CHAPTER-II

TAXES/VAT ON SALES, TRADE

CHAPTER II: TAXES/VAT ON SALES, TRADE

2.1 *Tax administration*

The Haryana Value Added Tax Act, 2003 (HVAT Act) and rules framed thereunder are administered by the Additional Chief Secretary (Excise and Taxation). The Excise and Taxation Commissioner (ETC) is the head of the Excise and Taxation Department and is assisted by Additional ETCs, Joint ETCs (JETCs), Deputy ETCs (DETCs) and Excise and Taxation Officers (ETOs). They are assisted by Excise and Taxation Inspectors and other allied staff for administering the relevant tax laws and rules.

2.2 *Results of audit*

In 2017-18, test check of the records of 35 units (Revenue: 33 and Expenditure: 02) out of 40 units relating to VAT/Sales tax assessments and other records revealed under-assessment of tax and other irregularities involving ₹ 1,653.05 crore, in 2,436 cases, falling under the following categories as depicted in the **Table 2.1.**

Table-2.1 – Result of Audit

Revenue			
Sr. No.	**Categories**	**Number of cases**	**Amount (₹ in crore)**
1	Thematic Audit on "Assessment, Levy and Collection of VAT from Contractors/Developers"	1,142	79.78
2.	Under-assessment of Tax	429	235.23
3.	Acceptance of defective statutory 'Forms'	217	261.12
4.	Evasion of taxes due to suppression of sales/purchases	80	279.58
5.	Irregular/Incorrect/Excess allowance of ITC	186	88.01
6.	Other irregularities	314	427.67
	Total (I)	**2,368**	**1,371.39**
Expenditure			
1.	Non receipt of utilisation certificates	1	269.42
2.	Other irregularities	67	12.24
	Total (II)	**68**	**281.66**
	Grand Total (I+II)	**2,436**	**1,653.05**

During the year, the Department accepted under-assessment and other deficiencies of ₹ 153.19 crore in 272 cases, out of which ₹ 11.20 crore involved in 24 cases were pointed out during the year and rest in earlier years. The department recovered ₹ 46.10 lakh in 34 cases in the year 2017-18, out of which two cases involving ₹ 23.51 lakh relates to this year and rest in earlier years.

There is no internal audit of assessment cases in the department. Significant cases involving ₹ 138.60 crore are discussed in the following paragraphs.

2.3 Preparedness for transition to Goods and Services Tax (GST)

2.3.1 Introduction

Goods and Services Tax (GST) was implemented with effect from 1 July 2017. GST[1] is being levied on intra-State supply of goods or services (except alcohol for human consumption and five specified petroleum products[2]) separately but concurrently by the Union (CGST) and the States (SGST)/Union territories (UTGST). Further, Integrated GST (IGST) is being levied on inter-State supplies of goods or services (including imports) and the Parliament has exclusive power to levy IGST. Prior to implementation of GST, VAT was leviable on intra-State sale of goods in the series of sales by successive dealers as per HVAT Act, 2003 and CST on sale of goods in the course of inter-State trade or commerce as per CST Act, 1956.

The State Government was empowered to regulate the provisions of HVAT Act whereas provisions relating to GST are being regulated by Centre and State on the recommendation of Goods and Services Tax Council (GSTC) which was constituted with representation from Centre and all the States to recommend on the matters related to GST.

Goods and Services Tax Network (GSTN) was set up by the Government of India as a private company to provide IT services. It provides *Front-end IT services* to taxpayers namely registration, payment of tax and filing of returns. Haryana opted as Model-I[3] state and engaged M/s Wipro Limited as System Integrator to provide *Back-end IT services i.e*. registration approval, taxpayer details viewer, refund processing, MIS reports *etc*.

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1 Central GST: CGST and State GST/Union Territory GST: SGST /UTGST.

2 Petroleum products: crude, high speed diesel, petrol, aviation turbine fuel and natural gas.

3 Model-1 States: only front-end services provided by GSTN,
Model -2 States: both Front-end and Back-end services provided by GSTN.

2.3.2 Trend of Revenue

Total receipts under GST including non-subsumed/subsumed taxes for the year 2017-18 was ₹ 27,109.35 crore against ₹ 23,488.41 crore under pre-GST taxes during the year 2016-17 *i.e.* an increase of 15.42 *per cent*. Actual receipts under pre-GST taxes[4] and GST are given below:

(₹ in crore)

Year	Revised Budget Estimate	Receipts under pre-GST taxes	Receipts under GST		Total receipts under pre GST taxes and GST	Increase (in *per cent*)	Compensation received	Protected Revenue
			SGST	Advance IGST apportionment				
2013-14	17,400.00	16,774.33	NA	NA	16,774.33	0	NA	NA
2014-15	19,930.00	18,993.25	NA	NA	18,993.25	13.23%	NA	NA
2015-16	25,000.00	21,060.23	NA	NA	21,060.23	10.88%	NA	NA
2016-17	26,400.00	23,488.41	NA	NA	23,488.41	11.53%	NA	NA
2017-18	17,380.00	15,608.92	10,833.43	667.00	27,109.35	15.42%	1,199.00	14,845.26
Total	**1,06,110.00**	**95,925.14**	**10,833.43**	**667.00**	**1,07,425.57**		**1,199.00**	**14,845.26**

Source: State Finance Reports and data furnished by the department

The above table indicates that there was an increasing trend in total receipts during the last four years, however, percentage of receipts decreased from 13.23 *per cent in 2014-15* to 11.53 *per cent* in 2016-17 and thereafter increase to 15.42 *per cent* in 2017-18.

2.3.3 Compensation to State

As per Section 5 and 6 of the Goods and Services Tax (Compensation to States) Act, 2017 the projected nominal growth rate of revenue of the taxes subsumed in GST during the transition period shall be 14 *per cent* per annum. The projected revenue for the year 2017-18 was ₹ 19,794.00 crore. The compensation payable is the difference between the projected revenue and the actual revenue collected by a State. The compensation payable to the State was to be provisionally calculated and released at the end of every two months period. The state received compensation of ₹ 1,199.00 crore and ₹ 2,287.00 crore during the year 2017-18 and 2018-19 (upto January 2019).

2.3.4 Legal/Statutory Preparedness

The State Government notified (June 2017) the Haryana Goods and Services Tax Act, 2017 and the Haryana Goods and Services Tax Rules, 2017. E-way bill system was implemented in the State on inter-State transactions with effect from 01 April 2018 and on intra-State transactions with effect from

[4] Value Added Tax, Central Sales Tax, Entry Tax, Luxury Tax and Entertainment Tax.

20 April 2018. Further, necessary notifications were issued by the State Government from time to time for facilitating implementation of GST in the State. The State Government/Commercial Taxes Department (CTD) had issued 229 notifications/circulars/orders regarding GST upto February 2019.

2.3.5 IT infrastructure and preparedness

GSTN was to provide three front-end services to the taxpayers namely registration, payment and filing of returns. Haryana had opted as model-I for implementation of GST hence the back-end applications like registration approval, taxpayer detail viewer, refund processing, MIS reports *etc*. for GST administration were developed by the State itself.

During the pre GST regime under the National e-Governance Plan (NeGP) of Government of India (GoI) Mission Mode Project for Commercial Taxes (MMPCT) the department was selected for comprehensive computerisation of the departmental activities. The department had engaged M/s Wipro Ltd as System Integrator. After implementation of GST the fabrication of back end applications was also assigned to M/s Wipro Ltd and M/s Ernst and Young LLP was engaged as the consultant for the GST matters.

Under the MMPCT project internet connections were given to district offices at the rate of 2 mbps and head office at the rate of 5 mbps which were enhanced upto 15 mbps at head office and upto 10 mbps to district offices. All 59 offices across the State access Haryana Excise portal hosted at Haryana State Data Centre (SDC) via Reliance Internet Link. However, computers in case of field offices were connected through Haryana State Wide Area Network (HSWAN) to SDC.

177 Application Program Interfaces (APIs) were released by GSTN. However, only 85 APIs were completed (February 2019) and remaining APIs were in progress. Various technical issues were faced by the department for implementing APIs and the same were reported to GSTN. The department had 28 issues pending with GSTN in production environment and 2 issues in User Acceptance Testing (UAT) environment. No special infrastructures were procured for GST purpose. All infrastructures of the pre GST regime were utilised by the department.

2.3.6 Capacity Building efforts by the Department

Refresher training on GST for Master Trainers and Trainers was organised (May and July 2017) at centre of excellence, National Academy of Customs, Excise and Narcotics, New Delhi in two phases. IT training of 69 Master Trainers (officers) had been organised in Chennai at *Infosys* campus under the

supervision of GSTN. Further, IT training programmes were organised in Haryana Institute of Public Administration (HIPA) at Gurugram for 29 officers upto the level of Joint Excise and Taxation Commissioner in two phases.

The department also organised various IT trainings for the other departmental officers at CTD headquarter at Panchkula. *'GST Corner'* tab was also started on departmental website to provide GST related information such as Act/ Rules, notifications/circulars/orders, help desks/Frequently Asked Questions (FAQs), important dates, e-Way bill and digital signature verifications e*tc*. A 'centralised user manual was also established to solve the problems/queries of taxpayers. Helpdesks were established at the district level also for ease of doing business.

