CHAPTER-II: SALES TAX/VALUE ADDED TAX

2.1 Tax administration

Assessments, levy and collection of value added tax (VAT) in Haryana are governed under the Haryana Value Added Tax Act, 2003 (HVAT Act) and rules framed thereunder. Excise and Taxation Commissioner (ETC) is the head of the Excise and Taxation Department for the administration of HVAT Act and Rules in Haryana. The Excise and Taxation Officers (ETOs) and Assistant Excise and Taxation Officers (AETOs) are responsible for registration of dealers, assessments, levy and collection of VAT. All the dealers registered under the Haryana General Sales Tax Act, 1973 (HGST Act) were liable to get registered under the HVAT Act. Every dealer whose gross turnover (GTO) exceeded ₹ five lakh were liable to get registered under the HVAT Act from the day following the day his GTO exceeded the taxable quantum. All dealers registered under the HVAT Act were assigned Taxpayers Identification Number (TIN). Under the HVAT Act, tax was levied at the prescribed rates at every point of sale after allowing deduction towards tax paid at the previous point {input tax credit (ITC)}. Assessments were made after scrutiny of books of accounts in selected cases under the Act.

2.2 Trend of receipts

Actual receipts from Taxes on sales, trade etc./VAT during the last five years 2005-06 to 2009-10 along with the total tax/non-tax receipts during the same period is exhibited in the following table:

(₹ in crore)

Year	Budget estimates	Actual VAT receipts	Variation excess (+)/ shortfall (-)	Percentage of variation (Col. 4 to Col. 2)	Total tax/non-tax receipts of the State	Percentage of actual VAT receipts vis-à-vis total tax / non-tax receipts (Col. 3 to Col. 6)
1	2	3	4	5	6	7
2005-06	5,490.00	5,604.45	(+) 114.45	(+) 02	11,537.21	49
2006-07	6,390.00	6,853.24	(+) 463.24	(+) 07	15,518.52	44
2007-08	7,832.00	7,720.98	(-) 111.02	(-) 01	16,714.90	46
2008-09	9,785.00	8,154.73	(-) 1,630.27	(-) 17	14,893.73	55
2009-10	10,740.00	9,032.37	(-) 1,707.63	(-) 16	15,960.90	57

Source: State Budget and Finance accounts.

The decrease in revenue receipts (16 *per cent*) in 2009-10 was mainly due to less collection from VAT on account of reduction of rates of tax and worldwide recession.

2.3 Analysis of arrears of revenue

The arrears of sales tax/VAT revenue as on 31 March 2010 amounted to ₹ 2,724.08 crore of which ₹ 575.12 crore (21 *per cent*) were outstanding for more than five years. The following table depicts the position of arrears of revenue during the period 2005-06 to 2009-10:

(₹ in crore)

Year	Opening balance of VAT arrears	Amount collected during the year	Closing balance of VAT arrears	Actual VAT receipts	Percentage (Col. 3 to Col. 2)	Percentage of arrears outstanding to VAT receipts (Col. 4 to Col. 5)
1	2	3	4	5	6	7
2005-06	909.04	72.77	1,142.15	5,604.45	8	20
2006-07	1,142.15	71.93	1,268.50	6,853.24	6	19
2007-08	1,268.50	127.54	1,591.87	7,720.98	10	21
2008-09	1,591.87	155.41	1,955.87	8,154.73	10	24
2009-10	1,955.87	164.08	2,724.08	9,032.37	8	30

We observed that arrears of revenue had increased from ₹ 909.04 crore at the beginning of the year 2005-06 to ₹ 2,724.08 crore (200 *per cent*) at the end of the year 2009-10. The percentage of realisation of arrears to the arrears at the beginning of the year ranged between six and 10 *per cent* during the years 2005-06 to 2009-10. Though the VAT receipts increased by 61 *per cent* (from ₹ 5,604.45 crore in 2005-06 to ₹ 9,032.37 crore in 2009-10), the arrears of VAT revenue increased by 200 *per cent* (from ₹ 909.04 crore as on 1 April 2005 to ₹ 2,724.08 crore as on 31 March 2010).

The Government may advise the Department to take effective steps for collecting the arrears promptly to augment Government revenue.

2.4 Assessee profile

10,994 dealers were registered during the year 2009-10. There were 988 large taxpayers and 74,757 small dealers in the State as on 31 March 2010. 1,60,755 dealers registered as on 31 March 2009 were required to file their periodical returns. The information relating to number of returns received and action taken by the department to issue notices to the remaining dealers who failed to furnish returns is being ascertained from the department and will be analysed**.**

2.5 Cost of VAT per assessee

The number of assessees and sales tax/VAT receipts during the period 2005-06 to 2009-10 as furnished by the Excise and Taxation Department are

mentioned below:

(₹ in lakh)

Year	Number of assessees	Sales tax/VAT receipts	Average collection of VAT per assessee
2005-06	1,38,096	4,31,076.20	3.12
2006-07	1,45,341	5,57,888.84	3.84
2007-08	1,52,352	6,05,931.44	3.98
2008-09	1,56,545	6,42,489.44	4.10
2009-10	1,61,927	7,53,065.60	4.65

We observed that the average collection of VAT per assessee increased from ₹ 3.12 lakh in 2005-06 to ₹ 4.65 lakh in 2009-10.

2.6 Arrears in assessments

The number of cases pending assessment at the beginning of the year, cases becoming due during the year, cases disposed during the year and number of cases pending at the end of each year during 2005-06 to 2009-10 as furnished by the Excise and Taxation Department in respect of taxes on sales, trade etc./ VAT are mentioned below:

Year	Opening balance	Cases due for assessment during the year	Total	Cases finalised during the year	Balance at the close of the year	Percentage of cases finalised to total cases (Col. 5 to col. 4)
1	2	3	4	5	6	7
2005-06	2,22,769	1,63,789	3,86,558	1,86,761	1,99,797	48
2006-07	1,99,797	1,76,682	3,76,479	1,59,608	2,16,871	42
2007-08	2,16,871	1,81,128	3,97,999	1,75,124	2,22,875	44
2008-09	2,22,875	1,83,153	4,06,028	1,64,132	2,41,896	40
2009-10	2,41,896	2,34,839	4,76,735	1,89,476	2,87,259	40

We observed that the number of pending assessment cases had been increasing every year during the period 2005-06 to 2009-10 and the pending cases in respect of sales tax/VAT increased from 2,22,769 cases at the beginning of 2005-06 to 2,87,259 (29 *per cent*) at the end of 2009-10. The percentage of sales tax/VAT assessment cases finalised to total cases during the period 2005-06 to 2009-10 ranged between 40 to 48 *per cent*.

