# CHAPTER-II: SALES TAX/VALUE ADDED TAX

## 2.1 Results of audit

Test check of the records in various Commercial Tax Offices conducted in audit during the year 2008-09 revealed underassessment of Rs. 5,009.24 crore in 630 cases which broadly falls under the following categories:

**(Rupees in crore)**

| Sl. no | Category | No. of cases | Amount |
|---|---|---|---|
| 1. | **Transition from Sales Tax to VAT (A review)** | 1 | 4,775.62 |
| 2. | Irregular concessions/exemptions | 66 | 56.82 |
| 3. | Non/short levy of tax, interest and penalty | 274 | 40.88 |
| 4. | Incorrect rate of tax and mistake in computation | 79 | 25.61 |
| 5. | Irregular grant of set-off | 71 | 4.30 |
| 6. | Other irregularities | 139 | 106.01 |
| **Total** | | **630** | **5,009.24** |

During the year 2008-09, the department has accepted underassessment of Rs. 10.01 crore in 252 cases and recovered Rs. 4.34 crore in 144 cases of which 36 cases involving Rs. 15.24 lakh were pointed out during the year 2008-09 and rest in earlier years.

A review on **Transition from Sales Tax to VAT** involving Rs. 4,775.62 crore and few illustrative audit observations involving Rs. 238.34 crore are discussed in the succeeding paragraphs.

## 2.2 Transition from Sales Tax to VAT

### Highlights

- The State Legislature introduced levy of additional tax under the Gujarat Value Added Tax Act, 2003 with effect from April 2008, though the policy paper on Value Added Tax specifically discouraged levy of additional tax.

**(Paragraph 2.2.6.1)**

- By allowing the exemption incentive holders to collect and retain the output tax, the Government had not only made the taxing statute discriminatory towards the incentive holders but also allowed undue enrichment of Rs. 6,376.58 crore to the exemption incentive holders.

**(Paragraph 2.2.12.2)**

- Failure to recover deferred tax from the composite incentive holders who opted exemption incentive under the GVAT Act, had resulted in non-recovery of Rs. 4,774.98 crore upto March 2009, including interest of Rs. 1,263.96 crore.

**(Paragraph 2.2.12.4)**

- The actual receipts could not be confirmed in absence of the system for verification of the treasury schedules with *challan*. Cross check in audit revealed misclassification of Rs. 39.20 crore in three cases. Misclassification adversely affects reports on receipts and budget estimates submitted to the State Legislature.

**(Paragraph 2.2.17.2)**

### 2.2.1 Introduction

The Union Government in Ministry of Finance had constituted an Empowered Committee of State Finance Ministers (empowered committee), to resolve the variations in the State Sales Tax Acts and to introduce state level Value Added Tax (VAT). The empowered committee, after deliberations, had issued a white paper (January 2005) defining the basic designs of state level VAT. The white paper, however, allowed the states to adopt appropriate variations in their VAT Acts, consistent with the basic design. The major designs put forth in the white paper were as follows:

- The manufacturers and traders (dealers) will be given input tax credit for purchase of inputs - including that on the capital goods - meant for use in manufacture or resale.
- Input tax credit, remaining unadjusted till the end of second year; and also on exports will be refunded to the dealers.
- The dealers will submit self assessment returns declaring their tax liability under the state level VAT. The Government will consider these self assessment returns as deemed assessment, except where the notice for the audit of books of accounts of the dealer was issued within the prescribed period.

- Audit of books of accounts of the dealer will be delinked from tax collection wing to remove any bias.
- The existing incentive schemes will be continued in a manner deemed appropriate by the Sate, after ensuring that the VAT chain is not affected.
- Taxes such as turnover tax, surcharge, additional surcharge and special additional tax would be abolished.

In Gujarat, before implementation of the VAT system, the levy of tax on sales and purchases of movable goods were governed by the Gujarat Sales Tax Act, 1969 (GST Act), the Bombay Sales of Motor Spirit Taxation Act, 1958 (MST Act), and the Gujarat Purchase Tax on Sugarcane Act, 1989 (Sugarcane Act). The State Legislature had passed the Gujarat Value Added Tax Bill in March 2003. Upon receiving assent from the President of India on 17 January 2005; the bill was enacted as the Gujarat Value Added Tax Act, 2003 (GVAT Act), thereby repealing the existing Acts on sales and purchases of movable goods. The major variations in the repealed Acts (GST Act, MST Act and Sugarcane Act) with the GVAT Act were as follows:

- The repealed Acts provided for the levy of tax at the first stage of sale/ purchase or at the last stage on selected goods. The GVAT Act provided for the levy of tax at each stage on value addition and the input tax credit on purchases to nullify the cascading effect.
- The repealed Acts provided for compulsory assessment in all cases; whereas, under the GVAT Act more reliance was placed on self assessment returns. In place of the scrutiny assessment provided in the repealed Acts, the GVAT Act allowed powers to audit the books of accounts maintained by the dealers on selective basis.
- Various forms prescribed for concessions or exemptions under the repealed Acts were abolished on introduction of the GVAT Act.

The GVAT Act, implemented with effect from 1 April 2006, contains 100 sections and three schedules. Under Section 98 of the GVAT Act, the State Government had notified (March 2006) the Gujarat Value Added Tax Rules, 2006 (GVAT Rules), prescribing the procedures to be followed while implementing the Act.

The white paper provided for basic rates of four *per cent*, 12.5 *per cent* and on special category one *per cent*. Consistent with the white paper, the rate of tax under the GVAT Act given in schedule II was four *per cent* on majority of goods, 12.5 *per cent* on goods other than those specified anywhere in the schedule and one *per cent* on precious metals.

However, the said schedule II provided tax at the rate of 60 *per cent* on country liquors, 25 *per cent* on kerosene, 20 *per cent* on lignite, 16 *per cent* on naphtha, 15 *per cent* on low sulphur heavy stock and lubricants. The rate of tax on the MST goods covered under schedule III of the GVAT Act ranged between 13 and 38 *per cent.* Further, with effect from 1 April 2008, the State had introduced an additional tax at the rate of one *per cent* in general and two and half *per cent* on selected goods, excluding declared goods.

Under the repealed Acts, every registered dealer was allotted with a separate registration number. Before implementation of the GVAT Act, these dealers were allotted (November 2005) with tax payer's identification number (TIN) containing eleven digits. The new dealers under the GVAT Act were also issued with the TIN.

The GVAT Act also provides for payment of a lump sum amount as composition in lieu of the tax. This was allowed to the dealers whose total turnover in a financial year had not exceeded Rs. 50 lakh, works contractors, traders of agricultural produces, dealers engaged in transfer of right to use of goods, hotel owners, caterers *etc.*

**The transitional process from sales tax to VAT in Gujarat was reviewed by Audit, which revealed a number of deficiencies in the process and also lacunae in the GVAT Act and Rules, as discussed in the succeeding paragraphs.**

### 2.2.2 Organisational set up

The repealed Acts as well as the GVAT Act are implemented by the Commercial Tax Department under the administrative control of the Finance Department (FD) of the State Government. The Commercial Tax Department (department) is headed by the Commissioner of Commercial Tax (Commissioner), who is assisted by a Special Commissioner and an Additional Commissioner. The department is geographically organised into seven administrative divisions, each headed by an additional/joint commissioner (Addl/JC). A division has `circles', each headed by a Deputy Commissioner (DC); there are 25 circles in the State. A circle has assessment units each headed by Assistant Commissioner/Commercial Tax Officer (AC/CTO); there are 103 units in the State. In addition, there are 10 permanent, 16 seasonal and 38 temporary check posts headed by AC/CTO. Besides, there are staff positions in the department's head office for administration, audit, legal, appeal, enforcement, e-governance, internal inspection *etc*.., headed by Addl/JC or DC.

### 2.2.3 Audit objectives

The review was aimed to check the status of system after being in place for three years and to ascertain whether:

- planning for implementation and the transition from the sales tax act to VAT Act was effected timely and efficiently;
- organisational structure was adequate and effective;
- the provisions of the VAT Act and Rules made thereunder, were adequate and enforced properly to safeguard the revenue of the State; and
- an internal control mechanism existed in the department and was adequate and effective to prevent leakage of revenue.

### 2.2.4 Scope and methodology of audit

During the review, audit verified documents related to the planning and formulation of the GVAT Act. Audit selected various branches[4] in the head office of the department, one administrative division viz., Division-1, Ahmedabad and twelve units[5] under the said division, so as to analyse implementation of the GVAT Act. The review was conducted during the period between 15 May and 20 July 2009; and covered documents for the period from 2004-05 to 2008-09. Audit criteria considered were the GVAT Act, repealed Acts, notifications/circulars/orders issued under the said Acts and judicial pronouncements.

### 2.2.5 Acknowledgement

Indian Audit and Accounts Department acknowledges the cooperation of the FD and the department in providing information and records for audit. The entry conference with the department was held on 8 May 2009 and with the FD on 11 May 2009, in which the scope and methodology of audit was discussed. The review was sent to the Government/department in August 2009 for their response. The audit findings and the recommendations were discussed in an exit conference held in December 2009. Representative of the FD and the department attended the meeting. The replies of the FD and the department furnished during the exit conference and at other points of time have been appropriately incorporated in respective paragraphs of the review.

### Audit findings

### 2.2.6 Trend of revenue

The comparative position of pre-VAT sales tax collection (2003-04 to 2005-06), post-VAT tax collection (2006-07 to 2008-09) and growth rate of tax collection in each of the year is furnished below:

**Pre-VAT and post-VAT tax analysis**

**(Rupees in crore)**

| Pre-VAT | | | | Post-VAT | | | |
|---|---|---|---|---|---|---|---|
| **Period** | **Budget estimates** | **Actual receipts** | **Percentage variation compared to previous year** | **Period** | **Budget estimates** | **Actual receipts** | **Percentage variation compared to previous year** |
| 2003-04 | 6,500.00 | 7,169.58 | 14.67 | 2006-07 | 10,900.00 | 12,817.46 | 21.36 |
| 2004-05 | 7,902.00 | 8,308.62 | 15.89 | 2007-08 | 15,080.00 | 15,104.54 | 17.84 |
| 2005-06 | 9,000.00 | 10,561.34 | 27.11 | 2008-09 | 17,023.00 | 16,810.63 | 11.30 |

**Source**: CAG's Audit Reports (Revenue Receipts) – Government of Gujarat and information furnished by the Commercial Tax Department.

After implementation of the GVAT Act, though the receipts increased, in absolute terms, the percent growth rate of receipt was constantly declining.

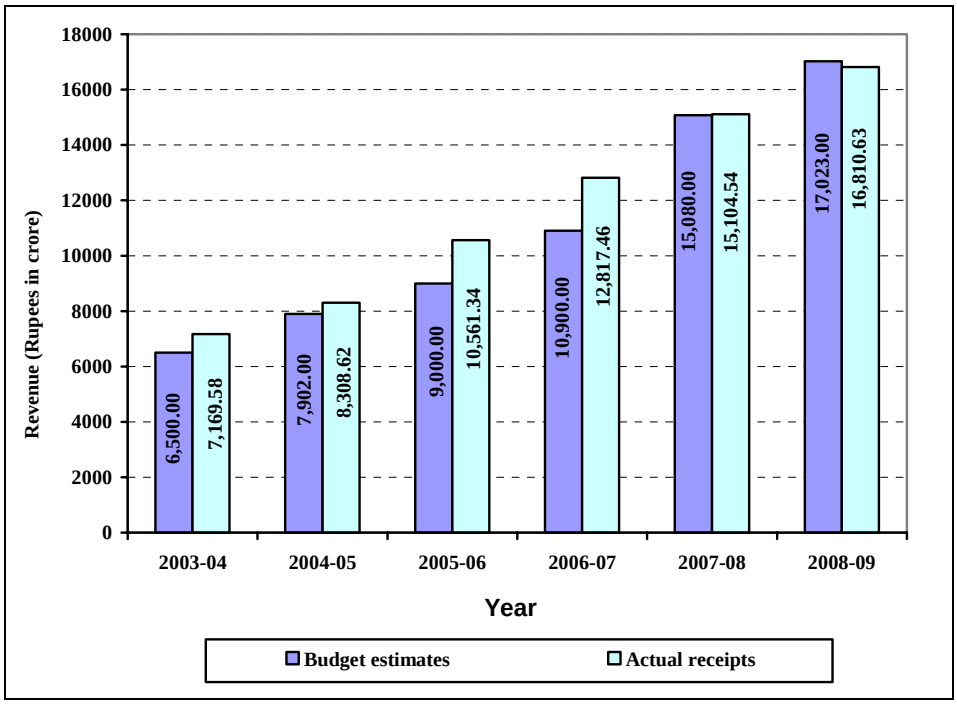
[4] Administration, Appeal, Audit, e-Governance, Enforcement, Internal Inspection, and Legal.

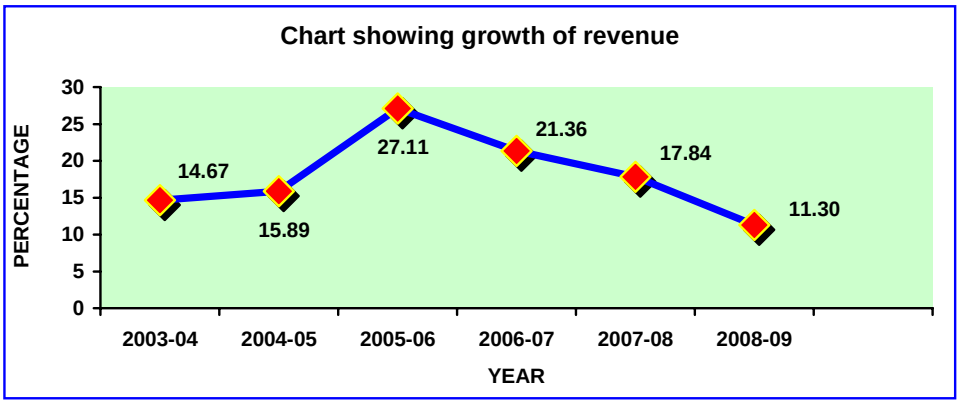
[5] Unit-1 to 11, Ahmedabad and Unit-Viramgam.

The major reason for the same was reduction in the rate of the central sales tax (CST) from four *per cent* up to 2006-07 to three *per cent* in 2007-08 and two *per cent* in 2008-09.

The Union Government had introduced a scheme for compensating the revenue loss due to reduction of rate of CST. Under the scheme the State Government had claimed Rs. 766.57 crore and Rs. 1,022.40 crore for the year 2007-08 and 2008-09 respectively from the Union Government.

