CHAPTER-II
EXECUTIVE SUMMARY

Results of audit

We test checked the records of 89 offices relating to Commercial Tax Offices during 2013-14 and noticed underassessment of tax and other irregularities involving ₹ 446.03 crore in 688 cases.

During the course of the year, the Department accepted underassessment and other irregularities of ₹ 30.70 crore in 221 cases and recovered ₹ 1.60 crore in 98 cases.

What we have highlighted in this Chapter

A Performance Audit on "**Return Scrutiny and Self Assessment on VAT"** revealed the following:

- The Department had not made any provision by way of providing space/column in form 214A/215A and 202A for furnishing the details of the goods purchased and nature of contract respectively. Thus, it could not be ascertained whether the goods were purchased from registered dealers and tax was paid correctly.
- The Department had not evolved any mechanism at higher level to monitor initial scrutiny of periodical and annual returns by the Assessing Authority where the cases of the dealers were accepted as 'deemed to have been assessed' under Section 33 of the VAT Act.
- In 1,082 cases, though inter-State sales were not supported by statutory declaration forms, tax was paid by the dealer at concessional rate resulting in short levy of tax of ₹ 277.62 crore.
- In 16 offices, misclassification of goods and incorrect determination of taxable turnover resulted in short realisation of tax of ₹ 45.95 crore in 79 cases.
- In the inter-State sales valued at ₹ 12.61 crore, the title of the goods had already passed on to the ultimate buyer before the movement of goods and the dealers were not entitled to concessional rate of tax, but these dealers incorrectly claimed and paid tax at concessional rate. This resulted in short recovery of tax of ₹ 1.31 crore.
- In respect of the 18 offices it was noticed that in 1,490 cases, either ITC was carried forward/claimed in excess of that shown in the returns or returns were not filed. Though provisional assessment was required under the Act in these cases, it was not done.

- Department had selected only 11 *per cent* cases of dealers for audit assessments. In 16,071 cases selected for audit assessment were having turnover less than ₹ one crore while 4,306 cases having turnover in excess of ₹ five crore were accepted as self assessed without scrutiny of the assessment. Though 1,106 cases were required to be selected for audit assessment, these were not selected and six cases selected for audit assessment were not finalised.
- Ten assessing authorities furnished a nil report relating to audit of self assessments done by the internal audit wing (IAW) of the Department, while in other five offices, audit of only 384 cases out of total 2.09 lakh cases was done by the IAW, despite instructions from the Department for audit of 5 *per cent* of the cases.
- In 16 offices, VAT audit reports and certified accounts in 329 cases were not furnished even after a lapse of ten months from the end of financial year. The assessing officers had not monitored the submission of these VAT audit reports as such the correctness of the tax payable by the dealers could not be ascertained.

In 14 cases, there was short levy of VAT/ CST of ₹ 15.98 crore including interest of ₹ 4.72 crore and penalty of ₹ 4.28 crore due to underassessment/turnover escaping assessment.

The AA had allowed proportionate ITC of ₹ 54.76 lakh to four dealers on purchase of sugarcane/plant and machinery against the production of molasses which is a by-product of sugar (a tax free item).

In three cases, the AA had allowed claim towards RR sale though the original seller had consigned goods directly to the ultimate buyer i.e. the goods were appropriated to their ultimate buyer before the movement of goods commenced resulting in non-levy of tax of ₹ 3.73 crore, including interest of ₹ 0.86 crore and penalty of ₹ 0.05 crore.

Misclassification by the AA had resulted in short levy of VAT of ₹ 1.05 crore, including interest of ₹ 0.24 crore and penalty of ₹ 0.49 crore in three cases.

The AA did not levy Entry Tax on motor vehicles in four cases resulting in non-levy of entry tax of ₹ 60.56 lakh, including penalty of ₹ 27.50 lakh.

CHAPTER-II
VALUE ADDED TAX/SALES TAX

2.1 Tax administration

Value Added Tax laws and rules framed thereunder are administered at the Government level by the Additional Chief Secretary (Finance). The Commissioner of Commercial Tax (CCT) is the head of the Commercial Tax Department (CTD), who is assisted by one Special CCT, four Additional CCTs, 11 Joint CCTs, 23 Deputy CCTs, 103 Assistant CCTs and Commercial Tax Officers (CTOs). They are assisted by Commercial Tax Inspectors and other allied staff for administering the relevant Tax laws and rules.

2.2 Working of Internal Audit Wing

The Department has an Internal Audit Wing under the charge of the Joint CCT (Audit) who is assisted by seven Deputy CCTs (Audit). This wing was to conduct test check of cases of assessment as per the approved action plan and in accordance with the criteria decided for the purpose so as to ensure adherence to the provisions of the Act and Rules as well as Departmental instructions issued from time to time.

The Deputy CCT (Audit) had monthly target of 125 assessment cases. During the year 2013-14, the seven Deputy CCTs (Audit) audited 3,724 cases as against yearly target of 10,500 cases. No audit was done in Division-7 whereas only 19 and 33 cases were audited in Division-4 and Division-6 respectively. Overall, there was shortfall of 65 *per cent* in terms of target set *vis-à-vis* achievement thereof.

Thus, there was decrease in achievement of target set for internal audit from 52 *per cent* as reported in Audit Report for the year 2012-13 to 35 *per cent* in 2013-14.

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

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

2.3 Results of audit

In 2013-14, we test checked assessment cases (VAT/Sales Tax) and other records of 89 offices. In these offices, 29,027 assessment cases were due for audit in 2013-14. Out of these, the Department produced 27,904 cases, while 1,123 cases remained outstanding at the end of the year. The Department provided partial details of turnover and revenue involved in the unproduced cases. As per information provided by the Department, the turnover involved in 876 cases was of ₹ 16,270.31 crore whereas tax involved was of ₹ 72.92 crore (454 cases). The test check of the above mentioned cases as produced by the Department showed underassessment of tax and other irregularities involving ₹ 446.03 crore in 688 cases, which fall under the following categories as given below:

(₹ in crore)

Sl. No.	Category	No. of cases	Amount
1	Performance Audit on "Return Scrutiny and Self Assessment on VAT"	1	337.38
2	Incorrect rate of tax and mistake in computation	26	19.43
3	Incorrect grant of set-off	4	0.09
4	Incorrect concession/exemption	10	0.02
5	Non/short levy of interest and penalty	120	14.98
6	Other irregularities	85	15.10
7	Irregular/excess grant of Input Tax Credit	179	17.49
8	Non/short levy of tax	237	38.83
9	Non/short levy of Purchase Tax	7	2.41
10	Profession Tax and Expenditure Audit	19	0.30
	Total	**688**	**446.03**

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 30.70 crore in 221 cases, which were pointed out in audit during 2013-14 and earlier years. An amount of ₹ 1.60 crore was recovered in 98 cases during the year 2013-14.

A Performance Audit on "Return Scrutiny and Self Assessment on VAT" involving ₹ 337.38 crore and a few illustrative cases involving ₹ 33.77 crore are discussed in following paragraphs.

2.4 Performance Audit on "Return Scrutiny and Self Assessment on VAT"

Highlights

- The Department had not made any provision by way of providing space/column in form 214A/215A and 202A for furnishing the details of the goods purchased and nature of contract respectively. Thus, it could not be ascertained whether the goods were purchased from registered dealers and tax was paid correctly.

(Paragraph 2.4.9)

- The Department had not evolved any mechanism at higher level to monitor initial scrutiny of periodical and annual returns by the Assessing Authority where the cases of the dealers were accepted as 'deemed to have been assessed' under Section 33 of the VAT Act.

(Paragraph 2.4.11)

- In 1,082 cases, though inter-State sales were not supported by statutory declaration forms, tax was paid by the dealer at concessional rate resulting in short levy of tax of ₹ 277.62 crore.

(Paragraph 2.4.12)

- In 16 offices, misclassification of goods and incorrect determination of taxable turnover resulted in short realisation of tax of ₹ 45.95 crore in 79 cases.

(Paragraph 2.4.13 and 2.4.14)

- In the inter-State sales valued at ₹ 12.61 crore, the title of the goods had already passed on to the ultimate buyer before the movement of goods and the dealers were not entitled to concessional rate of tax, but these dealers incorrectly claimed and paid tax at concessional rate. This resulted in short recovery of tax of ₹ 1.31 crore.

(Paragraph 2.4.17)

- In respect of the 18 offices it was noticed that in 1,490 cases, either ITC was carried forward/claimed in excess of that shown in the returns or returns were not filed. Though provisional assessment was required under the Act in these cases, it was not done.

(Paragraph 2.4.18)

- Department had selected only 11 *per cent* cases of dealers for audit assessments. In 16,071 cases selected for audit assessment were having turnover less than ₹ one crore while 4,306 cases having turn over in excess of ₹ five crore were accepted as self assessed without scrutiny of the assessment. Though 1,106 cases were required to be selected for audit assessment, these were not selected and six cases selected for audit assessment were not finalised.

(Paragraph 2.4.19)

- Ten assessing authorities furnished a nil report relating to audit of self assessments done by the internal audit wing (IAW) of the Department, while in other five offices, audit of only 384 cases out of total 2.09 lakh cases was done by the IAW, despite instructions from the Department for audit of 5 *per cent* of the cases.

(Paragraph 2.4.20)

- In 16 offices, VAT audit reports and certified accounts in 329 cases were not furnished even after a lapse of ten months from the end of financial year. The assessing officers had not monitored the submission of these VAT audit reports as such the correctness of the tax payable by the dealers could not be ascertained.

(Paragraph 2.4.21)

2.4.1 Introduction

The Gujarat Value Added Tax Act, 2003 (GVAT Act) and the Gujarat Value Added Tax Rules, 2006 (GVAT Rules) framed thereunder govern the levy, assessment and collection of value added tax (VAT) in the State. Under GVAT Act, tax is levied at each stage of sales with allowance of credit of tax paid on purchases (called input tax credit) to nullify cascading effect of multiple taxation. Thus all registered dealers are liable to pay tax only on each value addition. The GVAT Act is administered by the Commercial Tax Department (Department) of the Government of Gujarat.

The GVAT Act stipulates the filing of periodical returns, their scrutiny, filing of annual return in the form of self assessment as well as audit assessment by the Department to ascertain the correctness of levy and payment of tax. The relevant provisions in the GVAT Act are as under:

Section 29	Each registered dealer shall furnish monthly/quarterly returns[1] of the goods in respect of his business and transactions thereof within the period of 30 days from the end of the month.
Section 32	All returns shall be scrutinised and in certain cases (a) where input tax credit (ITC) is carried forward for subsequent returns, (b) refund is claimed by dealers, (c) net tax payable is nil or (d) returns are not furnished within the prescribed time, provisional assessment shall be made by the assessing officer.
Section 33	• Annual return in the form of self assessment accompanied by supporting documents, such as statutory forms and audited accounts in support of claims and concessions shall be furnished by the dealers within a period of nine months from the end of the financial year. • The annual accounts containing profit and loss accounts and balance-sheet along with annual returns shall be uploaded on the website of the Department where annual turnover exceeds ₹ one crore. • The cases of dealers shall be accepted as deemed to have been assessed where the Commissioner is satisfied with the correctness and completeness of periodical returns and annual return.
Section 34	Cases of dealers shall be subject to audit assessment where the Commissioner is not satisfied with the bonafides of any claim of tax credit, exemption, refund, deduction, concession, rebate or genuineness of any declaration or evidence furnished in support thereof.

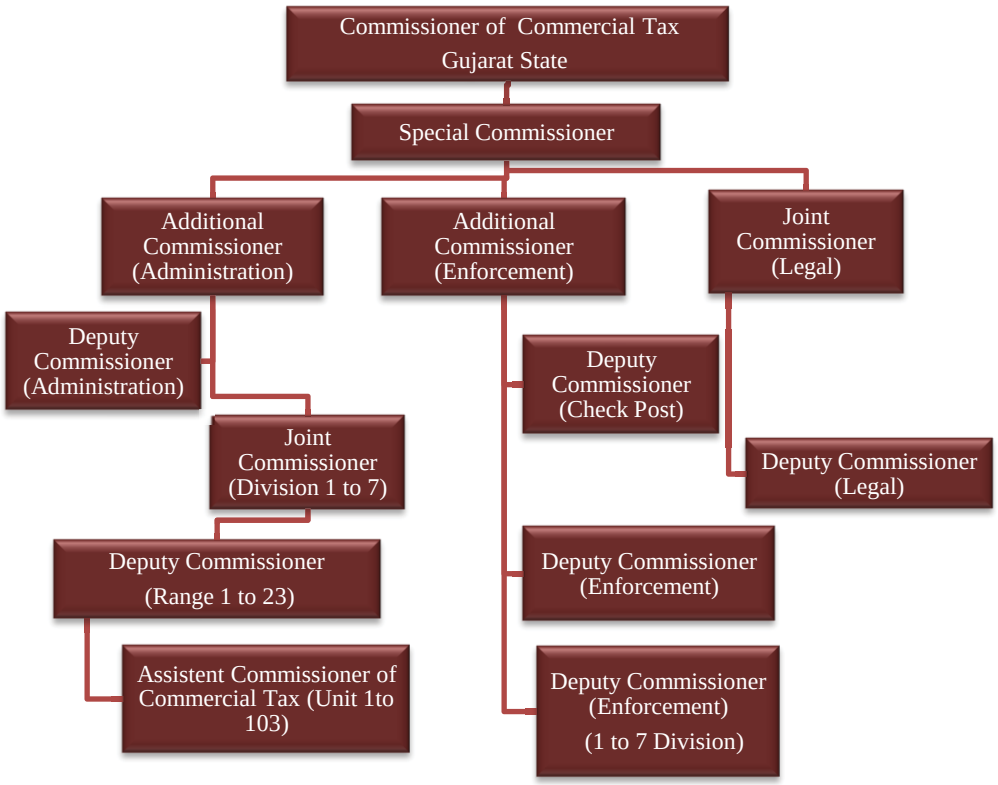
[1] All dealers shall furnish monthly return excluding the dealers where total amount of tax payable does not exceed ₹ 60,000 or involved in trading within the State or granted permission for lump-sum tax.

2.4.2 Reasons for selection of the topic

We noticed that the percentage of the cases selected for audit assessment by the Department ranged from 9 *per cent* to 14 *per cent* during the period 2008-09 to 2010-11. Thus, the balance cases were self assessment cases deemed to have been assessed. During our compliance audit, we also observed a large number of discrepancies in the cases accepted as deemed to have been assessed. In the background of discrepancies noticed by us and a large number of self assessment cases deemed to have been assessed, we considered it appropriate to conduct Performance Audit on "Return Scrutiny and Self Assessment on VAT".

2.4.3 Organisational set-up

The Value Added Tax is administered by the Commercial Tax Department (Department). The Commercial Tax Department of Gujarat functions under the control and supervision of the Additional Chief Secretary, Finance Department, Government of Gujarat. The Department is headed by Commissioner of Commercial Tax. He is assisted by a Special Commissioner and two other Additional Commissioners. The Department has 7 divisions, 23 range offices and 103 unit offices. The following organisational chart explains the set-up of the Department.



2.4.4 Audit Objectives

We conducted the Performance Audit with a view to ascertain whether:

- the provisions of the Act, Rules, notifications and instructions issued by the Department relating to return scrutiny and self assessment were adequate to safeguard the revenue interests of the State and were being followed by the Department;
- the task generation (selection of cases) was done efficiently and effectively so as to cover high risk cases to seek assurance about their correctness; and
- the internal controls of the Department were adequate and effective in scrutiny of returns and self assessment cases.

2.4.5 Audit Criteria

The audit criteria are derived from the following Acts and also the Rules made thereunder to govern the process of scrutiny of returns, challans and acceptance of self assessment made by the dealer:

- Gujarat Value Added Tax Act, 2003;
- Gujarat Value Added Tax Rules, 2006;
- Central Sales Tax Act, 1956; and
- The Notifications/ Circulars/ Orders issued by the Department/ Government.

2.4.6 Scope of Audit and Methodology

The Performance Audit conducted during August 2013 to June 2014 covers the performance of the Department relating to return scrutiny of self assessment cases for the financial year 2008-09 to 2010-11.

