA to finalise penal proceedings along with the assessment and if, for any reason, the penal action is kept pending, that should be initiated immediately after the assessment is finalised and must be completed within six months of the assessment.

Audit noticed from the records of office of DETC (ST), Panchkula in November 2014, that the AA finalised the assessment of a dealer for the year 2010-11, in November 2013 and created an additional demand of ₹ 4.59 crore.

Action to levy interest/penal action was to be taken up separately as stated in the assessment order. However, no such proceedings were initiated to levy interest even after a lapse of 12 months. This resulted in non levy of interest of ₹ 3.49 crore.

On this being pointed out (November 2014), the DETC (ST) Panchkula stated in March 2015 that the interest of ₹ 3.43 crore has now been levied under section 14 (6) of HVAT Act. Further, progress on recovery is awaited (November 2015).

The matter was reported to the Government in May 2015; reply has not been received (November 2015).

2.5 Non levy of additional tax (surcharge)

The AAs did not levy additional tax in the nature of surcharge at the rate of five *per cent* of the tax of ₹ 33.93 crore under VAT resulting in non levy of surcharge of ₹ 1.69 crore, in 42 cases.

As per section 7 (A) of HVAT Act, an additional tax, in the nature of surcharge at the rate of five *per cent* on the tax was leviable w.e.f. 02 April 2010. The Principal Secretary to Government of Haryana has also clarified (10 February, 2014) that the work contractors who have exercised the option of payment of lump sum in lieu of tax are also liable to discharge the liability of surcharge under section 7 (A) of the HVAT Act.

Audit noticed from the assessment records of five offices[34] of DETC (ST) between July and December 2014, that the AAs while finalising the assessments (between April 2013 and March 2014) in 42 cases, calculated the tax of ₹ 33.93 crore, at the rate of four *per cent* on the taxable turnover of ₹ 807.05 crore during the years 2010-11 and 2012-13, but the additional tax at the rate of five *per cent* of the tax amount of ₹ 33.93 crore was not levied. This resulted in non levy of surcharge of ₹ 1.69 crore.

On this being pointed out (between July and December 2014), the AA Gurgaon (West) stated (January 2015) that additional demand of ₹ 12.43 lakh has been created in three cases. AAs Faridabad (East), Panipat and Karnal stated that the cases have been sent to Revisional Authority for taking suo motu action. DETC (ST) Bahadurgarh did not furnish any reply (November 2015).

The matter was reported to the Government in May 2015; reply has not been received (November 2015).

[34] Bahadurgarh, Faridabad (East), Gurgaon (West), Karnal and Panipat.

2.6 Non/short levy of tax due to incorrect classification

Incorrect classification of steam/embroidered fabrics and spare parts and levying tax at lower rate against leviable rate of 12.5 *per cent,* resulted in non/short levy of tax and surcharge of ₹ 1.98 crore, in seven cases.

Under Section 7 (1) (a) (iv) of the HVAT Act, tax is leviable at the rates specified in Schedules 'A' to 'G' of the Act depending upon the classification of goods and the items not classified in above schedules are taxable at general rate of tax i.e.12.5 *per cent* with effect from 1 July 2005. Further, surcharge at the rate of five *per cent* of the tax was also leviable w.e.f. 02 April 2010.

2.6.1 Audit noticed from the assessment records of the office of DETC (ST), Panipat in September 2014, that a dealer sold steam worth ₹ 5.05 crore during the year 2010-11 and claimed as tax free sale and the AA while finalising the assessment in March 2014, also allowed it as tax free goods under schedule 'B' of the HVAT Act. However, steam is not classified in any schedule, hence taxable at the rate of 12.5 *per cent* plus surcharge. This resulted in non levy of tax and surcharge of ₹ 66.23 lakh besides interest of ₹ 52.99 lakh was also leviable.

On this being pointed out (September 2014), the DETC (ST) Panipat stated (September 2015) that an additional demand worth ₹ 1.21 crore had been created.

