

केवल भारत के लेखापरीक्षा एवं लेखा विभाग के प्रयोग के लिए (For use of IA&AD only)

हिमाचल प्रदेश मूल्य वर्धित कर के अधीन लेखापरीक्षा कार्य विधि
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MANUAL DEALING WITH THE PROCEDURE OF
AUDIT UNDER HIMACHAL PRADESH VALUE ADDED
TAX

कार्यालय प्रधान महालेखाकार (लेखापरीक्षा) हिमाचल प्रदेश शिमला - 171003

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PREFACE

This manual has been prepared for the guidance of those entrusted with the audit of receipts relevant to the Himachal Pradesh Value Added Tax, Act and Rules. In this manual, the basic provisions of the Law relating to levy, assessment and collection of tax/fees under the said Act has been set out. During the course of audit, if any reference has to be to a particular provision of the law, such a reference should be made to the section of the Himachal Pradesh Value Added Tax Act, 2005 and the Himachal Pradesh Value Added Tax Rules, 2005.

The manual should be treated only as a guide and the audit checks indicated should not be taken as exhaustive.

Revenue Sector (Headquarters) will be responsible for keeping this manual up-to-date. Any errors or omissions and suggestions for improvement of this manual should brought to the notice of the Deputy Accountant General(RS). The updation of manual has been completed upto March, 2018.

Shimla :
Dated :

Pr. Accountant General (Audit)
Himachal Pradesh

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CHAPTER 1
INTRODUCTION
HISTORICAL AND LEGISLAIVE BACKGROUND

- 1.1** The history of Value Added Tax (VAT) may be traced back to remote antiquity. In ancient days, sales tax or taxes of a similar nature were levied in many countries.
- 1.2** Tax on sale within the State is a State Subject. Over the period, many distortions had come in taxation due to unhealthy competition among States by giving sales tax incentives and ‘tax rate war’ started to attract more revenue to State. Many steps were taken to remove the distortions and rationalise tax structure since 1999 and it was decided to introduce uniform State Level VAT. Value Added Tax was introduced in India as a transitional arrangement to facilitate introduction of Goods and Services Tax.
- 1.3** Empowered Committee of the State Finance Ministers was formally set up in July 2000 with Finance Ministers of 10 States, to monitor implementation of uniform floor rates of sales tax by States and phasing out sales tax based incentives. The decisions of the Empowered Committee were arrived through persuasion. Efforts were made to arrive at a consensus, due to which various compromises became inevitable.
- 1.4** The VAT system as introduced is result of deliberations of committee of representatives from 29 States. Each State has its own views and peculiarities. Hence, having uniform nationwide VAT is very difficult and some compromises/adjustments are inevitable. This has happened while introducing State VAT also. Each State has made changes as per their own needs.
- 1.5** Value Added Tax (VAT) in its present form was introduced in Himachal Pradesh w.e.f. 01.04.2005.
- 1.6** Under the Constitution, the powers of the State for levy of tax on sales and purchases are derived from Article 246(3) read with entry 54 of List II (State list) of the Seventh Schedule which reads as “Taxes on the sale or purchase of goods other than newspapers”. This entry was amended as “Taxes on the sale or purchase of goods other than newspapers subject to provisions of Entry 92 A of List I” by the Constitution (Sixth Amendment) Act, 1956. The Union Government is authorised to levy ‘Taxes on the sale or purchase of goods other than newspapers’ if it take place in the course of inter-State trade or Commerce. Accordingly, the Central Sales Tax Act, 1956 was enacted by the Parliament. The provisions of this Act for levy of tax on inter-State sales came into force from July 1957. Though, the levy of tax on sales in the course of inter-State trade is outside the purview of the State Legislation, Article 269 provides that taxes shall be levied and collected by the Government of India but shall be assigned to the States. Section 9 of the Central Sales Tax Act, 1956 has vested the collection also in the authorities of the State Government

functioning under the State Sales Tax Law and such proceeds are also retained by the States.