2.3.7 Implementation of GST

Three front-end services namely registration, payment of tax and filing of returns were being provided to taxpayers by GSTN. Further, migration facility was also provided to the existing taxpayers to implement the transitional provisions. Back-end services *viz.* registration approval, taxpayer detail viewer, Letter of Undertaking (LUT) processing, refund processing, management information system (MIS) reports *etc*. were being provided by State (through M/s Wipro Ltd).

2.3.7.1 Registration of taxpayers

Every person registered under any of the pre-GST laws and having a valid Permanent Account Number (PAN) was issued a certificate of registration on provisional basis and final certificate of registration was to be granted on completion of prescribed conditions. Further, taxpayers having turnover more than threshold limit of ₹ 20 lakh were required to be registered under GST.

2.3.7.2 Migration of existing taxpayers

As per Rule 24 of Haryana GST Rules, 2017, every person registered under any existing law and having a PAN shall enrol on common portal by validating his e-mail address and mobile number and such person shall be granted registration on a provisional basis. Every person who has been granted a provisional registration shall submit an application alongwith the information and documents specified in the application on common portal. A certificate of registration shall be made available to the registered person electronically if the information and the particulars furnished in the application

are found to be correct and complete. As per information provided (February 2019) by the Department, position of provisional registration and final registration of existing registered dealers in the CTD is given below:-

Total taxpayers registered under VAT (as on 30-06-2017)	Dealers migrated from VAT	New registration	Total
2,38,828	214678	232039	4,46,717

Source: Data furnished by the department

It is seen from the above table that 90 *per cent* of the existing dealers migrated from pre GST regime and were finally registered under GST. Remaining 10 *per cent* taxpayers did not migrate due to increase in threshold limit/closure of business etc.

2.3.7.3 Allocation of taxpayers between Centre and State

As per recommendation of GST Council, 90 *per cent* of migrated taxpayers having turnover up to ₹ 1.5 crore and 50 *per cent* of migrated taxpayers having turnover of more than ₹ 1.5 crore were allotted to the State. Accordingly, out of the total 2,42,000 taxpayers State was allotted the jurisdiction of 1,80,829 taxpayers in the first phase of distribution as detailed below:-

Jurisdiction	No. of taxpayers with GTO more than ₹ 1.5 crores	No. of taxpayers with GTO less than ₹ 1.5 crores	Total
State	25,172 (50%)	1,55,657 (90%)	1,80,829
Centre	25,171 (50%)	17,288 (10%)	42,459
Total	**50,343**	**1,72,945**	**2,23,288**

Source: Information furnished by the Department

The department intimated that 2,42,000 taxpayers were involved in allocation in the first phase and remaining taxpayers were yet to be allocated. Out of which only 2,23,288 taxpayers were allocated to state and centre. Remaining 18,712 taxpayers were not allocated being unauthorised taxpayers, invalid GSTIN etc.

2.3.7.4 Filing of returns

As per Rule 59 to 61 of Haryana GST Rules, 2017, taxpayers other than composition taxpayers were required to furnish details of outward supplies of goods or services in Form GSTR-1, details of inward supplies of goods or services in Form GSTR-2 and a return in Form GSTR-3 (electronically generated by system on the basis of information furnished through GSTR-1 and GSTR-2) monthly, whereas composition taxpayers were required to file a quarterly return GSTR-4.

The prescribed process of return filing has been amended to address the teething trouble in the initial period of the new tax regime. Therefore, filing of GSTR-2 and GSTR-3 was postponed and all taxpayers were mandated to submit a simple monthly return in Form GSTR-3B with payment of tax by 20th of the succeeding month. Further, taxpayers having turnover below ₹ 1.5 crore were to file GSTR-1 on quarterly basis. Detail of returns filed was as under:

Period	Range of total eligible taxpayers	Range of *percentage* of taxpayers filed GSTR 3B	Range of *percentage* of taxpayers filed GSTR 4	Range of *percentage* of taxpayers filed GSTR 5	Range of *percentage* of taxpayers filed GSTR 6
July 2017 to March 2018	2,58,469 - 3,53,197	84.52 to 98.28	76.22 to 87.21	33.33 to 50.00	35.89 to 59.02
April 2018 to January 2019	3,60,761- 4,18,669	75.58 to 89.42	82.99 to 91.68	12.50 to 50.00	56.41 to 61.52

Source: Data furnished by the department

During the period July 2017 to March 2018 number of taxpayers increased from 2,58,469 to 3,53,197 but percentage of returns GSTR-3B decreased from 98.28 to 84.52 *per cent*. Similarly filing of returns by the Composition taxpayers in GSTR-4 decreased from 87.21 to 76.22 *per cent* **(Annexure V)**.

During the period April 2018 to January 2019 number of taxpayers increased from 3,60,761 to 4,18,669 while filing of returns GSTR-3B decreased from 89.42 to 75.58 *per cent*. Filing of returns by the Composition taxpayers in GSTR-4 decreased from 91.68 to 82.99 *per cent*.

2.3.7.5 Transitional credit

As per Rule 117 of Haryana GST Rules read with Section 140 of Haryana GST Act, the registered taxpayers were entitled to take credit of amount of input tax credit carried forward in the VAT return filed under the pre-GST law and credit of unavailed input tax credit in respect of capital goods not carried forward in the returns. The registered persons were required to file a return in prescribed form TRAN-1. However, the taxpayers shall not be allowed to take credit where all the returns required under the pre-GST law for the period of six months immediately preceding the appointed date were not furnished.

49,253 taxpayers filed TRAN-1 and claimed transitional credit of ₹ 14,461.35 crore. 2,058 taxpayers claimed ITC of more than ₹ 10 lakh each amounting to ₹ 3,448.59 crore (1,203 taxpayers claimed ITC between ₹ 10 lakh to ₹ 25 lakh each amounting to ₹ 571.63 crore and 855 taxpayers claimed ITC of more than ₹ 25 lakh each amounting to ₹ 2,876.96 crore) in TRAN-1.

Centralised data of credit allowed/rejected was not provided by the department.

2.3.7.6 Refund under GST

Refund module under GSTN was not operational hence the refunds are being allowed through manual system to the applicants. Specific procedures were prescribed for refund of the balance amount in the electronic cash ledger or unutilised input tax credit at the end of particular tax period. Refund of unutilised input tax credit was allowed in case of zero-rated supplies made without payment of tax or when the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. As per information provided by the Department position of refunds was as under:-

(₹ in crore)

Refund Claimed upto February 2019		**Refund allowed**		**Refund rejected**		**Refund pending**	
No. of taxpayers	**Amount**	**No. of taxpayers**	**Amount**	**No. of taxpayers**	**Amount**	**No. of taxpayers**	**Amount**
8,903	1,498.12	6,809	986.45	987	114.57	1,107	337.08

Source: Data furnished by the department

Thus the Department allowed refunds to 76 *per cent* of the registered taxpayers and 66 *per cent* of the total amount claimed was refunded.

2.3.7.7 E-Way Bill

The GST system provides generation of e-way bill, a document to be carried by the person in-charge of conveyance, generated electronically from the common portal prior to commencement of the movement of goods.

E-Way bill was implemented for inter-State transactions with effect from 01 April 2018 and for intra-State transactions with effect from 20 April 2018, after which 1,50,355 taxpayers were registered on the e-Way bill portal upto February 2019. 1,958 transporters were also enrolled. 2.12 crore interstate and 2.45 crore intrastate e-way bills were generated on the e-Way Portal. During roadside checking the department detected 2,573 e-way bills which are not genuine and 7,446 supplies without e-way bills as detailed below:

(₹ in crore)

No. of e-way bills checked upto February 2019	**No. of cases where e-way bill were ingenuine**	**No. of cases which were without e-way bill**	**Total amount of tax and penalty**
8,09,724	2,573	7,446	94.91

Source: Data furnished by the department

As is seen from the above table that total 10,019 e-way bills were either not genuine or goods were supplied without e-way bills. The department imposed tax and penalty of ₹ 94.91 crores for not genuine/without e-way bills.

2.3.8 Legacy Issues

GST is a revolutionary step which is set to replace a significant part of the State tax system. It will involve the entire manpower of the Department, hence, it is necessary that proper steps are taken so as to resolve the pending issues of the legacy system and effectively implement the new system. The position of legacy issues is as under:

2.3.8.1 Assessment of VAT cases

Dealers were registered under Haryana VAT Act, 2003, Central Sales Tax Act, 1956 and other taxes *i.e.* entry tax, luxury tax, entertainment tax, *etc.* prior to implementation of GST. Therefore, assessments of the dealers registered under VAT for the years 2015-16, 2016-17 and 2017-18 (1st quarter) was to be completed by the Department within the prescribed period of two years after the relevant year. Haryana VAT Act provides *'Deemed Assessment and Scrutiny Assessments'*. Instructions are issued for selection of scrutiny assessment every year. Deemed assessment for the year 2017-18 (1st quarter) and scrutiny assessment for the year 2016-17 was pending. Total 3,12,411 assessment cases were pending for assessment at the end of the year 2017-18. The department intimated that 3,23,689 cases under VAT and 3,23,153 cases under CST were pending (January 2019) for assessment.

2.3.8.2 Recovery of arrears

As per Section 26 of HVAT Act 2003 any amount due under this Act including the tax admitted to be due according to the returns filed, which remains unpaid after the last date specified for payment, shall be the first charge of the property of the defaulter and shall be recoverable from him as if the same were arrears of land revenue.