2.6.2 Audit noticed (May to July 2014) from the records of offices of DETC (ST), Sonipat that four dealers sold Embroidered Fabrics of ₹ 8.62 crore during 2011-12 and claimed the goods as tax free. The AAs, while finalising the assessments in November 2013, allowed the deductions treating it as tax free goods under Schedule 'B' of HVAT Act. However, embroidered fabrics being un- classified in any schedule is taxable at the rate of 12.5 *per cent* plus surcharge. This resulted in non-levy of VAT amounting to ₹ 1.13 crore besides interest of ₹ 58.81 lakh.

On this being pointed out (between May and July 2014), the DETC (ST) Sonipat stated (September 2015) that the cases had been sent to the Revisional Authority for suo motu action.

2.6.3 Audit noticed (August and September 2014) that two dealers under DETC (ST), Karnal sold machinery parts valued at ₹ 2.45 crore during the years 2010-11 to 2011-12 and paid tax of ₹ 12.86 lakh at the rate of five *per cent* plus surcharge. AA while finalising assessments during October 2013 to February 2014 also levied tax at the rate of five *per cent* plus surcharge instead of the correct rate of tax of 12.5 *per cent* plus surcharge as applicable in respect of unclassified item. This resulted in short levy of tax of ₹ 19.30 lakh, besides interest of ₹ 11.90 lakh.

AA, Karnal responded between August and September 2014 that cases had been sent to the Revisional Authority for taking suo motu action.

The matter was reported to the Government in May 2015; reply has not been received (November 2015).

2.7 Excess allowance of deposit of tax

Adjustment of tax deposit of ₹ 10.44 crore was allowed instead of ₹ 9.82 crore resulting in excess allowing of deposit of tax of ₹ 61.75 lakh, besides interest of ₹ 29.64 lakh was also leviable.

Under Section 14(3) of the HVAT Act, every dealer whose aggregate liability to pay tax under this Act for the last year or part thereof according to the returns filed by him, is equal to or more than one lakh rupees or such other sum, as may be prescribed, shall, in the manner prescribed, pay on or before the fifteenth day of each month the full amount of tax payable by him for the previous month, computed by him in accordance with the provisions of this Act and the rules made thereunder. The ETC, Haryana also issued instructions (March 2006) that benefit of tax deposited should be given after verification of payment of tax into Government treasury. Further, interest was also leviable under section 14(6) of the HVAT Act.

Audit noticed (January 2015) that one dealer under DETC (ST), Gurgaon (West) claimed ₹ 10.44 crore as benefit of deposit of tax during the year 2011-12. However, verification of deposits from the DCR, showed that a sum of ₹ 61.75 lakh was not found deposited as claimed to have been done on 29 November 2011. Neither was this amount found deposited in Treasury. However, the AA while finalising the assessment in November 2013 allowed the adjustment of tax deposit of ₹ 10.44 crore (inclusive of ₹ 61.75 lakh) instead of ₹ 9.82 crore. Despite ETC's instruction (March 2006) that benefit of tax deposited should be given only after verification of payment of tax into Government treasury, the AA allowed the adjustment of tax which was not deposited in treasury by the dealer. This resulted in allowing of excess benefit of tax of ₹ 61.75 lakh besides interest of ₹ 29.64 lakh was also leviable.

On this being pointed out (January 2015) DETC (ST) Gurgaon (West) stated in September 2015 that an additional demand of ₹ 61.75 lakh has been created. AA further intimated in May 2015 that 'recovery proceedings' for the due amount has been initiated against the dealer.

The matter was reported to the Government in May 2015; reply has not been received (November 2015).

2.8 Non levy of tax on sale of chemicals

Deduction in respect of chemicals (industrial inputs) was allowed treating it tax free sale instead of taxable at the rate of 4.2 *per cent* resulting in non levy of CST of ₹ 50.53 lakh besides interest of ₹ 26.28 lakh.

Under HVAT Act, chemicals sold to various industrial units as industrial inputs, falling under entry 102 of schedule 'C', are leviable to tax at the rate of four *per cent* and surcharge at the rate of five *per cent* on the tax leviable with

effect from April 2010 under section 7(A) of HVAT Act. Central Sales Tax (CST) rate is the same rate as VAT rate applicable in the State for dealers selling without 'C' forms. Further, interest was also leviable under Section 14 (6) of HVAT Act.

