

CHAPTER – II
TAXATION DEPARTMENT



CHAPTER-II: TAXATION DEPARTMENT

2.1 Tax Administration

Taxation Department is the most important revenue-earning Department of the State. The Principal Secretary to the Government of Meghalaya, Excise, Registration, Taxation and Stamps (ERTS) Department is in overall charge of the Taxation Department at the government level. The Commissioner of Taxes (CoT) is the administrative head of the Department. He is assisted by a Deputy Commissioner of Taxes (DCT) and three Assistant Commissioners of Taxes (ACTs). One ACT functions as the Appellate Authority. At the district level, 17 Superintendents of Taxes (SsT) have been entrusted with the work of registration, scrutiny of returns, collection of taxes, levy of interest and penalty, issue of road permits/declaration forms, enforcement and supervision of check gates etc. The collection of tax is governed by the provisions of the Central Sales Tax (CST) Act, 1956; the CST Rules, 1957; the Meghalaya Value Added Tax (MVAT) Act, 2003; the MVAT Rules, 2005; the Meghalaya Sales of Petroleum and Petroleum Products (including Motor Spirit) and Lubricants Taxation (MSL) Act, etc. With the introduction of Goods & Services Tax on 01 July 2017, CST Act and MVAT Act have been repealed.

2.2 Internal audit

The Taxation Department has no separate Internal Audit Wing (IAW). This was pointed out earlier by audit but no action has been taken by the Department to create an IAW.

2.3 Results of Audit

Test check of the records of 19 units relating to VAT during 2016-17 revealed under-assessment of tax and other irregularities involving ₹ 471.01 crore in 203 cases which fall under the following categories:

Table 2.1

<i>(₹ in crore)</i>			
Sl. No.	Category	Number of cases	Amount
1.	Non/Short realisation of tax	21	61.06
2.	Evasion of tax	21	44.51
3.	Loss of revenue	05	4.98
4.	Other irregularities	156	360.46
Total		203	471.01

During the year, the Department accepted under assessments and other deficiencies of ₹ 213.53 crore in 127 cases. An amount of ₹ 0.24 crore was realised in nine cases during the year 2016-17.

A few cases having financial impact of ₹ 37.65 crore, in terms of under assessment/short levy/non-levy of tax and other provisions of the Acts are discussed in the paragraphs 2.4 to 2.19.

2.4 Evasion of tax due to concealment of purchase

A dealer concealed inter-State purchase of ‘tobacco’ worth ₹ 3.67 crore resulting in evasion of tax amounting to ₹ 0.73 crore.

[Superintendent of Taxes (ST), Nongpoh; August 2016]

Under Section 45 of the MVAT Act, if the returns furnished by a dealer are incorrect, the Superintendent of Taxes (ST) can assess to the best of his judgement the amount of tax due from the dealer. If a dealer fails to pay the full amount of tax payable by due date, simple interest at the rate of two *per cent* per month from the first day of the quarter following the due date is leviable under Section 40 of the MVAT Act. In addition, for non-payment of tax, penalty not exceeding twice the amount of tax involved is also leviable under Section 90 read with Section 96 of the Act *ibid*. In Meghalaya, ‘tobacco and tobacco products’ are taxable at 20 *per cent*.

A dealer¹ engaged in sale of ‘tobacco and tobacco products’ submitted returns for the period from July 2013 to December 2014 wherein he disclosed purchase of goods valued at ₹ 75.76 crore. Examination of the inter-State purchase records of the dealer, however, revealed that during the same period, the dealer purchased goods valued at ₹ 79.43 crore. The dealer thus concealed taxable purchase of ₹ 3.67 crore having a tax effect of ₹ 0.73 crore². The dealer stopped all trade related activities³ after December 2014 indicating closure of business.

The ST did not initiate any action to ascertain the status of business activities of the dealer or assess the dealer on best judgement basis. The ST did not take cognisance of the actual inter-State purchases made by the dealer, details of which were available in the dealer’s records.

Failure of the ST to timely assess the dealer resulted in concealment of purchase with consequent evasion of tax amounting to ₹ 0.73 crore. Additionally, penalty not exceeding ₹ 1.46 crore and minimum interest of ₹ 0.35 crore⁴ were also leviable.

The case was reported to the Taxation Department, Government of Meghalaya in October 2016 and reminded in August 2017 and January 2018. The ACT stated (February 2018) that there was no evasion of tax as the total purchase made by the

¹ M/s Sai Agencies.

² 20 *per cent* of ₹ 3.67 crore = ₹ 0.73 crore.

³ The dealer stopped applying for road permits and declaration forms.

⁴ Calculated upto 31.03.2017

dealer between July 2013 and December 2014 was ₹ 80.19 crore which tallied with his tax returns submitted. The reply is not acceptable, since the dealer declared purchases amounting to ₹ 75.76 crore in his quarterly tax returns. Also, the dealer had not submitted any tax returns after December 2014. The Department did not furnish any details in support of the dealer's claim of purchase of ₹ 80.19 crore or if he had submitted of revised returns for the period.

No further reply had been received from the Taxation Department, Government of Meghalaya (February 2018).

2.5 Concealment of inter-State purchase

A dealer concealed purchase of 'cigarettes' worth ₹ 12.63 crore in course of inter-State trade and evaded tax of ₹ 2.53 crore

[ST, Circle-III, Shillong; February 2017]

Under Section 44 of the MVAT Act, every dealer of goods specified in Schedule-V of the MVAT Act shall be liable to pay tax at the first point of sale of such goods in the State. Under Section 45 of the MVAT Act, if the returns furnished by a dealer are incorrect, the ST can assess to the best of his judgement the amount of tax due from the dealer. In Meghalaya, 'cigarettes and tobacco' are listed under Schedule-V of the MVAT Act and are taxable at 20 per cent.