The Government may advise the Department to take necessary steps for early disposal of these pending assessment cases to augment Government revenue.

2.7 Cost of collection

The gross collection in respect of revenue receipts of Taxes on sales, trade etc./VAT, expenditure incurred on their collection and the percentage of such expenditure to gross collection during the years 2005-06 to 2009-10 along

with the relevant all India average percentage of expenditure of collection to gross collection for the relevant year are mentioned below.

(₹ in crore)

Year	Gross Collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average cost of collection
2005-06	5,604.45	36.86	0.65	0.91
2006-07	6,853.24	45.42	0.66	0.82
2007-08	7,720.98	50.64	0.66	0.83
2008-09	8,154.73	65.92	0.81	0.88
2009-10	9,032.37	78.48	0.87	-

Source: Finance Accounts.

2.8 Analysis of collection

The break-up of the total collection at pre-assessment stage and after regular assessments of sales tax/VAT cases for the year 2009-10 and the corresponding figures for the preceding four years as furnished by the Excise and Taxation Department are mentioned below:

(₹ in crore)

Year	Amount collected at pre-assessment stage	Amount collected after regular assessment	Amount refunded	Net collection as per department	Net collection as per Finance Accounts	Percentage of collection at pre-assessment stage to net collection (column 2 to column 5)
1	**2**	**3**	**4**	**5**	**6**	**7**
2005-06	5,480.84	169.01	45.40	5,604.45	5,604.45	98
2006-07	6,263.05	644.42	54.23	6,853.24	6,853.24	91
2007-08	7,223.15	723.60	81.15	7,865.60[1]	7,720.98[1]	92
2008-09	8,132.08	528.42	101.34	8,559.16[1]	8,154.73[1]	95
2009-10	9,973.05	394.45	133.09	10,234.41[1]	9,032.37[1]	97

We observed that the percentage of tax collected before regular assessment decreased from 98 *per cent* in 2005-06 to 91 *per cent* in 2006-07 and had been increasing from 2007-08 to 2009-10. However, the department collected ₹ 2,358.51 crore[2] during the years 2004-05 to 2008-09, while tax due in the cases detected during test check of assessment cases conducted by audit

[1] There are differences of ₹ 144.62 crore, ₹ 404.43 crore and ₹ 1,202.04 crore in the departmental figures and the figures given in the Statement No. 11 – Detailed accounts of revenue by minor heads in the Finance Accounts of the Government for the years 2007-08, 2008-09 and 2009-10 respectively.

[2] Amount collected after regular assessments during 2004-05 was ₹ 293.06 crore.

during the period from 2004-05 to 2008-09 amounted to ₹ 1,161.99 crore[3]. **The high amount of leakage of revenue detected by audit only in test checked cases vis-à-vis the amount collected after regular assessments points towards a need for the Government to strengthen the tax administration. Besides, the refunds allowed during the years 2005-06 to 2009-10 also registered a consistent increase; during 2009-10, it reached ₹ 133.09 crore and during the same year 2009-10, the department collected ₹ 394.45 crore after regular assessments.**

2.9 Revenue impact of the Audit

2.9.1 Position of Inspection Reports

The performance of the Excise and Taxation Department to deal with the irregularities detected in the course of local audit conducted during the year 2008-09 and the corresponding figures for the preceding four years is tabulated below:

(₹ in crore)

Year	Units audited			Cases accepted		Recovery made during the year	
	Number	Number of cases objected	Amount	Number	Amount	Number	Amount
2004-05	40	735	140.61	125	91.31	66	0.68
2005-06	46	960	241.06	95	1.07	60	0.95
2006-07	43	974	395.96	147	1.84	88	0.83
2007-08	47	1,232	176.04	145	2.44	77	1.44
2008-09	46	863	208.32	106	8.48	61	0.81
Total	**222**	**4,764**	**1,161.99**	**618**	**105.14**	**352**	**4.71**

We observed that the recovery in respect of accepted cases during the years 2004-05 to 2008-09 was only four *per cent*.

2.9.2 Position of Audit Reports

During the last five years (including the current year's report), audit through its Audit Reports had pointed out non/short levy/realisation, underassessment/ loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc., with revenue implication of ₹ 140.86 crore in 52 paragraphs. Of these, the Department/ Government had accepted audit observations in 50 paragraphs involving

[3] 2004-05: ₹ 140.61 crore; 2005-06: ₹ 241.06 crore; 2006-07: ₹ 395.96 crore; 2007-08: ₹ 176.04 crore and 2008-09: ₹ 208.32 crore.

₹ 46.38 crore and recovered ₹ 6.99 crore. The details are shown in the following table.

(₹ in crore)

Year of Report	Paragraphs included		Paragraphs accepted		Amount recovered	
	Number	Amount	Number	Amount	Number	Amount
2004-05	7	1.92	7	1.64	4	0.96
2005-06	8	5.74	7	1.14	7	1.12
2006-07	7	6.54	7	6.54	3	4.52
2007-08	8	2.17	7	1.00	2	0.32
2008-09	11	5.48	11	5.11	2	0.07
2009-10	11	119.01	11	30.95	-	-
Total	**52**	**140.86**	**50**	**46.38**	**18**	**6.99**

We observed that the recovery in respect of accepted cases was only 15 *per cent*. The slow progress of recovery even in respect of accepted cases is indicative of failure on the part of the heads of offices/department to initiate action to recover the Government dues promptly.

We recommend that the Government may revamp the recovery mechanism to ensure that at least the amount involved in accepted cases are promptly recovered.

2.10 Working of internal audit wing

The department stated (July 2010) that an internal audit system was set up by the Government for control and supervision of expenditure as well as receipts. The department had one Chief Accounts officer, four (against five sanctioned posts) Accounts Officers and 11 (against 14 sanctioned posts) Section Officers. There are 17 Section Officers in the districts level offices who conduct internal audit of assessment of sales tax/VAT cases, bills and cash books. Internal audit party had conducted audit of 13 out of 63 auditable units (21 *per cent*) of revenue receipts and expenditure during the year 2009-10, but the Chief Accounts officer failed to furnish the details of objections raised and settled along with planning of auditable units etc. Thus, the monitoring at the apex level was ineffective and the coverage of internal audit was also not adequate. The irregularities discussed in audit paragraphs 2.13 to 2.15 are indicators of ineffective internal control mechanism as none of these irregularities pointed out by us were detected by the departmental authorities/internal audit parties. It is, therefore, necessary to strengthen the internal audit cell to ensure timely completion of audit of assessment cases and timely detection and correction of errors in levy and collection of sales tax/VAT revenue.

The Government may strengthen the internal audit wing to ensure timely detection and correction of errors in assessment, levy and collection of VAT and refund cases.