2.4.6.1 In a meeting held between the Accountant General and the Commissioner of Commercial Tax on 19 July 2013, the Department expressed their inability to produce the records for the year 2006-07 and 2007-08. Further, the Department stated that the tasks were not generated for the year 2011-12 onwards and as such periodicity of the review was limited to 2008-09 to 2010-11. Thereafter, an Entry Conference was held on 27 August 2013 with the Government/Department. The Principal Secretary, Finance Department, Principal Secretary, Economic Affairs and the Commissioner of Commercial Tax along with the other officers of the Department attended the meeting. The objectives and methodology to be adopted in the Performance Audit was explained to them. The methodology consisted scrutiny of return files, annual returns in the form of self assessment, VAT audit reports along with certified accounts furnished by the dealers, registration files (RC files), etc. in respect of selected unit offices.

2.4.6.2 The selection of units for audit was done based on the maximum revenue collected by the units. We selected 18 Unit offices[2] (i.e. *Ghataks*) each headed by an Assistant Commissioner of Commercial Tax (ACCT), having 42.29 *per cent* share of revenue in the total collection of VAT.

2.4.6.3 The Department in respect of these 18 ACCT offices, accepted 2,08,805 cases out of 2,41,882 cases as deemed to have been assessed under self assessment during the financial year 2008-09 to 2010-11. We had called for the production of details and records of all the 2,08,805 cases accepted by the Department as deemed to have been assessed. But, the Department could produce the details of 57,324 cases only. The selection of the cases for detailed audit scrutiny was made from these 57,324 cases.

The criteria for selection of cases for detailed scrutiny in these 18 offices were as under:

Particulars	Percentage of selection	Number of Cases selected
Cases whose turnover exceeds ₹ 7.5 crore	100	1,710
Cases whose turnover was between ₹ 5 crore and ₹ 7.5 crore	50	889
Cases whose turnover was between ₹ 3 crore and ₹ 5 crore	30	1,547
Cases whose turnover was between ₹ 1 crore and ₹ 3 crore	20	3,217
Cases whose turnover was below ₹ 1 crore	10	387
Total		**7,750**

2.4.7 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation extended by the Department in completing the audit. The Performance Audit report was sent to the Government in August 2014 for their response. The report was discussed with the Department in the Exit Conference held on 10 November 2014. The replies received in the Exit Conference and at other point of time have been appropriately commented in the relevant paragraphs of the Report.

2.4.8 Audit Findings

We observed that in the present GVAT Act/Rules there is inadequate provisions to protect leakage of revenue in self assessment cases. There are absence of provisions for:

[2] ACCT - 5, 9, 11, 21, 22, 23 Ahmedabad, 57 Ankleshwar, 56 Bharuch, 77 Bhavnagar, 104 Gandhidham, 24 Gandhinagar, 25 Kalol, 94 Rajkot, 58 Surat, 41, 45 Vadodara, 74, 75 Vapi

(a) furnishing details of payment of tax on purchases of goods used in lump-sum works contract;
(b) prescribed application form regarding nature of lump-sum works contract; and
(c) uploading of accounts and HSN codes on VATIS.

This has affected successful implementation of VAT by hampering cross verification and transparency. These issues are discussed in subsequent paragraphs.

2.4.9 Deficiency in Forms prescribed in GVAT Act

Absence of provisions for furnishing details of payment of tax on purchase of goods and nature of goods used in lump-sum works contract

2.4.9.1 Under Section 14A of the GVAT Act read with Rule 28(8)(b)(vi-a)(2) of GVAT Rules and Notification dated 17.08.2006, a dealer engaged in execution of works contract may be permitted to pay at his option a lump-sum tax on total value of works contract by way of composition at the rate of *0.6 per cent* for civil works contract and at two *per cent* for the other works in lieu of amount of tax leviable thereon. No input tax credit is admissible to such dealers. The dealers in these cases have to pay tax on purchases made by them for execution of the works contract as per above mentioned rule. Under Rule 19(3), every such dealer shall furnish periodical return in Form-202, appended there with a list of purchases from dealers in Form-202A.

We scrutinised the said forms and observed that the details of purchases from registered dealers against tax invoices are furnished in Form-202A appended to Form-202. However, the Form-202A did not contain any column or place showing the details of purchases of goods from registered dealers against retail invoices. In absence of such details it could not be verified whether the goods were purchased from registered dealers or not and tax payable on goods used in execution of such works contract was actually paid by the contractors or not. A few instances are mentioned below:

- In nine self assessment cases pertaining to five offices[3], goods valued at ₹ 67.01 crore were utilised in the execution of the lump-sum works contract. It could not be ascertained from whom such goods were purchased and whether minimum tax payable of ₹ 3.19 crore[4] was paid or not.

- Section 14A of the Act provides that goods purchased in the course of inter-State trade or commerce/import shall not be used in the execution of lump-sum works-contract and tax at applicable rate under Section 7 of the Act shall be payable on all the goods used in the execution of works contract.

[3] ACCT-5 Ahmedabad, 57 Ankleshwar, 104 Gandhidham, 24 Gandhinagar and 41 Vadodara
[4] (₹ 67.01 crore X 5)/105 (5 *per cent* is the minimum rate of tax in Gujarat in respect of execution of works contract)

In two cases of two offices[5] we observed from the VAT Audit Reports attached with their returns that in execution of lump-sum works contract, the dealers had used the goods valued at ₹ 8.70 crore which were purchased in the course of inter-State trade or commerce/import. As such, the dealers were liable to pay tax of ₹ 1.11 crore on the deemed sale turnover of ₹ 23.22 crore, but the lump-sum tax of ₹ 9.11 lakh was paid treating it as a part of lump-sum contract. This resulted in short levy of tax of ₹ 1.01 crore, in addition to interest of ₹ 64.14 lakh and penalty of ₹ 86.77 lakh leviable thereon.

The facts indicate that the tax payable on goods used in the lump-sum works contract cannot be ascertained due to absence of space/column to this effect in the prescribed Form-202A.

2.4.9.2 Rule 28(8)(bb) of GVAT Rules provides that a works contract dealer shall apply in Form 214A for the permission to pay a lump-sum tax by way of composition for ongoing as well as new works contracts to be executed. Such permission shall be granted within 15 days in Form 215A by the Department.

We scrutinised the said Forms and observed that there was no column/space in the application form for indicating the nature of the works contract. There are mainly two categories of contracts viz. civil contracts and other contracts. Civil contracts relate to construction of buildings, roads, bridges, dams, mining, airports, etc. where dealers have the option for payment of lump-sum tax leviable at the rate of 0.6 *per cent* of the total value of contract. All other contractors are liable to pay lump-sum tax at the rate of two *per cent* of the total value of the works contract. In the absence of depiction of the nature of works contract in the permission form, the Department cannot cross-verify the correctness of the application of rate of tax.

We observed that in two self assessment cases[6], the contractors were exclusively dealing with the work of painting, electrification and interior cum installation. The nature of the contract indicated that the dealers were liable to pay tax at the rate of two *per cent* as they did not fall within the category of civil contracts. The dealers had incorrectly paid the tax at the rate of 0.6 *per cent* on the total receipt of the contract of ₹ 26.51 crore. This resulted in short levy of tax of ₹ 37.12 lakh apart from interest of ₹ 19.66 lakh and penalty of ₹ 55.68 lakh leviable thereon.

It is recommended that the Government may consider inserting space/column in the prescribed Form-202A for furnishing the details of all purchases and in Form-214A/215A for nature of each works-contract to be executed to ensure the payment of lump-sum tax at the correct rates.

[5] ACCT-9, 11 Ahmedabad
[6] Pertaining to ACCT-58, Surat

2.4.10 Deficiency in VATIS system

The Department had computerised the system of computation and submission of returns called the Value Added Tax Information System (VATIS). We observed the following deficiencies in the e-filing of returns and in uploading various documents like annual accounts on the website of the Department:

- The Department had not implemented the Harmonised System of Nomenclature (HSN) code for identification of commodities to ascertain the correctness of rate of tax. The dealers had filed periodical returns and annual returns in the form of self assessment without providing the names of commodities. In the VATIS system, no fields were specified as mandatory to be filled before uploading of such returns on the website. In the absence of mandatory fields for commodity name, the correctness of the application of rates and collection of tax thereon is not verifiable.

- Rule 20(6) provides for uploading of Trading Account, Profit and Loss Account and the Balance Sheet, but there was no provision in the VATIS system for this task. The accounts can not be uploaded on the website due to absence of functionality provision in VATIS.

- The uploading of returns for the dealers having annual turnover less than fifty lakh rupees was not mandatory. However, no system was put in place to capture through VATIS system basic data of these dealers, such as turnover, amount of tax paid, details of purchasing and selling registered dealers, amount of ITC claimed, etc. to aid in the scrutiny of the returns.

It is recommended that the Government may consider modifying the VATIS system to incorporate HSN code, uploading of annual accounts, mandatory fields for ensuring the compliance to the provisions of the Act.

The Department in the Exit Conference accepted the fact that HSN code was necessary to ensure application of correct rate of tax. This was not evisaged in the VATIS but is being considered under the proposed IT system proposed for Goods and Services Tax Act.

2.4.11 System to monitor scrutiny of returns

Under Section 32(1) of the GVAT Act, the scrutiny of each and every return is required to be done. The Department shall scrutinise these returns and supporting documents wherein it would be checked that the returns and annual returns were complete and furnished timely, supporting documents furnished were complete and tax had been paid correctly, exemptions and deductions claimed were regular, etc. The Commissioner of Commercial Tax had also emphasised the need for the scrutiny in his circular dated 07-11-2008 wherein instructions were issued to the assessing authorities for continuous and intensive scrutiny of returns with greater emphasis on top 100 dealers by each jurisdictional Commercial Tax Officer.

During the course of Audit, we called for the information relating to the number of self assessment cases in which return scrutiny was made. However, in 16 out of 18 offices the assessing authorities furnished a nil report to this effect and in remaining two offices, initial scrutiny of 920 cases out of 26,615 cases was done. The Department had not furnished specific reply when we inquired about the existing monitoring mechnism for compliance of the instructions for return scrutiny.

The above facts indicate that the assessing authorities had not followed their own instructions. The Department had not evolved any mechanism at the higher level to monitor the initial scrutiny of periodical returns and annual returns by the assessing officers, where the cases were accepted as deemed to have been assessed under Section 33 of the GVAT Act.

We observed that as a result of non-scrutiny/partial scrutiny of periodical and annual returns at the initial stage, a number of cases of dealers were accepted as deemed to have been assessed even where tax was not paid correctly, irregular and excess ITC was claimed and irregular refunds of ITC were claimed and granted. Some of the cases pertaining to 18 offices are discussed in the succeeding paragraphs from 2.4.12 to 2.4.18.

2.4.12 Irregularity in submission of statutory forms and supporting documents in inter-State transaction under CST Act

2.4.12.1 Short levy of tax due to non-furnishing of statutory forms

Section 8 of the Central Sales Tax (CST) Act, 1956 provides for levy of tax at the rate of three *per cent* between April to May-2008 and at two *per cent* with effect from June 2008 on inter-State sales of goods made against declaration in Form-C. Similarly in respect of transit sale i.e. sales made during the movement of goods, selling dealers are required to furnish Form E-I/II and Form-C in support of such sale for claiming exemption from payment of tax.

- We found that in 727 self assessment cases, the dealers had not furnished C forms in support of inter-State sales. In absence of these forms, the dealers were liable to pay the tax at local rates prescribed in the GVAT Act. However, all the dealers availed concessional rate of tax under CST resulting in short realisation of tax amounting to ₹ 66.91 crore and interest of ₹ 46.46 crore.

- Further, in 67 self assessment cases, sales turnover valued at ₹ 437.51 crore was not supported by Form E-I/E-II/C. The dealers were not entitled for exemption of tax of ₹ 25.56 crore availed by them. For breach of condition of submission of statutory forms, the dealers were also liable to pay interest of ₹ 13.66 crore.

During cross-verification of another 50 self assessment cases whose turnover had exceeded ₹ one crore with the VAT Audit Reports available in the files, we found that the VAT Auditors had found short payment of tax on account of non-receipt of statutory forms. The tax payable in these cases was ₹ 11.36 crore. However, no further action was taken either by provisionally assessing the cases under Section 32 or by audit assessment under Section 34 of the Act. Thus, lack of scrutiny of the returns resulted in short realisation of Government revenue to that extent, in addition to interest of ₹ 7.18 crore and penalty of ₹ 3.60 crore.

2.4.12.2 Incorrect allowance of export deduction for levy of tax

Under Section 5(3) of the CST Act, export sales out of the territory of India are exempt from payment of tax provided they are supported by Form-H and supporting documents confirming the proof of export. In the absence of the statutory forms and supporting documents, the tax on these goods is leviable at the rates prescribed in the Act.

We observed in 103 cases involving export of ₹ 623.19 crore that the exporters had neither furnished Form-H nor any supporting documents confirming the sale in the course of export. The Department had not scrutinised the returns to ascertain the correctness of such claims and whether the documentary evidence in support of such sale was available with the dealers. The dealers had claimed irregular exemption from payment of tax of ₹ 29.12 crore in addition to interest of ₹ 18.18 crore payable thereon.

2.4.12.3 Irregular allowance of deduction as branch transfer

Under Section 6(A) of the CST Act, consignment sale (branch transfer) shall be exempt from payment of tax on production of statutory Form-F. In the absence of the statutory forms and supporting documents, the tax on these goods is leviable at the rates prescribed in the Act.

We observed that in 55 self assessment cases the dealers had claimed the branch transfer of goods valued at ₹ 364.02 crore without submitting Form-F in support of such branch transfer. In the absence of scrutiny of the returns, the omission escaped the notice of the Department resulting in non-levy of tax of ₹ 21.75 crore and interest of ₹ 13.83 crore.

2.4.12.4 Irregular grant of exemption on High Seas Sales

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 provided the transaction is supported by documentary evidence to the effect that the sale has occurred before the goods have crossed the customs frontier of India.

We observed that in 31 cases involving High Seas Sales (HSS) of ₹ 193.21 crore, the dealers had not furnished documentary evidence such as agreement of HSS and Bill of Entry in support of such sales. The dealers had claimed irregular exemption from payment of tax of ₹ 10.52 crore in addition to interest of ₹ 6.75 crore leviable thereon.

2.4.12.5 Irregular claim of deduction for SEZ sales

As per Section 8(6) of the CST Act, 1956 read with Rule 12(11) of CST (Registration & Turnover) Rules, 1957 exemption of tax on sales of goods made to Special Economic Zones (SEZ) units or developers is available to the dealers subject to the production of Form-I.

We found that in 49 cases involving sales of ₹ 34.94 crore to SEZ units, the dealers had not submitted Form-I in support of such sales though they had availed exemption from payment of tax of ₹ 1.75 crore. Due to lack of scrutiny of the returns, the omission escaped the notice of the Department resulting in short levy of tax to that extent in addition to interest of ₹ 99 lakh.

The above facts indicate that there was lack of a system to monitor the scrutiny of returns and cases were accepted as deemed to have been assessed under Section 33 without proper scrutiny of periodical and annual returns.

After the above facts were brought to the notice of the Department/Government in June/September 2014, the Department stated (November 2014) in Exit Conference that in cases of non-submission of statutory forms notices have been issued in all these cases. However, further action taken has not been received (November 2014).

2.4.13 Short levy of VAT due to misclassification

Section 7 of the 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 in residuary entry is applicable.