Arrears (VAT and CST) aggregating to ₹ 11,069.39 crore was pending as on 31 March 2018. Out of which ₹ 2,149.64 crore was locked up due to pending court cases, ₹ 1,208.34 crore was held up due to rectification/review/appeal. Remaining amount of ₹ 7,711.41 crore was held up on account of different stages of action i.e. stay order by court/judicial authorities, official liquidator etc.

2.3.8.3 Refunds of pre-GST period

Position of refunds allowed/adjusted for pre GST period during the period 2013-14 to 2017-2018 was as under:

(₹ in crore)

Year	No. of cases	Amount of refund
2013-14	3,141	677.77
2014-15	2,348	647.49
2015-16	1,805	611.91
2016-17	1,971	651.52
2017-18	2,583	685.17
Total		**3,273.86**

Source: Data furnished by the department

The department allowed/adjusted the refund of ₹ 3,273.86 crore during the last five years. At the end of year 2017-18, 348 refund cases amounting to ₹ 89.96 crore were still to be finalised by the Department. The department may also consider sensitising the dealers to apply for refunds, if any left unclaimed by dealers of pre-GST period. This is in the interest of Revenue of the State as the shortfall in revenue, if any, due to allowing refund would be compensated by Central Government during the transitional period of five years only and the refunds allowed after the transitional period would adversely afftect revenue of the State.

2.3.9 Conclusion

The Department/Government was prompt in preparedness for implementation of GST as can be seen with reference to enactment of the Act and Rules as per model law approved by GST Council, primary enrolment of existing taxpayers, capacity building efforts *etc.* There have been frequent changes in rules/regulations since 1 July 2017 which have resulted in non-implementation of many of the procedures laid down in GST. Further, the IT solution was to be fully developed and problem regarding filing of returns was not resolved. The Department needs to sort out the issues related to legacy tax regime expeditiously through focused arrangements.

2.4 Assessment, Levy and Collection of VAT from Contractors/ Developers

2.4.1 Introduction

The Excise and Taxation Department has not established a system for collection of information from other departments to facilitate identification of un-registered dealers. Instances of non realisation of tax from un-registered contractors, non levy of interest on additional demand created by Assessing Authorities, non levy of tax and penalty for misuse of form VAT D-1, short levy of tax and interest due to application of incorrect rate of tax, under-assessment of tax due to allowing excess benefit of ITC, suppression of Gross Turnover (GTO) by contractors and short assessment of tax under amnesty scheme were noticed, which resulted in revenue loss of ₹ 79.78 crore.

'Works contract', as per Haryana Value Added Tax (HVAT) Act, 2003, includes any agreement for carrying out for cash, deferred payment or other valuable consideration, the assembling, construction, building, altering, manufacturing, processing, fabrication, installation, fitting out, improvement, repair or commissioning of any moveable or immovable property.

HVAT Act, 2003 defines 'Contractor' as any person who executes either himself or through a sub-contractor a works contract. A contractor is to get himself registered under the HVAT Act either as a dealer under Section 11 or lumpsum dealer under Section 9 of the Act.

Lumpsum dealer is required to pay tax at the rate of four *per cent* (upto 11th August 2014) and five *per cent* (from 12th August 2014) of gross receipts and they are not eligible for availing benefit of input tax credit. Non lumpsum dealer/contractor is liable to pay tax at the applicable rates on goods used in the execution of works contract.

The records relating to assessments framed during the year 2014-15 to 2016-17 of 17 DETC Sales Tax (ST)[5] offices out of 27 were test checked during audit (August 2017- March 2018) to ascertain whether various provisions relating to works contract contained in the HVAT Act/CST Act, have been followed; whether penal measures have been initiated for violations of the Act, and to check correctness of tax assessment under the amnesty scheme namely, the Haryana Alternative Tax Compliance Scheme for Contractors 2016 for the recovery of tax, interest, penalty or other dues payable under the said Act. Information was also collected from Haryana State

[5] Ambala, Bhiwani, Faridabad (East), Faridabad (West), Gurugram (East), Gurugram (West), Hisar, Jagadhri, Jind, Kaithal, Karnal, Kurukshetra, Panchkula, Panipat, Rewari, Rohtak and Sonepat.

Agriculture Marketing Board (HSAMB), Haryana Urban Development Authority (HUDA), Municipal Corporations/ Municipal Council/Municipal Committee (MCs) and The Haryana State Co-operative Supply and Marketing Federation Ltd. (HAFED) for ascertaining instances of unregistered works contractors.

2.4.2 Evasion of tax by unregistered contractors

Registration of contractors

Section 48 of HVAT Act provides that the Taxing Authority may call for any information, data and statistics from other Departments/Corporations/Persons which may be relevant to any proceedings or useful for tax administration. Section 16 provides for levy of tax and penalty equivalent to tax determined during assessment of unregistered dealer.

Audit called for information from various departments such as offices of Executive Engineer, HSAMB[6], HUDA[7], MCs[8] and HAFED Panchkula regarding works contractors engaged by them. From the information received from the departments, which were under the jurisdiction of 11 DETCs (ST)[9], audit observed that the department had not established any system for collection of information from other departments to facilitate the process of identification, registration and assessment of unregistered dealers to detect evasion of tax.

Evasion of tax

Rule 10 (2) of HVAT Rules 2003 provides that a dealer in whose case taxable quantum as specified in Section 3 (2) of HVAT Act is above ₹ five lakh, shall be liable to pay tax on and from the day following the day his gross turnover in any year first exceed the taxable quantum. Registration is required under Section 11 (2) of HVAT Act for all such dealers.

Audit verified the information collected from offices of Executive Engineer, HSAMB, HUDA, MCs and HAFED Panchkula with registration records of 11 DETCs. It was observed that 1,043 works contractors had exceeded the threshold limit of taxable turnover of ₹ five lakh. They had received payment of ₹ 407.29 crore for execution of works contracts during 2014-15 to 2016-17. However, these contractors were not registered under HVAT Act and suppressed the sale of ₹ 407.29 crore.

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6 Ambala, Bhiwani, Gurugram, Jagadhri, Jind, Rewari and Rohtak.
7 Bhiwani, Faridabad, Gurugram, Karnal, Panchkula, Panipat and Rewari.
8 Ambala, Gurugram, Jind, Panipat, Rewari and Rohtak.
9 Ambala, Bhiwani, Faridabad, Gurugram (East), Jagadhri, Jind, Karnal, Panchkula, Panipat, Rewari and Rohtak.

Failure of the department to conduct survey for the purpose of identifying unregistered dealers had resulted in non realisation of tax of ₹ 19.80 crore[10] from these unregistered dealers and mandatory penalty of ₹ 19.80 crore was also leviable.

On this being pointed out, four DETCs (ST)[11] stated (between September 2017 and May 2018) that cases were under examination. Reply has not been received from remaining seven DETCs (ST).

The State Government may consider

- Issuing appropriate directions to the Boards, Corporations, PSUs to call for the TIN of the contractors at the stage of tendering.
- Directing the department to devise a system of exchange of information with other departments to detect the unregistered works contractors and monitoring the results of exchange of information.

2.4.3 Non levy of Interest

Section 14 (6) of the HVAT Act lays down that if any dealer fails to make payment of tax, he shall be liable to pay, in addition to the tax payable by him, simple interest at one *per cent* per month if the payment is made within ninety days, and at two *per cent* per month if the default continues beyond ninety days for the whole period, from the last date specified for the payment of tax till the date he makes the payment.

In six DETCs (ST)[12], audit observed that 10 contractors had not paid tax as per provisions of the Act and Rules. Assessing Authorities (AAs) finalised the assessment of contractors and created the additional demand of ₹ 11.21 crore but failed to levy interest of ₹ 7.12 crore.

On this being pointed out, three AAs[13] stated (February and May 2018) that a demand of ₹ 5.51 crore had been created in three cases. Further, AA Gurugram (East) stated that notice had been issued for reassessment in two cases. AA Jagadhri stated (December 2017) that case had been sent to Revisional Authority (RA) for taking *suo-motu* action. AA Rohtak stated (May 2018) in one case that the dealer had deposited WCT of ₹ 0.06 crore in May 2017 and the same had been adjusted in the year 2014-15.

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10 G.T.O. minus 25% deduction on account of labour & service charges taxed @13.125% minus actual TDS deducted by contractee (upto 11.08.14 @4.2% and from 12.08.14 @ 5.25%). (GTO ₹ 407.29 crore –25% labour and service charges) = ₹ 101.82 crore. ₹ 407.29 crore - ₹ 101.82 crore = ₹ 305.47. ₹ 305.47crore X 13.125% = ₹ 40.09 crore - ₹ 20.29 crore (TDS deducted) = ₹ 19.80 crore).

11 Ambala, Gurugram (East), Panchkula and Rohtak.

12 Faridabad (East), Gurugram (East), Gurugram (West), Jagadhri, Rohtak and Sonepat.

13 Faridabad (East), Gurugram (East) and Gurugram (West).

The reply of AA was not correct as the dealer had deposited the tax for the year 2017-18 instead of 2014-15 and in another case verification of TDS submitted was still pending. AA Sonepat stated (May 2018) in two cases that the dealers had filed an appeal before Joint Excise and Taxation Commissioner (Appeal) against the order and the same was remanded back to the AA and proceedings for remand case had been initiated.