2.11 Results of audit

Test check of the records relating to assessments and refunds of sales tax/VAT in Excise and Taxation Department, conducted during the year 2009-10, revealed irregularities in assessments, levy and collection of tax involving ₹ 217.05 crore in 667 cases, which broadly fall under the following categories:

(₹ in crore)

Sr. No.	Category	Number of cases	Amount
1.	Underassessment of turnover under Central Sales Tax Act	66	102.41
2.	Application of incorrect rates of tax	71	9.42
3.	Non-levy of penalty	39	20.46
4.	Incorrect computation of turnover	23	1.33
5.	Non-levy of interest	10	1.23
6.	Other irregularities	458	82.20
Total		**667**	**217.05**

During the year 2009-10, the department accepted underassessment and other deficiencies of ₹ 32.59 crore involved in 102 cases of which 87 cases involving ₹ 32.30 crore had been pointed out during 2009-10 and the remaining in the earlier years. The department recovered ₹ 39.05 lakh in 36 cases during the year 2009-10, of which 22 cases involving ₹ 15.80 lakh related to the year 2009-10 and balance to the earlier years.

A few illustrative cases involving ₹ 119.01 crore are mentioned in the following paragraphs.

2.12 Audit observations

During scrutiny of the assessment records of sales tax/VAT in Excise and Taxation Department, we noticed the cases of non-observance of provisions of Acts/Rules, non/short levy of tax/penalty/interest, incorrect determination of classification/turnover and other cases, as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of Assessing Authorities (AAs) are pointed out in audit repeatedly, but not only the irregularities persist; these remain undetected till an audit is conducted. There is a need for the Government to improve the internal control system including strengthening of internal audit.

2.13 Non-observance of the provisions of the Acts/Rules

The HGST Act/HVAT Act/Central Sales Tax Act, 1956 (CST Act) and Rules made thereunder provide for:-

(i) levy of tax/penalty at the prescribed rate;

(ii) levy of lump sum tax on works contract at prescribed rates;

(iii) exemption from payment of tax to new industries under the HGST Act, who opt for deferment of tax under the HVAT Act on fulfilment of prescribed conditions;

(iv) allowance of ITC as admissible; and

(v) 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 and half per cent (one per cent with effect from 11 October 2007) per month if the payment is made within ninety days, and at three per cent per month (two per cent with effect from 11 October 2007) if the default continues beyond ninety days for the whole period, from the last date specified for the payment of tax to the date he makes the payment.

We noticed that the AAs, while finalising the assessments, did not observe the provisions of the rules in the cases mentioned in the paragraphs 2.13.1 to 2.13.6. This resulted in non/short levy/non-realisation of tax/interest/ penalty of ₹22.38 crore.

2.13.1 Underassessment of value added tax on

2.13.1.1 Leased machinery and equipments

Under Section 7 (1) of the HVAT Act, machinery and equipments being unclassified goods were taxable at the rate of 10 *per cent* upto 30 June 2005. The State Government clarified to a dealer[4] (December 2006) that the rate applicable for the transfer of right to use goods should be same as the rate applicable for the sale of the goods.

[4] M/s Hewlett Packard Financial Services India (Private) Limited, Gurgaon.

During test check of the records of the office of Deputy Excise and Taxation Commissioner (Sales Tax) {DETC (ST)}, Faridabad (West) in June 2008, we noticed that the dealer bank had leased out machinery and equipments as per lease agreements in February 1999 (prior to introduction of HVAT Act). The dealer bank received lease rent amounting to ₹ 87.91 crore during the years 2003-04 and 2004-05. The AA, while finalising the assessments in March and September 2007, levied tax at the rate of four *per cent* instead of the correct rate of 10 *per cent*. This resulted in underassessment of VAT of ₹ 5.27 crore. Additionally, interest amounting to ₹ 4.93 crore was also leviable under Section 14 (6) of HVAT Act.

After we pointed out these cases in June 2008, the AA stated (July 2008) that the tax had been charged correctly in view of schedule 'C' (serial number 3) treating the leasing of machinery as intangible asset. The reply of the AA is not correct as the provisions quoted were applicable with effect from 1 July 2005 and machinery is not an intangible asset. Later on DETC-cum-Revisional Authority (RA), Faridabad (West) admitted the audit observations and rectified the assessment order for the year 2003-04 but levied tax at the rate of four *per cent* after accepting forms VAT-D1 for ₹ 44.07 crore submitted by the dealer. The AA had raised (March 2007) demand of interest of ₹ 4.91 lakh for late deposit of tax along with the returns, but the RA refunded the interest of ₹ 4.91 lakh, which was not correct. The ETO-cum-AA, Faridabad (West) also rectified the assessment order for the year 2004-05 on the same analogy and accepted forms VAT-D1 for ₹ 43.85 crore. The action taken by the RA and AA to levy concessional rate of tax after accepting forms VAT-D1 was not in order as VAT-D1 is applicable when actual sale (transfer) of goods take place and not in case of deemed sale (lease rent). It is also added that in the instant case the transfer of machinery had already taken place in February 1999 i.e prior to introduction of the HVAT Act. We have not received final reply (August 2010).

2.13.1.2 Pre owned cars

As per notification issued in April 2003 under Section 7 (1) of the HVAT Act (serial number 42 of the list), motor vehicles, their parts and accessories were taxable at the rate of 12 *per cent* up to 30 June 2005.

During test check of the records of the offices of DETC (ST), Faridabad (East), Gurgaon (West) and Jagadhari between July 2007 and February 2010, we noticed that four dealers[5] dealing in sale and purchase of cars (old and new) purchased pre owned cars from private persons and registered dealers and sold 1,113 pre owned cars valued as ₹ 22.86 crore during the period between April 2003 and June 2005. The dealers paid lump sum tax of ₹ 40.19 lakh. The AAs finalised the assessments between March 2007 and March 2009 and levied lump sum rate of tax instead of the correct rate of tax of 12 *per cent.* This resulted in underassessment of tax of ₹ 2.34 crore. Additionally, interest amounting to ₹ 2.21 crore under Section 14 (6) of the HVAT Act was also leviable on short payment of tax between May 2004 and March 2009.

[5] Faridabad (East): 2, Gurgaon (West): 1 and Jagadhari: 1.