We observed in 19 self assessment cases pertaining to 10 offices that the assessing authorities had incorrectly accepted the returns filed by the dealers where tax was paid at lower rates due to incorrect classification of goods or application of incorrect rate of tax. This resulted in short levy of VAT of ₹ 8.64 crore including interest and penalty as follows:

(₹ in lakh)

Sl. No.	Office (No. of dealers)	Applicable rate of tax (*per cent*)	Rate applied (*per cent*)	Nature of observation	Short levy of VAT including interest and penalty
1	ACCT-22 Ahmedabad (3) ACCT-23 Ahmedabad (2)	12.5 +2.5	4+1	Electrical stamping was incorrectly treated as transformer stamping and tax was levied under entry no. 42(A) instead of entry no.87 residuary entry.	98.06
2	ACCT-5 Ahmedabad (1) ACCT-41 Vadodara (3)	12.5 +2.5	4+1	CNG kits used in motor vehicles were treated as valves of all types under entry no. 42(A).	78.04
3	ACCT-5 Ahmedabad (1)	12.5+2.5	0.6	Sale of Ready Mix Concrete taxable at the rate under entry number 87 treated as works contract.	274.61
4	ACCT-45, Vadodara (1)	12.5 +2.5	4+1	Crane (vehicle) treated as machinery used in manufacture of goods.	43.22
5	ACCT-25, Kalol (1) ACCT-58 Surat (1)	12.5 +2.5	4+1	Soft drink concentrate and cold drinks treated as fruit juice.	120.29
6	ACCT-21 (1), ACCT-23, Ahmedabad (1), ACCT-25, Kalol (1), ACCT-104 Gandhidham (1) ACCT-94 Rajkot (2)	12.5 +2.5	4+1	Incorrect rate of tax on sale of battery operated vehicle, furniture, fire-fighting equipment, vacuum pumps, electrical goods and vehicle parts applied.	249.75
				Total	**863.97**

2.4.14 Short levy of VAT due to incorrect determination of turnover

Section 7 of the Act provides for levy of tax on the turnover of sales, which remains after deducting therefrom the turnover of sales of goods not subject to tax under this Act, at the rates specified in Schedule II or III.

We observed in 60 self assessment cases that the assessing authorities had incorrectly accepted the returns filed by the dealers where the amount of valuable consideration was not included in the sales turnover. This resulted in short realisation of VAT of ₹ 19.21 crore, in addition to interest of ₹ 10.16 crore and penalty of ₹ 7.94 crore as follows:

(₹ in lakh)

Sl. No.	Nature of observation	Short levy of VAT including interest and penalty
1	Under Section 2(24) of the Act, amount of valuable consideration received or receivable by a dealer and any sum charged for anything done in respect of the goods at the time of or before delivery thereof forms a part of the taxable turnover. We found that in 26 cases pertaining to 13 offices[7], the amount of ₹ 220.69 crore received on account of transportation charges incurred before delivery of goods, amount reimbursed for warranty discount, packing expenses and sale of goods purchased from outside Gujarat, was omitted from levy of tax.	2,215.63
Remarks:-The assessing officer in one case stated that ITC was not claimed on packing material. The reply was not relevant as tax is leviable on sale of packing material under Section 7 of the Act while ITC can be claimed under Section 11 of the Act. Reply in the remaining cases has not been received.		
2	Under Section 2(24)(a)(ii) of the Act the amount of valuable consideration received as hiring charges for transfer of the right to use any goods for any purpose forms part of the sale price. We found that in seven cases of three offices[8] amount of ₹ 19.76 crore received in lieu of transfer of rights to use such as lease of tankers, machinery and equipment was not included in the sales turnover for levying tax.	311.54
3	Under Section 8 of the GVAT Act, credit/debit notes are required to be furnished for the claim of deduction towards change in consideration previously agreed or goods or part of the goods sold have been returned and the excess tax has not been borne by the purchaser of the goods. In the absence of credit/debit notes, tax is leviable. We observed that in six cases of six offices[9], deduction of ₹ 34.23 crore from the taxable turnover was claimed as return or price difference without furnishing the credit/debit notes or any other supporting documents. In the absence of debit/credit notes, the claim of deduction from taxable turnover could not be verified.	321.06
4	Under Section 2(30) of the Act, tax is leviable on taxable turnover of sales in relation to works contracts on the amount of sales remaining after deducting therefrom the charges towards labour, service and other like charges. We observed that in 12 cases of four offices[10] deemed sale of the goods involved in the execution of the works contract was either (i) Incorrectly shown as less than the amount of goods consumed in the execution of contract or (ii) Irregular deductions from the turnover as exempted items were claimed. The incorrect exhibition of turnover or irregular deductions of ₹ 38.28 crore led to incorrect determination of taxable turnover.	602.40

[7] ACCT-5, 9, 21, 22, 23 Ahmedabad, 56 Bharuch, 24 Gandhinagar, 25 Kalol, 94 Rajkot, 58 Surat, 41 Vadodara, 74, 75 Vapi

[8] ACCT-9 Ahmedabad, 24 Gandhinagar, 41 Vadodara

[9] ACCT-5, 9, 21 Ahmedabad, 24 Gandhinagar, 74, 75 Vapi

[10] ACCT-9 Ahmedabad, 94 Rajkot, 58 Surat, 41 Vadodara

5	Rule 18AA provides that where the amount of charges towards labour, service and other like charges are not ascertainable or the accounts are not sufficiently clear or intelligible, a lump-sum deduction at the rate of 30 *per cent* shall be admissible in case of civil works contract. We observed that in nine cases pertaining to three offices[11] charges of labour/service were not ascertainable or the accounts maintained by the dealers were found incomplete to determine the correct amount of labour/service charges. However, the dealers in their self assessments claimed excess deductions of charges of ₹ 16.97 crore towards labour/service than allowable under the provisions.	280.81
	Total	**3,731.44**

The Department in the Exit Conference stated that all these cases of short/ non-levy of tax would be examined in detail.

2.4.15 Non-levy of tax on goods involved in execution of construction of flats

Section 2(23)(b) of the Act provides that sale includes transfer of property in goods (whether as goods or in some other form) involved in execution of a works contract. Further, under Section 14A of the Act, lump-sum tax at the rate of 0.6 *per cent* is payable on total value of the civil works contract.

We observed in nine self assessment cases of three offices[12] pertaining to the period 2008-09 and 2009-10 that nine dealers constructed flats and did not pay leviable tax of ₹ 49.13 lakh on goods involved in the construction of flats on the ground that the decision is pending in the case of *M/s M K Raheja Developer Corporation vs. State of Karnataka* in the Hon'ble Supreme Court of India. The case was decided in September 2013 by the Hon'ble Supreme Court of India in the interest of revenue. However, no efforts were made by the Department to recover the payable tax. This resulted in non-payment of VAT of ₹ 49.13 lakh in addition to interest of ₹ 28.25 lakh and penalty of ₹ 68.48 lakh leviable thereon.

The Department in the Exit Conference (November 2014) stated that instruction have been issued to JCCT (Legal) for taking necessary action and also stated that such cases would be taken care of in future also.

2.4.16 Irregular availment of Input Tax Credit

Section 11 of the GVAT Act *inter alia* provides for claim of input tax credit (ITC) equal to the amount of tax paid by a registered dealer who has purchased taxable goods from another registered dealer and such ITC shall not be allowed on the purchase of vehicles of any type other than for resale, of HSD used as fuel, of goods used for captive consumption, of goods used in manufacture of tax free goods and on capital goods not used continuously for five years. Further, the amount of ITC shall be reduced by the amount of tax calculated at the rate of four *per cent* of turnover of purchases of taxable goods

[11] ACCT-5 Ahmedabad, 9 Ahmedabad, 45 Vadodara.
[12] ACCT-24 Gandhinagar, 94 Rajkot, 58 Surat.

consigned or dispatched as such or used as raw material in the manufacture or packing of goods for branch transfer and at the rate of two *per cent* as above if sold/resold in the course of inter-State trade and commerce.

We observed in 40 self assessment cases pertaining to 15 offices[13] that the ITC was availed on ineligible goods or availed on excess amount of purchases than the amount entered in the books of accounts or was not reduced in the proportion to the goods branch transferred or sold in the course of inter-State trade and commerce. This resulted in excess availment of ITC of ₹ 1.49 crore in addition to interest of ₹ 0.92 crore and penalty of ₹ 1.47 crore as shown below:

(₹ in lakh)

Sl. No.	Number of cases and nature of observation	Amount of ITC availed in excess than admissible including interest and penalty
1	In seven cases, ITC irregularly availed on goods used in the manufacture of tax free goods.	100.17
2	In seven cases, ITC was claimed on excess amount of purchases than the amount entered in the books of accounts.	41.47
3	In 15 cases pertaining to period from 2008-09 to 2010-11, the dealers had made purchases from the selling dealers whose registrations were cancelled by the Department before such purchases.	105.41
4	In three cases, ITC was claimed on purchases of vehicle and HSD, goods used in captive consumption and capital goods not used for minimum five years.	43.76
5	In six self assessment cases[14], the ITC was not reduced proportionately of goods which were branch transferred or used in manufacture of goods so branch transferred to other States or sold in the course of inter-State trade and commerce.	88.61
6	In two cases, ITC was incorrectly brought forward in excess than the amount available for carry forward after adjustment against payable tax in the previous year.	8.34
	Total	**387.76**

[13] ACCT-5, 9, 11, 22, 23 Ahmedabad, 77 Bhavnagar, 56 Bharuch, 24 Gandhinagar, 104 Gandhidham, 25 Kalol, 94 Rajkot, 58 Surat, 45 Vadodara, 74, 75 Vapi

[14] This included one case where ITC was carried forward since 2007-08 to 2010-11 continuously and excess amount was also refunded in 2010-11 without scrutinising the admissibility and correctness of such ITC.

2.4.17 Incorrect claim of deduction as Railway Receipts (RR) sale (CST)

Section 6(2) of the CST Act provides that where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of document of title of such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer shall be exempt from tax.

We observed in six self assessment cases pertaining to five offices[15] that the dealers had claimed deduction of an amount of ₹ 12.61 crore from the taxable turnover as sales in the course of inter-State trade and commerce effected by a transfer of document of title of such goods during their movement from one State to another i.e. RR sales. The dealers were not eligible for exemption as the title of the goods had passed to the ultimate buyer before movement of goods commenced. Thus, lack of scrutiny of these returns resulted in non-levy of CST of ₹ 65.06 lakh in addition to interest of ₹ 44.30 lakh and penalty of ₹ 21.40 lakh leviable thereon.

In the absence of initial scrutiny of periodical returns and annual returns the Department could not satisfy itself of correctness of any claim of tax credit, exemption, deduction or genuineness of any declaration or evidence furnished in support thereof with self assessment. It could also result in appropriate cases not being selected for audit assessment under Section 34.

It is recommended that the Department may ensure scrutiny of returns and annual returns at initial stage so that the correctness of levy and payment of tax could be ensured and appropriate cases could be selected for provisional or audit assessment.

2.4.18 Incorrect acceptance of returns as deemed assessments without framing provisional assessments

The Department had neither issued any guidelines for proper implementation of provisions in the categories of cases covered by Section 32 of the Act nor fixed minimum targets for provisional assessment to be made by the officers individually.

In the GVAT Act, provisions for provisional assessment of certain cases of dealers were incorporated as a check to ascertain the correctness of levy and payment of tax and admissibility of claims and concessions. Under Section 32(2) of the Act, where net amount of tax payable is nil, or the amount of tax credit is carried forward for subsequent return, or refund is claimed therein or the dealers have claimed higher amount of tax credit than the admissible amount or the dealers have not furnished the returns within the prescribed time period, such dealers shall be provisionally assessed for the period of such returns.

[15] ACCT-21 Ahmedabad, 25 Kalol, 58 Surat, 74, 75 Vapi

In respect of the 18 offices checked by us, the provisional assessment was done only in the category of cases where refunds were claimed by the dealers. In other categories for which provisional assessment was required under the provisions of the Act, no such assessment was undertaken. A few illustrative cases are shown below:

- In 67 cases, the ITC was carried forward. In all these cases provisional assessment though required to be done were not done.
- In 40 cases, dealers have claimed higher amount of tax credit than the admissible amount. No provisional assessment was made.
- In 1,383 cases, the dealers had not furnished the periodical returns or annual returns or supporting documents. But the Assessing Authorities did not make provisional assessment as required under the Act.

The acceptance of such cases as deemed to have been assessed without scrutiny of returns and provisional assessment was in contravention of the provisions of the Act.

2.4.19 Non-observance of criteria for selection of cases for audit assessment

Section 34(2) of the Act provides for audit assessment where the Commissioner is not satisfied with the bonafides of any claim of tax credit, exemption, refund, deduction, concession, rebate, or genuineness of any declaration or evidence furnished by a dealer in support thereof with self assessment. At the time of audit assessment the dealer shall produce all the basic records viz. books of accounts, annual accounts etc. in support of his returns.

Rule 31(3) of the GVAT Rules provides for different criteria for audit assessment under Section 34 of the Act. Further, audit assessment under Section 34 of the Act may be taken up in a particular case after prior permission of the JCCT, if it is necessary.

We observed that the Department had selected on an average 11 *per cent* cases[16] of dealers for audit assessment based on the criteria such as turnover, tax liability, etc. without initial scrutiny and analysis of returns. Majority of cases selected were that of traders having low turnover. In respect of 18 offices selected by us out of total 33,077 cases, 16,071 cases (48.6 *per cent*) having turnover below ₹ one crore were selected for audit assessment. However, 4,306 cases having turnover in excess of ₹ five crore were accepted as self assessed without scrutiny of return. Further, we observed that a number of cases which were required to be selected for audit assessment remained out of the ambit of the audit assessment as shown as follows:

[16] Total 1,32,604 cases out of 11,63,158 cases were selected during 2008-09 to 2010-11.

Criteria for selection of cases for audit assessment	Nature of observation
Audit assessment under Section 34 may be done by the Commissioner where a dealer is situated in SEZ or is a 100 *per cent* Export Oriented Unit or involved in import/export or inter-State transactions.	We observed that 1,082 cases were not selected for audit assessment though the dealers were situated in SEZ or had made export and inter-State sales. Besides statutory forms and supporting documents were not furnished for claim of concessions. No initial scrutiny of returns was made in these cases.
Audit assessment under Section 34 may be done by the assessing officer only after obtaining the prior permission of the JCCT, if it is necessary in a particular case.	The office had initiated audit assessment in respect of 24 cases[17] which were neither initially selected for the assessment nor the permission of JCCT was obtained for such assessment.
Section 34(9) of the GVAT Act provides that no assessment under Section 34(2) shall be made after the expiry of four years in respect of which or part of which the tax is assessable.	We observed that the asssessing officers had served the notices to six dealers for finalisation of audit assessment for the period 2008-09. However, these were not finalised till 31 March 2014.

Further, despite repeated reminders the Department did not furnish a complete details of cases from which the Department had selected audit assessment cases and therefore the robustness of the process of selection of cases for audit assessment could not be ascertained.

It is recommended that the scrutiny of returns and annual returns at the initial stage may be ensured so that appropriate cases could be selected for provisional or audit assessment based on the results of initial scrutiny and amount of turnover.

2.4.20 Weak internal audit

The Department has an internal audit wing working under DCCT (Audit) and headed by JCCT (Audit). The Commissioner of Commercial Tax (CCT) vide circular dated 01-03-2013 had also emphasised the need for internal audit of self assessment cases wherein instructions were issued for audit of five *per cent* of cases pertaining to the period 2007-08 onwards which were accepted as deemed to have been assessed under self assessed.

During the course of audit, we called for the information relating to number of self assessment cases in which internal audit was initiated. However, in 10 out of 18 offices the assessing authorities furnished a nil report to this effect. In five offices, internal audit of only 384 cases against 46,499 cases was initiated and information in respect of remaining three offices was not furnished. This indicates that the internal audits were not carried out to the desired extent as stipulated in the departmental instructions.