Audit noticed (August 2014) that a dealer coming under DETC (ST), Panipat sold chemicals worth ₹ 12.03 crore to industrial units of Punjab, manufacturing various type of alcohol/liquor during the year 2011-12 and claimed the goods as tax free sale. AA assessed the case under VAT in November 2013 and erroneously allowed the deduction treating it as tax free sale of goods. Since, chemicals are industrial inputs and taxable at the rate of 4.2 *per cent*. This resulted in non levy of CST of ₹ 50.53 lakh besides interest of ₹ 26.28 lakh.

On this being pointed out, DETC (ST) Panipat stated in September 2015 that the case had been sent to the revisional authority for taking suo motu action.

The matter was reported to the Government in May 2015; reply has not been received (November 2015).

2.9 Short levy of tax on sale of pipes

Tax at the rate of four *per cent* was levied instead of correct rate of tax of five *per cent* resulting in short levy of tax of ₹ 41.15 lakh besides interest of ₹ 30.74 lakh, in six cases.

Under Section 7 (1) (a) (iv) of the HVAT Act, 2003, tax is leviable at the rates specified in Schedules 'A' to 'G' of the Act depending upon the classification of goods w.e.f.1.7.2005. Under entry No. 60 of Schedule 'C' of HVAT Act 'pipes of all varieties including Galvanized Iron pipes, Cast Iron pipes, ductile pipes, Poly Vinyl Chloride pipes and conduit pipes are taxable at the rate of five *per cent* w.e.f. 15.02.2010 and surcharge at the rate of five *per cent* on the tax leviable under section 7(A) of HVAT Act w.e.f. 2nd February 2010. Further, interest was also leviable under Section 14 (6) of the HVAT Act.

Audit noticed (June 2014 to January 2015) from the assessment records of the DETC (ST), Sonipat and Rohtak that six dealers sold (2010-11 and 2011-12) Mild Steel (M.S.) pipes, Stainless Steel (S.S.) pipes, Black pipes and Steel pipes worth ₹ 49.20 crore and paid tax of ₹ 2.17 crore at the rate of four/ five *per cent*. AAs while finalising assessment (November 2013 to March 2014) also levied tax at the rate of four *per cent* instead of correct rate of five *per cent* plus surcharge as applicable in respect of schedule 'C' items. This resulted in short levy of tax of ₹ 41.15 lakh besides interest of ₹ 30.74 lakh.

AA Sonipat responded (June 2015) that the case has been sent to RA for taking suo motu action. AAs of Rohtak stated that two cases had been sent to Revisional Authority for taking suo motu action and in one case that the dealers sold MS tubes instead of pipes and have rightly been taxed. The reply of the AA Rohtak was not correct as the dealer sold steel pipes. The reply in respect of one case of AA Rohtak was still awaited.

The matter was reported to the Government in May 2015; reply has not been received (November 2015).

2.10 Non levy of additional tax/penalty for misuse of form VAT D-1

Non lumpsum works contractor violated the condition stipulated in the certificate given on form VAT D-1 resulting in non levy of additional tax and penalty of ₹ 65 lakh.

Under Section 7 (3) of the HVAT Act, where taxable goods are sold by one dealer to another dealer, tax is leviable at a lower rate (four *per cent*) if the purchasing dealer furnishes a declaration in VAT-D1 certifying that the goods are meant for use in the manufacturing of goods for sale. The ETC also clarified (March 2013) that the non lump sum work contractors, especially civil works contractors engaged in construction of roads and buildings being not manufacturer of goods can not avail the facility of purchasing goods at concessional rate against Form VAT D-1. If any such dealer has misused the form VAT D-1 then penal action, as provided under the Act/Rules is required to be taken against him. Further, if an authorised dealer after purchasing any goods fails to make use of the goods for the specified purpose, the AA may impose upon him, by way of penalty, under Section 7 (5) of the HVAT Act, a sum not exceeding one and a half times the tax which would have been levied additionally. However, no penalty would be imposed if the dealer voluntarily pays the tax which would have been levied additionally under Section 7 (1) (a) of the HVAT Act along with the returns for the period, when he failed to make use of the goods purchased for the specified purpose.