After we pointed out these cases between July 2007 and February 2010, Joint Excise and Taxation Commissioner (JETC)-cum-RA, Gurgaon and ETO, Faridabad (East) created additional demand of ₹ 3.34 lakh (against ₹ 55.24 lakh) and ₹ 7.48 lakh respectively in one case (each) of Gurgaon and Faridabad in June 2008 and July 2009. In respect of the remaining seven cases of four dealers, DETC (ST) and ETOs, Faridabad (East), Gurgaon (West) and Jagadhari stated that the AAs had levied lump sum rate of tax on pre owned cars rightly as per provisions of Schedule 'G' read with Section 45 of the Act. However, Schedule G is applicable only to the dealers who are the actual owners of the cars and not dealing in the business of sale/purchase of cars and was not applicable in the case of registered dealers dealing in sale/purchase of cars.

We pointed out the matter to the ETC, Excise and Taxation Department between December 2007 and February 2010, and in May 2010 for re-examination and for taking suitable action in the cases of paragraph 2.13.1.1. We also reported the matter to the Government in May 2010; we are yet to receive their reply (August 2010).

2.13.2 Short/non-levy of purchase tax and penalty due to misuse of VAT-D1

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 form VAT-D1 certifying that the goods are meant for use in the manufacture of goods for sale. 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.

2.13.2.1 During test check of the records of the offices of DETC (ST), Faridabad (West) and Faridabad (East) in September 2008 and August 2009, we noticed that two dealers purchased goods valued as ₹ 212.34 crore during the period between April 2004 and June 2005 at concessional rate of four *per cent* against declaration in form VAT-D1 for use in the manufacture of goods for sale. Out of which, these dealers transferred purchased goods (spare parts and components of motor vehicles) valued as ₹ 56.35 crore to their branches outside the State instead of using the same in manufacturing of the goods for sale and they failed to make payment of additional tax along with the returns. The AA, Faridabad (West) while finalising the assessment in March 2008 failed to levy tax additionally (normal tax leviable minus concessional tax levied) and penalty whereas AA Faridabad (East) levied (March 2009) only penalty of ₹ 7.69 lakh but failed to levy tax additionally. This resulted in non-levy of additional tax of ₹ 4.51 crore and maximum penalty of ₹ 6.68 crore.

After we pointed out these cases in September 2008 and August 2009, the AA, Faridabad (East) stated in November 2009 that there was no provision in the Act to levy additional tax where the goods purchased by the dealer against VAT-D1 forms were stock transferred. The only action prescribed under the Act is imposition of penalty which had been levied in the assessment order. The reply of AA Faridabad (East) is not in consonance with the provisions of the Act wherein the assessee was also required to pay tax along with the returns and failure to pay the same attracts the provisions for levy of penalty in addition to levy of tax. The reply furnished by the AA, Faridabad (West) was not relevant to the audit observation raised. We have not received further report on action taken in both the cases (August 2010).

2.13.2.2 During test check of the records of the office of DETC (ST), Panipat between June 2008 and January 2010, we noticed that 41 dealers purchased rags valued as ₹ 40.62 crore from within the State at concessional rate of tax against declaration in forms VAT-D1 and ₹ 6.21 crore from outside the State during the period between 2004-05 and 2006-07 for use in the manufacture of goods for sale. Out of which, these dealers sold rags valued as ₹ 18.64 crore to other dealers at concessional rate of tax and also failed to pay the tax which would have been levied additionally. The AAs, while finalising the assessments between April 2006 and February 2009, omitted to levy additional tax applicable to rags being unclassified goods. This resulted in non-levy of VAT of ₹ 1.23 crore besides maximum penalty of ₹ 1.84 crore.

After we pointed out these cases between June 2008 and January 2010, the Department stated between October 2008 and February 2010 that out of 23 cases, the AAs, while finalising 17 remand cases in March 2009, levied penalty of ₹ 98,000 in 14 cases of which ₹ 5,000 were recovered in one case in May 2009 and issued notices in six cases for taking suo motu action. Out of 18 cases, the ETO, Panipat had sent three cases to the DETC-cum-RA in January 2010 for taking suo motu action. We have not received report on recovery and final reply in the remaining cases (August 2010).

We pointed out the matter to the ETC, Excise and Taxation Department between December 2008 and February 2010 and reported to the Government between March and May 2010; we are yet to receive their reply (August 2010).

2.13.3 Short levy of lump sum tax on works contract

Under the HVAT Act and the rules framed thereunder, a contractor liable to pay tax may, in respect of a works contract awarded to him for execution in the State, pay in lieu of tax payable by him under the Act on the transfer of property (whether as goods or in some other form) involved in the execution of works contract, a lump sum tax calculated at four *per cent* of the total valuable consideration receivable for the execution of the contract.

During test check of the records of the offices of DETC (ST), Faridabad (East) and Panchkula between December 2007 and April 2008, we noticed that four contractors, who had opted for lump sum payment of tax, received payment of ₹ 16.54 crore for execution of works contracts during the period between April 2003 and March 2006. The AAs, while finalising the

assessments between May 2006 and May 2007, levied tax at the rate of two *per cent* instead of correct rate of four *per cent* which resulted in short levy of tax of ₹ 33.10 lakh. Additionally, interest amounting to ₹ 30.46 lakh under Section 14 (6) of the HVAT Act was also leviable on default in tax demand for the period between May 2004 and May 2007.

After we pointed out these cases between December 2007 and April 2008, the DETC (ST), Panchkula created additional demands of ₹ 5.03 lakh in March 2009. DETC (ST), Faridabad (East) stated between December 2009 and January 2010 that the cases had been sent to DETC-cum-RA Faridabad for taking suo motu action in June and August 2008. We have not received report on recovery and final reply in respect of Faridabad cases including action taken to levy of interest (August 2010).

We pointed out the matter to the ETC, Excise and Taxation Department in April and June 2008 and reported to the Government in February 2010; we are yet to receive their reply (August 2010).

2.13.4 Underassessment of tax due to allowing of excess benefit of tax deferment

Under Section 61 (2) (d) (iii) of the HVAT Act, an industrial unit availing the benefit of deferment of payment of tax, whether by change over under the provisions of the Act or otherwise, may, in lieu of making payment of the deferred tax after five years, pay half the amount of the deferred tax upfront along with the returns and on making payment in this manner, the tax due according to the returns shall be deemed to have been paid in full. If the tax calculated is more than the input tax, the difference of the two shall be the tax payable.

2.13.4.1 During test check of the records of the office of the DETC (ST), Panipat in November 2009, we noticed that a dealer, availing the benefit of exemption (changed over to deferment scheme under HVAT Act) from payment of tax of ₹ 9.47 crore for the period 25 September 1999 to 24 September 2008, had opted to pay 50 *per cent* of the tax in lieu of deferment of payment of tax under the HVAT Act/Rules. The assessee had made sale of goods valued as ₹ 37.11 crore involving tax of ₹ 1.48 crore during the year 2005-06. After adjusting ITC of ₹ 35.91 lakh, the balance tax payable was ₹ 1.12 crore. The dealer was entitled to concession of 50 *per cent* of deferred tax amounting to ₹ 56.27 lakh. The AA, while finalising the assessment in March 2009, allowed 50 *per cent* of total tax liability i.e. ₹ 74.22 lakh instead of admissible amount of ₹ 56.27 lakh. This resulted in excess deferment of tax of ₹ 17.95 lakh. Additionally, interest amounting to ₹ 17.95 lakh under Section 14 (6) of the HVAT Act was also leviable for the period from November 2005 to March 2009.