The following chart gives the comparative picture on the budget estimates and actual collection of tax during the period between 2003-04 and 2008-09.




The table and chart above read with the audit observations in the following paragraphs revealed that the percentage growth after implementation of the GVAT Act did not reach the desired level though the white paper envisaged higher revenue growth after implementation of VAT. Audit noticed the following deficiencies in augmentation of tax under the GVAT Act.

**2.2.6.1** The white paper issued by the empowered committee *vide* paragraph 2.16 specifically discouraged levies of other taxes viz., turnover tax, surcharge, additional surcharge and special additional tax under VAT system. This was suggested to avoid multiple types of taxes and to have more simplified tax structure under the VAT. However, the State Government introduced the levy of additional tax at the rate of one *per cent* in general and two and half *per cent* on selected goods, (excluding on declared goods) under the GVAT Act with effect from April 2008 so as to raise additional financial resources. **The additional tax introduced by the State was in contravention to the basic concept of the state level VAT**.

The Government stated (December 2009) that the white paper has no sanctity after enactment of the Vat and the State VAT Act has provision for the levy of an additional tax.

The white paper envisaged that any deviation from the basic concept would require approval of the EPC. The reply was silent about the above aspect.

**2.2.6.2** Section 9 of the GVAT Act prescribed for the levy of purchase tax on the turnover of the purchases of taxable goods made from a person who is not a registered dealer. Section 2(32) of the Act defined the word turnover of purchases, which did not cover the price paid by the dealer for transfer of right to the use of goods. **Therefore, purchase tax could not be levied on the price payable by the dealer to a person who is not a registered dealer for transfer of right to use of goods**. Insufficient provision thus resulted in loss of potential revenue.

The Government stated (December 2009) that the definition of the 'purchase price' under the VAT Act as well as under the repealed Act does not include such purchases.

**The government may consider inserting 'transfer of rights to use of goods' under the definition of purchase as is prevalent in some other states like Maharashtra, Himachal Pradesh *etc*., in the interest of the revenue.**

**2.2.6.3** Under Section 69(1) of the GVAT Act, where a vehicle coming from any place outside the State is bound for any other place outside the State, the driver or person in-charge of the vehicle should obtain a transit pass for such vehicle from the entry check post and deliver it at the exit check post. As per Section 69(2), if the driver or person in charge of the vehicle fails to deliver such transit pass at the exit check post, it shall be presumed that the goods contained in the vehicle are sold within the State and he shall be liable to pay the tax at the applicable rates. Section 69 of the GVAT Act read with Rule 52 of GVAT Rules provides for levy of penalty up to 150 *per cent* of the tax. In the system devised for watching transportation of goods through the state of Gujarat, the following deficiencies were noticed:

- Non-surrendering of transit pass at the exit check post could be identified by the entry check post only after considerable lapse of time, by which, the whereabouts of the goods could not be ascertained.

- The provisions of the GVAT Act could not be invoked as the seller, driver, person in charge of the vehicle, purchaser *etc*., are located outside the state of Gujarat.

**Thus, complexities in the implementation and deficiencies in the provisions of the GVAT Act made the system of issue and surrender of transit pass ineffective and it could not generate any revenue.**

The Government stated (December 2009) that at the time of issue of the transit pass full details of the transporters including name and address are collected. If the vehicle does not produce the transit pass at the exit check post, follow up could be made based on the details. However, the department could not furnish information about the amount recovered during the period between April 2006 and March 2009 from the defaulting transporters.

**2.2.6.4** Under the GVAT Act output tax is leviable on sales including deemed sale. If the sales turnover is related to job work, no tax is leviable. There could be instances where the dealer uses his own raw material while executing job work for others. Similarly, goods sent for job work may not be received back by the dealer. In such cases, either output tax is leviable or ITC is required to be disallowed. **However, the department had not prescribed any system to watch job work activities.**

The Government stated (December 2009) that for the inter-State movement of goods, form `F' is prescribed under the CST Act whereas for the local movement of goods, no form is required. However, the Government had not justified absence of the control mechanism in local movement of goods for the job work.

**2.2.6.5 The department had not finalised (July 2009) the issues related to sale price of goods sold through `company owned company operated' pumps of petroleum companies and gas supplied through pipeline of gas companies, even after the lapse of three years of the implementation of the GVAT Act.**

The Government stated (December 2009) that the issue would be looked into. Further reply is awaited (December 2009).

**2.2.6.6** Under the CST Act, various declarations are prescribed for allowing concessional rate of tax or exemption from the levy of tax on purchases. These statutory declarations were issued by the department to the dealers, based on requisitions from them. **However, details of actual utilisation of these forms are obtained from the dealers at the time of requisition for new declarations.**

The Government stated (December 2009) that with effect from 1 July 2008, the previous system was discontinued and the declarations were issued only after capturing utilisation details in the VATIS. However, even after introduction of the new system, the department has not restricted the use of declarations issued in the previous system.

**The department should obtain the unutilised declarations lying with the dealers and notify them as cancelled.**

**2.2.6.7** Due to initial organisational difficulties, the empowered committee decided not to levy tax on additional excise duty items viz., sugar, textile and

tobacco. As per paragraph 2.19 of the white paper, the decision for the levy of VAT on these items was to be reviewed after one year. However, further clarification on the issue has not been received (November 2009).

The Government stated (December 2009) that the VAT on Tobacco has been imposed and for other items consultation is under process with Government of India. Further reply is awaited (December 2009).

**The Government may consider initiating action to augment revenue through available and untapped resources instead of the levy of additional tax. Amendment to the provisions of the GVAT Act related to the turnover of purchases and transit pass could generate additional revenue to the State. Looking at the substantial share of revenue generated from petroleum and gas companies, Government needs to take immediate action on finalisation of the sale price.**

### 2.2.7 Preparedness and transitional process

The GVAT bill was presented before the State Legislature after considering the suggestions received from public such as the Confederation of Indian Industries, Chamber of Commerce *etc.* The State Legislature had passed the GVAT Bill on 26 March 2003 and the same was sent to the Union Government for obtaining assent to the bill from the President of India. Assent to the GVAT Act was received from the President of India on 17 January 2005 and the Act was published in official gazette on 25 January 2005. In the meantime, the empowered committee had issued the white paper on state level VAT on 17 January 2005. Keeping in view the common points of convergence and the white paper, the State had amended the GVAT Act at times.

**2.2.7.1** The State felt that the state level VAT should be simultaneously implemented by all the states of the Union so as to avoid problems in implementation as well as to the trade and industry. Hence, the implementation of the GVAT Act was kept in abeyance by the State. **Though majority of the states had implemented VAT from April 2005, in Gujarat the GVAT Act was implemented with a delay of one year, i.e. from 1 April 2006.**

**2.2.7.2** Implementation of the GVAT Act was assigned to the department, which made concentrated efforts to create awareness of the new Act among the stake holders *viz.*, the dealers. They had issued booklets outlining the GVAT law to all dealers. An accounting tool covering the requirements of GVAT law was also developed and distributed free of cost to the dealers on requisition.

**2.2.7.3** The total staff strength of the department and vacancy position for the period from 2004-05 to 2008-09 is tabulated below.

**Vacancy position in CTD**

| Period | Sanctioned strength | Men-in position | Vacancy position | Percentage of column (4) to column (2) | Vacancy position of ACCT/CTO/ CTI/clerks | Percentage of column (6) to column (4) |
|---|---|---|---|---|---|---|
| **1** | **2** | **3** | **4** | **5** | **6** | **7** |
| 2004-05 | 5,004 | 4,123 | 881 | 17.61 | 759 | 86.15 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 2005-06 | 4,968 | 3,923 | 1,045 | 21.03 | 910 | 87.08 |
| 2006-07 | 4,971 | 3,963 | 1,008 | 20.28 | 818 | 81.15 |
| 2007-08 | 4,972 | 3,899 | 1,073 | 21.58 | 880 | 82.01 |
| 2008-09 | 4,970 | 3,806 | 1,164 | 23.42 | 945 | 81.19 |

**Source**: Commercial Tax Department

The vacancy position increased from 881 in 2004-05 to 1,164 in 2008-09. **Further, maximum vacancies were noticed in the cadre of ACCT, CTO, CTI and clerks, who are crucial in implementation of the Acts at the unit level.**

The Government replied (December 2009) that action has been initiated for filling up the vacancies in higher cadres through promotion. It was also stated that in the cadre of CTI and clerks out of 1,575 and 1,231 posts, 1,175 and 1,023 posts respectively were filled up. Audit verification of staff position as on 1 December 2009 revealed that the total vacancy position had increased to 1,177 and that in crucial cadre of ACCT, CTO, CTI and Clerks had increased to 963.

**The Government needs to devolve a system to fill up the vacancies on regular interval either through promotion or recruitment.**

**2.2.7.4** The field level implementation of repealed Acts and the GVAT Act are carried out by the units. On implementation of the GVAT Act, the work load of units had reduced due to the abolition of concessional forms prescribed under the repealed Acts and provision for self assessment[6] (deemed assessment) in majority of the cases. These necessitated redefining the responsibilities of various authorities under the department. However, at the same time, the GVAT Act envisaged the levy of tax as well as extending input tax credit at each stage of value addition. This required timely documentation and scrutiny of all periodical returns submitted by the dealers, so as to ensure its correctness. Apart from this, the units are responsible for completing pending assessments and effecting recoveries under the repealed Acts. Thus, after implementation of the GVAT Act, the work load of units had increased substantially. In this background, e-governance had become extremely important for documentation and revenue analysis under the GVAT system. These necessitated redefining the responsibilities of various authorities under the department.

The department proposed (February 2006) its restructuring on account of implementation of the GVAT Act, which was not approved by the State Government. **Audit scrutiny revealed that the General Administration Department of Government of Gujarat had raised (March 2006) certain queries on the proposal, which were not complied with by the department (June 2009).** Further, the proposal forwarded was deficient as it failed to properly address the issues related to documentation, return scrutiny, revenue analysis, own technical staff for e-governance *etc*.

[6] As per Section 33 of GVAT Act, where a dealer had furnished all the self assessed returns by the date prescribed, paid the amount of tax according to such returns and the Commissioner is satisfied that the returns furnished are correct and complete; and notice for audit assessment had not been served within the prescribed period, such dealer shall be deemed to have been assessed for that year.

**2.2.7.5** In the absence of the administrative restructuring, the department continued with the existing system. Under the system, ACCT was the administrative head of the unit. He was responsible for issuing new registration and had overall control of the dealers paying annual tax of rupees two lakh and above. The criteria adopted to allot work among CTOs of the units were based on registration number. The overall control of the registered dealers under the unit, except those falling under the jurisdiction of the ACCT, was divided into clusters and distributed among the CTOs.

**Audit scrutiny of 12 units under Division-1, Ahmedabad revealed that the system deployed was not justifiable.** In the existing system, the number of dealers under the control of each ACCT as per management information system (MIS) report for March 2009 ranged between 110 and 426; whereas the number of dealers allotted to each CTO ranged between 237 and 2,075. Distribution of live dealers among the CTOs within the unit was also uneven, as in unit-1, Ahmedabad, CTO-1 was given the control of 237 live dealers; whereas CTO-3 was to manage 2,075 live dealers. Further, in four[7] units, four CTOs were having control of 'not-came dealers'[8] only. Since, the assessments of such dealers were already completed and whereabouts of these dealers were not known, the work allotted to the CTOs was insignificant.

The Government stated (December 2009) that the job charts redefining the duties of CTIs and Clerks were issued and the duties of ACs and CTOs have been rearranged since then. It was also stated that other administrative reforms were in the process of initiation. **Audit scrutiny revealed that the job charts redefining the duties of CTIs and Clerks working in units was issued in July 2009 and that of administrative headquarter sections were yet to be issued (December 2009).** Further, specific reply to uneven work distribution among the officials of the same cadre was not furnished.

**2.2.7.6** Integrated application software called Value Added Tax Information System (VATIS) was developed by Tata Consultancy Services Limited (TCS) to computerise the entire operations of the department. The project aimed to achieve a set of objectives, such as, improving the quality of the services to the VAT dealers, enabling better tax administration to identify the tax defaulters speedily, taking effective steps for recovery of tax dues, enabling the selection of cases for detailed audit based on risk parameters, monitoring the movement of goods vehicles at inter-state borders as well as within the State, exploiting the power of networking and advancement towards an efficient tax administration, leaving little scope for tax evasion.

Under the VATIS, 20 modules were proposed to be developed of which 14 modules had been fully implemented till July 2009. The department had effectively implemented (July 2008) the system to issue declarations under the CST Act through VATIS and also encouraged the registered dealers to file their periodical returns under GVAT Act through VATIS (e-return). The

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7 Unit-1 to 4, Ahmedabad.

8 CTD had allotted 10 digit computerised registration number to the dealers in 2002; against the existing eight digit registration number. The registered dealers, who had not applied for new computerised registration number, were identified as `Not came dealers'; and the pending assessment and recovery from such dealers were watched separately by each jurisdictional unit.

number of e-returns filed increased from 9,820 in 2006-07 to 4,40,521 in 2008-09. Under e-governance, Audit examined the VATIS and its requirements under the GVAT Act. Major deficiencies noticed are given below:

- The application software did not insist the user to change their initial default password compulsorily, though it was required as a prudent security policy.

The Government stated (December 2009) that several users have changed the default passwords. However, fact remains that the system did not insist for compulsory change of the default password.

- Till January 2009, the entry of detailed data in VATIS was done by the outsourced data entry operators. Due to the voluminous nature of data, responsible centres could not assure the correctness of the data entered in the system. Audit scrutiny of the online data and the physical returns revealed inconsistency in the data available in VATIS and that on physical documents. Besides, there was lack of monitoring by the department of the data entered into the system by the outsourced staff. Thus, **the department could not solely rely on the data available in the system for decision making, which rendered the entire process of input of data by outsourced staff and the expenditure incurred thereon futile and infructuous.**

The Government stated (December 2009) that full fledged data entry tender has been finalised with explicitly defined quality standards and penalty clauses. However, the fact remains that the existing data of more than three years is unreliable.

- The department obtained specific MIS reports from the unit offices on monthly basis. Though the relevant data were available in the VATIS, these MIS reports were prepared by the units manually due to lack of output controls.

The Government replied (December 2009) that periodical meetings were held based on the reports generated through VATIS. However, justification for continuing the system of obtaining manual reports from the units was not furnished.

- The VATIS have provision to generate the reports as per the existing manual registers limited to registration and return. Similar reports on the other modules were yet (October 2009) to be incorporated.