[17] Pertaining to ACCT-57, Ankleshwar

2.4.21 Deficiencies in maintenance of the records of returns

Under Section 29 read with Section 33 of the GVAT Act, all the dealers are required to furnish the periodical returns, annual return in the form of self assessment and supporting documents such as statutory forms, VAT Audit Reports, certified annual accounts etc. However, the Department had not produced to Audit any register indicating the receipt and disposal of such returns and supporting documents. The list of cases was got prepared and furnished at the time of conducting audit. Audit further observed the following deficiencies in the maintenance of records:

- Section 33 of the Act provides for furnishing of annual returns in the form of self assessment by all dealers. However, in 413 cases no annual returns were found on record though the periodical returns were furnished. There was nothing on record to indicate that these dealers had filed their returns as prescribed in the Act. Further, there is no provision for levy of penalty for non filing of annual returns by the dealers within the prescribed time limit. The cases pertaining to the period 2008-09 have since become time barred for taking corrective measures;
- Rule 20(5) provides for furnishing of annual return, where total turnover exceeds ₹ one crore within a prescribed period of three months, by uploading on the website of the Department. We checked 810 cases whose turnover was more than ₹ five crore to ascertain the filing of e-returns on VATIS. However, we observed that e-returns were not filed in 489 cases;
- In 970 cases which were selected for detailed scrutiny pertaining to four offices[18], the Department produced the VAT Audit Reports only. Complete returns and other documents were not available in the assessment files; and
- Section 63 of the GVAT Act provides for furnishing of VAT Audit Report in case of dealers where total turnover exceeds ₹ one crore and imposition of maximum penalty of ₹ ten thousand where a dealer fails to furnish a true copy of such report within a maximum period of ten months from the end of the year. Further, Rule 20(6) provides for furnishing of the annual accounts containing Trading Account, Profit and Loss Account and the Balance Sheet along with uploading on the website within six months from the end of the year.

We observed in 329 cases, each having turnover more than ₹ one crore, pertaining to 16 offices[19] that VAT audit reports and certified accounts were not furnished even after a lapse of ten months from the end of financial year. The assessing officers had not monitored the submission of VAT Audit Reports. With proper monitoring, the Department could have, in addition to ascertaining the correctness of the tax payable by the dealers, levied penalty of ₹ 32.90 lakh.

[18] ACCT-11 Ahmedabad, 57 Ankleshwar, 94 Rajkot & 41 Vadodara

[19] ACCT-5, 9, 11, 21, 23 Ahmedabad, 57 Ankleshwar, 56 Bharuch, 77 Bhavnagar, 104 Gandhidham, 24 Gandhinagar, 25 Kalol, 58 Surat, 41, 45 Vadodara, 74, 75 Vapi

Thus, the above facts indicate that the Department was not maintaining the records comprehensivly that were necessary to ascertain the correctness of levy and payment of tax.

It is recommended that the Department may devise a monitoring procedure to ensure comprehensive maintenance of records and also proivde deterrent measures for non-filing of the Annual Return.

2.4.22 Conclusion

During the Performance Audit, we scrutinised the existing provisions of GVAT Act/Rules and notifications and circulars issued thereunder and compliance thereof. We noticed systematic as well as various compliance deficiencies in the process of return scrutiny and provisional assessment and self assessment. The GVAT Act and Rules made thereunder place more reliance on the return-scrutiny and provisional assessment, instead of audit assessment. However, the Department had not scrutinised the returns properly at the initial stage. Provisional assessment was also not taken up by the Department to the extent envisaged under the GVAT Act. The Department on an average selected 11 *per cent* of cases of dealers for audit assessment without scrutiny of returns, though it was the pre-requisite for selection of such cases for audit assessment. The uniform procedure for furnishing, custody and maintenance of annual accounts, VAT audit reports and statutory forms, in respect of cases accepted as deemed to have been assessed under self assessment, was not followed. As a result, an important control mechanism to prevent/minimise the leakage of revenue was rendered ineffective, resulted in short realisation of tax of ₹ 337.38 crore including interest of ₹ 122.45 crore and penalty of ₹ 16.80 crore.

2.4.23 Summary of recommendations

We recommended that:

- the Government may consider inserting space/column in the prescribed Form-202A for furnishing the details of all purchases and in Form-214A for nature of each works-contract to be executed to ensure the payment of lump-sum tax at the correct rates;
- the Government may consider modifying the VATIS system to incorporate HSN code, uploading of annual accounts, mandatory fields for ensuring the compliance to the provisions of the Act. The Government may also consider for mandatory e-filing of returns and uploading of data for each dealer irrespective of their turnover;
- the Department may ensure scrutiny of returns and annual returns at initial stage so that the correctness of levy and payment of tax could be ensured and appropriate cases could be selected for provisional or audit assessment;
- the scrutiny of returns and annual returns at the initial stage may be ensured so that appropriate cases could be selected for provisional or audit assessment based on the results of initial scrutiny and amount of turnover; and

- the Department may devise a monitoring procedure to ensure comprehensive maintenance of records and also provide deterrent measures for non-filing of the Annual Return.

Compliance audit observations

Our scrutiny of the assessment records revealed several cases of non-compliance with the provisions of the Gujarat Sales Tax Act 1969, the Gujarat Sales Tax Rules 1970, the Central Sales Tax Act 1956, the Central Sales Tax (Registration and Turnover) Rules 1957, the Gujarat Value Added Tax Act 2003, the Gujarat Value Added Tax Rules, 2006 etc., and Government notifications and other cases as mentioned in the succeeding paragraphs in this Chapter. Such omissions on the part of the Departmental officers are pointed out by us each year; however, the irregularities not only do persist, but also remain undetected till our audit is conducted. There is need for the Government to improve the internal control system and internal audit.

2.5 Short levy of VAT due to underassessment/turnover escaping assessment

Section 7 of the GVAT Act, 2003 provides for levy of tax on the turnover of sales of goods specified in Schedule II or Schedule III at the applicable rate. As per Section 2(23) of the Act *ibid* sale includes transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration. Further, as per Section 2(24) of the Act *ibid* "sale price" includes the amount of duties levied or leviable under the Central Excise Tariff Act, 1985 or the Customs Act, 1962.

During test check of the assessment records containing Assessment Files, Registration Certificate files and other records viz. Profit and Loss Account etc. of 10 offices we noticed[20] in 15 assessments[21] of 12 dealers that there was short levy of VAT of ₹ 8.01 crore including interest of ₹ 2.11 crore and penalty of ₹ 2.66 crore, wherever applicable due to underassessment/turnover escaping assessment as detailed below:

(₹ in crore)

Sl. No.	Office (No. of dealers)	Assessment year (Date of assessment)	Nature of observation	Short levy of VAT including interest and penalty
1	DCCT-22 Rajkot (1), DCCT-23 Rajkot(1)	2007-08/ (29.9.11) 2007-08/ (18.10.12)	We noticed that the Central Excise Department had issued Show Cause Notices to the two dealers in September 2008 and May 2009 for suppression of sales turnover of ₹ 18.84 crore by way of under valuation. However, the Assessing Authority (AA) had not assessed the sales turnover so suppressed by the dealers resulting in short levy of VAT of ₹ 78.28 lakh.	2.58

[20] Between June 2010 and October 2013

[21] For the year 2006-07, 2007-08, 2008-09 and 2010-11 finalised between January 2010 and March 2013.

After we pointed this out, the Department accepted (September 2013 and October 2014) our observation in both the cases and raised demand of ₹ 42.96 lakh and ₹ 1.34 crore respectively.				
2	ACCT-73 Navsari (1)	2006-07 (20.3.13) 2007-08 (self assessment under Section 33 of the GVAT Act) 2008-09 (18.3.13)	The AA had not assessed tax of ₹ 77.44 lakh at the rate of 12.5 *per cent* on receipts of ₹ 6.20 crore towards 'vehicle hire charges' for operating CNG buses for Ahmedabad Municipal Corporation during the period from 2006-07 to 2008-09.	2.68
After this being pointed out, the Department accepted (October 2014) our observation and stated that revision proceedings had been initiated.				
3	DCCT-25 Gandhidham (1), DCCT-15 Surat (2)	2007-08/ (8.12.11) 2010-11/ (20.7.12) 2010-11/ (20.7.12)	(i) As per Section 2(24) of the GVAT Act "sale price" includes the amount of duties levied or leviable under the Customs Act, 1962. In case of one dealer of Gandhidham, the AA had not included the intra-zone sales/scrap sales of ₹ 28.59 lakh, including the customs duty amounting to ₹ 4.81 lakh, in the taxable sales turnover. This resulted in short levy of ₹ 2.16 lakh. (ii) As per Section 2(24) of the Act *ibid* "sale price" includes the amount of duties levied or leviable under the Central Excise Tariff Act, 1985. However, in case of two dealers, the AA did not include the central excise duty paid/payable of ₹ 18.74 crore in the taxable purchase turnover. This resulted in short levy of ₹ 1.78 crore.	1.80
After this was pointed out, the Department accepted (October 2014) our observation in all the three cases and initiated revision proceedings. A report of recovery has not been received.				
4	ACCT-56 Bharuch (1)	2007-08 (31.5.11)	The AA had levied tax of ₹ 7.09 lakh on turnover of ₹ 4.51 crore though as per VAT Audit Report[22] turnover of the dealer was of ₹ 7.25 crore and was liable to pay tax of ₹ 18.05 lakh.	0.37
After this being pointed audit, the Department accepted (April 2014) our observation and raised demand of ₹ 36.88 lakh.				
5	ACCT-70 Vyara (1)	2006-07 (7.1.10)	The AA had not assessed the works contract receipt worth ₹ 1.48 crore though the dealer had claimed TDS on such receipt.	0.12
After this being pointed out, the Department, accepted (September 2014) our observation, raised demand of ₹ 12.05 lakh and stated that the dealer had preferred appeal before the Tribunal.				
6	ACCT-103 Bhuj (1), ACCT-66 Surat (1)	2006-07 (13.1.11) 2007-08 (25.11.11)	(i) The dealer was a reseller of lubricants. As per Trading Account of the dealer, the total of opening balance, purchases during the year and direct expenses was of ₹ 16.71 crore whereas the total of closing stock and sales during the year was of ₹ 15.97 crore. Thus, the	0.24

[22] Section 63 of the GVAT Act provides that a dealer whose total turnover has exceeded ₹ one crore shall get his accounts verified and audited by an authority specified for the purpose and obtain a report of such audit to be submitted to the Department.

			turnover of the dealer was ₹ 16.71 crore, but the dealer had reported gross loss of ₹ 7.40 lakh in the Trading Account by undervaluing sales. This resulted in short levy of VAT of ₹ 1.35 lakh. (ii) In the other case, we found that the dealer had shown branch transfer purchases of CNG kit valued at ₹ 7.24 crore. We further observed that that there was no opening and closing stock of CNG kit and the dealer had shown sales of CNG kit at ₹ 6.35 crore only. Thus, the dealers had suppressed sales turnover of ₹ 89 lakh by undervaluing sales which resulted in short levy of VAT of ₹ 11.08 lakh.	
After this being pointed out, the Department accepted (September 2013) our observation in one case involving ₹ 18.93 lakh and initiated reassessment proceedings. In the other case, the concerned JCCT, while accepting (August 2013) our observation, raised demand of ₹ 4.83 lakh.				
7	ACCT-104 Gandhidham (1), ACCT-73 Navsari (1), DCCT-25 Gandhidham (1)	2007-08 (31.3.12) 2008-09 (20.3.13) 2007-08 (1.3.12)	The AA had not considered sale of vehicles/spare parts/plant and machinery of ₹ 81.28 lakh, as shown in the Schedule for fixed assets of the Balance Sheet. This resulted in short levy of VAT of ₹ 7.54 lakh.	0.22
After this being pointed out, the Department accepted (July and October 2014) our observation in all the three cases and initiated revision proceedings.				
Total				**8.01**

We pointed out the cases to the Department between March 2013 and May 2014. A report on recovery in accepted cases and reply of the Department in one case has not been received (November 2014).

We reported the matter to the Government (June 2014). The Government confirmed (October 2014) replies of the Department in nine cases.

2.6 Short levy of CST due to underassessment/turnover escaping assessment

2.6.1 As per Section 2(h) of the CST Act, 1956 read with Section 2(24) of the GVAT Act, 2003 "sale price" means the amount payable to a dealer as consideration for the sale of any goods including the amount of duties levied or leviable under the Central Excise Tariff Act, 1985 or the Customs Act, 1962.

During test check of the assessment records of office of the DCCT, Range-23, Rajkot we noticed in November 2012 in one assessment case for the year 2007-08 finalised in September 2011 that the AA had not assessed the sales turnover of ₹ 8.66 crore suppressed by the dealer by way of under-valuation, as determined in the Show Cause Notice issued by the Central Excise Department in September 2008. This resulted in short levy of CST of ₹ 3.67 crore including interest of ₹ 0.96 crore and penalty of ₹ 1.62 crore.

After this being pointed out to the Department in May 2014, the Department accepted (October 2014) our observation and raised demand of ₹ 4.50 crore. A report on recovery has not been received (November 2014).

We reported the matter to the Government in June 2014 and their replies have not been received (November 2014).

2.6.2 Section 8 (6) and (8) of the CST Act, 1956 read with Rule 12(11) of the CST (Registration and Turnover) Rules, 1957 provides for exemption from levy of tax on inter-State sale of goods made against declaration in Form 'I' to a registered dealer in any SEZ established by the authority specified by the Central Government. Where the sale is not supported by Form 'I', tax is leviable at the rate applicable on sale of such goods inside the State.

During test check of the assessment records of office of the DCCT, Range-15, Surat we noticed in January 2013 in four assessment cases of one dealer for the year 2006-07 to 2009-10 finalised in October 2011 that the dealer, as a SEZ unit, had purchased plant and machinery, raw materials and consumables worth ₹ 349.78 crore against Form 'I' without payment of CST. Subsequently, the dealer had opted to exit from SEZ in September 2010 on payment of CST of ₹ 15.93 crore saved on above purchases. However, the AA had not included the duties paid/ payable under the Central Excise Tariff Act, 1985 in the taxable purchase turnover against Form 'I' for the levy of CST. Thus, there was short levy of CST of ₹ 4.30 crore including interest of ₹ 1.65 crore.

After this being pointed out to the Department in April 2014, the Department accepted (October 2013) our observation and stated that the concerned authority had been instructed to initiate reassessment proceedings on the basis of purchase invoices.

We reported the matter to the Government in June 2014 and their replies have not been received (November 2014).

2.7 Discrepancies noticed in grant of Input Tax Credit

Discrepancies in grant of ITC noticed by audit are mentioned in paragraph 2.7.1 to 2.7.6.

2.7.1 Irregular allowance of Input Tax Credit on molasses

Section 11 (3) (a) (vi) of the GVAT Act provides for ITC of purchase of taxable raw material/capital goods which are intended for use in the manufacture of taxable goods. Further, as per Section 11 (5) (h) ITC is not admissible of purchases used in manufacture of tax free/exempted goods. The GVAT Act does not provide for allowance of ITC on proportionate basis on taxable by/sub-products emerged during manufacture of tax free goods. Further, as per judgment dated 12.7.2012 of the Tribunal in the case of '*Jayant Agro Agencies*' it was held that ITC could not be reduced on account of tax free by-product.

During test check of assessment records of four offices[23] we noticed[24] in four assessments[25] that the AA had allowed proportionate ITC of ₹ 54.76 lakh on purchase of sugarcane/plant and machinery against the production of molasses which is a by-product of sugar (a tax free item). The AA had allowed ITC on sugarcane on the basis of JCCT (Legal)'s letter No. 113 dated 28.5.2007. Since, the GVAT Act provides for ITC of purchase of taxable raw material/capital goods which are intended for use in the manufacture of taxable goods and there is no provision for allowance of ITC on proportionate basis on taxable by/sub-products emerged during manufacture of tax free goods, the letter of the JCCT was in contravention of the provisions of the GVAT Act. Thus, allowance of ITC of ₹ 54.76 lakh on production of molasses was irregular, besides, interest and penalty were also leviable.

We pointed out the cases to the Department between February and May 2014 and reported the matter to the Government in June 2014. Their replies have not been received (November 2014).

2.7.2 Irregular/incorrect allowance of Input Tax Credit

Section 11(1) (a) of the GVAT Act, 2003 (Act) provides for tax credit equal to the amount of tax collected/ payable from/by the purchasing dealer. Such tax credit shall be allowed to a purchasing dealer on his purchase of taxable goods which are intended for the purpose of use as raw material in the manufacture of taxable goods or in the packing of the goods so manufactured or use as capital goods meant for use in manufacture of taxable goods as per Section 11(3) (a). Further, as per Section 2(5) "Capital Goods" means plant and machinery other than second hand plant and machinery. However, as per Section 11(5), tax credit shall not be allowed for purchases (i) made from any person other than a registered dealer under the Act (ii) made in the course of inter-State trade and commerce (iii) of the goods which are used in manufacture of goods specified in Schedule-I or the goods exempt from the whole of the tax by a notification under Section 5(2) or in the packing of goods so manufactured (iv) of vehicles of any type and its equipment, accessories or spare parts (except when purchasing dealer is engaged in the business of sales of such goods) (v) of petrol, high speed diesel, crude oil and lignite unless such purchase is intended for resale and where original tax invoice is not available with purchasing dealer. Further, Section 12 of the Act provides for tax credit of taxable goods held in stock on the 31 March 2006 which were purchased during the year 2005-06. The dealers were required to claim ITC under Section 12 in Form 108.