After we pointed out the case in November 2009, the ETO, Panipat stated in January 2010 that the case was being re-examined and final reply would be sent in due course. We have not received further progress (August 2010).

2.13.4.2 During test check of the records of the office of the ETO, Bahadurgarh in July 2007, we noticed that a dealer, availing the benefit of capital subsidy of ₹ 1.73 crore for the period 1 April 2003 to 4 May 2006, had

opted to pay 50 *per cent* of the tax in lieu of deferment of payment of tax under the HVAT Act/Rules. The assessee had made sale of goods valued as ₹ 18.88 crore involving tax of ₹ 75.52 lakh during the year 2003-04. After adjusting ITC of ₹ 17.41 lakh, the balance tax payable was ₹ 58.11 lakh. The dealer was entitled to deferment of 50 *per cent* of deferred tax amounting to ₹ 29.06 lakh. The AA, while finalising the assessment in November 2006, allowed 50 *per cent* of total tax liability i.e. ₹ 39.86 lakh instead of admissible amount of ₹ 29.06 lakh. This resulted in excess deferment of tax of ₹ 10.80 lakh. Additionally, interest amounting to ₹ 10.06 lakh under Section 14 (6) of the HVAT Act was also leviable for the period from November 2003 to November 2006.

After we pointed out the case in July 2007, the DETC, Jhajjar admitted the audit observation and stated in October 2009 and June 2010 that the JETC (Range)-cum-RA, Gurgaon had created additional demand of ₹ 22.15 lakh {Tax: ₹ 8.17 lakh (after adjusting recovery of ₹ 2.63 lakh in March 2007); interest: ₹ 13.98 lakh (interest calculated upto 31 March 2008)} under HVAT/CST Act in April 2008. Further ETO, Bahadurgarh stated in February 2010 that no recovery had been made. We have not received any report on recovery (August 2010).

We pointed out the matter to the ETC, Excise and Taxation Department in September 2007 and February 2010 and reported to the Government in March 2010; we are yet to receive their reply (August 2010).

2.13.5 Underassessment of value added tax due to application of incorrect rate

Under Section 7 of the HVAT Act, VAT on goods sold is leviable at the specified rates.

During test check of the records of the offices of DETC (ST), Ambala Cantonment, Faridabad (West) and Gurgaon (West) between September 2008 and January 2010, we noticed that the AAs, while finalising the assessments between February 2008 and March 2009, levied tax at the lower rates instead of the correct rates leviable. Application of incorrect rate of tax resulted in underassessment of VAT of ₹ 30.32 lakh and interest of ₹ 29.65 lakh, leviable under Section 14 (6) of the HVAT Act as mentioned below:

Name of the DETC	Year/date of assessment	Description of goods sold (Number of dealers)	Value	Tax leviable	Tax levied	Tax short levied (6-7)	Interest leviable
			(₹ in crore)	(₹ in lakh)			
(1)	(2)	(4)	(5)	(6)	(7)	(8)	(9)
Ambala Cantonment	2005-06 8 October 2008	Rooh Afza (1)	3.10	37.18 (12)	30.98 (10)	6.20	6.20
Remarks: The AA, Ambala Cantonment had sent the case to the RA for taking suo motu action in December 2009.							

Name of the DETC	Year/date of assessment	Description of goods sold (Number of dealers)	Value	Tax leviable	Tax levied	Tax short levied (6-7)	Interest leviable
			(₹ in crore)	(₹ in lakh)			
(1)	(2)	(4)	(5)	(6)	(7)	(8)	(9)
Ambala Cantonment	2005-06 20 May 2008	Pressure Cookers (1)	0.37	4.49 (12)	1.50 (4)	2.99	2.83
Remarks: The AA, Ambala Cantonment had sent the case to the RA for taking suo motu action in December 2009.							
Ambala Cantonment	2005-06 27 February 2009 and 18 March 2009	Medicines (2)	0.94	9.44 (10)	3.78 (4)	5.66	5.66
Remarks: The AA, Ambala Cantonment had sent the case to the RA for taking suo motu action in January 2010.							
Ambala Cantonment	2005-06 25 June 2008	Tyres and Tubes (1)	1.76	14.04 (8)	7.02 (4)	7.02	6.96
Remarks: The AA, Ambala Cantonment stated in January 2010 that the case had been sent to the RA for taking suo motu action.							
Gurgaon (West)	2004-05 27 February 2008 and 2005-06 17 March 2009	Tyres and Tubes (1)	0.61	4.89 (8)	2.44 (4)	2.45	2.44
Remarks: The DETC, Gurgaon (West) stated in February 2010 that VAT on tyres and tubes for cycles sold by the dealer during April 2004 to June 2005 was correctly leviable at four *per cent*. The reply of DETC is incorrect as these rates were applicable with effect from 1 July 2005 and tax was leviable at eight *per cent* from 8 July 2003 to 30 June 2005.							
Faridabad (West)	2004-05 24 March 2008 and 2005-06 21 March 2009	Motor vehicle parts (1)	3.00	36.01 (12)	30.01 (10)	6.00	5.56
Remarks: The ETO, Faridabad (West) had sent the cases to RA for taking suo motu action in December 2009.							
Total			**9.78**	**106.05**	**75.73**	**30.32**	**29.65**

We pointed out the matter to the ETC, Excise and Taxation Department between September 2009 and February 2010 and reported to the Government in March and May 2010; we are yet to receive their reply (August 2010).

2.13.6 Inadmissible allowing of input tax credit

Under Section 8 (1) of the HVAT Act, input tax in respect of any goods purchased by a dealer shall be the amount of tax paid to the State on the sale of such goods to him. Under entry 31 of Schedule 'B' appended to the HVAT Act, Indian made foreign liquor [IMFL] (on which State excise duty has been paid) except when sold by a L-4/L-5 or L-12C licensee[4] is exempted from payment of tax. Thus, ITC on purchase of IMFL/beer is not admissible to these license holders since the assessee has not paid any VAT.

[4] L-4 license issued for retail vend of foreign liquor in a restaurant; L -5 license issued for retail vend of foreign liquor in a bar attached to a restaurant and L-12 license issued for retail vend of foreign liquor at a club.