A dealer⁵ submitted returns for the period between April 2013 and September 2015 wherein he disclosed local purchase of 'cigarettes' and other items. He accordingly submitted returns claiming exemption from payment of tax on subsequent sale of 'cigarettes'. During the aforesaid period, the dealer disclosed total sale of 'cigarettes' amounting to ₹ 354.22 crore. The dealer did not furnish returns after September 2015.

Audit examination of the records of the dealer revealed that during the same period, the dealer purchased 'cigarettes' amounting to ₹ 12.63 crore in course of inter-State trade using 'C' forms. However, the dealer did not disclose inter-state purchase and any taxable sale of 'cigarettes' in his quarterly returns. The dealer, thus, concealed the turnover of ₹ 12.63 crore and evaded tax amounting to ₹ 2.53 crore⁶. Additionally, penalty not exceeding ₹ 5.06 crore and interest amounting to ₹ 1.74 crore⁷ were also leviable.

The ST could not detect the concealment of taxable sale as he failed to cross check the inter-State purchases reported by the dealer with tax returns filed by him. This resulted in evasion of tax to that extent.

The case was reported to the Taxation Department, Government of Meghalaya in April 2017 and reminded in August 2017 and January 2018.

⁵ M/s Hardeodas Jagannath.

⁶ 20 per cent of ₹ 12.63 crore = ₹ 2.53 crore.

⁷ Calculated upto 31.03.2017.

The ACT opined (February 2018) that the inter-State purchase of ₹ 12.63 crore by the dealer related to M/s VST limited and M/s ITC limited, and they seemed to be dealing in items other than cigarettes also. Additionally, as per the utilization of ‘C’ forms by the dealer, it appeared that the dealer made inter-State purchase of ‘cigarettes’ amounting to ₹ 42 lakh only during the period. However, the dealer had been directed to produce his books of accounts and counterfoils of ‘C’ forms issued to him. Audit observed that the dealer made inter-state purchase amounting to ₹ 2.08 crore from M/s VST limited. The Department had not been able to produce the details of such items purchased. Further, M/s VST Industries Limited is a manufacturer of ‘cigarettes’⁸. Therefore, detailed scrutiny of invoice level records by the dealer in course of inter-State purchase is needed. No details of inter-state purchases made from ITC were communicated to Audit. Result of detailed scrutiny of dealer’s books of account is awaited.

No further had been received from the Taxation Department, Government of Meghalaya (February 2018).

2.6 Short payment of tax due to application of incorrect rate of tax

A dealer paid tax on sale of ‘automobiles’ at 5 per cent instead of 13.5 per cent, resulting in short payment of tax of ₹ 6.34 crore.

[ST, Circle-III, Shillong; February 2017]

Under Section 45 of the MVAT Act, if the returns furnished by a dealer are incorrect, the ST can assess to the best of his judgement the amount of tax due from the dealer. Further if a dealer furnishes incorrect returns, then interest at the rate of two *per cent* per month and penalty not exceeding twice the amount of tax is leviable under Sections 40 and 96 of the Act *ibid*.

In Meghalaya, ‘automobiles’ are taxable at 13.5 *per cent*.

A dealer⁹ submitted tax returns for the period from April 2013 to March 2015 wherein he disclosed total sale turnover of ₹ 119.71 crore. Out of this he declared sale of goods amounting to ₹ 74.59 crore taxable at 5 *per cent*. The ST completed the scrutiny of returns (July 2015) upto September 2014 and accepted the returns as correct.

Examination of the case records of the dealer revealed that the dealer dealt in automobiles and accessories only, which are taxable at 13.5 *per cent*. The dealer, thus, paid tax at incorrect rate on sale of goods worth ₹ 74.59 crore resulting in short payment of tax amounting to ₹ 6.34 crore¹⁰. Additionally, penalty not exceeding ₹ 12.68 crore and interest of ₹ 4.26 crore¹¹ were also leviable.

⁸ M/s Vazir Sultan Company (VST Industries) is a manufacturer of ‘charminar’ brand of cigarettes.

⁹ M/s Modrina Auto Enterprise.

¹⁰ Differential rate of 8.5 *per cent* on ₹ 74.59 crore = ₹ 6.34 crore.

¹¹ Calculated upto 31.03.2017

The ST failed to check the application of incorrect rate of tax by the dealer at the time of scrutiny resulting in short payment of tax to that extent.

The case was reported to the Taxation Department, Government of Meghalaya in April 2017 and reminded in August 2017 and January 2018. The ACT stated (February 2018) that the dealer also dealt in tractors, tillers *etc.* which are taxable at 5 *per cent* and there was no application of incorrect rate of taxation. Audit noted that the dealer was an authorized seller of vehicles manufactured by M/s Tata Motors, which did not manufacture tractors, tillers *etc.* Also, the dealer did not disclose any local purchases taxable at 5 *per cent* in his tax returns. Further, the ACT had not furnished any evidence of purchase and sale of these items as mentioned.

No further reply had been received from the Taxation Department, Government of Meghalaya (February 2018).

2.7 Loss of revenue on assessments not completed

A dealer closed down his business and did not pay tax amounting to ₹ 1.43 crore on closing stock worth ₹ 28.67 crore.