The Government stated (December 2009) that the provisions to incorporate other registers were being done gradually. However, reasons for not defining the same in user requirement specifications (URS) at the time of development of the software remained unexplained.

- The module on audit was yet (October 2009) to be developed; modules on enforcement and recovery were being tested. The module on check posts was implemented partially.

The Government stated (December 2009) that the procedure to develop Audit module had been started, enforcement as well as check posts modules had been implemented and recovery module was at the final testing stage.

- Due to frequent interruptions in network connectivity, the field units could not utilise the system to its optimum, and the main server could not update its centralised data timely from the local servers.

The Government stated (December 2009) that efforts were being continuously made for proper connectivity and the system had stabilised to a large extent now. However, the system could not be used optimally due to the delay in the corrective measures.

- The data management under the VATIS was done by the TCS and the department had outsourced the management of the system at different server points to junior programmers. **The department had not implemented any long term policy to have its own IT professionals for successful management of the online system.**

The Government stated (December 2009) that a study on VATIS was underway and appropriate decision would be taken based on the study report.

- Though the VATIS was implemented from April 2006, the manual system of maintenance of controlling registers could not be discontinued.

The Government stated (December 2009) that efforts were being made to discontinue the manual registers in a phased manner.

- Though the computerisation was taken up in 2002, i.e. well before implementation of the GVAT Act, **the department did not have a defined hardware policy.** It was reported (July 2009) that the proposal to appoint an agency for the purpose was being processed.

The Government stated (December 2009) that the IT committee had already appointed an agency for review of the progress of computerisation of the Department.

- Rule 20(5) of GVAT Rules stipulates that the registered dealer, whose total turnover exceeds Rupees one crore shall furnish e-return within three months. However, the department could not furnish the information regarding number of dealers required to file e-return.

**The delayed action to identify the requirements affected the implementation of the VATIS and resulted in non-utilisation of the system to its optimum level. The Department should analyse its IT needs in advance and timely pursue the requirements for successful implementation of e-governance.**

**2.2.7.7** Successful implementation of any Act requires a defined system in place and proper training of the staff. The duties and functions of the implementing authorities are required to be codified in the departmental manuals. **Though the department had imparted training on the GVAT Act to all the staff, they had not prepared any manual for the guidance of its officials.**

The Government stated (December 2009) that after introduction of VAT, the activities like registration, returns, forms, assessments *etc.,* were computerised for which user manual existed. However, the Government should initiate action to prepare departmental manual containing procedures to be followed in day-to-day functioning of the various authorities.

**2.2.7.8** Early completion of pending assessments under the repealed Acts was necessary to ensure that the dealers and the Government would be in a position to spare more time and energy for the implementation of the GVAT Act. To achieve this, the Government had introduced simple assessment scheme in March 2007, under which the assessing officers (AOs) had cleared majority of the assessments in which the dealers had paid tax up to rupees five lakh. However, the MIS report of Division-1, Ahmedabad for March 2009 revealed that there were 191 assessments of the repealed Acts which were pending with the various AOs of the division.

The Government stated (December 2009) that, these cases were pending due to litigation.

**2.2.7.9** The State Government had introduced the Sales Tax Amnesty scheme in 2006 and 2007 for speedy recovery of the outstanding taxes. The scheme provided for waiver of interest and penalty, if the entire outstanding tax was paid by the dealer. The MIS report of Division-1, Ahmedabad for March 2009 revealed that Rs. 951.75 crore was outstanding for recovery in 10,125 cases falling under the division. Of this, Rs. 431.78 crore in 5,836 cases was classified as non-recoverable. **Audit analysis revealed that the outstanding tax of Rs. 431.78 crore was recoverable from 'not-came dealers', whose whereabouts were not known.**

The Government stated (December 2009) that a drive had been undertaken to recover the outstanding dues by taking various steps, including bank attachment, stock attachment, third party recovery, auction of property *etc*. However, the special drive initiated now may not be fruitful as the whereabouts of these dealers were not known.

**The Government may consider restructuring of the department to be in consonance with the changed scenario. On e-governance, the Government may evolve long term policies on security, staff, hardware as well as connectivity. Also, the department may analyse the dues classified as non-recoverable and initiate suitable action.**

### 2.2.8 Registration

The number of registered dealers during the period from 2004-05 to 2008-09 vis-à-vis receipt per dealer is tabulated below:

**Number of registered dealers and receipts per dealer**

| Period | Number of dealers | Percentage increase (+)/decrease(-) of dealers with reference to previous year | Actual receipts (Rupees in crore) | Receipts per dealer (Rupees in lakh) |
|---|---|---|---|---|
| 2004-05 | 2,42,753 | (-) 24.09 | 8,308.62 | 3.42 |
| 2005-06 | 3,55,818 | (+) 46.58 | 10,561.34 | 2.97 |
| 2006-07 | 3,68,855 | (+) 3.66 | 12,817.46 | 3.47 |
| 2007-08 | 3,66,676 | (-) 0.59 | 15,104.54 | 4.12 |
| 2008-09 | 3,66,747 | (+) 0.01 | 16,810.63 | 4.58 |

**Source**: Commercial Tax Department

It could be seen from above that after implementation of the GVAT Act, there was an increase in VAT receipts and receipts per dealer. However, the number of registered dealers remained almost static.

The department had an information technology system developed by National Informatics Centre (NIC) under the repealed Acts. The registration data of the dealers under the repealed Acts were maintained in the said system. On implementation of the VATIS under the GVAT Act, the existing registration data in the NIC module was migrated to the VATIS, thereby confirming availability of the database of the registered dealers. Section 21 of the GVAT Act provides for registration of the dealers whose total turnover exceeds the threshold[9] of turnover. Section 22 of the GVAT Act provides that a dealer having a fixed regular place of business in the State and whose total turnover may not exceed the threshold limits could obtain voluntary registration. The department updated the registration data in the VATIS on day-to-day basis, while issuing new registration and cancelling or suspending the existing one.

**2.2.8.1** At the time of introduction of the GVAT Act, the department had undertaken a drive to identify dealers who were liable to be registered under the GVAT Act. **However, it had not continued the system but limited the activity to specific complaints received.**

The Government stated (December 2009) that similar drive to identify such dealers would be carried out as and when needed.

**2.2.8.2** Section 3(2) of the GVAT Act stipulates that a casual dealer or an auctioneer shall be liable to be registered if his taxable turnover of sales exceeds Rs.10,000. **However, the department had not prescribed a system to grant registration to casual dealers or auctioneers; hence the control mechanism and monitoring of tax collection from the said dealers could not be confirmed.**

The Government stated (December 2009) that the casual dealers and auctioneers were monitored by the enforcement wing and tax was collected from them as and when the occasion arose. The reply is not tenable. The taxable turnover limit in such cases necessitates deployment of more

[9] Under Section 3 of GVAT Act, threshold of turnover means total turnover exceeding rupees five lakh and taxable turnover exceeding Rs.10,000 in a year.

manpower to identify such dealers. The duty of enforcement wing is to keep a watch on evasion of tax and the casual dealers are spread all over the State.

**2.2.8.3** Rule 19(6) of the GVAT Rules provides that a dealer not having fixed or regular place of business in the State but who has been registered by the CTO, Ahmedabad shall furnish periodical returns to the CTO, Ahmedabad. Such dealers are categorised as Non-Localised Dealers (NLD); though the GVAT Act did not define the word NLD. **However, the department is geographically divided into seven divisions for effective implementation of the Act and commercial activities of the NLDs are not limited to Ahmedabad.**

The Government stated (December 2009) that the number of dealers obtaining NLD registration was limited and for the sake of uniformity and monitoring, such dealers were kept under one unit. The reply is not tenable. In the absence of definition for NLDs in the Act, they should be considered at par with the casual dealers.

**2.2.8.4** The registration number under the GVAT Act could be cancelled by the department for the failure of the dealer to adhere to the provisions of the Act. In such cases, if the dealer continued his business even after cancellation of his registration, the department initiated action only on receipt of specific complaints. **The department had not devised any system to identify such dealers to protect Government revenue.**

The Government stated (December 2009) that periodic survey and discrete enquiry was carried out to identify the unregistered dealers. Also, the VAT structure discouraged non-registration as ITC would not be available to other registered dealers on such transaction. The reply is untenable as the proviso to Section 11 allows grant of ITC on such purchases effected from unregistered dealers.

**2.2.8.5** Section 23 of the GVAT Act stipulates that every dealer registered under the repealed Acts or the CST Act is deemed to be registered under Section 21 with effect from 1 April 2006. The repealed Acts were not specific about obtaining security from the dealers, and it was obtained by the controlling authorities at their own discretion. Absence of such provision to obtain security from the existing registered dealers of repealed Acts was discriminatory as all dealers applying for new registration under the GVAT Act were required to submit security.

The Government stated that it did not require security from the existing dealers as they were proven dealers.

**However, by restricting the ambit of security applicable to new registration only, the department has given rise to anomalous situation of a distinction being created between the new and old dealers. Further, in the event of failure to pay the tax, the department has nothing to fall back upon. Had the department obtained the same amount of security of Rs. 10,000 from the existing 3,55,818 dealers registered under the repealed Act, it would have received Rs. 355.82 crore.**

**The Government may consider reviewing sufficiency of the documents for securing government revenue and prescribing a system to identify the casual dealers and dealers who continued business without registration.**

**The NLDs may be considered at par with the casual dealers defined under Section 2(10)(b) and the control over such dealers may be given to the jurisdictional officer of the respective place of business for effective revenue generation.**

### 2.2.9 Returns

Section 29 of the GVAT Act provides for furnishing of correct and complete periodical returns by the registered dealers. Rule 19 of the GVAT Rules prescribes the procedure and periodicity of returns to be furnished under the Act. Sub-rule (2) of Rule 19 stipulates that every dealer other than those covered under sub-rule 3, 3A, 3B and 3C shall furnish monthly returns. The dealers covered under sub-rule 3, 3A and 3B are liable to furnish quarterly returns. The dealers covered under sub-rule 3C are required to furnish half yearly returns. All the dealers are liable to furnish annual returns.

**2.2.9.1** Under Rule 19 of the GVAT Rules, the dealers who are not engaged in manufacturing activity as well as activities covered under the CST Act are required to furnish the quarterly returns. The dealers whose tax liability is less than Rs. 60,000 are also required to furnish the quarterly return. If any dealer effects transactions not satisfying the stipulations, he is liable to furnish the monthly returns from that period. Further, the co-operative societies engaged in manufacturing of sugar or khandsari are required to file half yearly returns. Audit was not informed about the logic behind such categorisation. **By categorising the dealers under different sub-rules and providing varying periodicity for furnishing returns, the GVAT Rules had made VAT implementation more inconvenient.**

The Government stated (December 2009) that the periodicity of submission of returns was prescribed after analysis of needs and it was not practical to have uniformity in periodicity. The reply is not tenable as under the present system the dealers will have difficulties in filing of return as the periodicity changes with reference to the quantum of tax payable. Also, the complexity necessitates changes in categorisation of the dealers in VATIS with reference to return submission.

**2.2.9.2** Paragraphs 2.11 and 2.12 of the white paper highlighted the importance of periodical returns under the VAT. The policy paper stated that the VAT liability would be self assessed by the dealers themselves in their returns. There should not be compulsory assessment at the end of each year as existed in the repealed Acts. Further, it was specified that every return furnished by the dealers was to be scrutinised expeditiously within the prescribed time limit from the date of filing the return so as to safeguard Government revenue. The concept paper suggested the inclusion of a provision for self assessment in the state VAT Acts. Section 32 and 33 of the GVAT Act provide for return scrutiny and self assessment, respectively.

**The department had not prescribed any time limit for scrutiny of the returns. Any register for watching the progress of such scrutiny had also not been prescribed.** The controlling officers carried out return scrutiny of only five dealers per month selected from top 100 tax payers. The following table, related to the 12 units falling under Division-1, Ahmedabad, shows estimated number of returns which were to be scrutinised as per the policy

paper and the number of returns selected for scrutiny under the existing system.

**Analysis of return scrutiny**

| Period | Number of registered dealers at the beginning of the year | | Number of returns receivable | | Total returns to be scruti-nised | Estimated number of returns scrutinised | Percen-tage of returns selected for scrutiny |
|---|---|---|---|---|---|---|---|
| | M | Q | M | Q | | | |
| 1 | 2[10] | 3[11] | 4 | 5 | 6 | 7 | 8 |
| 2006-07 | 8,233 | 38,059 | 98,796 | 1,52,236 | 2,51,032 | 3,660 | 1.46 |
| 2007-08 | 7,870 | 42,553 | 94,440 | 1,70,212 | 2,64,652 | 3,660 | 1.38 |
| 2008-09 | 10,010 | 38,995 | 1,20,120 | 1,55,980 | 2,76,100 | 3,660 | 1.33 |

M = Monthly; Q = Quarterly

**Thus, under the present system of return scrutiny, the number of returns selected are negligible as compared with the total number of returns received.**

Further, as the top tax payers are covered under audit assessment, limiting the return scrutiny to such dealers only, left the dealers covered under self assessment from return scrutiny.

The Government stated (December 2009) that the activity was also monitored during monthly review meetings. However, specific reply to the audit observation was awaited.

**The department should fix a time limit for expeditious scrutiny of all the periodical returns and should introduce control registers to watch the progress.**

**2.2.9.3** Under the CST Act, declarations and certificates viz., Form 'C', 'E-I' and 'E-II', 'F' and 'H', are prescribed for concessional or nil rate of tax on inter-state trade and commerce as well as exports. Rule 12(7) of the CST (Registration and Turnover) Rules, 1957 provides that the dealers shall furnish the declarations and certificates to the assessing authority within three months after completion of the relevant tax period.

Audit noticed that the department had not obtained the supporting declarations and certificates from the dealers within the prescribed period. The department relaxed the prescribed period for submitting the declarations and certificates by issue of circulars in February 2009 and June 2009. Through the circulars, the department directed the dealers to submit a list of declarations and certificates available with them for the transactions of 2006-07 and 2007-08, till 16 March 2009 and 30 June 2009, respectively. **Apart from the delayed action, these circulars were issued in contravention of the CST (R&T) Rules as amended from October 2005.**

The Government stated (December 2009) that the Department had resolved the problems of amendments in CST Rules by issuing public circulars

[10] Number of dealers required to submit monthly returns.

[11] Number of dealers required to submit quarterly returns.

extending the period to produce the declarations with returns. It was also stated that there were difficulties experienced by the dealers in obtaining statutory forms from other States and list of forms were insisted upon to avoid bulk of documents. The reply is not tenable as the amendment in CST Rules was made intentionally with a view to protect Government revenue and periodical submission of the declarations was mandatory.