- 1.7** Article 286 of the Constitution excludes from the purview of the State legislation (i) levy of tax on sale or purchase of goods in the course of import of the goods into or export of the goods out of the territory of India, (ii) tax on the sale or purchase of goods that take place outside the State and restricts the power of the State in so far as it imposed or authorises the imposition of a tax on the sales or purchases of goods declared by the Parliament by Law to be of special importance in the inter-State trade or Commerce. The principles governing these restrictions on the State Legislation are formulated by the Parliament in the Central Sales Tax Act, 1956.
- 1.8** The Himachal Pradesh Value Added Tax Act, 2005, was assented by the Governor on 31st day of the March, 2005, as result of the instructions by the President of India for promulgation of the HP VAT Ordinance, 2005, received vide Ministry of Finance O.M. No.25/6/2005-ST dated 21st February, 2005. The HP VAT Act came into force w.e.f. 1st April, 2005 in the State replacing existing Sales Tax Act known as The Himachal Pradesh General Sales Tax Act, 1968.
- 1.9** The levy of tax on sale and purchase is based on and is regulated by the provisions of:-
1. The Himachal Pradesh Value Added Tax Act, 2005
 2. The Himachal Pradesh Value Added Tax Rules, 2005
 3. The Central Sales Tax Act, 1956
 4. The Central Sales Tax (Registration and Turnover) Rules, 1957.
 5. The Central Sales Tax (Himachal Pradesh) Rules, 1970

CHAPTER 2

AUDIT MANDATE AND AUDITING STANDARD

- 2.1** Section 16 of the Duties, Powers and Conditions Act, 1971, read with Article 149 of the Constitution authorises the Comptroller and Auditor General to take up the audit of all receipts and refunds in the State.
- 2.2** The audit of Value Added Tax receipts and refunds is regulated by the general principles governing the audit of receipts as laid down in Chapter III of Section II of the Comptroller and Auditor General's Manual of Standing Orders (Audit).
- 2.3** The most important function of audit is to see that adequate regulations and procedures have been framed by the Excise and Taxation department to secure an effective check on the assessment, collection and proper accounting of value added tax and to satisfy itself that such regulations and procedures are actually being duly carried out. Audit should also make such examination as it thinks fit with respect to the correctness of the sum brought to account in respect of Value Added Tax.
- 2.4** It is primarily responsibility of the departmental authorities to see that revenue or other debts due to Government which have been brought to account are correctly and promptly assessed, realised and credited to Government account. During audit of receipts, it should be seen that all receipts due to Government are actually received and brought to account and that receipts, which have entered the books of a department, are correctly calculated and are, in fact, credited to Government account in time. It should also be checked that the executive have not granted unjustified or unauthorised remissions to tax payers.
- 2.5** Audit of revenue differs from audit of expenditure in that, in the former, attention must be given not only to examining the records of amounts actually received but also to ascertaining that adequate precautions are taken to ensure that all amounts received or due to be received in the period of the account are properly and promptly brought to account. Since the laws under which the revenue is collected provide for judicial remedy or judicial interpretation, the scrutiny by audit should be generally limited to those matters which are not subject to judicial processes.
- 2.6** The Audit Department should not in any way substitute itself for the revenue authorities in the performance of their statutory duties. But audit should satisfy itself in general that the departmental machinery is sufficiently safeguarded against errors and frauds.
- 2.7** Audit does not consider it the main part of its duties to review the judgement exercised or the decision taken in individual cases by officers entrusted with these duties, but it must be recognised that an examination of such cases may be an important factor in judging the effectiveness of assessment procedure. Where, for example, the information received in any individual case is insufficient to enable Audit to see how the requirement of law has been complied with. Audit may consider it its duty to ask for further information to enable it to form the judgement required of it as to the effectiveness of system. It is, however, towards forming a general judgement rather than to the detection of individual errors that the audit

enquiries should be recorded. The detection of individual errors is an incident rather than the object of Audit.

2.8 Members of the Audit Department will have access to the relevant records and papers of the Excise and Taxation department, when dealing with general questions or examining individual cases in their effect on any particular general question. But they should observe secrecy in the same way as officers of the Excise and Taxation Department.