[ST, Nongpoh; August 2016]

Under Section 11 of the MVAT Act, Input Tax Credit (ITC) is allowed to a registered dealer in respect of his purchase of taxable goods from another registered dealer for resale in the State. Further under Section 45(4) of the MVAT Act, if a dealer closes his business, then the ST shall assess the tax on goods that remain in stock at the time of closure of business on which ITC has already been given credit. As per Rule 28 of MVAT Rules, in the event of failure to furnish return, the certificate of registration of a dealer shall be suspended. Further if a dealer fails to pay the full amount of tax payable by due date, simple interest at the rate of two *per cent* per month from the first day of the quarter following the due date is leviable under Section 40 of the MVAT Act. In addition, for non-payment of tax, penalty not exceeding twice the amount of tax involved is also leviable under Section 90 read with Section 96 of the Act *ibid*.

A dealer¹² disclosed local purchase of goods amounting to ₹ 74.33 crore (taxable at 5 *per cent*) for the period between January 2008 and March 2012 and claimed ITC amounting to ₹ 2.97 crore on such purchase. During the same period, the dealer disclosed sales of ₹ 45.66 crore on which, tax amounting to ₹ 1.93 crore was payable. The dealer did not pay any tax and adjusted the output tax against the ITC available with him.

The dealer stopped furnishing any returns after March 2012 and discontinued¹³ his business activities in the State. Without taking into account the profit element, goods worth ₹ 28.67 crore remained with the dealer as on 31 March 2012. The closing stock

¹² M/s Greystone Ispat Ltd.

¹³ The dealer stopped furnishing quarterly tax returns and applying for road permits and declaration forms which are essential to carrying on business.

would be higher if the opening stock as on 31 March 2012 and the profit element are also taken into account¹⁴.

Despite not furnishing the tax returns for such a long period, the ST did not initiate the process to suspend his registration and to assess the tax payable on the closing stock of the dealer. Failure of the ST to monitor the business activities of the dealer and make timely assessments thereby resulted in non-realisation of tax amounting to ₹ 1.43 crore. Additionally, penalty not exceeding ₹ 2.86 crore and interest of ₹ 1.63 crore¹⁵ were also leviable.

On this being pointed out (October 2016), the ST accepted the findings (December 2016) and stated that the dealer had closed his business and efforts were being made to contact him. The ACT stated (February 2018) that the dealer had not responded to the notices served in this regard. Failure of the ST to timely assess the dealer resulted in loss of revenue to that extent.

No further reply had been received from the Taxation Department, Government of Meghalaya (February 2018).

2.8 Under-assessment of tax due to acceptance of obsolete declaration forms

Acceptance of obsolete declaration forms by the ST resulted in underassessment of tax amounting to ₹ 65.04 lakh.

[ST, Nongpoh; August 2016]

Under Section 8 of the Central Sales Tax (CST) Act, 1956 read with Rule 12 of the CST (Registration & Turnover) Rules, 1957 inter-State sale of goods is taxable at the concessional rate of two *per cent* if such sale is supported by declarations in Form ‘C’ from the purchasing dealer, else such sale is taxable at the local rate of tax. Government of Meghalaya notified¹⁶ that eligible industries¹⁷ shall pay CST at the rate of one *per cent*. Further under Section 45 of the MVAT Act, if the returns furnished by a dealer are incorrect, the ST can assess to the best of his judgement the amount of tax due from the dealer.

The State Governments of Nagaland and Manipur declared all offline/paper ‘C’ forms as obsolete from 1 January 2012 and 1 November 2012 respectively. This was duly communicated to the Taxation Department, Government of Meghalaya.

A dealer¹⁸ disclosed inter-State sales valued at ₹ 5.20 crore to dealers in Manipur and Nagaland for the period between January 2012 and March 2014, on which he paid tax amounting to ₹ 5.20 lakh. The ST accepted the same during assessment on various dates between October 2013 and May 2016. Audit scrutiny of records, however, revealed that

¹⁴ Even if we assume a profit of 5 *per cent*, the closing stock works out to ₹ 30.84 crore having tax effect of ₹ 1.54 crore.

¹⁵ Calculated upto 31.03.2017.

¹⁶ vide notification No. ERTS(T) 64/98/314 dated 16.10.06

¹⁷ Eligible under Meghalaya Industries (Tax Remission) Scheme, 2006

¹⁸ M/s AA Nutritions.

the dealer submitted offline/paper 'C' forms from the dealers in Manipur and Nagaland in support of his claim.

Although the notifications from the Taxation Departments of Nagaland and Manipur declaring the offline/paper 'C' forms as obsolete were available in the official records, the ST accepted these obsolete 'C' forms during assessment and allowed the dealer to pay tax amounting to ₹ 5.20 lakh at concessional rate of 1 *per cent* as against ₹ 70.24 lakh at 13.5 *per cent*. Irregular acceptance of obsolete 'C' forms thereby resulted in underassessment of tax amounting to ₹ 65.04 lakh. Additionally, penalty not exceeding ₹ 1.30 crore and interest of ₹ 58.21 lakh¹⁹ were also leviable.

The case was reported to the Taxation Department, Government of Meghalaya in October 2016 and reminded in August 2017 and January 2018.

The ACT stated (February 2018) that the 'C' forms submitted by the dealers from Manipur and Nagaland were verified and found to be valid. For inter-State sales to Nagaland, he furnished a revised notification which allowed acceptance of manual 'C' forms upto 30 September 2013. While in case of Manipur, the dealers submitted online 'C' forms. The reply is not acceptable as the ST kept on allowing concessional rate of taxation on account of manual 'C' forms for the quarter ending 31 December 2013 in respect of Nagaland. In case of Manipur, the dealers submitted 'duplicate' 'C' forms, which should have been rejected by the ST²⁰. It had a tax implication of ₹ 40.68 lakh²¹.

No further reply had been received from the Taxation Department, Government of Meghalaya (February 2018).