2.4.4 Non levy of Tax/Penalty for misuse of form VAT D-1

As per Section 9 of HVAT Act, only lumpsum contractors/dealers are entitled for use of VAT D-1[14] for purchase of goods on concessional rate of tax. If a non lumpsum contractor/dealer use the Form VAT D-1, he is liable to pay additional tax and penalty not exceeding 1.5 time of additional tax is required to be imposed upon him under Section 7 (5) of HVAT Act.

In seven DETCs (ST)[15], audit observed that nine non lumpsum works contractors had purchased goods/material valued at ₹ 16.28 crore against form VAT D-1 for use in construction of building/roads etc. Hence, the contractors were liable to pay additional tax and penalty. The AAs while finalising assessment failed to levy additional tax and penalty. This resulted in non levy of additional tax of ₹ 1.45 crore[16]. In addition, penalty of ₹ 2.18 crore was also leviable.

On this being pointed out, AA Sonepat stated (May 2018) that demand of ₹ 0.04 crore had been created. Three AAs[17] stated (between September 2017 and May 2018) that three cases had been sent to RA for taking *suo-motu* action. AA Bhiwani stated (March 2018) in two cases that the dealers were registered as regular registered dealer and not as contractor.

The replies of AA were not correct as the dealers were registered for the business of works contract as per registration certificates. AA Jagadhri stated (May 2018) that the case had been taken for reassessment.

The State Government may direct the AAs to verify the admissibility of concession rate against D-1 Form before allowing benefit.

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14 Form VAT D-1 is issued to a purchasing dealer by concerned AA to purchase goods on concessional rate for use in the manufacture of goods for sale, telecommunication network, mining, generation of power, and execution of works contract by lump-sum dealer.

15 Ambala, Bhiwani, Gurugram (South), Jagadhri, Kaithal, Panchkula and Sonepat.

16 Tax calculated on the basis of rate applicable on the goods purchased against VAT D-1.

17 Ambala, Gurugram (South) and Panchkula.

2.4.5 Short levy of tax and interest due to application of incorrect rate of tax

In 11 DETCs (ST)[18], audit observed that 25 non lumpsum contractors executed works between 2014-15 and 2016-17 worth ₹ 107.44 crore and paid tax at rates applicable for lumpsum contractors. The AAs finalised the assessment at lumpsum rates instead of applicable rate of tax on material used in the contract. This resulted in short levy of tax ₹ 7.57 crore. In addition, interest of ₹ 0.69 crore was also leviable.

On this being pointed out,

- Seven AAs[19] stated (between March and May 2018) that 16 cases had been sent to RA for *suo-motu* action.
- AA Gurugram (East) stated (May 2018) that demand of ₹ 0.17 crore had been created in one case and notice had been issued for reassessment in another case.
- AA Hansi (Hisar) stated (April 2018) that notice had been issued for reassessment. AA Karnal stated (March 2018) that notice had been issued in one case and matter was under examination in another case.
- AA Panipat stated (May 2018) in one case that the case was under examination and in other case (February 2017) that order had been revised and additional demand of ₹ 6.65 lakh had been created.
- AA Panchkula stated (December 2017) that the case was remanded back from RA and notice had been issued to dealer.
- AA Sonepat stated (May 2018) that MC was also a department of State Government. Thus, the tax has been correctly levied at lower rate. The reply of AA was not correct as the contractor was non lumpsum contractor and liable to pay tax at applicable rate on material.

2.4.6 Exemption of tax on Sub-Contract without supporting documents

Section 42 of HVAT Act provides that both contractor and sub-contractor are jointly and severally liable to pay tax in respect of transfer of property whether as goods or in some other form involved in execution of works contract by the sub-contractor. No tax is payable by contractor if he proves to the satisfaction

[18] Ambala, Faridabad (West), Gurugram (East), Gurugram (South), Hisar, Jagadhri, Karnal, Kurukshetra, Panchkula, Panipat and Sonepat.

[19] Ambala, Faridabad (West), Gurugram (East), Gurugram (South), Jagadhri, Kurukshetra and Panchkula.

of AA that the tax has been paid by the sub-contractor and assessment of such tax has been finalised.

In two DETCs (ST)[20], audit observed that ten contractors claimed tax exemption on sub-contract valued at ₹ 101.01 crore without supporting documents such as assessment order /proof of tax paid by sub contractors. While finalising the assessment, AAs allowed the exemption of sub contract on the basis of declaration made by contractors without supporting documents which involved the tax liability of ₹ 9.98 crore.

On this being pointed out, AA Gurugram (East) stated (May 2018) that in six cases reassessment proceedings had been initiated. AA Gurugram (South) stated (May 2018) that four cases had been sent to RA for taking *suo-motu* action.

2.4.7 Allowing benefit of Works Contract Tax (WCT) without verification

As per provision of Section 24(5) of HVAT Act 2003, any tax paid to the State Government in accordance with sub-section (3) shall be adjustable by the payee, on the authority of the certificate issued to him under sub-section (4), with the tax payable by him under this Act and the AA shall, on furnishing of such certificate to it, allow the benefit of such adjustment after due verification of the payment.

In three DETCs (ST)[21], audit observed that 16 contractors claimed the benefit of WCT of ₹ 6.26 crore. The AAs while finalising the assessment allowed benefit of ₹ 6.26 crore without obtaining WCT certificates. Thus, correctness of allowing benefit of WCT to works contractors could not be verified in audit.

On this being pointed out, three AAs[22] stated (May 2018) that in 15 cases letters had been issued to the concerned DETCs for verification of WCT. AA Gurugram (East) stated (May 2018) in one case that benefit of WCT had been given after verification. The reply of AA was not tenable, as payment of ₹ 2.26 lakh was not verified as per data in Daily Collection Register (DCR) statement.

2.4.8 Under-assessment of tax due to calculation mistake

Under Section 19 of HVAT Act, any taxing authority or appellate authority, may, at any time, within a period of two years from the date of supply of copy

[20] Gurugram (East) and Gurugram (South).
[21] Bhiwani, Gurugram (East) and Gurugram (North).
[22] Bhiwani, Gurugram (East) and Gurugram (North).

of the order passed by it in any case, rectify any clerical or arithmetical mistake apparent from the record of the case after giving the person adversely affected thereby a reasonable opportunity of being heard.

In four DETCs (ST)[23], audit observed that while finalising the assessment in four cases, AAs had calculated the tax of ₹ 94.21 lakh but while totaling the figures it was shown as ₹ 40.86 lakh, which resulted in under-assessment of tax ₹ 53.35 lakh.

On this being pointed out, AAs Panchkula and Gurugram (West) stated (September 2017 and May 2018) that demand of ₹ 38.29 lakh had been created. AA Gurugram (East) stated (Jan 2018) that reassessment proceedings had been initiated. AA Shahabad (Kurukshetra) stated (August 2017) that the case would be re-examined.

2.4.9 Under-assessment of tax due to allowing excess benefit of ITC

Under Section 8 of the HVAT Act, input tax in respect of any goods purchased by a VAT dealer shall be the amount of tax paid to the State on the sale of such goods to him. No ITC on goods which are disposed of otherwise than by way of sale is admissible. If the goods purchased in the State are used or disposed partly by way of sale and partly by stock transfer, the input tax in respect of such goods shall be computed on pro rata basis.

Audit observed in the office of the DETC (ST) Gurugram (East) that while finalising the assessment the AA allowed ITC of ₹ 0.17 crore on account of purchase of goods worth of ₹ 1.61 crore. The dealer sold material worth ₹ 1.03 crore and used the remaining material in execution of works contract. As the dealer had not maintained separate accounts for trading and works contract, ITC was to be reversed proportionately for use of material in works contract. Hence non reversal of ITC proportionately had resulted in under-assessment of tax of ₹ 0.13 crore[24].

On this being pointed out, AA Gurugram (East) stated (January 2018) that reassessment proceedings had been initiated.

2.4.10 Under-assessment of tax due to short assessment of taxable turnover

In five DETCs (ST)[25], it was observed that in the case of nine contractors AAs had assessed taxable turnover (TTO) of ₹ 198.71 crore. However, as per WCT certificates issued by the Contractees, the dealers had executed works worth

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[23] Gurugram (East), Gurugram (West), Kurukshetra and Panchkula.

[24] ₹ 16,66,499 (ITC) X ₹ 4,10,16,214(Lumpsum work).
₹ 5,13,48,163 (GTO)

[25] Ambala, Gurugram (East), Hisar, Kaithal and Panchkula.

₹ 225.80 crore (₹ 196.06 crore and ₹ 29.74 crore under lumpsum and non lumpsum respectively). Thus, there was short assessment of TTO ₹ 27.09 crore. This resulted in under-assessment of tax of ₹ 1.76 crore. In addition, interest of ₹ 0.21 crore was also leviable.

On this being pointed out,

- AAs Panchkula stated (May 2018) that demand of ₹ 37.20 lakh had been created.
- AA Ambala stated (March 2018) that case had been sent for reassessment.
- AA Gurugram (East) stated (September 2017) in one case that as per the total receipt statement GTO was ₹ 4.35 crore instead of ₹ 4.73 crore. Reply of AA was not tenable, as GTO/TTO was ₹ 4.73 crore as per WCT statement. In another case, AA stated (October 2017) that GTO of ₹ 66.86 crore was taken as per the return. The reply of AA was not tenable, as GTO/TTO worked out to ₹ 71.45 crore on the basis of WCT deducted. These were lumpsum contractors and their GTO is same as TTO. AA further stated (between December 2017 and May 2018) that reassessment proceedings had been initiated in three cases.
- AA Kaithal stated (April 2018) that the amount of ₹ 30.39 crore was taken as per balance sheet. The reply of AA was not tenable because as per WCT certificate GTO was ₹ 36.31 crore.