During test check of the records of the DETC (ST), Rohtak in July 2008, we noticed that a dealer, holding L-4/L-5 license under the Haryana Liquor License Rules, 1970, purchased IMFL and beer valued as ₹ 43.14 lakh (2003-04: ₹ 21.14 lakh; 2004-05: ₹ 22 lakh) without payment of VAT and sold it after charging VAT. The AA, while finalising the assessments for the year 2003-04 and 2004-05 in November 2006 and March 2008, allowed ITC of ₹ 8.63 lakh though no ITC was admissible on purchases of IMFL and beer. This resulted in short levy of tax of ₹ 8.63 lakh.

After we pointed out these cases in July 2008, DETC (ST) Rohtak admitted the audit observation and stated in September 2009 and June 2010 that the AA disallowed ITC of ₹ 8.63 lakh by rectifying the assessments for the years 2003-04 and 2004-05 in March 2009 and created additional demand of ₹ 8.63 lakh. We have not received further report on recovery (August 2010).

We pointed out the matter to the ETC, Excise and Taxation Department in October 2008 and reported to the Government in February 2010; we are yet to receive their reply (August 2010).

2.14 Incorrect determination of classification/turnover

The HVAT Act, CST Act and Rules framed thereunder provide for:-

(i) disclosure of actual turnover by the dealer in the returns;

(ii) levy of tax/interest/penalty at the prescribed rate;

(iii) accurate determination of classification of goods by the AAs at the time of assessment; and

(iv) accurate determination of turnover at the time of assessment.

We noticed that the AAs, while finalising the assessments, in the cases mentioned in the paragraphs 2.14.1 to 2.14.3, did not observe the provisions of the Act. This resulted in non/short levy/non-realisation of tax/interest/ penalty of ₹ 94.56 crore.

2.14.1 Incorrect deductions of transit sales

Under Section 6 (2) of the CST Act, where a sale of any goods in the course of inter State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a dealer shall be exempt from tax, provided the dealer furnishes a certificate in prescribed form E-I or E-II obtained from selling dealer(s) and a declaration in form 'C' obtained from purchasing dealer(s). Thus, the contract of supply of goods must come into existence after commencement and before termination of inter-State movement of goods. Further Section 38 of HVAT Act read with Section 9 (2) of CST Act provides for levy of penalty for filing/claiming incorrect returns/ benefit of exempted sale, a sum equal to three times the tax which would have been avoided had such account, return, document or information, as the case

may be, been accepted as true and correct.

2.14.1.1 During test check of the records of the office of DETC (ST), Panipat between May 2008 and January 2010, we noticed that three dealers of Panipat entered into agreements for supply of materials with Haryana Vidyut Prasaran Nigam Limited Panchkula, Haryana Power Generation Corporation Limited Panchkula and Indian Oil Corporation Limited, Panipat. The dealers (contractors) after purchasing the materials from outside the State supplied the same worth ₹ 510.25 crore between April 2003 and March 2008 directly to the site of works through their accounts. As the supply of materials was done within the State, the sale transactions were to be taxed under the provisions of the HVAT Act. Inspite of this, the dealers claimed benefit of exempted sales, under Section 6 (2) of the CST Act by furnishing E-I, E-II and 'C' forms, which was also allowed by the AAs while finalising assessments in these cases between October 2006 and March 2009. Thus, the benefit claimed/allowed was neither justified nor correct. This resulted in underassessment of VAT of ₹ 20.41 crore. Additionally, penalty of ₹ 61.23 crore was also not levied.

After we pointed out these cases between May 2008 and January 2010, ETOs, Panipat had sent six cases of dealers involving tax effect of ₹ 12.83 crore to the RA for taking suo motu action in October 2008 and May 2010. ETO Panipat did not admit audit observation in the case of a dealer for the years 2004-05 and 2005-06 stating that deductions of transit sales were rightly allowed against production of E-I and 'C' forms since there were vital evidence of endorsement of title to goods in transit and exempted from tax under Section 3 (b) of the CST Act. The reply is contrary to the provisions of the Act as the sales were liable to be taxed under HVAT Act. We have not received further report on action taken in these cases (August 2010).

2.14.1.2 During test check of the records of the office of the DETC (ST), Ambala Cantonment in December 2008/January 2009, we noticed that a dealer, dealing in sale/purchase of goods (papers), received supply orders from various dealers within and outside the State. The dealer had placed the supply orders to the paper mills outside the State during the year 2004-05 for the supply of goods with the direction to supply the goods valued as ₹ 4.59 crore direct to the purchasing dealers (local sales: ₹ 39.92 lakh; outside the State: ₹ 4.19 crore) through his account. As the supply of the goods was done within and outside the State, the sale transactions were to be taxed under the provisions of the HVAT Act and CST Act. Inspite of this, the dealer claimed benefit of exempted sales under Section 6 (2) of the CST Act by furnishing E-I and 'C' forms. The AA, while finalising the assessment and rectification order in March and July 2008, allowed the deductions of ₹ 4.59 crore treating it as transit sales against E-I and 'C' forms. As per dealer's statement dated 5 December 2008 available on the record at the time of audit and duly seen by the AA, the dealer collected the orders from various dealers and then sent the orders to paper mills for supply of papers directly to the purchasing dealers through his account. Thus, the sales, being pre determined sales, were not exempted from tax. Failure on the part of the AA to disallow deductions at the time of assessments in March and July 2008 and to reassess the case on receipt of dealer's statement in December 2008, confirming the fact of pre determined sales resulted in underassessment of tax of ₹ 20.75 lakh. Additionally, penalty

of ₹ 62.24 lakh was also leviable.

After we pointed out the case in December 2008/January 2009, the ETO, Ambala Cantonment sent the case to the DETC-cum-RA, Ambala Cantonment for taking suo motu action. The RA, in turn, vacated (January 2010) the notice for suo motu action on the plea/grounds that the dealer received the supply orders during movement of goods from one State to another. Further, there was nothing on assessment records which could prove pre determination of the sales made during the course of movement of goods as prescribed under Section 3 (b) of the CST Act. Since the dealer's statement available on record confirmed the pre determined sales, the action of the RA was not factually correct.

We pointed out the matter to the ETC, Excise and Taxation Department in December 2008 and February 2010 and reported to the Government in May and July 2010; we are yet to receive their reply (August 2010).