During test check of assessment records of 13 offices we noticed[26] in case of 34 assessments[27] of 31 dealers that the AA had allowed ITC which was irregular/ incorrect. A few cases are as follows:

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[23] ACCT: 66 Surat, 46 Vadodara, 71 Valsad
DCCT: 21 Junagadh

[24] Between October 2012 and August 2013

[25] For the year 2007-08 and 2008-09 finalised between November 2011 and May 2012

[26] Between September 2010 and November 2013

(₹ in lakh)

Sl. No.	Name of the office (No. of dealers)	Assessment year Date of assessment	Nature of observation	Excess grant of ITC including interest and penalty
1	ACCT-6, Ahmedabad (1)	2007-08 and 2008-09 30.09.2011 and 20.11.2012	The GVAT Act provides for ITC of purchases of raw/ packing material which are intended for use in the manufacture of taxable goods. The dealer was manufacturer of tax-free goods i.e. cotton yarn and fabrics. However, the AA had allowed ITC of ₹ 22.48 lakh proportionately (for purchase of cotton, yarn, stores and spares, dyes and chemicals, packing materials, etc.) against sale of waste/ scrape arising out of manufacturing activity.	74
After this being pointed out, the Department accepted (September 2014) our observation and stated that revision proceedings had been initiated.				
2	DCCT-Corporate Cell-I Ahmedabad (1), ACCT-52 Anand (6), ACCT-100 Jamnagar (8), ACCT-64 Surat (1), ACCT-41 Vadodara (1)	2007-10 Between July 2011 and May 2013	Section 11 (5) (mmmm) prohibits allowance of ITC for purchases made from a dealer whose certificate of registration (TIN) has been suspended or cancelled by the Department. However, the AA had allowed ITC on purchases made from those dealers whose TIN was cancelled by the Department, as revealed by the VATIS[28].	24
After this being pointed out, the Department accepted (September/October 2014) our observation in 15 cases and raised demand of ₹ 2.21 lakh in two cases while reassessment/revision proceedings had been initiated in the remaining cases. Further, the concerned JCCT accepted (May/July 2014) our observations in case of two dealers and raised demand of ₹ 0.63 lakh on reassessment.				
3	ACCT-47 Godhra (1), ACCT-93 Rajkot (2)	2006-07 and 2009-10 1. 15.12.2010 2. 05.03.2011and 3. 04.12.2012	Section 11 (5) (ll) prohibits allowance of ITC on purchase of diesel unless such purchases are intended for resale. We observed that the dealers were engaged in the business of chemicals/ oil seeds and oil cakes/quarry. However, the AA had allowed ITC on purchase of diesel not intended for resale.	23
After this being pointed out, the Department accepted (May/July/October 2014) our observations in all the three cases and raised demand of ₹ 21.71 lakh in two cases. In the remaining one case, the Department stated that the case had become time barred for the purpose of reassessment/revision resulting in loss of revenue.				
4	ACCT-47 Godhra (1)	2007-08 27.07.2011	Section 11 (3) (a) (vii) provides for ITC of capital goods meant for use in manufacture of taxable goods. However, as per Section 2 (5) capital	21

[27] For the year 2006-07, 2007-08, 2008-09 and 2009-10 finalised between December 2009 and May 2013.

[28] Value Added Tax Information System

			goods does not include second hand (i.e. old) plant and machinery. The AA had allowed ITC on purchase of old plant and machinery.	
After this being pointed out, the Department accepted (September 2014) our observation and stated that revision proceedings had been initiated.				
5	ACCT-20 Ahmedabad (2)	2006-07 31.12.2009 and 03.02.2011	Section 12 of the Act provides for tax credit of taxable goods held in stock on the 31 March, 2006 which were purchased during the year 2005-06. We observed that the dealers were non-localised dealers (NLD) i.e. not having any permanent/principal place of business in Gujarat. However, ITC on opening stock as on 01.04.2006 was allowed.	17
After this being pointed out, the Department accepted (May 2014) our observations in both the cases and raised demand of ₹ 28.25 lakh on reassessment. The Department further stated that the dealers had preferred appeal before the Tribunal against the reassessment orders and the Tribunal had stayed recovery proceedings till finalisation of appeal.				
6	ACCT-87 Porbandar (1)	2006-07 and 2007-08 30.06.2010 and 30.06.2010	Section 11(5) (h) prohibits allowance of ITC for purchases of the goods which are used in the packing of tax free goods. We observed that the AA had allowed ITC on packing materials used in the export of fish, an exempted item falling under entry no. 24 of Schedule I to the GVAT Act.	15
7	ACCT-46 Vadodara (1)	2008-09 21.12.2012	Section 11(5) prohibits ITC of purchases of vehicles of any type and its equipment, accessories or spare parts (except when purchasing dealer is engaged in the business of sales of such goods). However, the AA had allowed ITC on purchase of tyres and parts thereof though the dealer was not engaged in the business of sale of vehicles and its equipment/ accessories/spare parts.	13
After this being pointed out, the Department, while accepting (August 2014) our observation, raised demand of ₹ 13.28 lakh on reassessment and recovered an amount of ₹ 7.31 lakh from the dealer.				
8	ACCT-55 Khambhat (1)	2007-08 11.10.2011	Section 11 (5) (p) of the GVAT Act prohibits allowance of ITC where original tax invoice is not available with the purchasing dealer. The AA had allowed ITC though copy of original tax invoices or specimen copy of original tax invoices were not available in the assessment records to substantiate claim of ITC of the dealer.	13
After this being pointed out, the concerned JCCT accepted (May 2013) our observation and raised demand of ₹ 11.94 lakh on reassessment.				
9	ACCT-47, Godhra (1)	2009-10 10.01.2013	ITC was allowed on purchase of JCB machine purchased from outside Gujarat.	6
After this being pointed out, the Department accepted (May 2014) our observation and raised demand of ₹ 6.62 lakh on reassessment.				
10	ACCT-52	2006-07	Section 12 stipulates that ITC of	6

	Anand (1)	22.12.2009	opening stock of 2006-07 is admissible only on purchases made during 2005-06. The dealer had shown nil sales and purchases during 2005-06 in his annual return. However, the AA had allowed ITC of ₹ 1.78 lakh on opening stock of 2006-07 for purchases made prior to 2005-06 which was incorrect in view of the specific provision of Section 12.	
After this being pointed out, the Department accepted (February 2013) our observation and stated that ITC of ₹ 1.78 lakh had been reduced on reassessment. However, the Department did not offer its comment on levy of interest and penalty.				
11	ACCT-47 Godhra (1)	2009-10 19.08.2012	Rule 19 of the GVAT Rules prescribes Form 201A and Form 201B which shows details of sale/purchase of goods against tax invoice. Cross verification of Form 201A filed by the selling dealer and Form 201B filed by the purchasing dealer with their monthly returns revealed that the purchasing dealer had availed ITC of ₹ 1.47 lakh on purchases which were not shown by the selling dealer in his monthly returns. The AA had also allowed the above ITC to the purchasing dealer.	4
After this being pointed out, the Department accepted (May 2014) our observation and raised demand of ₹ 4.73 lakh on reassessment.				
12	ACCT-94 Rajkot (1)	2007-08 22.11.2011	Section 11 (3) (a) provides for ITC of purchases of raw material which include ingredient, processing material and consumable stores. The AA had allowed ITC on purchases of wax which was used in the patterns for giving shape to castings. Such patterns could be used over a period of years and could not be considered as ingredient/ consumables/ processing material of the final product manufactured i.e. casting. Hence, ITC allowed was irregular.	4
After this being pointed out, the Department accepted (July 2014) our observation and raised demand of ₹ 4.41 lakh on reassessment.				
			34 assessments of 31 dealers	**220**

The aforesaid allowance of ITC was against the provisions cited above resulting in irregular allowance of ITC of ₹ 71 lakh. Besides, interest of ₹ 54 lakh and penalty of ₹ 95 lakh was also leviable, wherever applicable.

We pointed out these cases to the Department between March 2011 and May 2014. Particulars of recovery in accepted cases and replies of the Department in remaining four cases have not been received (November 2014).

We reported the matter to the Government in June 2014 and their replies have not been received (November 2014).

2.7.3 Non/short reduction/reversal of Input Tax Credit

As per Section 11 (3) (b) of the GVAT Act, 2003 the amount of tax credit in respect of a dealer shall be reduced by the amount of tax calculated at the rate of four *per cent* on the taxable turnover of purchases within the State of the taxable goods consigned or dispatched for branch transfer or to his agent outside the State or of the taxable goods which are used as raw materials in the manufacture, or in the packing of goods which are dispatched outside the State in the course of branch transfer or consignment or to his agent outside the State or of the fuels used for the manufacture of goods. Further, as per Rule 28 (8) (b) (vi-a) (3) of the GVAT Rules, 2006 if a dealer (who has opted for payment of *lump-sum* tax) has already claimed the tax credit for the goods held in the stock on the date of effect of permission and such goods are going to be used in the works contract for which permission to pay *lump-sum* tax is sought for, he shall reverse such tax credit.

During test check of the assessment records of four offices[29] we noticed[30] in five assessments[31] that the AA had either not reversed/reduced ITC or had reduced ITC less than that was due to the Government side. This had resulted in non/short reduction/reversal of ITC of ₹ 1.03 crore. Besides, interest of ₹ 44 lakh and penalty of ₹ 14 lakh are also leviable, wherever applicable, as detailed below:

(₹ in lakh)

Sl. No.	Name of office (No. of dealers)	Assessment year Date of assessment	Nature of observation	Non/ short reduction/ reversal of ITC including interest and penalty
1	ACCT-26 Himatnagar (2)	2006-07 26.7.2010 and 28.7.2010	Rule 28 of the GVAT Rules provides for reversal of ITC of the goods held in stock on the commencement of permission to pay lump-sum tax. The dealers had opted for payment of lump-sum tax w.e.f. 1.10.2006. However, the AA had not reversed ITC of ₹ 2.11 lakh on stock of 'cement' lying with the dealers on the date of commencement of permission to pay lump-sum tax.	8
After this being pointed out, the Department accepted (August 2014) our observations in both the cases and raised demand of ₹ 9.70 lakh.				
2	DCCT Corporate Cell-3	2007-08 10.2.2012	Section 11 (3) (b) provides for reduction of ITC at the rate of four *per cent* of the purchase	74

[29] ACCT: 26 Himatnagar
DCCT: Corporate Cell III, Petro-I, Range-3, Ahmedabad
[30] Between November 2010 and March 2013
[31] For the year 2006-07 and 2007-08 finalised between August 2009 and February 2012

	Ahmedabad (1)		value of fuel. As per Form 201B, the dealer had purchased fuel valued at ₹ 24.63 crore. Hence, ITC of ₹ 98.53 lakh (four *per cent* of ₹ 24.63 crore) was required to be reduced. Against this, the AA had adopted purchase of fuel at ₹ 14.84 crore only and reduced ITC of ₹ 59.40 lakh. This resulted in short reduction of ITC of ₹ 39.13 lakh.	
After this being pointed out, the Department accepted (September 2014) our observation and stated that the dealer had preferred appeal before the appellate authority for other reasons and the appellate authority had been informed to consider the audit observation during disposal of appeal.				
3	DCCT (Petro-I) Ahmedabad (1)	2006-07 18.8.2009	Section 11 (3) (b) provides for reduction of ITC at the rate of four *per cent* of the purchase value of the goods purchased within Gujarat and branch transferred. The dealer had branch transferred goods valued at ₹ 1,237.29 crore which involved local purchases of ₹ 169.40 crore. Thus, ITC of ₹ 6.77 crore (four *per cent* of ₹ 169.40 crore) was required to be reduced. However, the AA had reduced ITC of ₹ 6.23 crore only. This resulted in short reduction of ITC of ₹ 54 lakh.	54
4	DCCT Range-3 Ahmedabad (1)	2007-08 15.12.2011	Section 11 (3) (b) provides for reduction of ITC at the rate of four *per cent* of the purchase value of the goods purchased within Gujarat and branch transferred. The dealer had branch transferred goods valued at ₹ 220.84 crore which constituted 38.66 *per cent* of the total sales turnover. However, the AA had adopted branch transfer value of ₹ 173.42 crore and arrived at ratio of 32.47 *per cent* for the purpose of reduction in ITC. This resulted in short reduction of ITC of ₹ 7.39 lakh.	25
Total				**161**

We reported the matter to the Government (June 2014). The Government confirmed the replies of the Department (October 2014) in two cases and no replies have been received in remaining two cases (November 2014).

2.7.4 Excess allowance of Input Tax Credit

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

During test check of the assessment records of three offices[32], we noticed[33] in four assessments[34] that the AAs had allowed excess ITC of ₹ 7 lakh. Besides, interest of ₹ 6 lakh and penalty of ₹ 6 lakh was also leviable, wherever applicable as follows:

(₹ in lakh)

Sl. No.	Office (No. of assessments)	Assessment year (Date of assessment)	Nature of observation	Excess allowance of ITC including interest and penalty
1	CTO-79, Mahuva (2)	2006-07 15.5.2010 and 24.3.2011	1. As per entry no. 15 of Schedule IIA of the erstwhile GST Act, 1969 read with entry no. 158 of Notification issued under Section 49(2) of the GST Act, bullion *(lagdi)* or coin of gold/ silver was taxable at the rate of 0.25 *per cent w.e.f.* 1.7.2004. AA had allowed ITC (u/s 12) of ₹ 1.48 lakh at the rate of one *per cent* on opening stock of bullion of ₹ 1.66 crore as on 1.4.2006. However, the dealer was eligible for ITC of ₹ 0.37 lakh only at the rate of 0.25 *per cent* of the opening stock of bullion. Thus, there was excess allowance of ITC of ₹ 1.11 lakh. The judgment of the High Court is not relevant in this case, as the judgment was delivered under Gujarat Sales Tax Act, which allows set off at 12.5 *per cent* on sales of goods. In this case GVAT is applicable and ITC is admissible on tax paid on the purchase of goods which is four *per cent* and not 12.5 *per cent.* 2. The Department did not accept our audit observation stating that ITC was admissible on ornaments and not on bullion. The reply of the Department is not correct as ITC is admissible	9

[32] ACCT: 76 Bhavnagar and 79 Mahuva
DCCT: 3 Ahmedabad.
[33] Between October 2012 and May 2013
[34] For the year 2006-07 and 2007-08 finalised between May 2010 and December 2011

			on purchase of good (under Section 12 of the Act) as such ITC would be admissible on the tax paid on the purchase of bullion and not on the sale of ornaments. 3. AA had allowed ITC of ₹ 1.87 lakh at the rate of 12.5 *per cent* on purchases of 'couplings' worth ₹ 14.95 lakh though the dealer had paid tax at the rate of four *per cent* at the time of sale of the couplings so purchased. Thus, ITC was required to be allowed at the correct rate of tax of four *per cent* instead of 12.5 *per cent*. This resulted in excess allowance of ITC of ₹ 1.27 lakh.	
After this being pointed out, the Department did not accept (October 2014) our observations in both the cases stating in one case that ITC under Section 12 was allowed on stock of ornaments and not bullion. In the other case, the Department quoted judgments of the Hon'ble High Court of Gujarat/Tribunal which were delivered on allowance of set-off under Sales Tax regime. The Reply of the Department is not acceptable as the dealer, being manufacturer of jewellery, had purchased bullion as raw material during 2005-06 and such purchases (taxable at the rate of 0.25 *per cent*), instead of finished goods, were eligible for ITC under Section 12. Further, the judgments applicable to the allowance of set-off under Sales Tax regime cannot be applied on admissibility of ITC under VAT regime.				
2	ACCT-76, Bhavnagar (1)	2007-08 (20.8.2011)	'Denaturated ethyle alcohol' attracted tax at the rate of four *per cent w.e.f.* 22.5.07 vide Notification No. GHN-17 dated 22.5.2007. The dealer had availed ITC of ₹ 4.89 lakh at the rate of 12.5 *per cent* on purchases affected between 24.5.2007 and 9.6.2007. However, as per the notification the dealer was eligible for ITC of ₹ 1.56 lakh only at the rate of four *per cent* of the purchase affected during the period stated above. Thus, AA had allowed excess ITC of ₹ 3.32 lakh.	6
After this being pointed out, the Department accepted (October 2014) our observation and stated that revision proceedings had been initiated.				
3	DCCT-3, Ahmedabad (1)	2007-08 (13.12.2011)	The AA had allowed ITC of ₹ 1.19 lakh on purchases of goods worth ₹ 41.96 lakh which were used in job-work relating to printing of packing material which was incorrect as per provisions of the GVAT Act.	4
Total				**19**

We reported the matter to the Government in June 2014. The Government confirmed the replies of the Department in three cases (October 2014). The reply in the remaining case has not been received.