2.4.11 Excess deduction of Labour and Services without recorded reasons

As per sub-rule 2 of Rule 25 of HVAT Rules, the amount included in taxable turnover is the total consideration paid or payable to the dealer under the contract and shall exclude the charges towards labour, services and other like charges. Where the amount of charges towards labour services and other like charges are not ascertainable from the books of account of the dealer, the amount of such charges shall be calculated at 25 *per cent* of valuable consideration for civil works. If the dealer claims deduction on account of labour, service and other like charges exceeding 25 *per cent* of total contract value, the AA after examining the claims may allow the claim of the dealer and shall record reasons in writing for accepting the claim.

Audit observed in the office of the DETC (ST) Ambala that three contractors had carried out work of ₹ 10.11 crore. They claimed deduction of ₹ 3.91 crore (31.62 *per cent* to 40 *per cent*) on account of labour and services and AA

allowed the claim. The justification for allowing labour charges on higher rate was not mentioned in the assessment order by the AAs. Deduction at 25 *per cent* worked out to ₹ 2.53 crore. Thus, correctness of allowing deduction of labour and services in excess of 25 *per cent* amounting to ₹ 1.39 crore to works contractors could not be verified in audit.

On this being pointed out, AA Ambala stated (March 2018) that three cases had been sent to Revisional Authority for *suo-motu* action.

2.4.12 Non levy of tax on material supplied by contractee to contractor

Section 2 (1) (ze) of the HVAT Act provides that the transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract, where such transfer, is for cash, deferred payment or other valuable consideration such transfer shall be deemed to be sale of those goods by the person making the transfer.

Audit observed in the office of the DETC (ST) Panchkula that material worth ₹ 1.85 crore was provided by the department/contractee to contractor for execution of works contract and the same was shown by the contractor in his Trading Account. While finalising assessment AA allowed the deduction of ₹ 1.85 crore against the cost of material supplied by department which was not admissible. This resulted in under-assessment of tax of ₹ 0.21 crore.

On this being pointed out, AA stated (May 2018) that the case had been reassessed and demand of ₹ 1.54 crore[26] had been created including penalty and interest.

2.4.13 Short assessment of tax under amnesty scheme

The State Government notified (12th September,2016) "The Haryana Alternative Tax Compliance Scheme for Contractors, 2016" for the recovery of tax, interest, penalty or other dues payable under the said Act. The scheme could be opted for any period which may commence with any financial year (to be chosen by the applicant i.e. developer/builder) and ending with 31st March 2014. A contractor opting under this scheme shall pay year wise, in lieu of tax, interest or penalty arising from his business, by way of one-time settlement, a lumpsum amount at the rate of one *per cent* of the entire aggregate amount, received/ receivable for the business carried out during the year, without deduction of any kind. Further, a surcharge at the rate of five *per cent* shall be charged on the amount so payable. The contractor opting for the scheme shall apply online in form TC-1 to the concerned AA with in ninety days from the date of notification. A committee consisting of two

[26] AA levied tax of ₹ 76 lakh + Interest of ₹ 76.90 lakh + Penalty of ₹ 2.87 lakh – Excess Carry Forward of ITC ₹ 1.92 lakh = ₹ 153.85 lakh.

senior most ETO (other than the concerned AA) and the concerned AA posted in the district shall examine Form TC-1.

The State government had clarified that following components will also form part of aggregate amount:–

i) Refund of cancelled units amounts
ii) External Development Charges (EDC)
iii) Internal Development Charges (IDC)
iv) Transfer Charges
v) Club Membership, Electricity, Gas and water charges
vi) Interest received from prospective buyers for delayed payment.

In four DETCs (ST)[27], audit observed that 14 Developers engaged in construction of civil structures, flats, dwelling units, building etc. who had opted for the scheme had declared gross receipts of ₹ 12,525.13 crore for the opted period. The three member committee of the department after examining the Form TC-1, annual accounts and other records, recommended gross aggregate receipt of ₹ 12,771.37 crore. The concerned DETCs (ST) accepted the recommendations of committee and levied tax of ₹ 134.10 crore.

Scrutiny of records revealed that receipts like EDC/IDC charges, Transfer charges, Refund amount of cancelled units and interest received from prospective buyers for delayed payment etc. had not been included in aggregate amount by the developers nor by the departmental committee. After inclusion of these components, audit worked out gross receipt of ₹ 14,516.93 crore. This resulted in under-assessment of tax ₹ 18.33 crore (₹ 14,516.93 crore - ₹ 12,771.37 x 1.05%).

On this being pointed out, AA Faridabad (East) stated (April 2018) that in one case the dealer had developed a Special Economic Zone as a co-developer and development charges received was as rent of the building given to the co-developer and rental income was not in the preview of VAT and hence was not a part of gross receipt.

Reply of AA was not tenable because as per balance sheets the receipts were on account of development charges and not rental income. AAs Gurugram (North) stated in two cases that the aggregate amount had been taken on the basis of percentage of completion method (POCM) in two cases. The replies should be seen in light of the fact that in one case the dealer had shown gross receipt of ₹ 1,880.94 crore in form TC-1 which should have been taken for computing tax instead ₹ 1,842.25 crore was taken as gross receipt of the

[27] Faridabad (East), Gurugram (East), Gurugram (North) and Karnal.

contractor. In other case aggregate amount was to be ₹ 1,073.85 crore taking into consideration advance received from customers instead of ₹ 994.11 crore. AA Gurugram (East) stated (May 2018) in 10 cases that cases were under examination.

The State Government may consider review of all cases of developers settled under the amnesty scheme.

Conclusion

Irregularities pointed out by Audit indicate deficient internal control of the Department due to which there have been deviations and non compliance to provisions of the HVAT Rules. Department has not established any mechanism for cross verification of inter departmental data base of works contractors resulting in loss of revenue due to tax evasion by unregistered works contractors. Benefit of payment of tax/WCT was given to contractors without verification. Instances of non levy of interest on short deposit of tax, non levy of penalty for misuse of form VAT D-1, short assessment of taxable turnover, allowing excess ITC, non levy of tax on material supplied to contractor and short assessment of tax under amnesty scheme were noticed resulting in revenue loss of ₹ 79.78 crore.

This was reported to the Government in June 2018. Reply was awaited despite issuance of reminder in November 2018.

The issues pointed out are based on the test check conducted by audit. The Department may initiate action to examine similar cases and take necessary corrective action.

2.5 Under-assessment of tax due to allowing concessional tax on invalid forms 'C'

Assessing Authority allowed concessional rate of tax without verification of forms which resulted in under-assessment of tax of ₹ 3.53 crore. In addition, penalty of ₹ 10.59 crore was also leviable.

Section 8 (4) of the Central Sales Tax Act, 1956 provides that concession under sub section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer furnishes to the AA a declaration form duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form (Form 'C')[28] obtained from the prescribed authority. Under section 38 of HVAT Act, three

[28] This form is issued by the purchasing dealer to the selling dealer in Inter-State trade for claiming concessional rate of tax.

times of tax due is leviable as penalty for submitting wrong documents to evade payment of tax. Government of Haryana had issued instructions on 14 March 2006 and 16 July 2013 for verification of intra-State or inter-State transactions of more than one lakh rupees before allowing the benefit of tax/concession to the dealer.

Scrutiny of the records of seven Deputy Excise and Taxation Commissioners (Sale Tax) {DETCs (ST)}[29] and Excise and Taxation Officer (ETO) Tohana revealed that 18 dealers claimed concessional tax rate on their inter-State sales worth ₹ 38.49 crore in the years 2013-14 and 2014-15. In support of the claims, the dealers filed 50 'C' forms issued by Commercial Tax Department of Rajasthan (39), Uttrakhand (2), Delhi (8) and Punjab (1). The concerned Assessing Authorities (AAs) finalised the assessments between April 2016 and March 2017 and allowed concessional tax on the declarations filed without verification as per instructions ibid.

Audit referred these forms to the concerned States for verification and also checked the forms through Tax Information Exchange System (TINXSYS) and found that the respective States had cancelled the registration of the dealers. The position is as below;

Selling unit in Haryana	Number of dealers	Issuing State	Number of 'C' Forms	Checked through
Jind, Rohtak, Gurugram (E), Gurugram (W) and Hisar	13	Rajasthan	39	TINXSYS -13 Verification -26
Gurugram (W)	1	Uttrakhand	2	Verification -2
Jagadhri, Tohana and Faridabad (W)	3	Delhi	8	TINXSYS -5 Verification -3
Gurugram (W)	1	Punjab	1	TINXSYS -1
Total	**18**		**50**	

In response to request of audit for verification of forms, State Tax Officer (STO), Jaipur (November 2017) informed that eight forms issued by one dealer of Rajasthan were not genuine and the registration had already been cancelled. STO, Jaipur also informed that the matter had already been reported to DETC Jind on 25 May 2016 in response to a request made in June 2015 for verification of forms. Despite this AA, Jind allowed

[29] Faridabad (West), Gurugram (East), Gurugram (West), Hisar, Jagadhri, Jind and Rohtak.

(03 October 2016) concessional rate of tax on 'C' forms issued by the dealer of Jaipur.