**The Government may consider keeping uniformity in submission of the returns from all the dealers, which would facilitate better control over submission of the returns. The department may redefine the system on scrutiny of the returns and submission of declarations under the CST Act.**

### 2.2.10 Tax audit

Section 33 of the GVAT Act read with Rule 30 of the GVAT Rules provides that where the dealers had not received notice for audit assessment within a period of two years from the closure of the year for which the tax is assessable, such dealers shall be deemed to have been assessed for that year based on their annual returns (deemed assessment). However, the Section authorised the Commissioner to finalise such cases under audit assessment[12] within three years of the closure of the year for which the tax is assessable. Thus, the dealers who had not received notice for audit assessment for the period of 2006-07 before 31 March 2009 were deemed to have been assessed for that period by the end of March 2009.

**2.2.10.1** None of the 12 units selected for review had furnished data on the number of deemed assessments for the period 2006-07 as on March 2009. Eight units[13] intimated, the total number of live dealers of that period under them as 29,983. Remaining four units[14] had not furnished (November 2009) the information called for (June 2009).

**2.2.10.2** Audit noticed that, in the cases where notice for audit assessment was not issued, scrutiny of the self assessment returns was in progress with the controlling officers based on the instructions (April 2009) from the Commissioner. **Delayed action to scrutinise the self assessment returns of 2006-07 may result in delay in realisation of revenue due for that period and the scrutiny of annual returns of subsequent periods.**

The Government stated (December 2009) that the time limit for issuing notices for audit assessment for the year 2006-07 would end on 31.3.2010 and cases not selected for audit assessment could be given the benefit of self assessment thereafter. The reply is not tenable. The notices for audit assessments for the period 2006-07 were to be issued by 31.3.2009. Further, the reply was silent about expeditious completion of the scrutiny of returns.

**2.2.10.3** Section 34 of the GVAT Act provides for finalisation of audit assessments after scrutiny of the books of accounts of the dealers. Out of the selected 12 units, six units[15] reported the total number of live dealers for the year 2006-07 as 23,077. Of this, 7,684 cases (33 *per cent)* were selected for

[12] Audit assessment means, assessments finalised by verifying the records maintained by the dealer.

[13] Unit-1, 2, 3, 4, 8, 10, 11 of Ahmedabad and unit-Viramgam.

[14] Unit-5, 6, 7 and 9 of Ahmedabad.

[15] Unit-2, 3, 4, 10, 11 of Ahmedabad and unit-Viramgam.

audit assessments including 259 cases finalised up to 31 March 2009. Similar information related to six units[16] was not furnished (November 2009).

**2.2.10.4** The department had not furnished information on the total number of cases, number of cases selected for audit assessments, number of cases assessed under scrutiny assessment of the repealed acts and details of criteria adopted for the selection of cases for audit assessment. In absence of these, the data on audit assessment could not be compared with scrutiny assessment of the repealed Acts. Also, the sufficiency of criteria adopted for the selection of audit assessment could not be verified.

The information furnished (December 2009) by the Government revealed that in 1,32,622 cases pertaining 2006-07 notices for audit or provision assessments were issued under GVAT Act. However, in absence of similar information on the repealed Acts, the same could not be compared with scrutiny assessment of the repealed Acts.

**2.2.10.5** The change in taxation law required the issue of guidelines to the AOs regarding records to be kept in the assessment files. **The department had not issued any guidelines in the matter (November 2009) and the AOs followed the system that prevailed under the repealed acts.**

The Government stated (December 2009) that the audit assessment was to be carried out through the computer system, which contained check list and hearing details for the assessments. Also, the system was provided with hyperlinks for cross checks and way bills. However, the reply was silent about the records to be kept in the assessment files.

**The inability of units reveals absence of internal control and monitoring mechanism. The department may initiate action to analyse such areas to evolve the required system. Also, the department may stipulate period for expeditious completion of the return scrutiny.**

### 2.2.11 Input tax credit

The white paper in paragraph 2.2 states that the essence of VAT is in providing set off of the tax paid earlier. This set off is given effect through the concept of the input tax credit. The input tax credit (ITC) means setting off the amount of input tax paid by a registered dealer against the amount of his output tax. Section 11 of the GVAT Act read with Rule 15 of the GVAT Rules, provides for the ITC and the method to be adopted for allowing the ITC. During analysis of the provisions given for granting the ITC, the following deficiencies were noticed.

**2.2.11.1** Section 11(3) of the GVAT Act prescribes grant of the ITC involved in the purchase of capital goods. Rule 15(2) of GVAT Rules stipulates that a registered dealer could claim ITC in a tax period in which he records the purchases in his books of accounts. **However, the ITC on capital goods neither relate to its installation nor its utilisation in manufacture.** Further, the stipulations did not contain any condition for disallowing the ITC on capital goods, if the dealer had claimed depreciation on the tax element under Section 32 of the Income Tax Act, 1961.

[16] Unit-1, 5, 6, 7, 8 and 9 of Ahmedabad.

**2.2.11.2** Under the GVAT Act, utilisation of the ITC is not related to actual utilisation of the goods. The dealer can utilise the ITC against his liability of output tax, even if the goods are lying in stock. Rule 35 of GVAT Rules provides for remission of tax payable in respect of any period, if such dealer had suffered financially on account of natural calamity or extra ordinary circumstances beyond his control. **Lack of stipulation in Rule 35 to correlate the ITC with its utilisation allows unintended benefit to such dealers.** Also, whether the ITC allowed on capital goods is required to be withdrawn proportionately in such cases has not been clarified (November 2009).

The reply furnished by the Government did not touch upon the issue raised by audit.

**2.2.11.3 There is no provision to levy interest in the cases of excess or fraudulent availing of the ITC.** Also, stipulations should be considered with regard to the ITC involved in obsolescence, rejections, returns, shortage and actual receipt of the goods.

**2.2.11.4** Section 11(8) stipulates that if the capital goods are not used continuously for a period of five years, the ITC shall be reduced proportionately. However, in the periodical returns the ITC on capital goods is clubbed with that on raw material and none of the units covered by review could furnish the information relating to the ITC on capital goods. Rule 15(6) allows refund of the unutilised ITC (other than on capital goods) before completion of two years. **Absence of a system to watch ITC on capital goods and raw material separately may result in the refund of ITC on capital goods within two years.**

The Government had agreed (December 2009) to review the format of the periodical returns so as to strengthen the monitoring mechanism for ITC on capital goods.

**The Government may prescribe a system to file a separate declaration on the intention of the dealer to claim the ITC on capital goods and put a system to watch the said ITC separately with reference to continued utilisation. Further, the Government may consider introducing provisions for the levy of interest against fraudulent availing and utilisation of ITC.**

### 2.2.12 Incentives

Under the repealed Acts, the State Government implemented various incentive schemes in the form of tax exemption, tax deferment or composite incentives. These incentives were allowed to industrial units, tourism units, wind power generation units as well as *khadi* and village industries commission (KVIC) units. Section 5(2)(b) of the GVAT Act authorises the State Government to continue such exemption granted to the industrial units under the repealed GST Act, with such modifications, subject to such conditions and for such period as may be prescribed. Under the said powers, the State Government had prescribed a system for regulating incentives vide Rule 18A to 18D of the GVAT Rules. The rules contain provisions for continuation of incentives in the form of exemption as well as deferment. On implementation of the GVAT Act, the dealers under composite scheme of the repealed Acts were allowed

either exemption or deferment, at their option. The incentive scheme prescribed under the GVAT Act and Rules had following deficiencies.

**2.2.12.1 The provision did not cover the incentives available to tourism units, wind power generation units and KVIC units.** Further, limited provisions in the Act to extend exemption incentive to goods covered under the GST Act created disparity between the dealers who were enjoying incentives under the MST Act and the Sugarcane Act.

The Government stated (December 2009) that the MST Act and Sugarcane Act were merged with the GVAT Act and the exemption to tourism units was covered under the GVAT Act through Government Resolution dated 23 July 2008. The reply requires reconsideration. Section 5(2)(b) of the GVAT Act provide for continuation of incentives given under the GST Act and does not mention about the MST Act and the Sugarcane Act. In absence of the required provisions in the GVAT Act, exemption allowed to the dealers on goods covered under the repealed MST Act and the Sugarcane Act was irregular.

**2.2.12.2** Rule 18A and Rule 18B of the GVAT Rules extended the incentive in the form of exemption, where the tax paid by the dealers on their purchases were refunded and the output tax was allowed to be collected on the sales by the dealers and was allowed to be retained by them. Against such output tax retained by the dealer, the Government prescribed issue of remission orders. Under the repealed Acts, the exemption holders were neither allowed to collect the tax and nor pay such tax on their sales. The leading principle in allowing exemption incentive was that the dealer could survive in the competitive market by reduced price on their products due to non-levy and non-payment of tax. **Thus, by allowing the dealers to collect and retain the output tax, the Government had deviated from the basic principle and also allowed undue enrichment to the exemption incentive holders at the cost of general public.**

Under the deferment incentive scheme, the dealers are allowed to collect tax on their sales, which is to be paid into Government account after stipulated period. Thus, the Government had made not only the taxing statute discriminatory towards the incentive holders but also allowed undue enrichment of Rs. 6,376.58 crore being the remission amount for the period from April 2006 to March 2009.

**Instead, the Government could have allowed the exemption holders to continue their sales without recovering the output tax and by allowing the purchasers to avail the ITC at notional basis which could have ensured that the VAT chain is not affected.**

The Government stated (December 2009) that the exemption holders were allowed to collect and retain the tax so as to avoid distortion of the VAT chain. Further, it stated that by adoption of the system, the Government had ensured earlier completion of the incentives. However, reasons for deviating from the basic principle of the exemption scheme as well as discrimination made between the deferment incentive holders and exemption holders were not clarified.

**2.2.12.3** Rule 18B(3) of the GVAT Rules stipulates that the eligible unit availing exemption incentive shall collect the tax on their sales and shall not

pay the same to the Government. Rule 18D states that while calculating the aggregate amount of remission, tax payable on inter-state sales under the provision of the CST Act is also to be considered. Section 9(2) of the CST Act authorises sales tax authorities of the State to follow the procedural stipulations made in sales tax law of the State on specified areas. **In absence of provision to allow remission under the CST Act, the rules made under the GVAT Act, suffer legal infirmity in view of Supreme Court judgement[17] in the case of M/s. India Carbon Limited holding that since the Central Act did not contain specific provision for levy of interest on delayed payment of tax, interest cannot be levied even though it existed in the State Act.**

The Government stated (December 2009) that the section 9(2) of CST Act includes refunds and remission was a kind of refund. The reply is untenable as the words remission and refunds have different meanings.

**2.2.12.4** The composite incentive scheme under earlier law allowed the eligible units to avail of tax exemption as well as tax deferment incentives simultaneously. Rule 18A(3) of the GVAT Rules provides that the eligible units availing of composite benefit under the earlier law could opt for either tax exemption or tax deferment incentive. Rule 18D(5) stipulates that the eligible unit shall make payment of tax deferred in accordance with the provisions of the respective Government Resolutions (resolution). The resolution for composite incentive specified that, the tax exemption under the scheme shall be guided by the notifications issued under the repealed Acts and that of tax deferment shall be guided by the respective resolution. The deferment incentive of 1995-2000 industrial incentive scheme was guided by the resolution issued (September 1995) by the Industries and Mines Department (I&MD). Under the provisions of the resolution, I&MD issued eligibility certificates to the dealers based on which, the commercial tax department issued sanction certificate. The resolution on deferment incentive stipulate that the eligible units shall pay the deferred tax in six equal annual installments to the Government account, on completion of deferment period or amount of incentive, whichever is earlier. Accordingly, for the composite incentive holders who had exercised option for exemption under the GVAT Act, the scheme of deferment was completed on 31 March 2006. Therefore, as per the conditions laid down in the resolution GR for deferment incentive, they were required to start payment of deferred tax from April 2006, in six annual equal installments.

Audit scrutiny revealed that 13 eligible industrial units under composite incentive scheme of earlier law had availed deferment incentive of Rs. 7,022.03 crore up to 31 March 2006 and opted for exemption under the GVAT Act. As per the stipulations of deferment incentive, the department should have recovered Rs. 1,170.34 crore on annual basis from these units. **The department did not initiate any action to recover the instalments due.** Interest was also recoverable at the rate of 18 *per cent* per annum on the delay in payment of instalment. This resulted in non-recovery of Rs. 4,774.98 crore up to March 2009, including interest of Rs. 1,263.96 crore.

[17] M/s. India Carbon Limited Vs. the State of Assam (1997) 106 STC 460 (SC).

The Government stated (December 2009) that there was no provision to recover the amount of deferment from the composite units which availed of exemption under the GVAT Act. It added that as per the Government Resolutions under which eligibility certificates were issued, the amounts deferred were to be recovered only after completion of the time limit or monetary ceiling limit, whichever was earlier. The reply is not tenable as the deferment incentive of composition holders are covered under the GR issued for the deferment scheme and the GR on deferment scheme stipulates that recovery is to be effected on completion of the deferment period or monetary limit, whichever is earlier. In the instant cases, while the dealers had opted for exemption under the GVAT Act, their period of deferment incentive was completed. Therefore, they are liable to pay the deferred amount in instalments with effect from April 2006.

**The Government may reconsider the issue of tax collection by exemption holders. The Government should initiate action to recover the deferred tax including interest, from the composite holders as per the resolution, who opted for exemption incentive under the GVAT Act.**

### 2.2.13 Cross verification

Successful implementation of the taxation law requires in-built control mechanism to confirm the correctness of details furnished by the dealers. Under the GVAT law, cross verification of records of purchasing/selling dealers, cross check of data available with other taxation departments *etc*. were of utmost importance to confirm proper realisation of Government revenue. Scrutiny of the control mechanism existed in the department for cross verification revealed following deficiencies.

**2.2.13.1** With a view to help the commercial tax departments of various States and Union Territories in monitoring the sales/purchases made in the course of interstate trade and commerce, the Empowered Committee of State Finance Ministers had recommended for maintaining database on interstate dealers commonly known as TINXSYS (Taxation Information Exchange System).

Verification of the TINXSYS revealed availability of the data of Gujarat Commercial Tax Department. However, the GSWAN connectivity provided in the department did not allow access to the TINXSYS database. Due to this, the department officials could not utilise the information.

The Government stated (December 2009) that the matter would be referred to the IT committee for further analysis.