2.7.5 Excess carry forward of Input Tax Credit

As per column No. 22 of Part-V of Annual Return in Form 205 and Assessment Order in Form 304, amount of excess tax paid and/or excess ITC which remains after adjustment against tax payable, is carried forward to the subsequent year. As a prevelant procedure, the amount carried forward in the Annual Return is accepted as correct and allowed in the assesment order also. In case carried forward tax/ITC is less in assessment than claimed in Annual Return, the deficit amount along with interest is treated as demand.

During test check of the assessment records of two offices[35] we noticed[36] in five assessments[37] that the dealers had carried forward ITC of ₹ 17.43 lakh in their Annual Return for 2006-07 against ITC of ₹ 7.22 lakh carried forward by the AA in the assessment orders. The omission occurred due to lack of cross checking of returns filed by the dealers during the year. This resulted in excess carried forward of ITC of ₹ 10.21 lakh.

After these cases were pointed out to the Department in December 2013 and April 2014, the Department accepted (August/October 2014) our observations in all the cases and raised demand of ₹ 5.07 lakh in two cases while revision proceedings had been initiated in the remaining three cases.

We reported the matter to the Government in June 2014. The Government confirmed the replies of the Department in four cases (October 2014).

2.7.6 Irregular grant of refund of ITC of capital goods

As per Rule 15 (6) of the GVAT Rules, 2006 where the tax credit (other than tax credit on capital goods) admissible in the year remains unadjusted against the output tax as per Section 11, such amount shall be refunded not later than expiry of two years from the end of the year in which such tax credit had become admissible. Thus, the Rule prohibits refund of ITC on purchases of capital goods.

During test check of the assessment records of two offices[38] we noticed[39] in two assessments[40] that AA had incorrectly granted refund with interest of ITC of capital goods which remained unadjusted against tax liability of the dealers. Since, the Rule specifically prohibits refund of ITC on purchases of capital goods, the grant of such refund was irregular. This had resulted in irregular grant of refund of ITC of capital goods of ₹ 18.85 lakh.

[35] ACCT: 52 Anand, 26 Himatnagar
[36] In February and July 2013
[37] For the year 2006-07 finalised between December 2010 and March 2011
[38] ACCT: 47 Godhra, 93 Rajkot
[39] In March and August 2013
[40] For the year 2007-08 and 2008-09 finalised in March and June 2012

After these cases were pointed out to the Department in April and May 2014, the Department accepted (September/October 2014) our observation in both the cases and raised demand of ₹ 7.63 lakh in one case while reassessment proceedings had been initiated in the other case.

We reported the matter to the Government in June 2014. Reply of the Government has not been received (November 2014).

2.8 Non-levy of tax due to irregular acceptance of Railway Receipt (RR) sale

As per Section 3(b) of the CST Act, 1956, a sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase is effected by a transfer of documents of title (RR/LR etc.) to the goods during their movement from one State to another. Further, as per Section 6 (2) of the Act *ibid* all subsequent inter-State sales to registered dealers by transfer of documents during movement of goods are exempt from sales tax on production of Form 'E-I' (first inter-State sale) or 'E-II' (subsequent sale by the transferors) and Form 'C'. Moreover, in Cinezac Technical Services V/s State of Kerala (2009) 25 VST 165 (Kerala HC DB), it was held that a pre-arranged sale would not be treated as subsequent inter-State sale. Similar view was taken in State of Karnataka V/s A & G Products and Technologies (2008) 13 VST 177=37 MTJ 337 (Kar HC DB) and it was held that goods appropriated to the ultimate buyer even before commencement of movement of goods would not be exempted from CST.

During test check of the assessment records of three offices[41], we noticed[42] in assessments[43] of three dealers that the AA had allowed claim towards RR[44] sale though the original seller had consigned goods directly to the ultimate buyer and there was no endorsement of lorry receipts by the subsequent selling dealers during movement of goods i.e. the goods were appropriated to their ultimate buyer before the movement of goods commenced. Thus, irregular acceptance of claim towards RR sales during assessments by the AA had resulted in non-levy of tax of ₹ 3.73 crore including interest of ₹ 0.86 crore and penalty of ₹ 0.05 crore.

We pointed out the cases to the Department in February and May 2014. The Department accepted (September/October 2014) our observation in all the three cases and initiated revision/reassessment proceedings.

We reported the matter to the Government in June 2014. The Government confirmed the reply of the Department in one case (October 2014).

[41] ACCT: 10 Ahmedabad, 41 Vadodara
DCCT: 24, Jamnagar

[42] Between March and November 2013

[43] For the year 2007-08, 2008-09 and 2009-10 finalised between November 2011 and September 2012

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

2.9 Non/short levy of purchase tax

Section 9 of the GVAT Act, 2003 provides for levy of purchase tax on purchases of taxable goods/sugarcane (for the purpose of use thereof in the manufacture of sugar or *khandsari*), made from unregistered dealers. Further, as per Section 11 of the Act *ibid*, a dealer is entitled for input tax credit (ITC) of tax paid on purchase of taxable goods which are intended for the purpose of use as raw material in the manufacture of taxable goods or in the packing of the goods so manufactured. However, as per Section 11 (3) (b) such ITC is required to be reduced by the amount of tax calculated at the rate of four *per cent* of the taxable turnover of goods purchased within the State and consigned as branch transfer. Moreover, the GVAT Tribunal vide its judgment dated 18.3.2009 in the case of 'Green Farm Biotech' held that oil seeds, purchased from farmers (unregistered dealer) and sold as *'biaran'* (seeds for sowing purpose, tax free goods), attracts purchase tax at applicable rate.

During test check of the assessment records of four offices[45] we noticed[46] in assessments[47] of four dealers that there was non/short levy of purchase tax of ₹ 1.57 crore including interest of ₹ 0.38 crore and penalty of ₹ 0.70 crore as follows:

(₹ in crore)

Sl. No.	Office (No. of dealers)	Assessment year (Date of assessment)	Nature of observation	Non/short levy of purchase tax including interest and penalty
1	ACCT, Unit-20, Ahmedabad (1) DCCT, Range-23, Rajkot (1)	2008-09 and 2007-08 3.1.2013 and 12.3.2010	The dealers had purchased cotton worth ₹ 25.14 crore from farmers which attracted purchase tax under Section 9(1) of the GVAT Act. Out of the above purchases, the dealers branch transferred raw/ ginned cotton and cotton seeds worth ₹ 21.33 crore. The dealers had neither paid any purchase tax nor claimed any ITC of purchase tax. Similarly, the AA also did not assess purchase tax on the purchases of cotton from farmers during audit assessment considering that there was no revenue implication as the dealers had not claimed any ITC of purchase tax payable by them. Since, in the event of payment of purchase tax by the dealers and claim of ITC by them, the amount of ITC was required to be reduced	1.34

[45] ACCT: 20 Ahmedabad, 47 Godhra
DCCT: 19 Bhavnagar, 23 Rajkot
[46] Between March and August 2013
[47] For the year 2007-08 and 2008-09 finalised between March 2010 and January 2013

			at the rate of four *per cent* of purchase value of cotton as per Section 11 (3) (b), non-assessment of purchase tax by the AA resulted in non-levy of purchase tax of ₹ 40.51 lakh.	
After this being pointed out, the Department accepted (October 2014) our observations in both the cases and raised a demand of ₹ 1.24 crore in one case while reassessment/revision proceedings had been initiated in the other case.				
2	DCCT, Range-19, Bhavnagar (1)	2008-09 23.11.2011	(i) The AA had considered purchases of sugarcane made during the month of November, December 2008 and January, February 2009 for the levy of purchase tax. However, purchases of sugarcane made during the month of April 2008 were not considered for the levy of purchase tax. (ii) The AA had reduced purchase tax liability by ₹ 8.08 lakh by set-off/allowing/ considering ITC proportionately on sale of molasses (a taxable by-product of sugar, a tax free commodity). Since, GVAT Act does not provide for allowance/ set-off of proportionate ITC on by/sub-product of non-taxable goods, reduction in purchase tax liability was incorrect.	0.19
3	ACCT, Unit-47, Godhra (1)	2007-08 11.10.2011	The dealer had sold *'biaran'*[48], manufactured out of oil seeds viz. Groundnut seeds and *Aranda* (Castor seed) which were purchased from farmers. Hence, as per judgment of the Tribunal, the dealer was liable to pay purchase tax. However, AA did not levy the purchase tax during audit assessment.	0.04
After this being pointed out, the Department accepted (October 2014) our observation and raised demand of ₹ 3.90 lakh.				
Total				**1.57**

We pointed out these cases to the Department between February and May 2014. Particulars of recovery in accepted cases and reply of the Department in remaining one case have not been received (November 2014).

We reported the matter to the Government in June 2014. The Government confirmed the replies of the Department in two cases (October 2014).

[48] Seeds for sowing purpose

2.10 Non/short levy of CST

As per Section 8(1) read with Section 8 (4) of the CST Act, 1956 every dealer, who in the course of inter-State trade or commerce, sells goods to a registered dealer, shall be liable to pay tax at the rate of two/three/four *per cent* of his turnover or at the rate applicable to the sale or purchase of such goods inside the State under the sales tax law of that State, whichever is lower, provided that the dealer selling the goods furnishes a declaration in Form 'C' in original duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars. In case of non furnishing of Form 'C' or furnishing incomplete forms, the dealer is liable to pay tax applicable to the local sales. Further, as per judgment of the Hon'ble Supreme Court in the case of Commissioner of Sales Tax V/s Rai Bharat Das, CST is leviable on packing material as well as packing charges, even if shown separately. Moreover, as per Section 30 (6) of the GVAT Act 2003, where a dealer is liable to pay interest and he makes payment of an amount which is less than the aggregate of the amount of tax, penalty and interest, the amount so paid shall be first applied towards the amount of interest, thereafter the balance, if any, towards the amount of penalty and thereafter the balance, if any, towards the amount of tax. Further, as per Section 9 (2) of the CST Act, 1956 provisions regarding interest and penalty under GVAT Act are applicable to the CST assessment also.

During test check of the assessment records of four offices[49] we noticed[50] in four assessments[51] that there was non/short levy of CST of ₹ 1.38 crore including interest and penalty of ₹ 0.61 crore as detailed below:

(₹ in crore)

Sl. No.	Office (No. of dealers)	Assessment year (Date of assessment)	Nature of observation	Non/ short levy of CST including interest and penalty
1	ACCT Unit-68 Surat (1)	2008-09 13.6.2012	(i) Sales worth ₹ 3.74 crore made to SEZ were not supported by Form 'I'/ 'C'. Hence, tax was required to be levied at the rate of five *per cent* including additional tax. However, the AA had levied tax at the rate of three/ two *per cent* resulting in short levy of tax of ₹ 7.71 lakh. (ii) Inter-State sales worth ₹ 29.71 crore were not supported by Form 'C' attracting tax at the rate of five *per cent* including additional tax. However, the assessing authority had levied tax at the rate of three/two *per cent*	1.15

[49] ACCT: 49 Nadiad, 54 Petlad, 68 Surat, 32 Vijapur
[50] Between September 2010 and July 2013
[51] For the year 2005-06, 2006-07and 2008-09 finalised between November 2008 and June 2012

			resulting in short levy of tax of ₹ 59.71 lakh.	
After this being pointed out, the concerned JCCT, while accepting (May 2014) our observation, reassessed the dealer and adjusted the additional demand of CST against the ITC available with the dealer.				
2	ACCT Unit-54 Petlad (1)	2006-07 30.11.2010	(i) AA had not levied tax on packing charges (OGS) worth ₹ 17.87 lakh. (ii) Inter-State sales worth ₹ 14.40 lakh which were made against duplicate[52] Form 'C' were assessed at concessional rate of tax of four *per cent* instead of local rate of tax of 12.5 *per cent*.	0.20
	ACCT Unit- 49 Nadiad (1)	2006-07 July 2009	(iii) Inter-State sales valued at ₹ 88.19 lakh were all on duplicate E-1 and C forms. This resulted in non-levy of tax of ₹ 3.53 lakh, interest of ₹ 3.77 lakh and penalty of ₹ 5.29 lakh.	
After this being pointed out, the concerned JCCT, while accepting (October 2013) our observation, raised demand of ₹ 4.22 lakh in revision order by disallowing deduction towards packing charges. However, the authority did not offer his remarks on acceptance of duplicate form 'C' in the assessment order. The Department furnished (May 2014) copies of duplicate Form 'E-I' and Form 'C' in the remaining case. Reply of the Department is not acceptable as it is mandatory to produce original Form 'E-I/II' and Form 'C' in support of claim of RR sale[53].				
3	ACCT, Unit-32, Vijapur (1)	2005-06 30.11.2008	The AA had incorrectly accepted Form 'C' valuing ₹ 42.77 lakh, which was issued against sales effected in May 2006 (2006-07), in the assessment for the year 2005-06.	0.03
We have not received reply of the Department in this case.				
Total				**1.38**

We reported the matter to the Government in June 2014. Reply of the Government has not been received (November 2014).

2.11 Non-levy of penalty (VAT/CST)

Section 34 (7) of the GVAT Act, provides for levy of penalty not exceeding one and half times of the tax assessed, if the dealer, in order to evade or avoid payment of tax has failed to furnish, without reasonable cause, returns in respect of any period by the prescribed date or has furnished incomplete or incorrect returns for any period. Section 34 (12) provides for levy of penalty not exceeding one and half times of the difference between the tax paid with returns and the amount assessed or reassessed where the tax assessed or reassessed exceeds 25 *per cent* of the amount of tax already paid. Moreover,

[52] Rule 12 (1) of the CST (Registration and Turnover) Rules, 1957 prescribes three copies of Form 'C' namely *'counter foil', 'duplicate' and 'original'*. Out of the above copies, *counter foil* remains with the purchasing dealer, *duplicate* copy is to be retained by the selling dealer with himself and *original* copy is to be submitted by the selling dealer to the assessing authority at the time of assessment to avail concessional rate of CST.

[53] Judgment of Hon'ble Supreme Court of India in case of India Agencies, Bangalore v/s Additional Commissioner of Commercial Taxes, Bangalore [Appeal (Civil) 1922 of 1999]

as per Section 32(5) the provisions of the GVAT Act apply *mutatis mutandis* to the provisional assessment as if provisional assessment were an audit assessment made under the Act. By virtue of Section 9(2) of the CST Act, the above provisions apply to assessments under the CST Act as well.

2.11.1 During test check of the assessment records of three offices[54] we noticed[55] in three assessments[56] that in two cases the dealers had not paid any tax of ₹ 16 lakh with returns, while in another case the dealer was assessed to tax (₹ 14.60 lakh) but the tax paid was only ₹ 5.33 lakh. Thus, the dealers were liable to pay penalty for non/less payment of tax.

However, the AA had not levied any penalty during audit assessment under Section 34 of the GVAT Act. This resulted in non-levy of penalty of ₹ 32.89 lakh.