AA, Jagadhri had also allowed (28 December 2016) concessional rate of tax on 'C' forms issued by two dealers of Delhi, despite being aware that the registration of the buying dealer of Delhi had been cancelled with effect from 10 September 2013 and 26 May 2014.

Thus, AA Jind and Jagadhri allowed concessions against invalid declarations. Further, AAs of the remaining six offices also finalised the assessments between April 2016 and March 2017 and allowed the concessional tax on the forms without verification.

This resulted in under-assessment of tax of ₹ 3.53 crore. In addition, penalty of ₹ 10.59 crore was also leviable.

On this being pointed out, in one case, AA, Gurugram (West) reassessed the case and demand of ₹ 15.62 lakh was created (July 2017). AA Jagadhri admitted the para and stated that the case would be reassessed (December 2017). DETC Jind intimated (October 2017) that letter had been issued to the Commercial Tax Officer (CTO) Jaipur for verification. The reply is not acceptable as CTO, Jaipur had already informed the facts to DETC Jind (May 2016). AA Rohtak stated that letter had been sent for verification of 'C' forms in two cases (August 2017). In one case, AA Rohtak claimed that the form issued by one dealer was duly verified from the website of Commercial Tax Department of Rajasthan. Reply was not acceptable as on verification by audit, it was found that the form was found invalid.

AA Gurugram (East), Gurugram (West), Tohana and Rohtak stated that action would be taken as per law after verification (July 2017 to December 2017). Reply has not been received from AA, Hisar.

The matter was reported to the Government in April 2018. Reply was awaited despite issuance of reminders in June and November 2018.

The Department may ensure stringent enforcement of its instructions for grant of concession on intra-State and inter-State sale after due verification.

2.6 Under-assessment of tax due to assessment on less turnover

Assessment of tax on less turnover by Assessing Authority, resulted in under-assessment of tax of ₹ 13.19 crore. In addition, penalty of ₹ 43.62 lakh was also leviable.

Section 15 (5) of the HVAT Act provides that if a dealer fails to furnish returns in respect of any period by the prescribed date, the AA may, at any time before the expiry of three years from the close of the year to which such returns relate and after giving the dealer a reasonable opportunity of being heard, assess, to the best of its judgment, the amount of tax, if any due from him and for this purpose he may presume that his gross turnover for the assessment period is the same as for the corresponding period of the last year and input tax is nil.

A) Scrutiny of records of the DETC (ST), Faridabad (East) revealed that the AA assessed (25 March 2015) the case of a dealer for the year 2011-12 under Section 15 (5) of the HVAT Act as the assessee had not filed any return for 2011-12 and determined the tax on the GTO of ₹ 418.26 crore after adding 10 *per cent* to the preceeding years' GTO. Audit observed that AA Faridabad had received two references, one from Excise and Taxation Officer (ETO), Panchkula and another from ETO, Rohtak, regarding claims for ITC made by dealers under their jurisdiction. The references sought to confirm sale of material by the dealer of Faridabad.

Reference was received from ETO Rohtak (23 February 2015 and received at ETO office Faridabad on 17 March 2015) seeking confirmation of sale of ₹ 128.86 crore by the dealer of Faridabad since a dealer in Rohtak had claimed ITC on this amount. This amount was however not considered at the time of assessment of GTO by ETO, Faridabad on 25 March 2015.

ETO, Panchkula had also made a reference to ETO, Faridabad regarding claim of ITC by a dealer who had purchased material amounting to ₹ 388.78 crore from the dealer of Faridabad. However, ETO, Faridabad assessed the case without taking into consideration sale of ₹ 388.78 crore as reported by ETO, Panchkula. Hence there was under-assessment of tax of ₹ 13.04 crore (₹ 517.64 crore – ₹ 418.26 crore = ₹ 99.38 crore X 13.125 *per cent*).

On this being pointed out by Audit, (February 2016), AA Faridabad (East) stated (August 2018) that the case was reassessed (November 2016) and an additional demand of ₹ 13.04 crore was created and recovery proceeding had been started.

B) Section 38 of the HVAT Act, provides for levy of penalty for maintaining false or incorrect accounts or documents with a view to suppressing sales, purchases, imports which affect the tax liability of the dealer. A sum thrice the amount of tax avoided would be levied as penalty.

Scrutiny of records of the DETC Gurugram (West) revealed that a dealer had sold building material of ₹ 1.11 crore to a dealer of DETC Panipat during the year 2010-11. The dealer of Gurugram had filed returns for that period but did not include this sale in the returns. The AA also finalised the assessment in November 2012 according to returns. Audit further noticed that the DETC Panipat had requested DETC Gurugram for verification of purchase of ₹ 1.11 crore from the dealer of Gurugram. AA Gurugram stated (April 2014) that the dealer had not shown the sale of ₹ 1.11 crore in the returns. This case should have been reassessed soon after the concealment of sale of ₹ 1.11 crore came to notice in April 2014. This was not done. The dealer had falsified account, with a view to suppress the sales of ₹ 1.11 crore, to evade payment of tax and thereby became liable for penal action. Thus, non-levy of tax by AA on suppressed sale resulted in evasion of tax of ₹ 14.54 lakh (13.125 *per cent* of ₹ 1,10,81,042) In addition, penalty of ₹ 43.62 lakh was also leviable.

On this being pointed out by audit (January 2015), AA Gurugram (West) reassessed the case (November 2017) and created an additional demand of ₹ 58.18 lakh.

The matter was reported to the Government in March 2018/April 2018. Reply was awaited despite issuance of reminder in June and November 2018.

Department may strengthen its internal controls for ensuring that references received from other assessing officers are taken into account while finalising assessments. Department may review such cases and fix responsibility. Further, amount pointed out by Audit may be recovered under intimation to Audit.

2.7 Under-assessment of tax due to allowing benefit against invalid forms 'F'

AA, while finalising the assessment allowed the benefit of consignment sale against invalid 'F' forms resulting in non levy of tax of ₹ 1.78 crore. In addition, penalty of ₹ 5.34 crore was also leviable.

Section 6 (A) (1) of CST Act provides that where any dealer claims that he is not liable to pay tax under this Act on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, for this purpose he may furnish to the assessing authority a declaration in Form

'F' signed by the principal officer of the other place of business, or his agent or principal. Further, section 38 of HVAT Act, provides for penal action (three times of tax avoided/benefit claimed) for claims on the basis of false information and incorrect accounts or documents etc. Government of Haryana had issued instructions on 14 March 2006 and 16 July 2013 for verification of intra-State or inter-State transactions of more than one lakh rupees before allowing the benefit of tax/concession to the dealers.

Scrutiny of the records of the offices of DETC (ST) Jind and Kaithal revealed that 10 dealers claimed exemption on their branch transfers/consignment sale amounting to ₹ 33.94 crore to two firms in Jaipur and Hanumangarh in Rajasthan for the years 2013-14 and 2014-15. In support of the claims, the dealers filed 91 'F' forms obtained from their respective branches/agents located in Jaipur and Hanumangarh, Rajasthan. The concerned AAs finalised the assessments between June 2016 and March 2017 and allowed the exemptions based on the declarations filed without verification as per instructions ibid.

Audit referred these forms to Rajasthan for verification and found that none of the forms were genuine as the registration of the firm in Jaipur was cancelled from 1st April 2013 and that of Hanumangarh from 6th June 2012. Further, STO, Jaipur, Rajasthan had intimated audit (November 2017) that cancellation of registration of the firm in Jaipur was already reported to DETC Jind in May 2016 in response to the request (June 2015) of AA, Jind. However, AA Jind while finalising the assessments (August and October 2016) ignored the fact and allowed benefit. AA Kaithal also allowed the benefit of consignment sale without verification. Thus allowing the benefit of consignment sale against invalid "F" forms by AAs resulted in non levy of tax of ₹ 1.78 crore[30]. Penalty of ₹ 5.34 crore was also leviable.

On this being pointed out, AA Jind intimated (October 2017) that the forms were verified from the Rajasthan Government website and letter had been written to the STO, Jaipur to know the genuineness. The reply was not acceptable as STO, Jaipur had already apprised DETC Jind of the factual position (May 2016). Reply has not been received from AA Kaithal.

The matter was reported to the Government in February 2018. Reply was awaited despite issuance of reminders in June and November 2018.

Department may ensure stringent enforcement of its instructions for grant of concession on intra-state and inter-state after due verification.

[30] ₹ 33.94 crore X 5.25 *per cent* = ₹ 1.78 crore.

2.8 Under-assessment of tax due to allowing excess benefit of ITC on stock transfer or losses

Short/non reversal of ITC by Assessing Authority resulted in excess benefit of ITC of ₹ 9.04 crore.

Under Section 8 of the HVAT Act, input tax in respect of any goods purchased by a VAT dealer shall be the amount of tax paid to the State on the sale of such goods to him. No ITC on goods which are disposed of otherwise than by way of sale is admissible.

If the goods purchased in the State are used or disposed partly by way of sale and partly by stock transfer, the input tax in respect of such goods shall be computed on pro rata basis.

Scrutiny of records of three offices[31] of DETC (Sales Tax) revealed that two dealers purchased Building Material, Wheat, Paddy and Cement during 2012-13 and 2013-14 worth ₹ 20,899.62 crore after payment of VAT of ₹ 1,096.20 crore. The dealers had transferred material worth ₹ 19,120.61 crore against form 'F'[32]. ITC was to be reversed proportionately on stock transfer. The reversible ITC works out to ₹ 994.80 crore. However, AAs while finalising assessments incorrectly reversed only an amount ₹ 986.60 crore resulting in short reversal of ₹ 8.20 crore.