2.14.2 Non-levy of tax on sale of HDPE fabrics

Under the HVAT Act, High Density Polyethylene (HDPE) fabrics (plastic goods), being non-specified item in any schedule, are leviable to tax at the general rate of 12.5 *per cent* with effect from 1 July 2005. The State Government clarified in December 2009 that HDPE fabrics are unclassified goods, not covered under Schedule 'C'/Schedule 'B' of HVAT Act, and liable to be taxed at 12.5 *per cent* with effect from 1 July 2005. Under the CST Act, tax on inter State sales of goods (other than declared goods) shall be calculated at the rate of 10 *per cent* or at the rate applicable to the sale of such goods inside the State, whichever is higher, when such sales are not supported by form 'C'.

During test check of the records of the offices of DETC (ST), Jhajjar and Panipat between October 2009 and February 2010, we noticed that 16 cases of 12 dealers made sales of HDPE fabrics valued as ₹ 41.64 crore (HVAT: ₹ 22.81 crore; CST: ₹ 18.83 crore) during the period between 2005-06 and 2007-08 without payment of tax and without furnishing of declaration forms 'C'. The AAs, while finalising the assessments between May 2008 and March 2009, allowed the deductions of ₹ 41.64 crore treating it as tax free goods under Schedule B of HVAT Act. This resulted in non-levy of VAT amounting to ₹ 5.18 crore. Additionally, interest amounting to ₹ 4.01 crore was also leviable under Section 14 (6) of the HVAT Act.

After we pointed out these cases between October 2009 and February 2010, ETOs-cum-AAs stated in March 2009 that 11 cases of seven dealers had been sent to the RA, Panipat for taking suo motu action. We have not received final reply in the remaining five cases (August 2010).

We pointed out the matter to the ETC, Excise and Taxation Department in February and March 2010 and reported to the Government in March and July 2010; we are yet to receive their reply (August 2010).

2.14.3 Underassessment of tax due to inadmissible deduction from gross turnover

Under Section 2 (ze) (ii) of the HVAT Act, the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, where such transfer, is for cash, deferred payment or other valuable consideration and such transfer shall be deemed to be a sale of those goods by the person making the transfer. Under the provisions of HVAT Act, tax is leviable at every successive stage and deemed sale is also taxable in the hands of the contractor. A works contractor may either pay lump sum tax at the rate of four *per cent* of gross receipts of works contract or pay tax on value of goods involved in the execution of works contract. Thus, the deductions for labour and other service charges are to be made from total contract value for determining sale value of goods sold for levy of tax.

2.14.3.1 During test check of the records of the office of DETC (ST), Panipat in January 2010, we noticed that the dealer company (contractor) was engaged in building construction and did not opt for lump sum payment of tax. The contractee supplied material valued as ₹ 9.72 crore to the contractor for use in the execution of works and the cost was recovered from contractor through works bills during the years 2006-07 and 2007-08. The dealer had not claimed any ITC. The AA, while finalising the assessments in January and March 2009, omitted to levy tax on deemed sale of material valued as ₹ 9.72 crore and allowed other miscellaneous deduction of ₹ 3.47 crore from the GTO. This resulted in underassessment of tax of ₹ 1.65 crore due to inadmissible allowance of deductions aggregating to ₹ 13.19 crore. Additionally, interest amounting to ₹ 79.66 lakh under Section 14 (6) of the HVAT Act was also leviable for non-payment of tax for the period between November 2006 and March 2009.

After we pointed out these cases in January 2010, the ETO, Panipat stated in January 2010 that the matter was being examined. We have not received final reply (August 2010).

2.14.3.2 During test check of the records of the office of DETC (ST), Panipat in December 2009, we noticed that the dealer company (contractor), opted to pay lump sum tax in respect of one project only out of seven projects executed during 2005-06, received payment of ₹ 82.88 crore (normal contracts: ₹ 77.99 crore; lump sum contract: ₹ 4.89 crore) during the year 2005-06. The contractor claimed a deduction of ₹ 2.31 crore (out of normal contracts receipts of ₹ 77.99 crore) on account of contractee tax. The AA, while finalising the assessment in March 2009, allowed deduction of ₹ 2.31 crore from the GTO on account of contractee tax amount included in gross receipts not leviable to tax as it would be double taxation. As no such tax namely contractee tax was neither levied nor collected under any provision of the Act, the deduction allowed was, therefore, inadmissible. Inadmissible allowing of deduction of ₹ 2.31 crore resulted in underassessment of VAT of ₹ 17.41 lakh.

After we pointed out the case in December 2009, the AA stated in January 2010 that the case was being re-examined. We have not received final reply (August 2010).

2.14.3.3 During test check of the records of the office of DETC (ST), Panipat between October 2009 and January 2010, we noticed that four dealers executed job work of dyeing and embroideries and two dealers executed works contract. While finalising the assessments, the AAs did not levy or short levied tax on yarn and dyes and paints etc. passed on in execution of job work in five cases whereas in one case, the profit element (₹ 29.38 lakh) was not added in the material cost passed on in the execution of works contract. This resulted in non/short levy of tax of ₹ 16.08 lakh on the total material passed on valued as ₹ 6.48 crore. Additionally, interest of ₹ 11.73 lakh under Section 14 (6) of the Act was also leviable for the period August 2005 and March 2009.

After we pointed out these cases between October 2009 and January 2010, the AAs, Panipat stated in January 2010 that in four cases, the cases were being re-examined and results would be intimated later on and one case had been sent to the RA for taking suo motu action. In another case, the AA stated that the tax was correctly levied at the rate of four *per cent* as the dealer had shown sales against VAT-D1 forms. The reply of the ETO is not in consonance with the provisions of the Act as no further manufacturing activity was involved and the claim of concessional rate of tax allowed against VAT-D1 was incorrect. We have not received final reply in these cases (August 2010).

We pointed out the matter to the ETC, Excise and Taxation Department in February and March 2010 and reported to the Government in March and May 2010; we are yet to receive their reply (August 2010).

2.15 Evasion of tax due to misuse of declaration form 'F'

The AA, while finalising the assessments, in the cases mentioned in the paragraphs 2.15.1 to 2.15.2, did not cross verify declaration of forms 'F' with Tax Information Exchange System and also cross verification of all purchase/sale transactions totaling more than ₹ one lakh from a single VAT dealer in a year, as required in the ETC instructions dated 14 March 2006. This resulted in short levy of tax of ₹2.07 crore (including non-levy of penalty of ₹78.65 lakh) for evasion of tax.

2.15.1 Evasion of value added tax due to

2.15.1.1 Suppression of purchases and 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, or stock 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 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. In order to prevent the tax evasion by fraudulent means, VAT provides for introduction of Tax Information Exchange System for proper tracing of inter-State sales transactions. Further, with a view to detect evasion of VAT by claiming fraudulent ITC by issuing

forged tax invoices or fictitious accounting of goods neither purchased nor sold etc., the ETC issued instructions in March 2006 for cross verification of all purchase/sale transactions totaling more than ₹ one lakh from a single VAT dealer in a year.