We pointed out these cases to the Department in December 2013 and May 2014. The Department accepted (August/September 2014) our observation in two cases and raised demand of ₹ 13.98 lakh in one case and initiated revision proceedings in the other case.

In one case, the concerned JCCT did not accept (August 2013) our observation stating that the dealer had paid tax as per returns before audit assessment, as such the tax assessed did not exceed the tax paid. Hence, no penalty was required to be levied.

The reply of the JCCT is not correct since the dealer had neither filed any returns nor paid tax of ₹ 11.75 lakh though he had collected tax through tax invoices. The dealer had paid tax consequent to a raid by the Department. Further, the AA had not quoted any reasons in the assessment order for non-levy of penalty of ₹ 17.62 lakh.

2.11.2 During test check of the assessment records of two offices[57] we noticed[58] in three assessments[59] of two dealers that in one case the dealer had filed nil returns during 2009-10 and 2010-11. However, during the cross check of claim of ITC of the dealer with other dealers, it was noticed that the dealer had issued sale invoices of ₹ 46.46 lakh during the above years. Hence, the dealer had evaded tax by filing nil returns while the other dealer had evaded tax by not paying tax on warranty income[60]of ₹ 49.15 lakh. However, the AA had not levied any penalty of ₹ 78.91 lakh for non-payment of tax of ₹ 53 lakh

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[54] ACCT: 8 Surat, 45 Vadodara
DCCT: 10 Vadodara

[55] Between December 2012 and October 2013

[56] For the year 2007-08 and 2008-09 finalised between December 2011 and September 2012

[57] ACCT: 83 Amreli
DCCT: 1 Ahmedabad

[58] In January and February 2013

[59] For the year 2007-08, 2009-10 and 2010-11 finalised in October and November 2011

[60] The Honourable Supreme Court of India in the case of 'Mohmed Ikram Khan and Sons' has held that amount received from the parent company in respect of warranty claims is to be treated as sale.

during provisional assessment under Section 32. This resulted in non-levy of penalty of ₹ 78.91 lakh.

We pointed out these cases to the Department in May and December 2013. The Department, while accepting (September 2013) our observation in one case, stated that the dealer had filed appeal against the provisional assessment. Hence, decision to levy penalty had been withheld. In the other case, the concerned JCCT stated (July 2013) that penalty of ₹ 58 lakh had been levied during audit assessment under Section 34.

We reported the matter to the Government in June 2014. The Government confirmed the replies of the Department in two cases.

2.12 Short levy of VAT due to misclassification

As per Section 7 of the GVAT Act, 2003 tax on the turnover of sales of goods shall be levied at the rates specified in Schedule II or Schedule III of the Act. Additional tax at the rate of 2.5/1 *per cent* is also leviable from 1 April 2008. Lubricants fall under entry no. 49B of Schedule II attracting tax at the rate of 15 *per cent* whereas entry no. 58A of Schedule II pertains to machinery used in manufacture of goods, excluding domestic appliances (whether fitted or not with electric motor) such as grinder, mixer, grinder-cum-mixer, juicer, blender, water purifier, flour mill, toaster, oven etc., attracting tax at the rate of four *per cent*. Further, as per entry no. 87 of Schedule II, all goods other than those specified in Schedule I or Schedule III and in the preceding entries of Schedule II attract tax at the rate of 12.5 *per cent*.

2.12.1 As per entry no. 49B of Schedule II, Lubricants are taxable at the rate of 15 *per cent*. We noticed that in case of one dealer in ACCT: 23 Ahmedabad, industrial/automotive lubricants and industrial aluminum rolling oil lubricant valued at ₹ 11.63 crore was taxed at the rate of 12.5 *per cent* instead of 15 *per cent*. This resulted in short levy of tax of ₹ 29.08 lakh, interest of ₹ 21.19 lakh and penalty of ₹ 43.62 lakh.

After this being pointed out to the Department in December 2013, the Department did not accept our audit observation stating (October 2014) that lubricants are leviable at the rate of 12.5 *per cent* as per determination under Section 62 of the erstwhile Gujarat Sales Tax (GST) Act, 1969.

Reply of the Department is not correct as the lubricants are taxable at the rate of 15 *per cent* under entry no.49B of VAT Act and GST Act is not applicable in the present case.

2.12.2 As per entry no. 58 (A), machinery used in the manufacture of goods are taxable at the rate of four *per cent*. Domestic appliances are not covered under this entry. These fall under entry no.87 of Scheduled II of GVAT Act and are taxable at 12.5 *per cent*.

Test check of records of two dealers in ACCT, Godhra revealed that the AA had incorrectly classified food processing machineries such as Grinder, *Roti* making machine, Dough kneading machine, *PaniPuri* machine valued at

₹ 43.29 lakh under entry no. 58A and levied tax at the rate of four *per cent* instead of 12.5 *per cent*. This resulted in short levy of tax of ₹ 3.27 lakh, interest of ₹ 2.72 lakh and penalty of ₹ 4.91 lakh.

After this being pointed out to the Department in December 2013 and April 2014, the Department, while not accepting our observations, stated (October 2014) that the dealers were manufacturers of industrial and commercial food processing machineries which were used in industrial units like hotels and religious institutions. The above machineries cannot be put in domestic use. Thus, the goods were correctly classified under entry no. 58A of Schedule II.

The reply of the Department is not tenable as entry no. 58A of Schedule II covers machinery used in manufacture of goods. The food processing machineries cannot be termed as 'machinery used in manufacture of goods' as hotels and religious institutions cannot be treated as manufacturing units.

We reported the matter to the Government in June 2014. Reply of the Government has not been received (November 2014).

2.13 Non-levy of CST on Branch Transfer without Form 'F'

Section 6A of the CST Act, 1956 read with Rule 12(5) of the CST (Registration and Turnover) Rules, 1957 provides for exemption from levy of CST on transfer of goods from one State to another by the dealer to his principal/branch/agent, provided such transfer is supported by declaration in Form 'F'. If the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed to have been occasioned as a result of sale and tax levied accordingly.

During test check of the assessment records of three offices[61] we noticed[62] in three assessments[63] that in case of three dealers the AA had allowed branch transfer worth ₹ 2.90 crore, as deduction from total sales turnover, and no tax was levied in the assessment, though such claim by the dealers was not supported by mandatory Form 'F'[64]. Thus, non-assessment of branch transfer, not supported by Form 'F', resulted in non-levy of CST of ₹ 92.85 lakh, including interest of ₹ 20.83 lakh and penalty of ₹ 40.93 lakh.

We pointed out these cases to the Department in March and May 2012. The Department accepted (in September and December 2012) our observations in two cases and raised demand of ₹ 93.45 lakh. In the remaining one case, the Department did not accept (May 2013) our observation stating that deduction

[61] ACCT: 10 Ahmedabad, 93 Rajkot
DCCT: 19, Bhavnagar

[62] Between November 2010 and January 2012

[63] For the year 2004-05, 2006-07 and 2007-08 finalised between October 2008 and March 2011

[64] Rule 12(4) of the CST (Registration and Turnover) Rules, 1957 prescribes form 'F' which is a declaration issued by the transferee (agent or principal) to the transferor (seller) as an evidence in support of the claim of the seller that such transfer (movement) of goods was not a sale.

of ₹ 1.10 crore pertained to branch transfer/consignment[65]. Reply of the Department is not acceptable since as per provisions of the CST Act the dealer was required to produce Form 'F' in support of its total claim of consignment/branch transfer valued at ₹ 1.10 crore, but had produced forms of consignment transfer of ₹ 70.41 lakh. As such, the remaining goods valued at ₹ 40 lakh were taxable under the Act. Particulars of recovery in accepted cases has not been received (November 2014).

We reported the matter to the Government in June 2014. The Government confirmed (October 2014) the replies of the Department in two cases.

2.14 Non-levy of Entry Tax

As per judgment dated 15.7.2011 of the Honourable Gujarat High Court in the case of Reliance Industries Ltd. V/s State of Gujarat (SCA No. 11848 of 2005) 'crawler cranes, loaders, mobile cranes, motor grader, road roller, fork lift, chain mounted drilling machine, pipe layer and bulldozer' are classified as motor vehicles attracting entry tax at the rate of 12.5 *per cent* till 31 March 2008 and at the rate of 15 *per cent* from 1 April 2008 under Section 3(1) read with Section 2 (k) of the Gujarat Tax on Entry of Specified Goods into Local Area Act, 2001. Further, Section 17 (2) of the Act *ibid* provides for levy of penalty at the rate of 18 *per cent* per annum for non payment of the entry tax.

During test check of the assessment records of three offices[66] we noticed[67] in assessments[68] of four dealers that the dealers had imported J.C.B. Machine/Soil Compactor/Loader Backhoe/Hydraulic Mobile Crane/Excavator-cum-loader/ Vibratory compactor/car/fork lift truck etc. from outside the State. The above goods attracted entry tax as per provisions cited above. However, the assessing authorities did not levy Entry Tax in the assessments. This resulted in non-levy of entry tax of ₹ 60.56 lakh including penalty of ₹ 27.50 lakh.

We pointed out the cases to the Department between December 2013 and May 2014. The Department accepted (May/October 2014) our observation in all the cases and raised demand of ₹ 31.94 lakh in one case.

We reported the matter to the Government in June 2014. The Government confirmed the replies of the Department in all the cases.

2.15 Short levy of VAT due to incorrect/excess deduction towards labour charges

Section 2 (30) (c) of the GVAT Act, 2003 provides for deduction of the charges towards labour, service and other like charges in relation to works contract from the taxable turnover. Further, where the amount of such charges are not ascertainable or the accounts maintained by the contractor are not

[65] Consignment refers to branch transfer of goods by the dealer to his agent or principal or other branch.
[66] ACCT: 104 Gandhidham, 58 Surat, 46 Vadodara
[67] Between March and September 2013
[68] For the year 2007-08 and 2008-09 finalised between November 2011 and December 2012

sufficiently clear or intelligible, a *lump-sum* deduction shall be admissible in accordance with the percentage mentioned in the table below Rule 18AA of the GVAT Rules, 2006. Moreover, as per Rule 28 (8) (c) of the Rules ibid, a dealer holding permission to pay lump-sum tax under Section 14A of the Act *ibid,* shall pay lump-sum tax on the total turnover after deducting the amount paid to sub-contractors, if any.

During test check of the assessment records of three offices[69] we noticed[70] in four assessments[71] that the AA had allowed incorrect/excess deduction towards labour charges resulting in short levy of VAT of ₹ 15 lakh. Besides in three cases interest of ₹ 9 lakh and penalty of ₹ 9 lakh was also leviable as follows:

(₹ in lakh)

Sl. No.	Nature of observation	Labour charges		VAT		Short levy of VAT including interest and penalty
		Allowable	Allowed	Leviable	Levied	
1	The AA had allowed deduction of ₹ 1.59 crore towards labour income without ascertaining the nature of such income which was realised by cotton crushing/pulling.	00	1.59	0.13	0.07	6
After this was pointed out, the Department, while accepting (April 2014) our observation, reassessed the dealer and stated that the case of the dealer was pending before the Tribunal.						
2	The AA did not levy tax on labour work receipt of ₹ 3.37 crore though the dealer was paying lump-sum tax.	00	3.37	0.19	0.13	21
After this was pointed out, the Department accepted (April 2014) our observation prima facie and stated that the concerned authority had been instructed to initiate reassessment proceedings.						
3	The AA had allowed deduction towards labour at the rate of 30 *per cent* of the gross turnover instead of at the rate of 20 *per cent* applicable to the works contract (electrical), executed by the dealer, as per Rule 18AA.	0.41	0.61	0.12	0.10	3
After this was pointed out, the Department, while accepting (May 2014) our observation, stated that reassessment proceedings had been initiated.						
4	The AA had allowed deduction towards job work from the income received from the works contract for which the dealer had been permitted to pay lump-sum tax.	00	2.71	0.10	0.09	3
After this being pointed out, the Department accepted (October 2014) our observation and initiated revision proceedings.						
Total						**33**

[69] ACCT: 52 Anand, 56 Bharuch, 58 Surat
[70] Between September 2012 and July 2013
[71] For the year 2006-07 and 2007-08 finalised between January and May 2011

We reported the matter to the Government in June 2014. Their replies have not been received (November 2014).

2.16 Short levy of VAT due to application of incorrect rate of tax

As per entry no. 32 of Notification No. GHN-44 dated 29.4.2006 tyres and tubes of bicycle/tricycle/cycle rickshaws etc., covered under entry no. 6 of Schedule II to the GVAT Act, were exempted from VAT in excess of four *per cent*. Moreover, as per explanation, under entry no. 61 of Schedule-II, added by Gujarat Act No. 9 of 2009 dated 1.8.2009, renewable energy devices and components do not include battery operated vehicle.

During test check of the assessment records of two offices[72] we noticed[73] in three assessments[74] of two dealers that the AA had levied tax at the rate of four *per cent* instead of 12.5 *per cent* on sales of 'tyres and tubes of bicycle' valued at ₹ 14.06 lakh, effected prior to 29.4.2006, and 'e-bikes' valued at ₹ 5.79 crore. Thus, application of incorrect rate of tax by the AA had resulted in short levy of VAT amounting to ₹ 28.25 lakh, including interest of ₹ 1.09 lakh and penalty of ₹ 1.53 lakh.

We pointed out these cases to the Department in April/May 2014. The Department accepted (October 2014) our observations in two cases. In case of one dealer, an amount of ₹ 6.24 lakh had been reduced from the tax exemption limit for 2008-09 while reassessment proceedings had been initiated for 2009-10. In the other case, the Department stated that the case had become time-barred for the purpose of revision/reassessment resulting in loss of revenue.

We reported the matter to the Government in June 2014. The Government confirmed the replies of the Department in both the cases (November 2014).

2.17 Non/short levy of tax/additional tax

Section 7 (1A) of the GVAT Act, 2003, inserted *w.e.f.* 1.4.2008, provides for levy of additional tax at the rate of 2.5 *per cent* on the goods falling under entry no. 87 of Schedule II of the Act *ibid*. As per explanation below entry no. 61 of Schedule II to the Act *ibid* renewable energy devices and components and parts thereof do not include battery operated vehicle, which falls under entry no. 87 *ibid*. Further, as per Section 14A (2) of the Act *ibid*, a dealer who is permitted to pay lump-sum tax, shall not charge any tax in his sales bill or sales invoice in respect of the sales on which lump-sum tax is payable. Moreover, as per Section 30 (6) of the Act *ibid*, where a dealer is liable to pay interest and he makes payment of an amount which is less than the aggregate of the amount of tax, penalty and interest, the amount so paid shall be first applied towards the amount of interest, thereafter the balance, if any, towards the amount of penalty and thereafter the balance, if any, towards the amount of tax.

[72] ACCT: 101 Jamnagar
DCCT: 25 Gandhidham

[73] In April 2013

[74] For the year 2006-07, 2008-09 and 2009-10 finalised between February 2010 and February 2012

During test check of the assessment records of four offices[75] we noticed[76] in five assessments[77] of four dealers that in case of one dealer the AA had not levied additional tax on escalation invoices[78], for the year 2006-07 and 2007-08, which were raised in 2008-09 while in another case the AA had levied additional tax at the rate of one *per cent*, instead of 2.5 *per cent*, on sale of e-bikes[79]. Further, in case of one dealer, whose permission to pay lump-sum tax had been cancelled due to breach of condition, the AA had considered sales turnover inclusive of tax during assessment of the dealer as regular dealer. Since, the dealer was holding permission for paying lump-sum tax; he was not eligible to charge tax in his bills/invoices. Hence, the turnover was required to be considered as exclusive of tax. Similarly, in another case, the AA had adjusted the amount paid by the dealer towards his tax liability instead of adjusting the same first towards interest and penalty, payable by the dealer for late/short payment of tax. This had resulted in non/short levy of tax/ additional tax of ₹ 25.48 lakh including interest of ₹ 8.30 lakh and penalty of ₹ 4.36 lakh.

We pointed out the cases to the Department between May 2012 and May 2014. The Department accepted (between December 2012 and October 2014) our observations in all the cases and raised demand of ₹ 11.92 lakh in two cases while reassessment proceedings had been initiated in the remaining two cases.