2.9 Evasion of tax by suppressing sales turnover

A dealer concealed sale of 'electronic goods' amounting to ₹ 8.44 crore resulting in evasion of tax amounting to ₹ 71.74 lakh.

[ST, Circle-IV, Shillong; February 2017]

Under Section 39 of the MVAT Act, each and every return furnished by a registered dealer is subject to scrutiny by the ST to *inter alia* verify the correctness of return and payment of tax thereon. Further, under Section 45 of the MVAT Act, if the returns furnished by a dealer are incorrect, the ST can assess to the best of his judgement the amount of tax due from the dealer. If a dealer furnishes incorrect returns, then interest at the rate of two *per cent* per month and penalty not exceeding twice the amount of tax is leviable under Sections 40 and 96 of the Act *ibid*. In Meghalaya 'electronic goods' are taxable at 13.5/14.5 *per cent*²².

¹⁹ Calculated upto 31.03.2017.

²⁰ judicially held by the Supreme Court Commissioner, Sales Tax v. M/s Prabhudayal Prem Narayan (1988) 71 STC (SC); M/s Delhi Automobiles Private Limited v. Commissioner of Sales Tax (1997) 104 STC 75 (SC).

²¹ including interest upto 31.03.2017.

²² 14.5 *per cent* w.e.f 15.01.2015.

A dealer²³ dealing in ‘electronic goods’ disclosed total sales turnover amounting to ₹ 14.03 crore taxable at five *per cent* and ₹ 5.63 crore taxable at 13.5/14.5 *per cent* in his quarterly returns for the period from April 2012 to March 2015. The ST completed the scrutiny of returns upto September 2014 on various dates between April 2014 and March 2016 by accepting the returns as correct.

Audit examined the details of local and inter-State purchases made by the dealer during the aforesaid period. It, however, revealed that the dealer purchased goods amounting to ₹ 6.10 crore taxable at five *per cent* and ‘electronic goods’ amounting to ₹ 14.07 crore taxable at 13.5/14.5 *per cent* during the same period. The dealer thus submitted false returns and concealed sale of ‘electronic goods’ worth ₹ 8.44 crore²⁴ thereby resulting in evasion of tax amounting to ₹ 71.74 lakh²⁵. Additionally, penalty not exceeding ₹ 1.43 crore and interest of ₹ 30.13 lakh²⁶ were also leviable.

Although the details of purchases made by the dealer were available in the case records, the ST failed to notice the discrepancies in the returns filed by the dealer and the particulars of sales turnover. It resulted in evasion of tax to that extent.

The case was reported to the Taxation Department, Government of Meghalaya in October 2016 and reminded in August 2017 and January 2018. The ACT accepted the audit observation (February 2018) and stated that case records of the dealer were re-examined and demand notice for tax due and penalty amounting to ₹ 37.66 lakh had been sent to the dealer. Details of the assessment made by the ST and realisation, thereof, had not been intimated to Audit.

No further reply had been received from the Taxation Department, Government of Meghalaya (February 2018).

2.10 Short payment of tax due to excess claim of labour charges

A dealer engaged in work contracts claimed excess deduction of ₹ 3.46 crore as labour charges, resulting in short payment of tax amounting to ₹ 46.73 lakh.

[ST, Circle-III, Shillong; February 2017]

Under Section 5(c) of the MVAT Act, in case of work contracts, the actual charges towards labour, *etc.* are deductible from the gross turnover to arrive at the taxable turnover. As per Section 86 of the MVAT Act, any dealer whose gross turnover during a year exceeds ₹ 40 lakh, has to get his accounts audited by a Chartered Accountant and submit a report of such audit to the ST within six months from the end of that year. Further under Section 45 of the MVAT Act, if a dealer fails to furnish returns or the returns furnished by a dealer are incorrect, then the ST can assess to the best of his judgement the amount of tax due from the dealer.

²³ M/s Electro Audio Vision.

²⁴ ₹ 14.07 - ₹ 5.63 crore = ₹ 8.44 crore.

²⁵ Differential rate of 8.5 *per cent* on ₹ 8.44 crore = ₹ 71.74 lakh.

²⁶ Calculated upto 31.03.2017.

A dealer²⁷ disclosed sales turnover amounting to ₹ 9.93 crore in course of execution of work contracts during the period from April 2014 to March 2015, against which, the dealer claimed ₹ 4.83 crore as labour charges. The ST completed the scrutiny of returns in October 2015 and accepted the returns as correct.

Examination of the audited accounts²⁸ of the dealer for the same period, however, revealed that the labour charges incurred by the dealer were ₹ 1.37 crore. The dealer, thus, irregularly claimed excess deduction towards labour charges amounting to ₹ 3.46 crore, resulting in short payment of tax amounting to ₹ 46.73 lakh²⁹. Additionally, penalty not exceeding ₹ 93.47 lakh and interest of ₹ 19.63 lakh³⁰ were also leviable.

The ST, at the time of scrutiny, failed to detect the excess claim of exempted sale even though the detailed audited accounts were available in the dealer's case records, thereby resulting in short payment of tax to that extent.

The case was reported to the Taxation Department, Government of Meghalaya in April 2017 and reminded in August 2017 and January 2018. The ACT stated (February 2018) that the dealer had submitted a revised certificate of audit of accounts from the Chartered Accountant wherein the labour charges had been disclosed at ₹ 1.37 crore. The Chartered Accountant also explained that the error in the previous certified report was due to wrong accounting of labour charges as purchases.

The reply is not acceptable as labour charges claimed by the dealer now stand to 49 *per cent* of the total turnover in the revised audited accounts. This would require detailed examination of books of accounts and other related documents such as Running Account bills *etc.* under Section 5(2)(c) of MVAT Act³¹. Further, the purchases disclosed by the dealer in his quarterly returns and revised audited accounts do not match. The ACT failed to intimate result of assessment of the books of accounts of the dealer by the ST in confirmation of the high labour claims to Audit (February 2018).