2.9 The most important function of the audit in relation to VAT assessments and refunds is to satisfy itself by such test checks, as it may consider necessary, that the internal procedures adequately provide for and actually secure:-

- (i) the collection and utilisation of data necessary for the computation of demands or refunds under the law;
- (ii) the prompt raising of demands on tax payers in the manner required by law;
- (iii) regular accounting of demands, collection and refunds;
- (iv) the correct accounting and allocation of collections, and their credit to the consolidated fund;
- (v) that proper safeguards exist to ensure that there is not wilful omission to levy or collect taxes or to issue refunds;
- (vi) that claims on tax payers are pursued with the diligence and are not abandoned or reduced except with adequate justification and proper authority;
- (vii) that double refunds, fraudulent or forged refund orders or other losses of revenue through fraud, default or mistakes are promptly brought to light and investigated; and
- (viii) that penalty recoverable from the assesses for belated payment of tax is properly calculated in accordance with law and there is not any omission to levy or collect the penalty and in case where levy of penalty is discretionary; whether such levy was considered by the Assessing Authority. In the latter case, the quantum of penalty imposed would be outside the purview of audit.

2.10 The auditor should plan the audit in a manner, which ensures that an audit of high quality is carried out in an economic, efficient and effective way. For this purpose, important aspects of functions of audited office are to be identified and audit objectives and tests required to achieve them are specified. Audit is to provide for a review to determine whether appropriate action has been taken on previously reported audit findings.

2.11 The auditor should scrutinize all the matters that are considered material and knowledge of which is to influence the user of audit report. It is not always in terms of money but a transaction can be material in terms of characteristics and in the context of its occurrence. The auditor must exercise his judgment in determining the audit procedures to afford a reasonable basis for his opinion.

2.12 The work of the audit staff at each level of audit should be properly supervised to ensure fulfilment of audit objectives and the supervision should be directed both to substance and to the method in order to ensure that all evaluation and conclusions are soundly based and supported by reasonable audit evidence and off errors, deficiencies and unusual matters have been identified and documented/ reported.

- 2.13** The auditor should be well versed with the Act/Rules and settled Law on the subject. The lacunae in the Act/Rules leading to non-fulfilment of stated objectives of the Government regarding revenues be highlighted and suggest reminders to overcome legal infirmities. Where there is difference of opinions regarding interpretation of law the opinion of the law department be sought and accepted.
- 2.14** The audit findings, conclusions and recommendations must be based on evidence. Therefore, data collection and sampling technique be chosen carefully. Where the computer based system data is an important part, the reliability of data be assessed and data base of the department may be used to seek audit evidence.
- 2.15** Auditors should adequately document the audit evidence in working papers, including the base and extent of the planning, work performed and the findings of audit. Working papers should contain sufficient information to enable an ordinary person, having no previous connection with the audit, to ascertain from the evidence that supports the auditor's significant findings and conclusions.
- 2.16** On the completion of each audit assignment, the auditor should prepare a written report setting out the observations and conclusions in an appropriate form. Its contents should be easy to understand and free from vagueness or ambiguity. It should include only information which is relevant and supported by sufficient and competent audit evidence and be independent, objective, fair, complete, accurate, constructive and concise as the subject matter permits.
- 2.17** In the audit of Receipts, it would be necessary in the case of department which is receiver of public monies to ascertain what arrangements are in place to ensure the prompt detection, investigation and prevention of irregularities, double refunds, fraudulent or forged refund vouchers or other loss of revenue through fraud, error or wilful omission or negligence to levy or collect taxes or to make refunds. For instance, the department could be requested to undertake a comparison of a sample set of counterfoils of receipts with those available with the tax payers or other debtors, the results of the comparative study being made available to Audit. Audit may also suggest any appropriate improvements in procedure.
- 2.18** It is the primary duty of the department concerned to establish an environment that prevents valuable entity assets from being lost through frauds and corruption by providing adequate controls and checks. This doesn't absolve the auditor of its responsibility to detect and report the frauds by analyzing the internal control system and transactions in depth. High-risk areas of fraud in revenue receipts are in cash management, assessment of revenue and refunds.
- 2.19** While determining materiality levels for different audit areas the auditor may take into account adjustments to the materiality level that may make audit more responsive to risk arising from fraud and corruption. For this purpose auditor should apply its own judgement to determine the extent of audit investigation to be undertaken in cases of suspected fraud and corruption and formulate a formal policy or strategy for deterring fraud and corruption.
- 2.20** Audit should review whether applicable accounting standards ensure disclosure of true financial statements inclusive of any losses resulting from fraud and corruption. The responsibility for adequate and timely disclosure of any cases of fraud and