We reported the matter to the Government (June 2014). The Government confirmed the replies of the Department in three cases.

2.18 Short levy of VAT due to application of incorrect rate of lump-sum tax

As per Section 14A of the GVAT Act, 2003 the Commissioner may permit every dealer who transfers property in goods involved in execution of a work contract to pay at his option in lieu of the amount of tax leviable from him under this Act in respect of any period, a lump-sum tax by way of composition at such rate as may be fixed by the State Government having regard to the incidence of tax on the nature of the goods involved in the execution of the total value of the works contract. Further, as per Notification No. GHN-88 dated 17.8.2006 read with Notification No. GHN-106 dated 11.10.2006 all kinds of works contract other than those specified in entry no. 2 and 3 of the notifications attracts tax at the rate of two *per cen*t of total value of the works contract.

[75] ACCT: 5 Ahmedabad, 47 Godhra
DCCT: 25 Gandhidham, 17 Surat

[76] Between March 2011 and September 2013

[77] For the year 2006-07, 2008-09 and 2009-10 finalised between August 2010 and May 2012

[78] Escalation invoices are those invoices which are raised subsequently as a result of increase in prices.

[79] E-bike stands for electronic bikes which are battery operated. These bikes are considered as pollution free vehicles.

During test check of the assessment records of ACCT, Unit-104, Gandhidham we noticed[80] in one assessment[81] of a dealer that the AA had levied lump-sum tax at the rate of 0.6 *per cent* on the total turnover by classifying the works executed by the dealer under entry no. 3 of Notification dated 11.10.2006. However, as per Income Tax Audit Report, the dealer was engaged in the business of mechanical contracts viz. fabrication and erection of M.S. storage tanks, falling under entry no. 1 of the notification dated 17.8.2006 attracting lump-sum tax at the rate of two *per cent*. Thus, application of incorrect rate of lump-sum tax resulted in short levy of VAT of ₹ 20.25 lakh, including interest of ₹ 6.07 lakh and penalty of ₹ 8.51 lakh.

We pointed out the case to the Department in April 2014. The Department accepted (October 2014) our observation and raised demand of ₹ 21.41 lakh. Particulars of recovery have not been received (November 2014).

We reported the matter to the Government in June 2014. Reply of the Government has not been received (November 2014).

2.19 Short levy of interest (VAT)

As per Section 42 (6) of the GVAT Act, 2003 where the amount of tax assessed or reassessed for any period, exceeds the amount of tax already paid by the dealer for that period, the dealer shall pay simple interest at the rate of eighteen *per cent* per annum on the amount of tax remaining unpaid for the period of default.

During test check of the assessment records of two offices[82] we noticed[83] in two assessments[84] that the AA had calculated interest incorrectly on delayed payment of tax due to incorrect calculation/adoption of period of delay. The AA had levied interest of ₹ 61.18 lakh, instead of correct interest of ₹ 80.08 lakh, resulting in short levy of interest of ₹ 18.90 lakh.

We pointed out the cases to the Department in May 2014. The Department accepted (October 2014) our observations in both the cases and raised demand of ₹ 17.69 lakh in one case.

We reported the matter to the Government (June 2014). Reply of the Government has not been received (November 2014).

2.20 Incorrect allowance of export deduction

Sale during export is not taxable. Rule 12 (10) of the CST (Registration and Turnover) Rules, 1957 provides that the dealer has to furnish a certificate in Form-H duly filled in with all details as an evidence of deemed export, *i.e.* copies of bill of lading, shipping bill, foreign buyer order, etc. Moreover, 'same goods' purchased should be exported. By virtue of Section 9(2) of the

[80] In April 2013
[81] For the period 2006-07 finalised in April 2011
[82] ACCT: 103 Bhuj, 99 Jamnagar
[83] In April 2013
[84] For the year 2007-08 finalised in September and December 2011

CST Act, provisions of interest and penalty as per GVAT Act, becomes applicable to CST assessment also.

During test check of the assessment records of two offices[85] we noticed[86] in assessments[87] of two dealers that the AA had allowed deduction from sales turnover towards indirect export though in one case, evidence in support of export such as bill of lading/ shipping bill were not available on record; while in the other case, there was difference in commodity sold against Form 'H' (organic sesame seeds) and commodity exported (Indian sesame oil) by the ultimate buyer and the dealer was not in possession of foreign buyer order. This resulted in incorrect deduction of turnover involving tax of ₹ 18.43 lakh including interest of ₹ 3.88 lakh and penalty of ₹ 4.31 lakh.

We pointed out the cases to the Department in December 2013 and May 2014. The Department accepted (October 2014) our observations in both the cases and raised demand of ₹ 10.20 lakh in one case. In the other case, the Department stated that the case had become time barred for the purpose of reassessment/revision resulting in loss of revenue.

We reported the matter to the Government in June 2014. The Government confirmed the reply of the Department in one case.

2.21 Excess payment of interest

As per Sub-section 1 of Section 38 of the GVAT Act, 2003 where refund of any amount of tax becomes due to the dealer by virtue of an order of assessment under Section 34, he shall be entitled to receive in addition to the amount of tax, simple interest at the rate of six *per cent* per annum on the said amount of tax from the date immediately following the date of the closure of the accounting year to which the said amount of tax relates till the date of payment of amount of such refund. Provided that where the dealer has paid any amount of tax after the closure of the accounting year and such amount is required to be refunded, no interest shall be payable for the period from the date of closure of such accounting year to the date of payment of such amount.

During test check of the assessment records of three offices[88] we noticed[89] in case of assessments[90] of three dealers that the AA had calculated interest incorrectly in case of two dealers, while in case of one dealer, the AA had granted interest on refund of tax of ₹ 3.20 crore from the closure of the accounting year though the dealer had paid such tax after the closure of the accounting year. Thus, incorrect calculation of interest and non-adherence to the specific proviso under Section 38 (1) by the AA had resulted in excess payment of interest of ₹ 18.15 lakh.

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85 ACCT: 56 Bharuch, 103 Bhuj
86 In February 2011 and September 2012
87 For the year 2004-05 and 2007-08 finalised in September 2008 and May 2011
88 ACCT: 11, Ahmedabad
DCCT: Corporate Cell-II Ahmedabad, 18 Valsad
89 Between February 2012 and June 2013
90 For the year 2006-07 and 2007-08 finalised between March 2011 and March 2012

We pointed out the cases to the Department between October 2012 and May 2014. The Department accepted (between February 2013 and September 2014) our observations in all the cases and stated that rectification proceedings had been initiated in one case while the other two cases had been referred to the appellate authority before whom the dealers had filed appeal against the assessment orders.

We reported the matter to the Government in June 2014. The Government confirmed the replies of the Department in two cases.

2.22 Non-levy of CST due to irregular exemption to sales to SEZ

Section 8 (6) and (8) of the CST Act, 1956 read with Rule 12(11) of the CST (Registration and Turnover) Rules, 1957 provides for exemption from levy of tax on inter-State sales of goods made against declaration in Form 'I' to a registered dealer in any SEZ established by the authority specified by the Central Government. Where the sale is not supported by Form 'I', tax is leviable at the rate applicable on sale of such goods inside the State.

During test check of the assessment records of ACCT, Unit-68, Surat we noticed in one assessment for the year 2008-09 finalised in June 2012 that the AA had treated sales of glass bottles worth ₹ 3.92 crore made to SEZ as exempted sales though such sales were made against declaration in Form 'C', instead of Form 'I', on collection of tax of ₹ 7.69 lakh. Thus, irregular allowance of exemption from levy of tax on sales made to SEZ unit resulted in non levy of CST of ₹ 13.14 lakh including interest of ₹ 5.45 lakh.

We pointed out the case to the Department in April 2014 and their replies have not been received (November 2014).

We reported the matter to the Government in June 2014 and their replies have not been received (November 2014).

2.23 Irregular permission to pay lump-sum tax

Section 14A and 14B of the GVAT Act, 2003 provides for payment of lump-sum tax by works contractors and Commission Agents engaged in the business of agricultural produce, respectively. The works contractor has to apply in Form 214/215, prescribed under Rule 28(8) of the GVAT Rules, 2006, to obtain permission to pay lump-sum tax. Further, as per Section 14B (3) *ibid*, a commission agent shall not be permitted to pay lump-sum tax if such agent sells goods in the course of inter-State trade or commerce.

During test check of assessment records of two offices[91] we noticed[92] in two assessments[93] that in one case the AA had assessed the works contract sales on lump-sum basis and levied tax at the rate of two/0.6 *per cent* though the dealer had not obtained any permission to pay lump-sum tax, while in the other case, the Department had permitted the commission agent to pay lump-sum tax

[91] ACCT: 14 Ahmedabad, 83 Amreli
[92] In March and May 2011
[93] For the year 2006-07 finalised in June 2009 and January 2010

during 2006-07, though the dealer had made sales in the course of inter-State trade and commerce in the month of May 2006. Thus, assessment of tax on lump-sum basis without permission/despite breach of condition had resulted in short levy of tax of ₹ 11.45 lakh including interest of ₹ 1.70 lakh and penalty of ₹ 5.85 lakh.

We pointed out the cases to the Department in May and July 2012. The Department accepted (July 2013) our observation in one case and raised demand of ₹ 4.62 lakh. However, the dealer preferred appeal before GVAT Tribunal on payment of ₹ one lakh.

We reported the matter to the Government in June 2014. Reply of the Government has not been received (November 2014).

2.24 Irregular/excess grant of refund/provisional refund

Rule 37(5) of the GVAT Rules, 2006 provides for provisional refund for an amount not exceeding ninety *per cent* of the amount claimed in the return furnished by a dealer. Further, the Commissioner of Commercial Taxes Circular dated 20.11.2008, stipulates that while granting provisional refund, input tax credit of closing stock is to be reduced from the total claim of refund. Moreover, as per Section 36 of the GVAT Act, 2003 refund due to the dealer shall be first applied towards the recovery of any amount due under this Act and only the balance amount, if any shall be refunded.

During test check of the assessment records of two offices[94] we noticed[95] in two cases[96] that the AA had issued Refund Payment Order (RPO) for ₹ 6.58 lakh in one case instead of adjusting outstanding dues of ₹ 4.81 lakh for the year 2006-07, while in case of the other dealer, provisional refund was granted without reducing input tax credit of closing stock. This resulted in irregular/excess grant of refund/provisional refund of ₹ 7.94 lakh including interest of ₹ 0.08 lakh.

We pointed out the cases to the Department in April 2014. The Department accepted (October 2014) our observations in both the cases and stated that revision proceedings had been initiated in one case. In the other case, task was generated for audit assessment and AA was instructed to consider audit observation during audit assessment.

We reported the matter to the Government in June 2014. Reply of the Government has not been received (November 2014).

[94] ACCT:52 Anand, 93 Rajkot
[95] In July and August 2013
[96] Assessment for the year 2008-09 finalised in October 2012 and Provisional refund for 2011-12

2.25 Irregular remission of tax/interest

Section 41 of the GVAT Act, 2003 read with Notification No. GHN-9 dated 27.2.2009 provides for remission of whole tax, payable by a certified manufacturer on the sales of specified goods till the sales of such specified goods do not exceed the quantity approved by the appropriate authority and specified as such in the eligibility certificate. The State Government had introduced in April 2007 *Vechan Vera Samadhan Yojana* (*yojana*) for speedy recovery of outstanding tax. The *yojana* allowed for remission of interest and penalty on payment of outstanding tax during the currency of the *yojana* i.e. during 1.4.2007 and 31.5.2007. Thus, interest and/ or penalty, leviable on tax paid prior or after the currency of the scheme, were not eligible for remission.

During test check of the assessment records of two offices[97] we noticed[98] in assessments[99] of two dealers that in one case the AA had remitted interest of ₹ 3.40 lakh payable on the tax for the period April to November 2005 but was paid belatedly between May and November 2006 (i.e. prior to commencement of the amnesty scheme). In the other case, AA had remitted tax of ₹ 17.89 lakh on quantity of specified goods, which exceeded the quantity approved by the authority in the eligibility certificate resulting in irregular remission of tax of ₹ 2.68 lakh. Thus, non-adherence to the specific provisions of the notification/scheme resulted in total irregular remission of tax/interest of ₹ 6.08 lakh.

We pointed out these cases to the Department in March 2011 and April 2012. The Department accepted (July 2011 and October 2014) our observations in both the cases and raised demand of ₹ 2.86 lakh in one case. Particulars of recovery have not been received (November 2014).

We reported the matter to the Government (June 2014). The Government confirmed the reply of the Department in one case.

2.26 Short levy of tax (Sales Tax)

Section 55A of the erstwhile GST Act, 1969 provides for payment of lump-sum tax by way of composition by works contractors. The State Government notification No. (GHN-4) GST-1097 (S) (55) (A) (2) 74 dated 1.4.1997 prescribes rate of composition for different works contract. As per the notification works contract for civil works attracted lump-sum tax at the rate of two *per cent,* while works contracts, not described in the notification, were liable to be taxed at the rate of 12 *per cent*. Further, as per determination dated 19.9.1997, laying of underground polythene pipeline is not a civil work and tax was leviable at the rate of 12 *per cent*. Moreover, goods falling under residuary entry no. 195 of Schedule IIA to the Act ibid attract tax at the rate of 12 *per cent*.

[97] ACCT: 57 Ankleshwar, 29 Prantij
[98] In March 2009 and September 2011
[99] For the year 2005-06 and 2006-07 finalised in December 2007 and March 2011

During test check of the assessment records of office of ACCT, Unit-20, Ahmedabad we noticed[100] in assessments[101] of two dealers that:

- in one case the AA had levied lump-sum tax at the rate of two *per cent* instead of 12 *per cent*, by treating laying of water distribution pipeline as civil work
- in the other case, the dealer had paid tax at the rate of four *per cent* by treating works contract of laying 'glass reinforced polyester pipeline' as 'sale of goods' and same was allowed in the assessment by the AA. Since, 'glass reinforced polyester pipeline' falls under residuary entry no. of Schedule IIA to the Act ibid, tax was required to be levied at the rate of 12 *per cent*.

Thus, application of incorrect rate of tax had resulted in short levy of tax of ₹ 49.78 lakh, including interest of ₹ 11.45 lakh and penalty of ₹ 14.37 lakh.

We pointed out the cases to the Department in April 2012. The Department accepted (November 2012 and October 2014) our observations in both the cases and raised demand of ₹ 49.78 lakh. Further, an amount of ₹ 2.03 lakh had been recovered in one case and recovery proceedings had been initiated under Land Revenue Code in both the cases. Particulars of recovery have not been received (November 2014).

We reported the matter to the Government in June 2014. Reply of the Government has not been received (November 2014).

2.27 Short levy of penalty (Sales Tax)

As per Section 45(6) of the erstwhile GST Act, 1969 where in the case of a dealer the amount of tax assessed or reassessed for any period exceeds the amount of tax already paid by the dealer in respect of such period by more than 25 *per cent* of the amount of tax so paid, there shall be levied on such dealer a penalty not exceeding one and one-half times the difference between tax assessed/reassessed and tax paid. Further, Circular dated 3 June 1992, issued by the Commissioner of Commercial Tax, prescribed slab rates for levy of penalty.

During test check of the assessment records of office of ACCT, Unit-7, Ahmedabad we noticed[102] in one assessment[103] that tax assessed exceeded the tax paid by the dealer by more than 100 *per cent*. Hence, as per the circular, the dealer was liable to pay penalty at the rate of 60 *per cent* of the difference (₹ 33.60 lakh) between tax assessed (₹ 54.07 lakh) and tax paid (₹ 20.47 lakh). However, the AA had levied penalty at the rate of 40 *per cent* of such difference. This had resulted in short levy of penalty of ₹ 6.77 lakh.

[100] In December 2009
[101] For the year 2004-05 and 2005-06 finalised in September 2008 and February 2009
[102] In September 2010
[103] For the year 2004-05 finalised in December 2009

We pointed out the case to the Department in May 2012. The Department accepted our observation (July 2012) and raised demand of ₹ 6.77 lakh. Particulars of recovery have not been received (November 2014).

We reported the matter to the Government (June 2014). The Government confirmed the reply of the Department (November 2014).