Further, one dealer purchased packing material worth ₹ 16.68 crore after payment of tax of ₹ 0.70 crore within the State during 2012-13 and transferred the entire material against 'F' form and hence the dealer was not eligible for ITC. The AA reversed ITC of ₹ 0.15 crore only. This resulted in wrong benefit of ITC of ₹ 0.55 crore (₹ 0.70 crore - ₹ 0.15 crore).

2.8.2 One dealer had booked loss of ₹ 4.66 crore. The proportional ITC worked out to ₹ 0.29 crore. The AAs while finalising assessments did not reverse ITC which resulted in wrong benefit of ₹ 0.29 crore.

Thus incorrect reversal resulted in wrong benefit of ITC of ₹ 9.04 crore (₹ 8.20 crore + ₹ 0.55 crore + ₹ 0.29 crore)

On this being pointed out DETC (ST) Gurugram (West) intimated (October 2017) that an additional demand of ₹ 28.91 lakh had been created in one case and one case has been sent to Revisional Authority (April 2017) for

[31] Gurugram (East) (01 dealer), Gurugram (West) (02 dealers) and Panchkula (01 dealer).

[32] a declaration filed by a dealer claiming tax exemption on the movement of goods from one State to another on the ground that such movement was occasioned by reason of transfer of such goods to any other place of his business or to his agent or principal and without recognising it as sale.

suo-motu action. DETC (ST) Panchkula intimated (June 2018) that an additional demand of ₹ 8.12 crore has been created. AA Gurugram intimated (October 2018) that the case has been sent to Revisional Authority for suo-motu action.

The matter was reported to the Government in March 2018. Reply was awaited despite issuance of reminders in June and November 2018.

Department may ensure early recovery of the amount under intimation to Audit.

2.9 Incorrect benefit of Input Tax Credit on goods not sold

AA, while finalising the assessment allowed inadmissible ITC claim for purchase of Duty Entitlement Pass Book (DEPB) which was not sold by the dealer resulting in incorrect grant of input tax credit of ₹ 2.89 crore. In addition, interest of ₹ 1.73 crore was also leviable.

Under Section 8 of HVAT Act, input tax credit (ITC) on purchase of goods is admissible against tax liability on sale of goods as such or the goods manufactured therefrom in the State or inter-State trade and commerce. Duty Entitlement Pass Book (DEPB) Scheme is an export promotion scheme introduced by Government of India in 1997 where an exporter gets duty credit entitlement on his exports in proportion to the value of the export goods. Under this scheme, DEPB scrips are issued by Director General Foreign Trade to exporters for availing DEPB credit. The Government of Haryana clarified (22 April 2013) that ITC is available only if the DEPB scrips are purchased for re-sale and no ITC would be admissible if these were used for adjustment of custom duty. Further, interest at the rate of two *per cent* per month was also leviable under Section 14 (6) of the HVAT Act.

Scrutiny of record of (DETC) (ST), Rewari revealed that a dealer purchased DEPB scrip worth ₹ 55.02 crore after payment of VAT of ₹ 2.89 crore during 2012-13. As the Scrips were not sold by the dealer, no ITC was admissible. However, while finalising assessment on 28th April 2015, AA allowed the ITC claim to the dealer resulting in incorrect grant of ITC of ₹ 2.89 crore. Interest of ₹ 1.73 crore[33] was also leviable.

On this being pointed out, AA Rewari intimated (February 2018) that the case had been sent for suo-motu action to Revisional Authority.

[33] Interest is charged from 1.11.2012 to 28.4.2015 i.e. 29 months and 28 days on ₹ 2.89 crore at the rate of two *per cent* per month. ₹ 2.89 crore X 2 *per cent* X 29 months = ₹ 1.68 crore + ₹ 2.89 crore X 2 *per cent* X 28/30 = 5.59 lakh. Total ₹ 1.68 crore + ₹ 0.05 crore = ₹ 1.73 crore.

The matter was reported to the Government in February 2018. Reply was awaited despite issuance of reminders in June and November 2018.

2.10 Non levy of tax

AA, while finalising the assessment, assessed sale of items worth ₹ 7.08 crore as tax free goods. However, these items are taxable at the rate of 5.25 *per cent* and 13.125 *per cent*. This resulted in non-levy of VAT amounting to ₹ 43.31 lakh. In addition, interest of ₹ 24.53 lakh was also leviable.

Under Section 7 (1) (a) (iii) and (iv) of the HVAT Act, tax is leviable at the rates specified in Schedules 'A' to 'G' of the Act depending upon the classification of goods. Schedule 'C' goods are taxable at 5 *per cent*. The items not classified in above schedules are taxable at general rate of tax of 12.5 *per cent* with effect from 1 July 2005. Further, surcharge at the rate of five *per cent* of the tax is also leviable w.e.f 2nd April 2010. In addition, interest is also leviable under Section 14 (6) at the rate of one *per cent* per month if the payment is made within ninety days, and at two *per cent* per month if the default continues beyond ninety days for the whole period, from the last date specified for the payment of tax to the date he makes the payment.

Scrutiny of records of the office of DETC (ST), Panchkula and Jagadhri revealed that three dealers sold steel screen pipes, felt and bio fuel worth ₹ 5.91 crore in 2013-14 and 2014-15 and claimed the sale as tax free. The AA, while finalising the assessment (November 2015, September 2016 and November 2016) allowed the claim of the dealer. However, these items are all Schedule 'C' items and are taxable at 5.25 *per cent* including surcharge. This has resulted in non-levy of VAT amounting to ₹ 31.04 lakh (₹ 5.91 crore X 5.25 *per cent*). Interest of ₹ 14.64 lakh was also leviable.

Further, a dealer of DETC, Jagadhri sold fixed tangible assets worth ₹ 1.17 crore in the year 2013-14. The AA while finalising the assessment in March 2017 omitted to levy tax on the sale. These goods were liable to tax at the rate of 5.25 *per cent* and 13.125 *per cent* .This resulted in non-levy of tax of ₹ 12.27 lakh[34]. Interest of ₹ 9.88 lakh was also leviable.

On this being pointed out, AA Panchkula and Jagadhri intimated that the cases had been sent to the Revisional Authority for suo motu action (between March 2017 to June 2018).

The matter was reported to the Government in March and April 2018. Reply was awaited despite issuance of reminders in June and November 2018.

[34] ₹ 37,74,409 X 5.25 *per cent* = ₹ 1,98,156+ ₹ 78,17,507 X 13.125 *per cent* = ₹ 10,26,048 + ₹ 3000 = ₹ 12,27,204.

Department may examine whether there are more such cases where tax exemptions have been allowed incorrectly. Early recovery in respect of the cases pointed out by Audit may be ensured.

2.11 Under-assessment of tax due to calculation mistake

There was under-assessment of tax amounting to ₹ 41.46 lakh due to calculation mistake by Assessing Authorities.

Under Section 19 of the HVAT Act, any taxing authority or appellate authority, may, at any time, within a period of two years from the date of supply of copy of the order passed by it in any case, rectify any clerical or arithmetical mistake apparent from the record of the case after giving the person adversely affected a reasonable opportunity of being heard.

Scrutiny of the records of DETC, Gurugram (East) and Gurugram (West) revealed that two dealers made sales valued at ₹ 13.12 crore during 2013-14. The AAs while finalising the assessment in November 2015 and March 2017, assessed the tax of ₹ 29.41 lakh instead of the correct amount of ₹ 70.87 lakh due to calculation mistake. This resulted in under-assessment of tax of ₹ 41.46 lakh.

On this being pointed out (September 2017)**,** DETC, Gurugram (West) stated (September 2017) that the case had been reassessed and additional demand of ₹ 46.96 lakh had been created. DETC, Gurugram (East) intimated that notice for reassessment had been issued (January 2018) to the dealer.

The matter was reported to the Government in April 2018. Reply was awaited despite issuance of reminders in June and November 2018.

2.12 Non levy of interest

Assessing Authorities, while finalising the assessments did not levy interest of ₹ 27.77 lakh on delayed payment of tax by two dealers.

Section 14 (6) of the HVAT Act inter alia lays down that if any dealer fails to make payment of tax in accordance with the provisions of the Act and Rules made thereunder, he shall be liable to pay, in addition to the tax payable by him, interest at one *per cent* per month if the payment is made within ninety days, and at two *per cent* per month if the default continues beyond ninety days for the whole period, from the last date specified for the payment of tax to the date he makes the payment.

Scrutiny of records of offices of DETC (ST), Bahadurgarh and Gurugram (East) revealed that in two cases, interest had not been levied as required under the provisions ibid.

In Bahadurgarh, the dealer had paid monthly tax due during the period April 2013 to 31 March 2014, in November 2014 instead of the due date which is 15th of the following month. AA while finalising assessment for the year 2013-14 in March 2017, did not levy interest of ₹ 11.58 lakh on the delayed payment of ₹ 43.55 lakh.

In Gurugram, it is seen from the assessment for the year 2012-13 that on the date of assessment (18 March 2016) tax of ₹ 19.69 lakh was due from the dealer. AA while finalising assessment, did not levy interest of ₹ 16.19 lakh[35] on non payment of tax.