No further reply had been received from the Taxation Department, Government of Meghalaya (February 2018).

2.11 Under assessment of tax due to acceptance of false 'C' forms

The ST accepted false declarations in Form 'C' in support of inter-State sale of ₹ 6.06 crore resulting in under assessment of tax of ₹ 0.18 crore.

[ST, Williamnagar; February 2017]

Under Section 8 of the Central Sales Tax (CST) Act, 1956 read with Rule 12 of the CST (Registration & Turnover) Rules, 1957 inter-State sale of goods is taxable at the concessional rate of two *per cent* if such sale is supported by declarations in Form 'C'

²⁷ M/s Sunshine Sawkmie.

²⁸ Audit Report issued by a Chartered Accountant.

²⁹ 13.5 *per cent* of ₹ 3.46 crore = ₹ 46.73 lakh.

³⁰ Calculated upto 31.03.2017.

³¹ Under Section 5(2)(c) of MVAT act labour charges *etc.* allowed to be deducted from gross turnover value is 25 *per cent* in the cases where the amount of such charges is not ascertainable from the contract.

from the purchasing dealer; else such sale is taxable at the local rate of tax. The provisions of the MVAT Act apply *mutatis mutandis* in case of assessments under the CST Act.

In Meghalaya, coal is taxable at five *per cent*.

During the period from April 2014 to December 2014, a dealer³² disclosed inter-State sale of coal valuing ₹ 6.06 crore to registered dealers in Assam and submitted two ‘C’ forms³³ in support of the sale. This was accepted by the ST and the sale was accordingly assessed (November 2016) at the concessional rate of two *per cent*.

Audit cross-verified these ‘C’ forms with the website³⁴ of the Taxation Department, Government of Assam. It revealed that the ‘C’ forms submitted by the dealer had been issued by the Taxation Department, Government of Assam to the purchasing dealers for making inter-State purchases from some other dealers in Meghalaya and not from the aforesaid dealer. Thus, the dealer fraudulently declared the sale amounting to ₹ 6.06 crore to registered dealers by submitting false ‘C’ form declarations with a view to evade tax.

This was, however, overlooked by the ST at the time of assessments (November 2016) as he failed to verify the correctness of the declarations made by the dealer. This resulted in under assessment of tax amounting to ₹ 0.18 crore; on which interest of ₹ 0.08 crore³⁵ and penalty not exceeding ₹ 0.36 crore were additionally leviable.

The case was reported to the Taxation Department, Government of Meghalaya in May 2017 and reminded in August 2017 and January 2018. The ACT while accepting the facts (February 2018) stated that the ST had re-assessed the dealer and demand notice had been issued to the dealer. Details of the assessment made by the ST and realisation thereof had not been intimated (February 2018).

No further reply had been received from the Taxation Department, Government of Meghalaya (February 2018).

2.12 Evasion of tax on sale of Motor Spirits and High Speed Diesel

A dealer concealed sale of ₹ 7.13 crore of motor spirits/high speed diesel and evaded tax of ₹ 1.12 crore.

[ST, Williamnagar; February 2017]

Under Section 11(4) of the Assam (Sales of Petroleum *etc.*) Taxation Act, 1955 (as adapted by Meghalaya) if the ST is not satisfied with the correctness of returns furnished by a dealer, then the ST can assess to the best of his judgement the amount of tax due from the dealer. Further under Section 16(1)(c) of the Act, if the dealer has

³² M/s Eliash Marak.

³³ ‘C’ form no AS 0585703 during QE June 2014 and ‘C’ form no AS 0585803 during QE December 2016.

³⁴ <http://tax.assam.gov.in>

³⁵ Calculated upto 29.11.2016 (Date of Assessment).

concealed particulars of his turnover, then the dealer is liable to pay as penalty, in addition to the tax payable, a sum not exceeding one and half times the tax payable. In addition, interest on tax payable is leviable under Section 20A of the Act *ibid* as follows:

Table 2.2

For the first 60 days from the due date ³⁶	12 per cent per annum
Beyond 60 days from the due date	24 per cent per annum

For the period between December 2014 and June 2016, a dealer³⁷ disclosed sale of 'Motor Spirits' (MS) at ₹ 2.69 crore and 'High Speed Diesel' (HSD) at ₹ 5.79 crore. The ST accepted the same during assessment between February 2015 and August 2016. However, audit examination of the purchase statement of the dealer revealed that during the same period, the dealer purchased MS valued at ₹ 5.15 crore and HSD valued at ₹ 10.46 crore.

The ST failed to take into account these related records while completing the assessment. It thereby allowed the dealer to conceal sale of MS worth ₹ 2.46 crore and HSD worth ₹ 4.67 crore, resulting in evasion of tax amounting to ₹ 1.12 crore³⁸. Additionally, penalty not exceeding ₹ 1.68 crore and interest of ₹ 0.23 crore³⁹ were also leviable.

The case was reported to the Taxation Department, Government of Meghalaya in May 2017 and reminded in August 2017 and January 2018. The ACT while accepting the facts (February 2018) stated that the ST had re-assessed the dealer and demand notice had been issued to the dealer. Details of the assessment made by the ST and realisation thereof had not been intimated (February 2018).

No further reply had been received from the Taxation Department, Government of Meghalaya (February 2018).

2.13 Concealment of purchase

A dealer concealed inter-State purchase amounting to ₹ 15.78 crore and evaded tax of ₹ 3.16 crore.