**The Government may consider providing access to TINXSYS website to the assessing officers and also make it mandatory to verify the information available in the site before allowing concession/exemption of tax to the dealers.**

### 2.2.14 Tax deduction at source

Section 59B of the GVAT Act provide for deduction of tax at source by persons responsible for paying specified sale price to a contractor or sub-contractor. Under Sub-Section 14 of Section 59B, the person deducting tax is required to furnish return in prescribed form. Section also provides for

levy of penalty on the persons, who did not deduct the tax or after deducting the tax failed to pay it to the Government account. The penalty so leviable shall not exceed 25 *per cent* of the amount required to be deducted.

**Audit analysis revealed that the department had not devised any system to identify the persons who are liable to deduct the tax at source. Further, no system existed to monitor receipt and scrutiny of these returns. In absence of the system, proper compliance of the provisions of the GVAT Act could not be ensured.**

The Government stated (December 2009) that with effect from August 2009, provision for Tax Deduction Account Number (TDN) had been incorporated in the GVAT Act so as to identify the works contractors.

**The Government may consider setting up a well defined follow up system.**

### 2.2.15 Internal controls

**2.2.15.1** The offices working under the department had maintained various manual registers prescribed under earlier law. Though the GVAT Act was implemented from April 2006, neither the sufficiency of the registers prescribed under the earlier law were analysed nor instructions to continue the maintenance of such registers under the GVAT law was issued by the department. In absence of these, the unit offices continued to maintain the registers under earlier law, according to their own convenience. **Thus, there was no control mechanism in respect of important areas under the GVAT law such as the ITC on capital goods, return scrutiny, submission of audited accounts, self/deemed assessments, option to pay lump sum amount in lieu of tax *etc*.**

The Government stated (December 2009) that most of the activities like Registration, Returns, Payments, Forms, *etc* were monitored through VATIS, which generated various MIS reports. It was also stated that separate manual registers were being maintained for incentives and recovery. However, the reply was silent on the monitoring system adopted for areas specified in above paragraph.

**2.2.15.2** The internal inspection of various offices of the department, viz. divisions, circles, units, check-posts, enforcement, appeal, audit *etc*., are conducted by the internal inspection wing headed by the DC (Inspection). The offices, which are not inspected during the year by the DC (Inspection), are to be inspected by the next higher controlling officers in a manner that internal inspection of all the offices of the department gets conducted in each year. Under internal inspection, the records other than pre and post audit assessments are checked for conformity of the system. The information on target and achievement of internal inspection and status of observations made by internal inspection during the period from 2004-05 to 2008-09 is mentioned below.

**Performance of internal inspection**

| Period | Offices to be inspected[18] | DC (Inspection) | | | Inspections conducted by other officers | Shortfall in inspection (Column 2-3-6) | Percentage of shortfall |
|---|---|---|---|---|---|---|---|
| | | Inspections conducted | Observa-tions issued | Outstanding observations | | | |
| **1** | **2** | **3** | **4** | **5** | **6** | **7** | **8** |
| 2004-05 | 151 | 15 | 1,019 | 366 | 50 | 86 | 57 |
| 2005-06 | 151 | 15 | 845 | 270 | 47 | 89 | 59 |
| 2006-07 | 151 | 15 | 658 | 223 | 40 | 96 | 64 |
| 2007-08 | 151 | 15 | 792 | 653 | 50 | 86 | 57 |
| 2008-09 | 151 | 15 | 889 | 861 | 52 | 84 | 56 |

**Source:** Commercial Tax Department.

The information furnished by the department revealed the following deficiencies in the working of internal inspection.

- **The shortfall in internal inspection ranged between 56 and 64 *per cent.***
- Compliance to large number of observations issued by the DC (Inspection) remained pending due to which the intended purpose of inspection was defeated.

The Government stated (December 2009) that subordinate offices were not given specific targets for inspection as they were supposed to carry out inspection of all the remaining offices and Commissioner office monitors this activity through periodical reports. It was further stated that compliance reports on remaining observations were obtained from the head of the office and these were disposed after considering the merit of its compliance. The reply is not tenable as the subordinate offices had not completed the internal audit cycle and there were inordinate delays in disposal of inspection reports.

**The department may devise a monitoring system under DC (Inspection) to complete internal inspection of all offices of the department every year and may fix a time limit for final compliance to the observations.**

### 2.2.16 Internal audit

**2.2.16.1** The internal audit wing of the department was looking after pre and post audit of assessments under repealed Acts. **Audit had called for (June 2009) information related to the working of the internal audit wing after implementation of the GVAT Act.**

The information received (December 2009) revealed that the policy regarding scope and criteria for internal audit under GVAT Act have not been finalised.

**2.2.16.2** The white paper *vide* paragraph 2.13 stipulated that self assessment returns of certain percentage of the dealers selected on scientific basis should be audited by a separate wing so as to safeguard Government revenue. The work was to be completed within six months. **However, internal audit wing**

[18] 103 units, 25 circles, 10 check posts, seven divisions, six branches in HO (administration, audit, appeal, e-governance, enforcement and legal).

**of the department had not framed any programme for checking self assessment returns till October 2009 and the work of audit assessment was allotted to the controlling officers of the units.**

The Government stated (December 2009) that the audit assessments of dealers for the period 2006-07 were selected on the basis of criteria such as output tax, turnover, industrial incentives, works contracts *etc*., and was assigned to the Deputy Commissioners, Assistant Commissioners and Commercial Tax Officers. The reply did not clarify on the separation of audit assessment from jurisdictional controlling officers and also audit of self assessment cases.

**In view of the policy paper, the department may separate audit assessment from controlling officers.**

**Compliance deficiencies**

### 2.2.17 Other topics of interest

**2.2.17.1** The State Legislature had approved levy of additional tax under the GVAT Act, with effect from 1 April 2008. The State Government proposed levy of additional tax to meet with the priority of development of human resources, infrastructural development for balanced economic and social growth and acceleration of the process of development. The Government estimated revenue of Rs. 880 crore through the proposed additional tax.

**Audit scrutiny revealed that the State Government had not opened a separate minor head to identify the revenue generation on account of additional tax.** Hence, the Director of Accounts and Treasury could not exhibit it in their records.

The Government stated (December 2009) that the separate minor head was not opened as additional tax could be adjusted against the output tax liability.

However the fact remains that the actual receipt through additional tax could not be identified against the estimates. In the absence of any record, audit also could not verify whether such receipts were utilised for the intended purposes.

**2.2.17.2** The details of the *challans* as and when received from the dealers by the units were to be noted in the register No. 6 under earlier Act on a day-to-day basis. The details of *challans* noted in the register were to be verified with the treasury schedules by the units for confirming the authenticity of tax payment. This activity is known as Verification with the Treasury Schedules (VTS). On an audit query regarding the system of the VTS followed under the GVAT Act, the department stated (July 2009) that the VATIS software developed included the facility for VTS. However, in absence of data from treasury offices in required format, this could not be made functional except for Ahmedabad.

Cross check of 59 *challans* involving revenue of Rs. 3,069.97 crore pertaining to Ahmedabad for the year 2007-08 with the treasury records revealed that in three cases payment of Rs. 39.20 crore made under the Entry Tax Act was incorrectly accounted under the GVAT Act**. Thus, absence of adequate system for VTS activity resulted not only in non-confirmation of revenue reported by the units with the treasury receipts but also in incorrect reporting of actual receipts under various heads to the State Legislature.**

**This also affects the annual plan of the State Government as budget estimates are based on actual receipts of the previous year.**

The Government stated (December 2009) that in the cases of treasuries situated outside Ahmedabad, information were obtained by the nodal officers and VTS was planned accordingly. It added that ITC under the GVAT Act was allowable on entry tax and the income under entry tax as well as VAT were credited to the same major head. The reply is untenable. The misclassification of entry tax as VAT income reveals vulnerability in VTS conducted on the soft copy of data received from the Ahmedabad treasury. Also, the entry tax and the VAT are collected under different minor heads with reference to separate Acts.

**2.2.17.3** Under Section 69 of the GVAT Act, in cases of vehicles coming from any place outside the State and bound for any other place outside the State, transit passes are issued at entry check post which are required to be surrendered at the exit check post by the driver or person in charge of the vehicle. On failure to do so, it shall be presumed that the goods contained in the vehicle were sold within the State and tax at the applicable rates alongwith penalty up to 150 *per cent* of the tax is leviable on the goods.

**During test check of the records of two offices,[19] it was noticed that 103 transit passes issued by two check posts[20] were not surrendered at the exit check posts/barriers even after the lapse of six to 17 months.** However, the AOs did not take any action to assess and recover the tax of Rs. 63.84 lakh including penalty of Rs. 23.07 lakh.

### 2.2.18 Conclusion

Analysis of the transitional process from sales tax to VAT revealed various deficiencies in the process and lacunae in the GVAT Act and Rules. Though the white paper issued by the empowered committee discouraged it specifically, Government had resorted to levy of additional tax instead of tapping potential areas of revenue. Even after three years of implementation of the Act, the department had not finalised the issue of sale price of major revenue goods viz., petrol and gas sold through company owned outlets and pipelines. The department could not satisfactorily address the issues related to e-governance and manpower deployment. The existing provisions and system for registration and the ITC lacked clarification. Delayed and inadequate return scrutiny left enough scope for the leakage of revenue. The procedure prescribed for continuation of the incentives under the GVAT law was against the spirit of the original schemes and resulted in undue enrichment to the incentive holders. Failure to recover the deferred tax from the incentive holders and dues from defaulters resulted in non-realisation of revenue. The department could not furnish the required information to Audit. Internal control and monitoring mechanism were weak as evidenced from the above and also absence of control register and weaknesses in the functioning of the internal inspection wing.

[19] CTO: Dahod and ACCT: Palanpur.
[20] Amigarh and Dahod.

### 2.2.19 Summary of recommendations

The State Government may consider implementing the recommendations noted under the paragraphs included in the review with special attention to the following for rectifying the system and compliance issues.

- initiate action to remove the deficiencies and contradictions in the Gujarat Value Added Tax Act, 2003;
- analyse and identify the areas from where additional revenue could be augmented;
- issue instructions for deployment of manpower of the department prudently and for setting up of proper system to watch input tax credit and expeditious scrutiny of returns; and
- issue instructions for addressing the system deficiencies in e-governance, particularly on the issues of net work connectivity, hardware management and own technical staff.

## 2.3 Other audit observations

*Scrutiny of the records of the various Commercial Tax offices revealed several cases of non-compliance with the provisions of the Gujarat Sales Tax Act, 1969, the Bombay Sales of Motor Spirit Taxation Act, 1958, the Gujarat Sales Tax Rules, 1970, the Central Sales Tax Act, 1956 etc., and Government notifications and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on test check carried out in audit. Such omissions on the part of the departmental officers are pointed out in audit each year however the irregularities not only persist; but also remain undetected till Government audit is conducted in the next year. There is need for the Government to improve the internal control system and internal audit.*

## 2.4 Incorrect grant of benefits under the sales tax incentive schemes

**2.4.1** The Government of Gujarat issued a notification vide entry 140 under Section 49 (2) of the GST Act, 1969 for granting benefit of exemption to the eligible unit under the incentive scheme for economic development of Kutchh District. The Government of Gujarat also, vide Finance Department resolution of June 2002, decided to allow deferment of sales tax, general sales tax and additional tax within the ceiling limit of the eligibility certificate. The levy and collection of central sales tax in Gujarat is governed by the Central Sales Tax Act, 1956 (CST Act). The CST Act provides for grant of an exemption through issue of a notification under Section 8(5) of the CST Act published in the official gazette. The Government has not issued any notification under Section 8(5) of the CST Act.

During test check of the records of three offices[21] between December 2008 and January 2009, it was noticed from the assessments of six dealers for the period between 2002-03 and 2005-06 that the AOs allowed deferment of central sales tax of Rs. 42.34 crore against the deferment limit available. In another 12 cases, the AOs incorrectly adjusted the central sales tax of Rs. 16.21 crore against the exemption limit available to the dealers. However, in the absence of a notification for availing of incentives under the CST Act and provision for availing of the deferment in Government Resolution, the central sales tax of Rs. 58.55 crore was required to be levied and collected in cash. This resulted in irregular grant of deferment and exemption of central sales tax of Rs. 58.55 crore.

This was brought to the notice of the department (April 2009) and the Government (May 2009); their reply has not been received (November 2009).

**2.4.2** Under the conditions of the Incentive scheme for economic development of Kutchh District, new industrial units established in the District of Kutchh during the operative period of the scheme *i.e.* from 31 July 2001 to 31 October 2004 were eligible for the incentive at the rate of 100 *per cent* of the eligible capital investment. The scheme provided that the expenditure incurred on the purchase of the plant and machinery shall be considered for arriving at the limit of the eligibility for issue of the eligibility certificate by the Industries

[21] DCCT Gandhidham.
ACCT Bhuj, Gandhidham.

Department. Based on the eligibility certificates issued by the Industries Department, the Sales Tax Department issued the certificate of sales tax exemption or deferment.

Scrutiny of the records of the office of the Industries Commissioner, Gandhinagar in November 2008 revealed that the Industries Department issued an eligibility certificate to M/s Sumangal Glass Industries Pvt. Ltd. in November 2006 for exemption under the scheme within the limit of Rs. 10.47 crore for the period from 31 December 2005 to 30 December 2012. The limit of eligibility was fixed considering the expenditure incurred on the capital investment made by the unit upto 31 December 2005. It was noticed from the balance sheet of the unit for the year ended 31 March 2007 that the unit had deducted Rs. 72.82 lakh from the fixed assets on account of excise duty/service tax. While capitalising the plant and machinery, the elements of excise duty/service tax were included as capital expenditure. Subsequently, on account of availing of cenvat credit, the amount was deducted from the capitalised fixed assets of the plant and machinery. The amount of excise duty/service tax paid on the plant not capitalised cannot form part of the expenditure allowed for working out the eligibility limit. This excess grant of eligibility limit resulted in excess grant of exemption of tax of Rs. 72.82 lakh.

After the case was pointed out (April 2009), the department accepted (August 2009) the audit observation and issued show cause notice to the unit. Further development has not been reported (November 2009).

The matter was reported to the Government (May 2009); their reply has not been received (November 2009).

**2.4.3** The incentive scheme for economic development of Kutchh District provided that the eligible unit shall have to remain in production continuously during the eligibility period mentioned in the eligibility certificate.

Scrutiny revealed that the DCCT, Gandhidham issued a certificate of exemption to a dealer, M/s Shreeji Food and Fun Industries, based on an adhoc eligibility certificate issued by the District Industries Centre, Bhuj for the period from 16 April 2002 to 15 April 2007 with tax exemption limit of Rs. 9 lakh. The Industries Department did not issue final eligibility certificate to the unit.