Audit noticed (July 2013) from the assessment records of the DETC (ST), Panipat that a dealer (regular/normal work contractor), had purchased goods worth ₹ 3.06 crore against declaration in form VAT D-1 during the year 2009-10. This was not authorised as the dealer was normal work contractor who had not opted for lump sum payment of tax and had claimed ITC of ₹ 33.41 lakh. The dealer had also not paid the additional tax of ₹ 26 lakh along with returns and therefore, violated the condition stipulated in the certificate given on Form VAT D-1. Hence, dealer was liable to pay additional tax of ₹ 26 lakh and penalty of ₹ 39 lakh under section 7(5) of HVAT Act. AA while finalising the assessment in March 2013, failed to levy the same for this violation. This resulted in non levy of additional tax and penalty of ₹ 65 lakh.

DETC (ST) Panipat responded (September 2015) that the case had been sent to the Revisional Authority for taking appropriate action.

The matter was reported to the Government in May 2015; reply has not been received (November 2015).

2.11 Evasion of tax due to suppression of Sales

No action was initiated even after a lapse of nine months against four defaulting dealers for recovery of tax of ₹ 22.53 lakh besides penalty of ₹ 67.59 lakh in respect of suppressions of sales.

Under Section 38 of the HVAT Act, if a dealer has maintained false or incorrect accounts or documents with a view to suppress his sales, purchases,

imports into State or stocks of goods, or has concealed any particulars or has furnished to or produced before any authority any account, return, document or information which is false or incorrect in any material particular, such Authority may direct him to pay by way of penalty, in addition to the tax to which he is assessed or is liable to be assessed, a sum thrice the amount of tax which would have been avoided had such account, return, document or information as the case may be, been accepted as true and correct.

Audit noticed (October 2014) that four dealers (trading in yarn and waste) falling under DETC (ST) Panipat did not include goods of ₹ 4.29 crore in their sales made to a dealer of Panipat during 2011-12 thereby suppressed the sales. The AA finalised the assessments of these dealers (April to July 2013). This suppression of sales came to notice (January 2014) of the AA but no action was initiated by the concerned AA against the defaulting dealers for levy of tax and penalty under Section 38. Thus, the dealers had suppressed sales worth ₹ 4.29 crore and were liable to pay tax of ₹ 22.53 lakh at the rate of five *per cent* plus surcharge. Additionally, mandatory penalty of ₹ 67.59 lakh at the rate of three times of tax evaded was also leviable on suppression of sales.

The DETC (ST) Panipat responded (September 2015) that in three cases re-assessment have been framed and additional demand of ₹ 22.21 lakh had been created and in remaining one case re-assessment proceeding have been initiated**.**

The matter was reported to the Government in May 2015; reply has not been received (November 2015).

2.12 Non levy of tax on sale of HDPE pipes

Tax free sales of ₹ 3.08 crore of HDPE pipes, were allowed instead of levying tax at the rate of five *per cent* plus surcharge resulting in non levy of tax amounting to ₹ 16.17 lakh, besides interest of ₹ 10.68 lakh.

Under Section 7 (1) (a) (iv) of the HVAT Act, tax is leviable at the rates specified in Schedules 'A' to 'G' of the Act depending upon the classification of goods. The Financial Commissioner and Principal Secretary to Government of Haryana has clarified on 18 November 2011 that High Density Polyethylene pipes (HDPE) are not tax free items but covered under entry No. 60 of Schedule 'C' of HVAT Act and taxable at the rate of five *per cent*.

Audit noticed (May and June 2014) that one dealer under DETC (ST) Sonipat sold HDPE pipes worth ₹ 3.08 crore (2010-11 and 2011-12) and claimed tax free sales. AAs, while finalising the assessments (November 2013 and February 2014), also allowed the same instead of levying tax at the rate of five *per cent*. This resulted in non-levy of tax amounting to ₹ 16.17 lakh including surcharge, besides interest of ₹ 10.68 lakh was also leviable.

AA responded (October 2015) that the cases had been sent to the Revisional Authority for taking suo motu action.

The matter was reported to the Government in May 2015; reply has not been received (November 2015).