This resulted in non levy of interest of ₹ 27.77 lakh (₹ 11.58 lakh + ₹ 16.19 lakh).

On this being pointed out, DETC (ST) Bahadurgarh stated in March 2018 that the case had been sent to Revisional Authority, Jhajjar for taking suo motu action and AA Gurugram (East) stated in March 2018 that notice for reassessment had been issued to the dealer.
The matter was reported to the Government in March 2018. Reply was awaited despite issuance of reminders in June and November 2018.

Department may ensure recovery of the amount under intimation to Audit.

2.13 Inadmissible Input Tax Credit

Assessing Authority, while finalising the assessment allowed benefit of Input Tax Credit without verification of purchase from selling dealers resulting in incorrect grant of Input Tax Credit of ₹ 1.28 crore. In addition, penalty of ₹ 3.83 crore was also leviable.

Under Section 8 of the HVAT Act, input tax in respect of any goods purchased by a VAT dealer shall be the amount of tax paid to the State on the sale of such goods to him. ETC Haryana issued instructions in March 2006 and July 2013 that cent *per cent* verification of ITC up to the stage of actual payment of tax shall be done. Further, Section 38 of the Act provides for penal action (three times of tax avoided as penalty) for claims on the basis of false information and incorrect accounts or documents etc.

[35] ₹ 19,69,540 X1233 /30 days (from 1 November 2012 to 18 March 2016) X two *per cent.*

Scrutiny of the records of the DETCs (ST) Panipat, Faridabad (East) Gurugram (East), revealed that AA while finalising the assessments of three dealers for the year 2013-14 (January 2015, May 2015 and March 2017) allowed benefit of ITC of ₹ 1.28 crore without verification of purchase from selling dealers. **On verification by audit, it was found that the selling dealers had not made sale to these dealers. This resulted in incorrect grant of ITC of ₹ 1.28 crore. In addition, penalty of ₹ 3.83 crore was also leviable.**

On this being pointing out, AA Gurugram (East) intimated (August 2018) that the case has been reassessed and demand of ₹ 0.47 crore has been created. AA Faridabad (East) intimated (April 2017) that the case had been reassessed and demand of ₹ 3.24 crore has been created. AA Panipat intimated (February 2018) that the case had been taken up for reassessment.

The matter was reported to the Government in April 2018. Reply was awaited despite issuance of reminders in June and November 2018.

Department may ensure putting in place stringent mechanism of allowing benefit of ITC after due verification. Amount pointed out by Audit may be recovered under intimation to Audit.

2.14 Under-assessment of tax due to application of incorrect rate of tax

Assessing Authorities, while finalising the assessment levied incorrectly tax at the rate of 5/5.25 *per cent* instead of 13.125 *per cent* resulting in under-assessment of tax of ₹ 2.12 crore. In addition, interest of ₹ 1.27 crore was also leviable.

Under section 7 (1) (a) (iv) of the HVAT Act, all unclassified commodities are taxable at the rate of 12.5 *per cent* with effect from 1 July 2005. Surcharge at the rate of five *per cent* is payable on the tax leviable under section 7 (A) of HVAT Act w.e.f 2nd April 2010. Interest is also leviable under Section 14 (6) at the rate of one *per cent* per month if the payment is made within ninety days, and at two *per cent* per month if the default continues beyond ninety days for the whole period, from the last date specified for the payment of tax to the date he makes the payment.

Scrutiny of records of four DETC (ST)[36] offices revealed that while finalising the assessments for the year 2012-13 to 2013-14, six dealers were assessed

[36] Panipat :1, Faridabad (East) : 2, Faridabad (West) : 2, Rohtak : 1.

(between June 2014 and May 2016) at lower rate of tax on sale of unclassified goods as detailed below:-

(Amount in ₹)

Sr. No.	Name of DETC	Period/Month of Assessment	Commodity	Value of goods sold	Tax leviable @ 13.125 % including surcharge	Tax levied @ 5/ 5.25 %	Tax short levied	Response to audit observation
1	Panipat	2012-13 dated 18.03.2016	Fly ash	21413533	2810526	1124210	1686316	Fly ash is an unclassified item and taxable at the rate of 13.125 *per cent.* AA intimated (February 2017) that case had been sent to Revisional Authority for taking suo motu action.
2	Faridabad (East)	2012-13 dated 21.01.2016	Paneer	14953085	1962592	785037	1177555	The Government clarified on 23.06.2014 that Paneer is an unclassified item and taxable at the rate of 13.125 *per cent.* AA intimated (March 2017) that the case had been sent to Revisional Authority for taking suo motu action.
3	Faridabad (West)	2012-13 dated 02.06.2014 and 2013-14 dated 15.06.2015	Air compressor, accessories and parts	19106473	2507725	1003090	1504635	The Government clarified on 22.10.2009 that Air compressor/ Blower is an unclassified item and taxable at the rate of 13.125 *per cent*. AA intimated (May 2017) that notice has been issued to the dealer for submission of bills of goods sold.
4	Rohtak	2013-14 dated 20.11.2015	Plastic scrap	20009817	2626288	1000490 (5%)	1625798	Plastic scrap is an unclassified item and taxable at the rate of 13.125 *per cent*. AA intimated (April 2018) that the case has been sent to RA for suo motu action.
5	Faridabad (East)	2013-14 dated 14.12.2015	Machinery parts	53607058	7035926	2814371	4221555	AA intimated (November 2016) that the case had been sent to Revisional Authority for taking suo motu action.

Sr. No.	Name of DETC	Period/Month of Assessment	Commodity	Value of goods sold	Tax leviable @ 13.125 % including surcharge	Tax levied @ 5/ 5.25 %	Tax short levied	Response to audit observation
6	Faridabad (West)	2013-14 dated 31-05-2016	Currency Sorting devices	140057472	18382543	7353017	11029526	Currency sorting devices is an unclassified item and taxable at the rate of 13.125 *per cent.* AA intimated (December 2017) that currency sorting device is a computer. Reply of the AA is not correct as this is electronic goods and will be taxable at 13.125 *per cent*.
	Total			**269147438**	**35325600**	**14080215**	**21245385**	

This resulted in under-assessment of tax of ₹ 2.12 crore. Interest of ₹ 1.27 crore was also leviable.

The matter was reported to the Government in May 2018. Reply was awaited despite issuance of reminders in July and November 2018.

Department may undertake scrutiny of more cases for ensuring that correct tax rates are being levied. Amount pointed out above may be recovered under intimation to Audit.

2.15 Incorrect benefit of tax deposit into Government Accounts without verification

Assessing Authorities, while finalising the assessment allowed incorrect benefit of tax deposit of ₹ 27.15 lakh to two dealers. In addition, interest of ₹ 14.96 lakh was also leviable.

As per provision contained in Rule 4.1 of Punjab Financial Rules Volume-1 as applicable to State of Haryana, it is the duty of the Revenue or the Administrative Department concerned, to see that dues of Government are correctly and promptly assessed, collected and paid into the treasury. The departmental controlling officers should see that all sums due to Government are regularly and promptly assessed, realised and duly credited into the treasury. Benefit of tax will be allowed after verification of tax deposited into treasury. If any credits are claimed but not found in the accounts, enquiries should be made first of the responsible departmental officer concerned. In addition, interest was also leviable under Section 14 (6) at the rate of one *per cent* per month if the payment is made within ninety days, and at two *per cent* per month if the default continues beyond ninety days for the whole period,

from the last date specified for the payment of tax to the date he makes the payment.

Scrutiny of the records of the office of DETC (ST), Faridabad (west) revealed that AA while finalising assessment (April 2016) allowed benefit of tax deposit of ₹ 27.09 lakh for the year 2013-14 to a dealer. Verification by audit revealed that an amount of ₹ 20 lakh out of ₹ 27.09 lakh was actually not deposited by the dealer into Government account. Interest of ₹ 11.67 lakh[37] was also leviable.

In Gurugram (East) it was seen that a dealer had made tax deposit of ₹ 7.15 lakh for the year 2012-13 and AA allowed the benefit. The same amount was allowed in the year 2013-14 also by the AA (November 2015) though this was not deposited by the dealer. This resulted in incorrect benefit of ₹ 7.15 lakh. Interest of ₹ 3.29 lakh[38] was also leviable.

Thus AAs allowed benefit of tax deposit of ₹ 27.15 lakh (₹ 20 lakh + ₹ 7.15 lakh) into Government account without verification. Total interest of ₹ 14.96 lakh was also leviable.

Granting benefit of tax paid without ensuring that the amount has actually been remitted into Government account is a pointer towards deficient internal controls. There should be provision for online checking of tax deposits by dealers. Provision of benefits of tax deposited should be system enabled instead of being a manual exercise.

On this being pointed out, DETC Faridabad (West) stated in July 2018 that the dealer has deposited ₹ 20 lakh. DETC Gurugram (East) stated in August 2018 that the case had been reassessed and an additional demand of ₹ 10.99 lakh had been created.

The matter was reported to the Government in May 2018. Reply was awaited despite issuance of reminders in July and November 2018.

The cases pointed out are based on the test check conducted by Audit. The Department may initiate action to examine similar cases and take necessary corrective action.

[37] ₹ 20,00,000 x 29 months and 5 days (01 Nov 2013 to 05 April 2016) x 2/100 = ₹ 11,66,667.

[38] ₹ 7,15,462 x 23 months (1 Nov 2013 to 30 Sept 2015) x 2/100 = ₹ 3,29,112.