Further verification of the records of the commercial tax office, Bhuj in December 2008 revealed that the unit had stopped production from January 2005. However, while finalising the assessments for the period 2003-04 and 2004-05 in April 2007, the AO adjusted the tax payable amount of Rs. 1.46 lakh, Rs. 6.61 lakh and Rs. 91,000 during the years 2002-03, 2003-04 and 2004-05 respectively against the exemption limit available. As the dealer had stopped the production during the currency of the eligibility certificate, the adjustment of tax of Rs. 8.98 lakh was irregular. The unit was thus liable to pay tax of Rs. 15.31 lakh including interest of Rs. 6.33 lakh.

This was brought to the notice of the department (April 2009) and Government (May 2009); their reply has not been received (November 2009).

**2.4.4** Section 45(6) of the GST Act provides that where the amount of tax assessed or reassessed exceeds the amount of tax paid with the returns by a dealer by more than 25 *per cent*, penalty not exceeding one and half times of

the difference shall be levied. Further, the Commissioner vide public circular dated 3 June 1992 has laid down slab rates for levy of penalty.

During test check of the records of the ACCT, Gandhidham in December 2008, it was noticed that two dealers, holding sales tax incentive certificates for exemption under entry 140 of the notification issued under Section 49(2) of the GST Act, were assessed for the period 2002-03 and 2003-04 in May 2004 and March 2008. While completing the assessment, the AO adjusted, either the tax on turnover of the sales prior to the effective date of commencement of exemption period or computed the tax at incorrect rate, against the available limit of incentive specified in the certificate. This resulted in non/short levy of sales tax of Rs. 8.23 lakh including interest of Rs. 1.98 lakh and penalty of Rs. 2.21 lakh.

The matter was brought to the notice of the department (April 2009) and Government (May 2009); their reply has not been received (November 2009).

**2.4.5** Under the sales tax incentive schemes[22], the units which opt for deferment incentives are allowed to collect and retain the tax and pay it after a specified period into the Government account. The deferred amount of tax is recoverable in six annual installments beginning from the financial year subsequent to the year in which the unit exhausts the limit of incentive granted to it under the scheme or after the expiry of relevant period during which deferment is available, whichever is earlier. In the event of default in payment of deferred tax, interest is leviable at the rate of 24 *per cent* up to 31 August 2001 and 18 *per cent* thereafter.

During test check of the records of office of CTO, Idar in July 2008, it was noticed in case of two dealers who opted for deferment incentives that in one case, the dealer did not pay any installment of deferred tax of Rs. 3.29 crore though the six installments of deferred tax were due between 1 April 1997 and 1 March 2003. In case of the other dealer, the first installment of deferred tax was due on 1 April 2007. The dealer paid deferred tax of Rs. 60.67 lakh belatedly, with delay ranging between 74 days and 205 days. The AO did not initiate action to recover the tax and interest in these cases resulting in non-recovery of tax of Rs. 8.16 crore including interest of Rs. 4.87 crore.

After the cases were pointed out (December 2008), the department accepted the audit observation and recovered Rs. 4.42 lakh in case of one dealer. Reply in the other case has not been received (November 2009).

The matter was reported to Government (April 2009); their reply has not been received (November 2009).

**2.4.6** Under the sales tax incentive schemes, eligible units are allowed to purchase raw materials, processing material, consumable stores and packing materials against declaration on payment of tax at the rate of 0.25 *per cent.* Balance tax on purchases is calculated at the prescribed rates and adjusted against the ceiling limit of exemption. Similarly, tax saved on sale of manufactured goods is also adjusted against the ceiling limit of exemption.

[22] Schemes implemented by Department of Industries of Government of Gujarat in four cluster over a 20 year period from 1980-81 to 1999-2000 which provided for grant of sales tax incentives in the form of exemption, deferment and composition of tax.

During test check of the records of 12 offices[23] between May 2007 and October 2008, it was noticed in the assessment of 18 dealers for the period between 2000-01 and 2005-06 that the AOs computed the tax at incorrect rates and either adjusted against the ceiling limit available or recovered in cash. This resulted in under assessment of tax of Rs. 1.94 crore.

After the cases were pointed out, the department accepted the audit observation involving Rs. 34.26 lakh in case of five dealers and adjusted tax of Rs. 3.01 lakh against the exemption limit available. Reply in the remaining cases had not been received (November 2009).

The matter was reported to Government (April 2009); their reply has not been received (November 2009).

**2.4.7** Section 4A of the GST Act specifies that additional tax (AT) at the rate of 10 *per cent* of sales tax, general sales tax or purchase tax shall be levied from 1 April 2000 to 28 February 2003 on every dealer liable to pay tax under Section 3, 3A or 4 of the Act. Under sales tax incentive schemes 1990-95 and 1995-2000, there was no provision to adjust AT against tax exemption limit[24]. In accordance with notification of 3 March 2001, AT was allowed to be adjusted against exemption limit. Therefore, the AT on purchase tax and sales tax was to be paid in cash by dealers holding exemption certificate up to 2 March 2001. Besides, delay in payment of tax attracts interest and penalty under the provisions of the GST Act.

During test check of the records of three offices[25] between April 2007 and May 2008, it was noticed from assessment of three dealers for the year 2000-01 that in one case, the AO allowed incorrect adjustment against the ceiling limit instead of recovering in cash. In two cases, though the AOs levied additional tax in reassessment, they did not levy interest and penalty. This resulted in short levy of tax of Rs. 50.72 lakh including interest of Rs. 24.30 lakh and penalty of Rs. 25.67 lakh.

After the cases were pointed out (between August 2007 and July 2008), the department accepted the audit observation and recovered Rs. 35,111 in case of one dealer. Reply in the remaining cases had not been received (November 2009).

The matter was reported to Government (April 2009); their reply has not been received (November 2009).

**2.4.8** According to the Government Resolution (GR) of 20 April 1998 of the Industries and Mines Department, an industrial unit with project costing more than Rs. 10 crore and availing sales tax incentive under New Incentive Policy of 1995-2000 scheme shall have to contribute two *per cent* of sales tax in case of exemption and three *per cent* of sales tax in case of deferment availed during the year for *Gokul Gram Yojna* (GGY) by 30 June of subsequent

[23] ACCT: Billimora, Gandhidham, Gondal, Himatnagar, 3 Jamnagar. 1 Nadiad, 4 and 5 Rajkot, 2 Surat and 1 Surendranagar.
DCCT: 24 Jamnagar.
CTO : Prantij.

[24] Exemption limit means an aggregate amount of tax payable by the eligible unit which is allowed to be adjusted against sanctioned amount for a specified period.

[25] ACCT: 4 Rajkot and 6 Vadodara.
DCCT : Bharuch.

financial year. In case of failure to contribute the amount on due date, the AO was to suspend the incentive with effect from 1 July. Such suspension could be cancelled if the dealer paid interest at the rate of two *per cent* per month on the contribution amount for the period of delay.

During test check of the records of DCCT-24, Jamnagar, it was noticed that a unit was required to pay Rs. 2.70 crore towards GGY contribution. However, the dealers paid only Rs. 2.42 crore. While finalising the assessment of the dealer for the year 2003-04 in September 2007, the AO did not take any action to recover the short contribution and suspend the incentive, resulting in short realisation of revenue of Rs. 49.43 lakh including interest of Rs. 21.43 lakh.

The above facts were brought to the notice of the department (July 2008) and Government (May 2009); their reply has not been received (November 2009).

**2.4.9** Under the sales tax incentive schemes, an eligible unit shall be entitled for exemption from the tax to the extent of monetary limit and within the limit specified in the eligibility certificate issued by the Industries Department. The aggregate amount of tax including additional tax[26], leviable under Section 15B of the GST Act shall be considered for the purpose of arriving at the limit of exemption. High Court of Gujarat[27] held that the dealer is liable to pay purchase tax under Section 15B of the Act on the purchase of raw materials by the dealer from sales tax exemption holders and on their use in the manufacture of goods which are generally taxable goods under the Act though they may be exempted from payment of sales tax pursuant to the notification under Section 49(2) of the Act.

During test check of the records of two offices[28] between January 2007 and September 2008, it was noticed from the assessment of two dealers for the assessment period between 1997-98 and 2003-04 that the dealers had consigned/transferred the manufactured goods valued of Rs. 137.04 crore to their branches outside the State. However, the AOs did not include raw materials purchased from the dealers holding exemption certificate while calculating purchase tax under Section 15B of the GST Act in respect of proportionate value of the manufactured goods consigned/branch transferred to other state for sale. This resulted in short adjustment of tax of Rs. 35.90 lakh including interest of Rs. 26,721 and penalty of Rs. 1.43 lakh.

After the cases were pointed out (between May 2007 and November 2008), the department accepted the audit observation involving Rs. 95,657 in case of one dealer. Reply in the remaining cases had not been received (November 2009).

The matter was reported to Government (May 2009); their reply has not been received (November 2009).

**2.4.10** Sales tax incentive schemes provide that the eligible unit[29] shall remain in production continuously during the period mentioned in the eligibility

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26 Additional tax is adjustable from 3 March 2001 onwards.

27 M/s Madhu Silica (85 STC 258) and M/s Cheminova India Ltd (2001-GSTB-286).

28 ACCT: Nadiad.
DCCT: 7 Gandhinagar.

29 Eligible unit means a unit permitted by Industries Department to avail sales tax incentives of either exemption or deferment of tax.

certificate. The eligible unit shall also furnish to the Commercial Tax Department details regarding production, availment of benefit *etc*. as provided in the GST Act and rules made thereunder. If the eligible unit contravenes any of the conditions, the incentive shall cease to operate. Accordingly, the entire amount of tax that would have been payable on sale and purchase effected by the eligible unit shall be paid by the unit within a period of 60 days from the date of contravention. If the unit failed to do so, the AO shall recover the amount from the eligible unit as an arrear of land revenue.

During test check of the records of ACCT-1, Junagadh, in September 2008, it was noticed that a unit enjoying sales tax exemption had discontinued his business from March 2004. While finalising the assessments for the period 2001-02 and 2002-03 in July 2006 and September 2007, though entire amount of tax exemption benefit alongwith interest was recoverable from the dealer for breach of conditions, the AO, however, incorrectly adjusted the tax of Rs. 13.54 lakh against the exemption limit. The AO failed to observe the provisions of the incentive scheme and did not take any action under the provisions of the Bombay Land Revenue Code to recover the benefit availed of by the dealer as arrears of land revenue. This resulted in non-realisation tax of Rs. 20.85 lakh including interest of Rs. 7.31 lakh.

The above facts were brought to the notice of department (December 2008) and Government (May 2009); their reply has not been received (November 2009).

## 2.5 Non/short levy of tax due to incorrect classification of goods

**2.5.1** The Supreme Court of India held[30] that PP/HDPE fabrics will be classified as plastic instead of textile material for the purpose of levy of central excise duty. **It was noticed in audit that the earlier determination order passed by the Commissioner treating the HDPE fabrics as exempted goods, though the tax on HDPE fabrics was leviable at the rate of eight *per cent* treating it as 'plastic', was not withdrawn/revised in view of the Supreme Court judgment. The practice, therefore, continued.** Further, Section 8 of the CST Act provides for levy of tax on interstate sale of goods not supported by form C, at 10 *per cent* or at the rate applicable on such goods inside the State, whichever is higher.

During test check of the records of 16 offices[31] between October 2007 and October 2008, it was noticed from the assessments of 28 dealers under the GST Act and six dealers under the CST Act that the AOs did not levy tax on sale of HDPE fabrics though tax was leviable in view of the above judgement. Incorrect classification resulted in underassessment of Rs. 7.92 crore under the GST Act and Rs. 2.80 crore under the CST Act, aggregating to Rs. 10.72 crore.

After the cases were pointed out (between May 2008 and January 2009), the department did not accept the audit observations stating that the classification was correctly made under fabric as per the orders of the GST Tribunal. The

30 Union of India Vs Pramact Plastic Pvt. Ltd. 2000 (119) ELT-A173 (SC).

31 DCCT: 7 Gandhinagar and 8 Mehsana.
ACCT: 7, 9, 11, 18, 19 and 22 Ahmedabad, 2 Anand, Bharuch, 1 Jamnagar, Jetpur, Kadi, 5 Rajkot, 2 Vadodara and 12 Surat.

reply is not acceptable as the judgment by Supreme Court was pronounced after the decision of the Tribunal.

**The government may consider issuing orders in view of apex court's verdict in the interest of revenues of the State.**

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

**2.5.2** The GST Act provides for levy of tax at the rates as prescribed in the schedules to the Act, depending upon the classification of the goods. However, where the goods are not covered under any specific entry of the schedule, general rate of tax given for residuary item is applicable. Further, Section 8 of the CST Act provides for the levy of tax on interstate sale of goods not supported by form C, at 10 *per cent* or at the rate applicable on such goods inside the State, whichever is higher.

During test check of the records of 16 offices[32] between May 2007 and August 2008, it was noticed that 20 dealers paid tax at lower rates due to incorrect classification of goods during the period between 1997-98 and 2005-06. While finalising the assessments between January 2006 and January 2008, the AOs also failed to assess the tax at correct rates. This resulted in short realisation of tax of Rs. 6.17 crore including interest of Rs. 85.88 lakh and penalty of Rs. 2.19 crore under GST Act, and Rs. 4.62 crore including interest of Rs. 1.60 crore and penalty of Rs. 34.90 lakh under CST Act, aggregating to Rs. 10.79 crore.

After the cases were pointed out (between May and December 2008), the department accepted the audit observations involving Rs. 10.96 lakh in three cases. Reply in the remaining cases have not been received (November 2009).

The matter was reported to Government (April 2009); their reply has not been received (November 2009).

## 2.6 Non/short levy of central sales tax

**2.6.1** Rule 12(10) of the Central Sales Tax (Registration and Turnover) Rules, 1957, provides that the dealer has to furnish to the prescribed authority, a certificate in form H giving all details *viz*. agreement number and date relating to such export, particulars of goods alongwith the evidence of export of such goods in support of his claim for export. If the dealer fails to produce the evidence, such sales are to be treated as interstate sales without C forms and are liable to tax at applicable rate.

During test check of the records of 16 offices[33] between December 2007 and August 2008, it was noticed from the assessments of 63 dealers for the period between 1995-96 and 2005-06 that the AOs allowed export sales valued at Rs. 501.78 crore either without production of form H/bill of lading or against incomplete certificates in form 'H'. This resulted in underassessment of

[32] DCCT: 5 Ahmadabad, Corp.Cell-III Ahmedabad and 12 Vadodara.
ACCT: 9, 13, 16, 19, 20 and 23 Ahmedabad, 1 Bhavnagar, 3 Jamnagar, 2 Junagadh, Kadi, 2 Vapi, Valsad and Vyara.