During test check of the records of the office of DETC (ST), Faridabad (West) in May and June 2008, we noticed that the department failed to implement comprehensive computerised system and the AAs had also not conducted cross verification of the transactions (even within their district jurisdiction) before finalising the assessments. We conducted cross verification of transactions of sales and purchases in May and June 2008 and noticed that four dealers sold goods valued as ₹ 8.07 crore to nine dealers of Faridabad and two dealers purchased goods valued as ₹ 40.14 lakh from two dealers of Faridabad during the year 2004-05. These dealers had not shown these sales and purchases transactions in their accounts as well as in the quarterly returns submitted to the department. Failure of the AAs to cross verify the transactions of sales and purchases before finalising the assessments between December 2006 and March 2008 inspite of ETC directions of March 2006, which consequently led to evasion of VAT amounting to ₹ 40.01 lakh. Additionally, penalty amounting to ₹ 1.20 crore was also leviable on suppression of sales and purchases.

After we pointed out these cases in May and June 2008, the ETO-cum-AA, Faridabad (West) re-assessed three cases and levied VAT and penalty amounting to ₹ 22 lakh and ₹ 65.99 lakh respectively in June 2009 and March 2010. ETO Faridabad stated (February and March 2010) that statutory notice was issued and served upon a dealer for re-assessment, and re-assessment proceedings were initiated in one case under Section 17 of HVAT Act. We have not received report on recovery in respect of three dealers and final reply in the remaining cases (August 2010).

2.15.1.2 Misuse of declaration form 'F'

Under Section 6A of the CST Act, transfer of goods from one State to another place of business in another State is exempt from levy of tax on production of 'F' forms and if any dealer fails to prove to the satisfaction of the AA the claim of transfer of goods, then the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale. The ETC issued instructions in March 2006 that in the cases of specific traders (selected for scrutiny) all transactions totaling more than ₹ one lakh from a single VAT dealer in a year should be cross verified to detect evasion of VAT.

During test check of the records of the office of DETC (ST), Kurukshetra in August 2009, we noticed that a dealer claimed deduction of consignment sale of goods valued as ₹ 1.36 crore against declaration in forms 'F' during the year 2005-06. The AA, while finalising the assessment in March 2009, allowed the deduction. We conducted cross verification of records with other States 'Tax Information Exchange System' in August 2009 and noticed that the dealer had suppressed his sales and submitted fake declaration forms to the tune of ₹ 34.77 lakh. Failure on the part of AA to scrutinise the claim and cross verify the transactions as required in the ETC instructions dated 14 March 2006 resulted in incorrect allowing of deduction which consequently

led to evasion of VAT of ₹ 2.78 lakh. Additionally, penalty of ₹ 8.34 lakh under Section 38 of the HVAT Act was also leviable for evasion of tax.

After we pointed out the case in August 2009, DETC (ST), Kurukshetra accepted the fact and stated in February and June 2010 that three forms 'F' had not been issued to the consignees of Delhi. The AA issued show cause notice to the dealer to recover the amount of tax and penalty leviable under the Act. We have not received any report on recovery of tax and penalty (August 2010).

We pointed out the matter to the ETC, Excise and Taxation Department in September and October 2009 and reported to the Government in March and May 2010; we are yet to receive their reply (August 2010).

2.15.2 Input tax credit allowed incorrectly

2.15.2.1 Under Section 8 (1) of the HVAT Act read with Rule 20 of HVAT Rules, 2003, claim of input tax can be allowed to the purchasing dealer only when the tax has been deposited by the selling dealer. With a view to detect evasion of VAT by claiming fraudulent ITC by issue of forged tax invoices or fictitious accounting of goods neither purchased nor sold etc., the ETC issued instructions in March 2006 for cross verification of all purchase transactions totaling more than ₹ one lakh from a single VAT dealer in a year. As per directions issued by the JETC (Range), Faridabad on 15 February 2008 and 8 August 2008, claim of ITC in respect of purchases made from 27 and 33 enlisted dealers respectively was admissible at nil rates for the years 2004-05 and 2005-06.

During test check of the records of the office of DETC (ST), Hisar in June 2009, we noticed that a dealer purchased iron and steel valued as ₹ 8.30 crore from seven dealers of Faridabad during the year 2005-06 and claimed ITC of ₹ 33.18 lakh. The AA, while finalising the assessment on 13 August 2008, allowed ITC of ₹ 33.18 lakh, despite the specific directions of JETC (Range) Faridabad issued on 8 March 2008 for allowing ITC at nil rate on purchases made from these dealers during the year 2005-06. Failure on the part of AA to get the purchases of these dealers verified as they were also declared dealers for allowing ITC at nil rate for the year 2004-05 and to take action as per directions of JETC (Range) resulted in non-raising of demand and incorrect allowing of ITC of ₹ 33.18 lakh.

After we pointed out the case in June 2009, the AA re-assessed the case by disallowing ITC on purchases of ₹ 8.35 crore made from these dealers and raised an additional demand of ₹ 33.38 lakh in November 2009. The AA had sent (June 2010) the case to the ETC for granting permission to auction the property of the dealer attached in February 2010. We have not received further report on recovery (August 2010).

2.15.2.2 Under Section 8 (1) to (3) of the HVAT Act read with Rule 20 of HVAT Rules, 2003, input tax in respect of any goods purchased by a VAT dealer shall be the amount of tax paid to the State on the sale of such goods to him. Further, a tax invoice and VAT-C4 certificate issued to a VAT dealer showing the tax charged to him on the sale of invoiced goods shall be sufficient proof of the tax paid on such goods for the purpose of allowing ITC.

During test check of the records of the office of DETC (ST), Ambala Cantonment in December 2009, we noticed that a dealer purchased goods valued as ₹ 14.27 crore from a dealer 'A' of Ambala Cantonment and claimed ITC of ₹ 1.75 crore during the year 2005-06. We conducted cross verification of the records and noticed that the selling dealer 'A' paid VAT amounting to ₹ 1.72 crore on goods sold as per Form VAT-C4 issued to the assessee. The AA, while finalising the assessment in February 2009, allowed ITC of ₹ 1.75 crore without verifying the amount of VAT actually paid. This resulted in allowing excess ITC of ₹ 2.68 lakh.

After we pointed out the case in December 2009, the AA had sent the case to DETC-cum-RA, Ambala Cantonment in January 2010 for taking suo motu action. We have not received further report (August 2010).

We pointed out the matter to the ETC, Excise and Taxation Department in August 2009 and February 2010 and reported to the Government in May 2010; we are yet to receive their reply (August 2010).