[ST, Circle-I, Tura; November 2016]

As per Rule 53 of the MVAT Rules, 2005, a Road Permit in Form 40 issued by the ST is to be carried by the transporter importing taxable goods into Meghalaya and is required to be produced at the taxation check posts. Under Section 45 of the MVAT Act, if the returns furnished by a dealer are incorrect, the ST can assess to the best of his judgement the amount of tax due from the dealer. In addition, for non-payment of

³⁶ Due date is the end of the month following the quarter.

³⁷ M/s Genesis Service Station.

³⁸ Tax on HSD: 13.5 per cent on HSD worth ₹ 4.67 crore = ₹ 0.63 crore
 Tax on MS: 20 per cent on MS worth ₹ 2.46 crore = ₹ 0.49 crore
 Total purchase of HSD/MS worth ₹ 7.13 crore = ₹ 1.12 crore

³⁹ Calculated upto 31.03.2017

tax, penalty not exceeding twice the amount of tax involved and interest at two *per cent* per month are also leviable under Section 40 and Section 96 of the Act *ibid*.

A dealer⁴⁰ submitted returns for the period from April 2013 to March 2015 wherein he disclosed total inter-State purchase of ₹ 2.50 crore, against which, he disclosed sale of ₹ 2.83 crore. The ST completed the scrutiny (February 2015) of returns upto September 2014 and accepted the returns as correct.

Audit cross-checked the details of import of consignment by the dealer through the taxation check post at Boxirhat⁴¹ in Assam. It was observed that during the aforesaid period, the dealer imported goods valuing ₹ 18.27 crore. The dealer thus concealed purchase of goods worth ₹ 15.78 crore and evaded tax of ₹ 3.16 crore. Additionally, penalty not exceeding ₹ 6.32 crore and interest of ₹ 1.98 crore⁴² were also leviable.

At the time of scrutiny, the ST failed to take into account the details of purchase of taxable goods by the dealer using Road Permits in Form 40. In addition, the ST also failed to verify the details of entry of goods into Meghalaya through the taxation entry check post located at Bajengdoba on Meghalaya-Assam border. This resulted in evasion of tax to that extent.

The case was reported to the Taxation Department, Government of Meghalaya between February 2017 and April 2017 and reminded in August 2017 and January 2018.

The ACT stated (February 2018) that as per the case records the total outside purchase made by the dealer was ₹ 2.67 crore. Further, the ACT stated that the dealer's place of business was such that he could import goods through Assam, which could not be verified by the ST. The reply is not acceptable as details obtained by Audit from the Assam check gate clearly prove that the dealer had transported goods worth ₹ 18.27 crore as pointed out.

Further, the fact that the ST, under his jurisdiction had dealers who could easily transport goods without being monitored implies absence of internal controls in the Department. The Government may establish a mechanism to obtain information periodically from the taxation department of bordering State of Assam so that it may act as an effective internal control to keep instances of under-reporting in check.

No further reply had been received from the Taxation Department, Government of Meghalaya (February 2018).

⁴⁰ M/s Mahamaya Sales Agencies

⁴¹ Located on NH 17 (earlier NH 31) on the Assam-West Bengal border at a distance of around 150 km from Tura.

⁴² Calculated upto 31.03.2017.

2.14 Under assessment of tax due to acceptance of inadmissible 'F' forms

Acceptance of inadmissible declarations in form 'F' by the ST in support of stock transfer of coal amounting to ₹ 22.96 crore resulted in under assessment of tax of ₹ 1.15 crore.

[ST, Williamnagar; February 2017]

Under Section 6A of the CST Act, 1956 read with Rule 11(5) of the CST (R&T) Rules, 1957, if a dealer moves goods in the course of inter-State trade, by reason of transfer of goods and not by reason of sale, from one place of his business to any other place of his business or to his agent or principal, then such transfer is exempt from tax if the dealer furnishes a declaration, duly filled in form 'F' along with the evidence of dispatch of such goods. Each form 'F' covers such transactions for one calendar month.

For the period from October 2014 to March 2016, a dealer⁴³ claimed exemption on stock transfer of coal valuing ₹ 22.96 crore to two of his agents⁴⁴ in Assam. He furnished four declarations in form 'F' in support of this claim. The ST accepted the same and assessed the dealer accordingly between September 2015 and April 2016. The dealer availed tax exemption on such stock transfer.

Audit examination of the records of the dealer revealed that the dealer appointed these two dealers of Assam as agents⁴⁵ between April 2016 and September 2016, which was after the period of the said transaction. Thus, the 'F' forms submitted in support of such stock transfer were inadmissible and the tax exemption on stock transfer claimed by the dealer for the aforementioned period was irregular.

The ST failed to verify the status of these agents for the purpose of inter-State stock transfer during the period of transaction and allowed tax exemption to the dealer on the strength of inadmissible 'F' forms. This resulted in under assessment of tax amounting to ₹ 1.15 crore; on which penalty not exceeding ₹ 2.30 crore and interest of ₹ 0.46 crore⁴⁶ were additionally leviable.

The case was reported to the Taxation Department, Government of Meghalaya in May 2017 and reminded in August 2017 and January 2018. The ACT while accepting the facts (February 2018) stated that the ST had re-assessed the dealer and the additional tax had been realised from the dealer. Details of the assessment made by the ST and amount realised had not been intimated (February 2018).

No further reply had been received from the Taxation Department, Government of Meghalaya (February 2018).

⁴³ M/s Grace Coal Agency.

⁴⁴ M/s PE Enterprise and M/s Biman Export.

⁴⁵ M/s PE Enterprise on 08.04.2016 and M/s Biman Export on 20.09.2016.

⁴⁶ Calculated upto 31.03.2017.