[33] DCCT: Bharuch and 8 Mehsana.
ACCT: 5, 6, 7, 15 and 22 Ahmedabad, 2 Anand, Bharuch, Gandhidham, Gondal, Himatnagar, Kadi, 4 Rajkot, Valsad and 1 Vapi.

Rs. 31.51 crore including interest of Rs. 70.74 lakh and penalty of Rs. 88.81 lakh.

The matter was reported to the department (between November and December 2008) and the Government (April 2009); their reply has not been received (November 2009).

**2.6.2** Section 5(2) of the CST Act provides that a sale or purchase of goods shall be deemed to take place in the course of import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the custom frontiers of India. Further, Section 41(3) of GST Act provides that the assessing authority after considering all the evidence which may be produced in support of the declaration made by the dealer shall assess the amount of tax due from the dealer and as per the orders of the commissioner issued in April 2004, these evidence are to be retained in the case records.

During test check of the records of six offices[34] between December 2007 and May 2008, it was noticed from the assessments of 41 dealers for the period between 2001-02 and 2005-06 that the AOs allowed deduction of high sea sales[35] of Rs. 200.44 crore but did not keep the prescribed documentary evidence *viz.* copy of agreement between the importer and purchaser, bill of entry endorsed in favour of the purchaser, sales bill, proof of payment of customs duty *etc*. on record in support of the deduction despite the orders of the commissioner. Before allowing the deduction of high sea sales, the AOs should have considered and kept the prescribed documents on record as evidence in support of the deduction. In the absence of the relevant documents, the correctness of deduction allowed from the turnover could not be verified. The tax involved in these transactions worked out to Rs. 10.18 crore.

After the cases were pointed out (between May and July 2008), the department stated that necessary evidence had now been procured and kept on the records in case of two dealers. However the reply did not explain the reasons for not keeping the documents on record. Reply in the remaining cases had not been received (November 2009).

The matter was reported to Government (April 2009); their reply has not been received (November 2009).

**2.6.3** The CST Act and Rules made thereunder provide that where any dealer transfers goods from one state to another not by reason of sale, he shall furnish to the AO, a declaration in form 'F', duly filled and signed by the principal officer of the other place of business, alongwith the evidence of dispatch of such goods. If the dealer fails to furnish such declaration, the movement of such goods shall be deemed to have been occasioned as a result of sale.

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[34] ACCT: 22 Ahmedabad, 1, 2 Surat and Gandhidham.
DCCT: Bharuch and 18 Valsad.

[35] Sales of goods before crossing the custom frontiers of India, by endorsing the import documents in favour of the purchaser by importer.

During test check of the records of seven offices[36] between December 2007 and October 2008, it was noticed in the assessment of ten dealers for the period between 2000-01 and 2005-06 that the AOs allowed claim of transfer of goods to other place of business without any declaration or evidence for dispatch of such transfer. This resulted in short levy of tax of Rs. 9.32 crore including interest of Rs. 2.01 crore and penalty of Rs. 2.50 crore.

After the cases were pointed out (between May 2008 and January 2009), the department accepted the audit observation involving Rs. 33,427 and recovered Rs. 10,000 in case of one dealer. Reply in remaining cases has not been received (November 2009).

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

**2.6.4** Section 8(1) of the CST Act provides for levy of tax at the rate of four *per cent* on inter-state sale of goods made against declaration in form 'C'. Where the sale is not supported by form 'C', tax is leviable at the rate of 10 *per cent* or at the rate applicable on such goods inside the State, whichever is higher. In respect of declared goods where the sale is not supported by form 'C', tax is leviable at twice the rate applicable. In respect of the dealers availing of tax exemption benefit under entry 69 or 255 of the notification issued under Section 49(2) of the GST Act (between March 1992 and July 1996), concessional rate of four *per cent* without the production of 'C' form would be available only on production of form 29 or 43 or tax shall have to be computed at the higher rates as applicable. However, as per the provision of the CST Act (as amended in June 2002), production of 'C' form is mandatory for claiming exemption under Section 8(5) of the CST Act.

During test check of the records of 26 offices[37] between December 2007 and October 2008, it was noticed in the assessment of 60 dealers for the period 1997-98 and 2005-06 that sales of various goods valued at Rs. 43.66 crore were not supported by form 'C'. However, AOs incorrectly levied concessional rates of tax instead of the appropriate rates. This resulted in short levy of tax of Rs. 4.94 crore including interest of Rs. 1.02 crore and penalty of Rs. 1.36 crore.

After the cases were pointed out (between May 2008 and January 2009), the department accepted the audit observations involving Rs. 14.38 lakh in case of eight dealers and recovered Rs. 3.04 lakh in case of four dealers. Reply in the remaining cases had not been received (November 2009).

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

**2.6.5** Section 6(2) of the CST Act stipulates that in the course of inter-state sales of goods, if the purchasing dealer effects any subsequent sales during the

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[36] ACCT: 5, 9 Ahmedabad, Gandhidham, 1 Junagadh, Kadi and 1 Vapi.
DCCT: Petro-I Ahmedabad.

[37] DCCT : Jamnagar and 16 Surat.
ACCT : 3, 5, 6, 7, 9, 15, 16, 18 and 20 Ahmedabad, Deesa, Gandhidham, Himatnagar, 3 Jamnagar, 1 Junagadh, Porbandar, 4 Rajkot, 5 and 7 Surat, 1 and 2 Vadodara, Vyara and Unjha.
CTO: Kapadwanj and Idar.

movement of goods, no tax is payable, provided the dealer claiming exemption produces a declaration in Form E-I or E-II obtained from the selling dealer and declaration in form C from the purchaser. Section 41(3) of the GST Act also provides that the assessing authority, after considering all the evidence which may be produced in support of the declaration made by the dealer, shall assess the amount of tax due from the dealer.

During test check of the records of four offices[38] between January and October 2008, it was noticed from the assessment of six dealers for the period between 1996-97 and 2005-06 that the AOs did not levy tax on sales though sales were not supported by the prescribed forms. This resulted in non-levy of tax of Rs. 1.40 crore including interest of Rs. 29.38 lakh and penalty of Rs. 41.40 lakh.

After the cases were pointed out (between June and December 2008), the department accepted the audit observations involving Rs. 1.35 lakh in case of one dealer. Reply in the remaining cases had not been received (November 2009).

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

## 2.7 Non/short levy of purchase tax

**2.7.1** Section 15B of the GST Act provides that where a dealer purchases directly or through a commission agent any taxable goods other than declared goods and uses them as raw material, processing material or as consumable stores in the manufacture of taxable goods, purchase tax at the prescribed rate is leviable on such goods. Purchase tax so levied is admissible as set off under the Rule 42E of the GST Rules, 1970 provided the goods manufactured are sold by the dealer in the State. The High Court of Gujarat[39] held that the dealer is liable to pay the purchase tax under Section 15B of the Act on the purchase of raw material from sales tax exemption holders and on their use in the manufacture of goods which are generally taxable goods under the Act though they may be exempted from the payment of sales tax pursuant to the notification under Section 49(2) of the Act.

During test check of the records of 13 offices[40] between May 2006 and September 2008, it was noticed from the assessment of 15 dealers for the periods between 1992-93 and 2005-06 that the AOs either did not levy or levy lesser amount of purchase tax on purchases made from exemption holders or purchases used in goods consigned outside the state. This resulted in underassessment of tax of Rs. 1.18 crore including interest of Rs. 20.05 lakh and penalty of Rs. 8.51 lakh.

After the cases were pointed out (between June and December 2008), the department accepted the audit observations involving Rs. 8.68 lakh in case of six dealers and recovered Rs. 2.26 lakh in three cases. Reply in the remaining cases had not been received (November 2009).

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38 ACCT: 6 and 19 Ahmedabad, 2 Anand and 7 surat.

39 M/s Madhu Silica (85 STC 258) and M/s Cheminova India Ltd. (2001-GSTB-286).

40 DCCT: Corp. Cell-I Ahmedabad, Bharuch, 7 Gandhinagar, 24 Jamnagar, 12 Vadodara and 18 Valsad.
ACCT: 20, 23 Ahmedabad, Ankleshwar, 1 Junagadh, Kadi and 1 Nadiad.
CTO: Idar.

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

**2.7.2** Section 13 of the GST Act provides that a registered dealer, on production of certificate in Form 19, can purchase goods (other than prohibited goods) without the payment of tax for use by him as raw material or processing material or consumable stores in the manufacture of taxable goods for sale within the State. In the event of breach of condition of declarations, the dealer is liable to pay purchase tax at the prescribed rates with interest and penalty, under section 16 of the Act.

During test check of the records of two offices[41] in January 2008, it was noticed from the assessment of four dealers for the period between 2002-03 and 2005-06 that the dealers had purchased material valued at Rs. 3.89 crore against form 19 and used for purposes contrary to the conditions of form 19. In three cases, the dealers had utilised material in manufacture of tax free goods and in one case the dealer had consigned/branch transferred manufactured goods to other state for sale. For these breach of conditions of the declarations of form 19, the AOs either did not levy purchase tax or levied it short. This resulted in non/short levy of purchase tax of Rs. 40.54 lakh including interest of Rs. 6.71 lakh and penalty of Rs. 13.11 lakh.

After the cases were pointed out (between May and June 2008), the department accepted (April 2009) the audit observation involving Rs. 7.81 lakh in one case. Reply in the remaining cases had not been received (November 2009).

The matter was reported to Government (April 2009); their reply has not been received (November 2009).

## 2.8 Non/short levy of turnover tax

Section 10A of the GST Act provides for the levy of turnover tax at the prescribed rate on the turnover of sales of goods other than declared goods after allowing permissible deduction under the Act, where the turnover of a dealer liable to pay tax, first exceeds Rs. 50 lakh. From April 1993, sales made against various declarations and sales exempted from tax under Section 49 were excluded from the permissible deductions making such sales liable to turnover tax.

During test check of the records of two offices[42] in November 2007 and February 2008, it was noticed from the assessments of two dealers for the periods between 1991-92 and 1996-97, that the AOs either did not levy tax on the turnover exceeding the prescribed limit or levied lesser amount of tax by applying incorrect rate. This resulted in short realisation of turnover tax of Rs. 1.02 crore including interest of Rs. 2.13 lakh and penalty of Rs. 1.77 lakh.

The above facts were brought to the notice of the department (May and June 2008) and the Government (April 2009); their reply has not been received (November 2009).

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41 ACCT: 23 Ahmedabad and 3 Surat.

42 DCCT : 5 Ahmedabad.
ACCT : 1 Surendranagar.

## 2.9 Irregular/excess grant of set off

**2.9.1** Rule 42 of the GST Rules provides that a dealer who has paid tax on the purchase of goods (other than prohibited goods) to be used as raw or processing material or consumable stores in the manufacture of taxable goods, is allowed set off at the rate applicable to the respective goods from the tax payable on the sale of manufactured goods subject to fulfillment of general conditions prescribed in Rule 47 of the Rules.

During test check of the records of 19 offices[43] between October 2007 and October 2008, it was noticed in the assessments of 28 dealers for the assessment period between 1996-97 and 2005-06 that the AOs allowed excess set off either on the purchase of prohibited goods or incorrectly without ascertaining the fulfillment of the prescribed conditions. This resulted in excess grant of set off of tax of Rs. 1.34 crore including interest of Rs. 28.12 lakh and penalty of Rs. 32.10 lakh.

After the cases were pointed out (between June 2008 and January 2009), the department accepted the audit observations involving Rs. 6.29 lakh in the cases of eight dealers and recovered Rs. 3 lakh from three dealers. Reply in the remaining cases have not been received (November 2009).

The matter was reported to Government (May 2009); their reply has not been received (November 2009).

**2.9.2** Rule 45 of the GST Rules provides that the dealer who has paid tax on the purchase of goods, is allowed set off from the tax payable on interstate sale of such goods provided that the assessee proves to the satisfaction of the Commissioner that the relevant tax has been paid or became payable on an earlier transaction on the same goods and produces a certificate issued by the dealer from whom the goods were purchased.

During test check of the records of two offices[44] in February and March 2008, it was noticed from the assessment of two dealers for the assessment period 2001-02 and 2002-03 that the AOs allowed excess set off without ascertaining the fulfillment of the prescribed condition. This resulted in incorrect/excess grant of set off amounting to Rs. 78.53 lakh.

This was brought to the notice of the department (June 2008) and the Government (May 2009); their reply has not been received (November 2009).

**2.9.3** Rule 44 of the GST Rules provides that the dealer who had paid tax on the purchase of goods is eligible for set off from the tax payable on the interstate sale of such goods. The Rules further provide that no set off shall be granted where the vendor who has sold the goods to the claimant has not credited it in the Government treasury, the amount of tax on his sales for which set off is claimed. The department has also issued instructions in June 2004 to verify the payment of tax before grant of set off.

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[43] ACCT: 11, 13, 18, 19, 20 and 22 Ahmedabad, 2 Anand, Dhoraji, Gondal, 1 Jamnagar, Mehsana, 3 Rajkot and Surendranagar.
DCCT: Corp cell-1 Ahmedabad, Jamnagar, Mehsana, Nadiad and Surat.
CTO : Dhrangadhra.

[44] ACCT: 3 Ahmedabad and 1 Surendranagar.

During test check of the records of four offices[45] between January and July 2008, it was noticed from the assessments of four dealers for the period between 2000-01 and 2002-03 that the AOs allowed excess set off of Rs. 18.95 lakh without obtaining any proof of the tax having been paid by the selling dealers. This resulted in excess grant of set off of Rs. 36.78 lakh including interest of Rs. 9.02 lakh and penalty of Rs. 8.81 lakh.

After the cases were pointed out (between June and November 2008), the department accepted (March 2009) the audit observations involving Rs. 57,200 and recovered the amount in the case of one dealer. Reply in the remaining cases have not been received (November 2009).

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

## 2.10 Non/short levy of interest

Section 47(4A) of the GST Act provides that if a dealer does not pay the amount of tax within the prescribed period and if the amount of tax assessed or reassessed exceeds the amount of tax already paid by more than 10 *per cent,* simple interest at the rate of 24 *per cent* per annum for the period upto 31 August 2001 and at 18 *per cent* per annum there after is leviable on the amount of tax remaining unpaid for the period of default. The Gujarat Motor Spirit Cess Act, 2001 and the Rules made thereunder provide for the levy of simple interest at the rate of 24 *per cent* per annum on the amount of cess remaining unpaid for the period of default. By virtue of Section 9(2) of the CST Act, the above provisions apply to the assessments under the CST Act as well.