2.15 Short payment of tax on work contracts

Application of incorrect rate of tax on work contracts resulted in short payment of tax of ₹ 0.23 crore.

[ST, Circle-II, Tura; November 2016]

Under Section 5(c) of the MVAT Act, in case of work contracts, the actual charges towards labour, services *etc.* are deductible from the gross turnover to arrive at the taxable turnover. Further, Supreme Court of India held⁴⁷ that the goods incorporated in the works could be classified as a separate category for the purpose of calculation of tax payable and the State Legislature was empowered to tax the goods involved in the execution of a works contract at a uniform rate which might be different from the rates applicable to individual goods. In Meghalaya goods involved in works contract are taxed at a uniform rate⁴⁸ of 13.5 *per cent*.

Two dealers⁴⁹ executed works contract valued at ₹ 6.72 crore between March 2014 and March 2015 out of which ₹ 2.48 crore was deducted towards cost of labour and services. On the balance amount of ₹ 4.24 crore, the dealers paid tax at the rate of four/five *per cent* on ₹ 2.70 crore and at 13.5 *per cent* on ₹ 1.54 crore.

The MVAT Act provided uniform rate of tax at 13.5 *per cent* on goods involved in the execution of works contract, levy and collection of tax at the rate of five *per cent* instead of 13.5 *per cent* was irregular. The ST could not detect this lapse as he did not complete scrutiny of returns for the aforesaid period. Failure of the ST to detect application of incorrect tax rate resulted in short payment of tax of ₹ 0.23 crore⁵⁰; on which penalty of ₹ 0.46 crore was additionally leviable.

On this being pointed out (April 2017), the ST while accepting the audit observation (May 2017) stated that the dealers had been assessed and demand notice for recovery of tax payable amounting to ₹ 0.23 crore had been issued to the dealers. Status of recovery had not been received from the Taxation Department, Government of Meghalaya (February 2018).

2.16 Short payment of tax

The ST failed to detect short payment of tax amounting to ₹ 58.50 lakh.

[ST, Circle-III, Shillong; February 2017]

Under Section 39 of the MVAT Act, each and every return furnished by a registered dealer is subject to scrutiny by the ST to *inter alia* verify the correctness of return and payment of tax thereon. Further under Section 45 of the MVAT Act, if the returns furnished by a dealer are incorrect, the ST can assess to the best of his judgement the

⁴⁷ Gannon Dunkerley & Co. v. State of Rajasthan and Larsen & Toubro v. Union of India [1993] 88 STC 204 (SC).

⁴⁸ Schedule IV attached to the Act.

⁴⁹ M/s RB Corporation and M/s JD Infrastructure.

⁵⁰ Differential rate of 8.5 *per cent* on ₹ 2.70 crore = ₹ 0.23 crore.

amount of tax due from the dealer. If a dealer fails to pay the full amount of tax payable by due date, simple interest at the rate of two *per cent* per month from the first day of the quarter following the due date is leviable under Section 40 of the MVAT Act.

A dealer⁵¹ dealing in ‘automobiles’ submitted returns for the period from April 2014 to June 2015 (excluding the quarter ending March 2015), wherein he disclosed tax liability of ₹ 2.46 crore. Out of the total tax payable, the dealer paid tax amounting to ₹ 1.88 crore and he failed to pay the balance tax amounting to ₹ 58.50 lakh.

The ST, at the time of scrutiny of returns (July 2015) for the aforesaid period, however, failed to detect the short payment of tax. Failure of the ST to verify the details of payment of previous tax payable during scrutiny, resulted in short payment of tax and consequent non-realisation of interest to that extent.

For short payment of tax, the dealer was liable to pay interest of ₹ 21.85 lakh⁵².

The case was reported to the Taxation Department, Government of Meghalaya in April 2017 and reminded in August 2017 and January 2018. The ACT stated (February 2018) that the dealer had paid ₹ 2.83 crore against the tax liability and hence there was no evasion of tax. The reply is not acceptable as examination of the *challans* furnished by the Department revealed that the dealer made payment of tax of only ₹ 1.88 crore against the tax liability of ₹ 2.46 crore for the aforementioned period, resulting in short realisation of tax to that extent.

No further reply had been received from the Taxation Department, Government of Meghalaya (February 2018).

2.17 *Evasion of tax by bonded warehouses*

Two bonded warehouses irregularly sold alcoholic liquor worth ₹ 16.29 crore without payment of tax amounting to ₹ 3.26 crore.

[ST, Khliehriat; October 2016]

In Meghalaya, licensees of all bonded warehouses selling Indian Made Foreign Liquor (IMFL) and beer have to maintain detailed account of stock of IMFL /beer which has to be submitted to the Commissioner of Excise (CoE) at the end of each quarter. Under Rule 125 of the Assam Excise Rules, 1945 (as adapted by Meghalaya), the CoE shall take stock of all categories of IMFL /beer in stock of the bonded warehouses at the end of each quarter. Further under Section 45 of the MVAT Act, if the returns furnished by a dealer are incorrect, the ST can assess to the best of his judgement the amount of tax due from the dealer.

In Meghalaya, ‘alcoholic liquor’ is taxable at 20 *per cent*.

⁵¹ M/s Modrina Auto Enterprise.

⁵² Calculated upto 31.03.2017

2.17.1 A bonded warehouse dealer⁵³ furnished ‘nil’ tax return for the quarter ended September 2015. Audit examined the detailed accounts of the dealer in the office of the CoE. It was observed that the CoE detected irregular despatch of 94,380 cases of IMFL/beer worth ₹ 11.03 crore by the dealer without payment of excise duty during the same period. The dealer, not only sold IMFL/beer without payment of excise duty but also furnished false tax returns with the intention to evade payment of tax amounting to ₹ 2.21 crore⁵⁴.