During test check of the records of seven offices[46] between May 2006 and October 2008, it was noticed from the assessment of eight dealers for the period between 1995-96 and 2005-06 that the AOs either did not levy interest or levied it short on the amount of unpaid tax. This resulted in non/short levy of interest of Rs. 32.07 lakh.

After the cases were pointed out (between June 2008 and January 2009), the department accepted the audit observations involving Rs. 30.52 lakh in the cases of five dealers. A report on recovery and reply in the remaining cases have not been received (November 2009).

The matter was reported to the Government (April 2009); their reply has not been received (October 2009).

## 2.11 Non/short levy of penalty

Section 45(6) of the GST Act provides that where the amount of tax assessed or reassessed exceeds the amount of tax paid with the returns by a dealer by more than 25 *per cent*, penalty not exceeding one and half times of the difference shall be levied. Further, the Commissioner *vide* public circular dated 3 June 1992 has laid down slab rates for levy of penalty. By virtue of

[45] ACCT: 7, 15, 23 Ahmedabad and Bharuch.

[46] DCCT: Petro I Ahmedabad, 7 Gandhinagar and Nadiad.
ACCT: 7 Ahmedabad, Godhra and Vyara.
CTO : Petlad.

Section 9(2) of the CST Act, the above provisions apply to the assessments under the CST Act as well.

During test check of the records of 17 offices[47], between January 2006 and October 2008, it was noticed from the assessments of 23 dealers for the assessment periods between 1994-95 and 2003-04 that the difference between tax assessed and tax paid with returns exceeded by 25 *per cent* of the amount of tax paid. However, the AOs while finalising the assessments between March 2005 and October 2008, did not levy penalty in terms of Commissioner's circular of June 1992. This resulted in non/short levy of penalty of Rs. 1.47 crore.

After the cases were pointed out (between June 2008 and January 2009), the department accepted the audit observations involving Rs. 37.34 lakh in the cases of 11 dealers and recovered Rs. 1.33 lakh from one dealer. A report on the recovery of the balance amount and reply in the remaining cases have not been received (November 2009).

The matter was reported to Government (April 2009); their reply has not been received (November 2009).

## 2.12 Application of incorrect rate of tax

The GST Act provides for levy of tax at the rates as provided in the schedules to the Act, However, where the goods are not covered under any specific entry of the schedule, rate of tax given for residuary entry is applicable.

During test check of the records of 14 offices[48] between December 2006 and September 2008, it was noticed from the assessments of 14 dealers for the period between 2001-02 and 2005-06 that the AOs taxed turnover of Rs. 13.35 crore of various goods at incorrect rates. This resulted in short levy of tax of Rs. 1.01 crore including interest of Rs. 23.04 lakh and penalty of Rs. 28.11 lakh.

After the cases were pointed out (between April 2007 and December 2008), the department accepted audit observations involving Rs. 2.36 lakh in the cases of three dealers and recovered Rs. 35,444 from one dealer. A report on the recovery of the balance amount and reply in the remaining cases have not been received (November 2009).

The matter was reported to the Government (May 2009); their reply has not been received (November 2009).

## 2.13 Non/short levy of tax on works contract

Section 55 A of the GST Act provides that a dealer engaged in works contract may opt to pay, in lieu of tax, a lump sum amount by way of composition, at the rate fixed by the Government from time to time on the total value of the

[47] ACCT: 4, 11 and 20 Ahmedabad, 2 Anand, Bharuch, Dahod, Deesa, Gandhidham, Godhara, 1 Nadiad, 4 Rajkot, 12 Surat, 1 Vadodara and Vyara.
DCCT: 24 Jamnagar and 15 Surat.
CTO: Petlad.

[48] ACCT : 4, 9, 11, 18 and 23 Ahmedabad, Bharuch, 1, 10 and 12 Surat and 1 Vapi.
DCCT : 2 Ahmedabad, Corp. Cell-3 Ahmedabad and 17 Surat.
CTO: Khambhat.

contract. As per judicial decisions[49], the property of material such as chemicals and dyes used in the process of dyeing and printing are passed on to the fabrics of the customers and such passing of property of material is a deemed sale and tax is leviable on such material.

During test check of the records of six offices[50] between May 2006 and September 2008, it was noticed from the assessments of 11 dealers for the period 2000-01 and 2005-06 that in case of three dealers, the AOs allowed composition tax at incorrect rates. In case of eight dealers, the AOs did not levy composition tax on works contract of dyeing and printing though the tax was leviable in view of the judicial decisions. This resulted in non/short levy of composition tax of Rs. 11.05 crore including interest of Rs. 2.69 crore and penalty of Rs. 3.06 crore.

After the cases were pointed out (between May 2006 and September 2008), the department accepted the audit observations involving Rs. 54.73 lakh in five cases. A report on recovery in these cases and reply in the remaining cases have not been received (November 2009).

The matter was reported to Government (April 2009); their reply has not been received (November 2009).

## 2.14 Turnover escaping assessment

According to Section 2(29) of the GST Act, `sale price` includes the amount of valuable consideration paid or payable to a dealer for any sale. Further, if the Commissioner has reason to believe that any turnover of sales of any goods chargeable to tax has escaped assessment; he may reassess the amount of tax due from such dealer within the time prescribed and recover the dues on such turnover.

During test check of the records of six offices[51] between May 2006 and September 2008, it was noticed from the assessments of six dealers for the periods between 2001-02 and 2005-06 that the AOs did not include the amount of valuable consideration forming part of 'sale price'. This resulted in short realisation of tax of Rs. 52.96 lakh including interest of Rs. 4.04 lakh and penalty of Rs. 8.25 lakh.

After the cases were pointed out (between October and December 2008), the department accepted the audit observations involving Rs. 15.65 lakh in case of two dealers and recovered Rs. 6.34 lakh in case of one dealer. A report on the recovery and reply in the remaining cases have not been received (November 2009).

The matter was reported to Government (April 2009); their reply has not been received (November 2009).

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49 M/s Mathu Shree Textile Industries Ltd. (132-STC-539).
M/s Teaktex processing Complex Ltd. (136-STC-435).
M/s Bijoy Processing Industries. (92-STC-503).

50 ACCT-9, 20 Ahmedabad, Jetpur, 12 Surat, 1 Vadodara.
DCCT Corp Cell-1 Ahmedabad.

51 ACCT: 13, 20 Ahmedabad, Anand and Godhra.
DCCT: Junagadh and Mehsana.

## 2.15 Incorrect allowance of deduction from sales

Resale for the purpose of Sections 7, 8, 15 and 19B of the GST Act, means a sale of purchased goods in the same form in which they were purchased or without doing anything to them which amounts to or results in manufacture. Section 41(3) of the GST Act further provides that the AO after considering all the evidences which may be produced in support of the declaration made by the dealer, shall assess the amount of tax due from the dealer. Further, the Commissioner issued instructions on 15 April 2004 that the copies of trading account, profit and loss account, audit report, registration details of selling dealers *etc*. shall be kept in the assessment record.

During test check of the records of 22 offices[52], it was noticed between October 2007 and January 2009 from the assessments of 123 dealers finalised between August 2004 and August 2007 that 121 dealers made purchases from registered dealers (RD) and claimed deduction as resale though no evidence in support of RD purchases were available on record. In the assessments of other two dealers, the AOs allowed deduction as resale though the dealer had made purchase from unregistered dealers (URD) in one case and the purchase was made from outside Gujarat State (OGS) in other case. The AOs failed to observe the provisions of the Act/Rules and instructions issued by the Commissioner. This also indicates that there was no internal control mechanism to watch compliance of the instructions issued by the department. Total tax involved worked out to Rs. 73.97 crore.

After the cases were pointed out (between May 2008 and January 2009), the department accepted (between March and June 2009) audit observations involving Rs. 1.38 crore in five cases and stated that necessary evidence in support of RD purchases have been obtained and kept on record after verification. While the relevant records are yet to be verified by audit, the reply does not highlight the reasons for allowing deduction without supporting documents which is mandatory as per the order of the Commissioner. Reply in the remaining cases has not been received (November 2009).

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

## 2.16 Incorrect allowance of deduction against forms

**2.16.1** Section 13(A) (ii) of the GST Act provides that the deduction from turnover can be allowed for sale against form 17-B[53] for the goods specified in schedule II B. Section 19-B of the GST Act provides that the deduction from turnover can be allowed for sale against form 24-B[54] for sale of oil-seeds. Section 41(3) of the GST Act further provides that the AO after considering

[52] DCCT: 2 Ahmedabad, Corp cell -I Ahmedabad, 24 Jamnagar, 21 Junagadh and 8 Mehsana.
ACCT: 3, 5, 9, 19 Ahmedabad, Ankleshwar, Bharuch, Deesa, Gandhidham, 2 Junagadh, Mehsana, 3 Rajkot, 1, 2, 3, 6 Surat, Unja and 1 Vapi.

[53] Form 17-B Certificate by a Licenced Dealer purchasing goods for the purpose of clause (A) (ii) (a) of Section 13 of the GST Act.

[54] Form 24-B Certificate by a registered dealer purchasing oilseeds for the purpose of clause (i) of Sub-Section (1) of Section 19 B of the GST Act.

all the evidence in support of declaration made by the dealer shall assess the amount of tax due from the dealer.

During test check of the records of two offices[55] in December 2007 and August 2008, it was noticed from the assessments of two dealers for the period between 2004-05 and 2005-06 that the AOs incorrectly allowed deduction either without ascertaining the genuineness of the forms placed on record or without production of the forms. This resulted in non-levy of tax of Rs. 1.68 crore including interest of Rs. 23.06 lakh and penalty of Rs. 44.59 lakh.

After the cases were pointed out (between May and November 2008), the department accepted audit observation of Rs. 4.11 lakh and stated (July 2009) that the counter foils of the forms has been checked and kept on record in case of one dealer. While the counter foils of forms are yet to be verified by audit, the reply does not highlight the reasons for allowing deduction of sales without production of prescribed declarations. Reply in the remaining cases has not been received (November 2009).

The matter was reported to Government (May 2009); their reply has not been received (November 2009).

**2.16.2** The GST Act provides that the sales made on certain declarations are allowed without payment of tax subject to fulfillment of the prescribed conditions. Sales of prohibited goods against declaration in Form 19 are not permissible.

During test check of the records of seven offices[56] between January and September 2008, it was noticed from the assessment of nine dealers for the period between 1996-97 and 2005-06 that the AOs either incorrectly allowed sale of prohibited goods made against declaration in Form 19 or allowed it on invalid forms/without forms as deduction from the sales turnover. This resulted in non-levy of tax of Rs. 46.83 lakh including interest of Rs. 12.30 lakh and penalty of Rs. 3.64 lakh.

After the cases were pointed out (between May and November 2008), the department accepted audit observations of Rs. 33.23 lakh in case of three dealers and recovered Rs. 1.79 lakh in case of one dealer. A report on recovery on the remaining cases and reply in remaining cases had not been received (November 2009).

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

## 2.17 Non/short levy of additional tax

Section 4A of the GST Act provides that every dealer liable to pay the tax on the sale or purchase of the goods under Section 3 or Section 3A of the Act is liable to pay additional tax at the rate of 10 *per cent* on such tax with effect from 1 April 2000.

[55] ACCT: Porbandar and DCCT 11 Vadadora.

[56] ACCT: 2 Anand, Gandhidham,7 Surat and 1 Vadodara.
DCCT: 24 Jamnagar, 17 Surat and 18 Valsad.

During test check of the records of three offices[57] between December 2005 and July 2008, it was noticed from four assessments of three dealers (three assessments under the CST Act and one under the GST Act) for the period between 2000-01 and 2002-03 that the AOs either did not levy additional tax or levied it short. This resulted in non/short levy of Rs. 10.78 lakh including interest of Rs. 3.40 lakh and penalty of Rs. 32,157.

After the cases were pointed out (between October 2008 and January 2009), the department accepted the audit observations involving Rs. 9.93 lakh in case of two dealers. A report on recovery in these cases and reply in the remaining case had not been received (November 2009).

The matter was reported to the Government (April 2009); their reply has not been received (November 2009).

## 2.18 Non-levy of tax on sale of trademark

Section 3 of the GST Act, provides that subject to the other provisions contained in the Act, every dealer is liable to pay sales tax under the Act on all sales made by him.

During scrutiny of the records of DCCT-3, Ahmedabad in December 2007, it was noticed from the assessment of a dealer for the period 2000-01 that the AO did not levy the tax on the sale of trademark on the ground that the sale of trademark was deemed sale under Section 3A of the GST Act and the agreement for the sale was executed in New Delhi. As the dealer had agreed for outright sale of trademark and not the right to use the trademark, tax was leviable under Section 3 of the Act and *situs* of the sale would be the place where the contract of sale was executed. Further, the head office as well as the corporate office of the dealer is situated in Gujarat. The AO did not collect and place on record the evidence to prove that the sale agreement was executed in the other state and tax liability was discharged. This resulted in short realisation of tax of Rs. 2.77 crore including interest of Rs. 71.67 lakh and penalty of Rs. 76.82 lakh.

The matter of non-levy of tax on sales of trademark was brought to the notice of the department (June 2008) and the Government (May 2009); their reply has not been received (November 2009).

## 2.19 Non-maintenance of 'P' register

Section 42 of the GST Act provides that the order of assessment can not be passed at any time after the expiry of three years from the end of the year in which the last return is filed. The department, vide its circular dated 17 March 1997 prescribed various registers. Of these, Register No. 11 i.e. 'P' register is important for assessment and collection of tax. Dealerwise information on the status of assessment is noted in the register. The AO shall enter alphabet 'P' against the period of pending assessment of each dealer on completion of the assessment year. On completion of the assessment, the AO shall close the entry in the register by indicating date of assessment and put his signature.

[57] ACCT: 2-Surat, 1-Vadodara and Vyara.

During test check of the records of 10 offices[58] between December 2007 and July 2008, it was noticed that 'P' register of the AOs were not closed and summarised properly. Further scrutiny of the registers disclosed that the AOs did not complete assessments in 7,669 cases and those assessments were barred by law of limitation. Audit could not quantify the possible loss of revenue to the Government due to non-availability of complete records.

This was brought to the notice of the department (between February and November 2008) and to the Government (May 2009); their reply has not been received (November 2009).

[58] ACCT: 3 and 15 Ahmedabad, Billimora, 24 Gandhinagar, 1 and 3 Jamnagar, Mehsana, 1 Nadiad, 2 Surat and 2 Vadodara .