2.17.2 A bonded warehouse dealer⁵⁵ failed to furnish any tax return and pay any tax thereon for the quarter ended June 2015. Audit examined the detailed accounts of the dealer in the office of the CoE. It was observed that the CoE detected irregular despatch of 45,979 cases of IMFL/beer worth ₹ 5.26 crore by the licensee of the bonded warehouse without payment of excise duty during the same period. The dealer, not only sold IMFL/beer without payment of excise duty but also failed to furnish tax returns with the intention to evade payment of tax amounting to ₹ 1.05 crore⁵⁶.

Audit observed that the two dealers submitted ‘nil’ return or failed to furnish return although they were engaged in a business with high sale turnover. Despite this, the ST failed to ascertain the actual sale made by the dealers during the aforesaid period and assess the dealers accordingly. In case of the Excise Department, the CoE had issued demand notices for recovery of the excise duty from both the dealers.

Failure of the ST to verify the actual sale of dealers thereby resulted in evasion of tax on sale of IMFL/beer amounting to ₹ 3.26 crore. Additionally, penalty not exceeding ₹ 6.52 crore and interest of ₹ 1.04 crore⁵⁷ were also leviable.

This happened because the State Excise Department did not share the information regarding evasion of excise duty by bonded warehouse to the Taxation Department. The Government may direct the revenue departments to compulsorily share information with one another about suspected cases of tax/revenue evasion having revenue implication for other departments.

The case was reported to the Taxation Department, Government of Meghalaya in January 2017 and reminded in August 2017 and January 2018; their reply had not been received (February 2018).

⁵³ M/s SS Bonded Warehouse.

⁵⁴ 20 per cent of ₹ 11.03 crore = ₹ 2.21 crore.

⁵⁵ M/s Banicia Bonded Warehouse.

⁵⁶ 20 per cent of ₹ 5.26 crore = ₹ 1.05 crore.

⁵⁷ Calculated upto 31.03.2017.

2.18 Interest not levied on late payment of tax

Interest amounting to ₹ 1.18 crore was not levied on six dealers for late payment of tax.

[Superintendents of Taxes (SsT), Circles-III, Shillong and Circle-I, Tura; February 2016 to March 2016]

Under Section 35 of the MVAT Act, every registered dealer has to furnish quarterly tax returns duly supported by proof of payment of tax. Further if a dealer fails to pay the full amount of tax payable by due date, simple interest at the rate of two *per cent* per month from the first day of the quarter following the due date is leviable for the period of the default under Section 40 of the MVAT Act.

Audit of records of two taxation circles revealed that five dealers paid the admitted tax of ₹ 14.50 crore for the period between April 2012 and March 2016 after the due date, with delays ranging between one day and 521 days. For belated payment of tax, interest of ₹ 1.18 crore was payable (*Annexure-I*). The dealers, however, failed to pay the interest for the delay in payment of tax.

Despite delay payment of tax, the SsT did not take any action to calculate the interest and realise the same from the dealers. This resulted in non-realisation of interest to that extent.

The case was reported to the Taxation Department, Government of Meghalaya between March 2017 and May 2017 and reminded in August 2017 and January 2018. The ACT while accepting the facts (February 2018) stated that the ST, Circle-III, Shillong had realised interest amounting to ₹ 0.92 crore as against ₹ 1.08 crore in respect of two out of three dealers under his jurisdiction. Realisation of the balance amount had not been intimated (February 2018). In respect of ST, Circle-I, Tura, the ST stated that interest had been realised, however, details of realisation were not intimated to Audit (February 2018).

No further reply had been received from the Taxation Department, Government of Meghalaya (February 2018).

2.19 Non-imposition of penalty for misuse of declaration forms

The SsT did not realise penalty amounting to ₹ 0.42 crore from four dealers for misuse of declaration forms.

[SsT, Circles-I & IV, Shillong, Nongpoh & Khliehriat; August 2016-February 2017]

As per Section 10A read with Section 10(b) of the CST Act, 1956, if any registered dealer, when purchasing any class of goods, falsely represents that goods of such class are covered by his certificate of registration, the ST may impose upon him by way of penalty, a sum not exceeding one and half times the tax leviable in respect of sale of goods under Section 8(2) of the Act *ibid*.

Audit examined the assessment records of four SsT⁵⁸ between August 2016 and February 2017. It revealed that four dealers purchased goods amounting to ₹ 2.42 crore from registered dealers of other states in course of inter-State trade against 44 declarations in Form 'C' during the period from April 2012 to August 2016. Further examination of the case records revealed that the goods so purchased using declaration forms were not covered by the certificate of registration of the dealers. The dealers mis-utilised the declaration forms and were, therefore, liable to pay penalty not exceeding ₹ 0.42 crore (*Annexure-II*).

The SsT however failed to take any action against the dealers thereby resulting in penalty not being realised to that extent.

The case was reported to the Taxation Department, Government of Meghalaya between October 2016 and May 2017 and reminded in August 2017 and January 2018. The ACT stated (February 2018) that in case of ST, Circle-I, Shillong, there was no mis-utilisation of 'C' forms as the dealer dealt in 'kitchenware' which included 'electrical items' as per his registration certificate. In case of Circle-IV, Shillong, the items procured by the dealer were used in multiplex cinema. The reply is not acceptable, as 'C' forms cannot be used for purchase of capital goods. In case of two other dealers, no reply had been furnished (February 2018).

No further reply had been received from the Taxation Department, Government of Meghalaya (February 2018).

⁵⁸ SsT, Circles-I & IV, Shillong, ST, Nongpoh and ST, Khliehriat.