corruption rest with the office concerned and the auditor must evaluate and report on the adequacy and competence with which the office concerned has discharged its responsibility.

- 2.21** Shortcomings in system and controls which provide an environment conducive to fraud and corruption should proactively reported by audit to the department to improve the control environment and minimize the risk of fraud and corruption. Audit should make the department aware that the absence or lack of application of reliable or valid performance measures and indicators could increase the possibility of occurrence of fraud and corruption.
- 2.22** Since complete documentary proofs about cases may not be available to audit due care should be exercised in arriving at an audit conclusion. In many circumstances additional checks may have to be performed and additional evidence acquired that would normally be considered appropriate and necessary for arriving at an audit opinion.
- 2.23** Before taking up the audit the auditor should have a complete understanding of the auditee organization and environment in which it operates, the level of internal control and past performance especially previous instances of fraud and corruption. Based on the risk assessment, the auditor should develop the audit objective and design audit procedures so to have reasonable expectations of detecting and evaluating material mis-statement and irregularities arising from fraud and corruption.
- 2.24** Increasing use of Information Technology systems by the auditee, requires that the auditors should know reliable and verifiable system based audit trails to evaluate the internal controls as computerized fraud could involve manipulation of a computer data by whatever method in order to dishonestly obtain money, properly or same other advantage of value. The auditor has to be particularly aware of the audit trail, of the checks and balances of I.T. systems of the levels of the controls and needs to also have fair idea of how processing controls can be circumvented by the perpetrator of fraud and how data can be accessed and manipulated. It is particularly important for the auditor of the IT system to assess in his audit the level of security controls built in and if these are in tune with the sensitivity of data.
- 2.25** Whenever a material instance of failure to comply with the applicable laws and regulations is observed, the auditor should investigate the lapses in control system. He may also examine if the supporting evidence has been tampered in any manner or any individual(s) could have benefited from the material violation.
- 2.26** Auditors need to be alert to deviations from acceptable accounting standards including disclosure requirements particularly when there is suspicion of fraud and corruption.
- 2.27** When in the opinion of auditor the financial statements include material fraudulent transactions or such transactions have not been adequately disclosed or the audit conducted by the auditor leads him to the conclusion that instance(s) of fraud and/or corruption have taken place and when the auditor has adequate evidence to support his conclusion, he should ensure that the findings are adequately included in audit

report. However, the terms fraud and corruption may not be used in a conclusive sense unless such action is established in a court of law.

2.28 In the following up on reported cases of fraud and corruption the auditor should determine whether the necessary action is being taken with due regard to urgency that the situation demands and become aware of the changes in the system and procedures which could be violated through subsequent audit.

In the subsequent chapters, the basic provisions of law and the rules governing the assessment and collection of Value Added Tax (VAT) are set out. Being only a summary, this Manual can, in no sense, be regarded as a substitute for the Acts themselves and, therefore, it should be treated merely as a preliminary step to enable the auditor to grasp the essential of the administration of the Value Added Tax laws. For a fuller and comprehensive study he should refer to the provisions of the Acts and the rules made there under.

CHAPTER-3

ORGANISATION AND FUNCTIONS OF THE EXCISE AND TAXATION DEPARTMENT

- 3.1** Under the Act, all powers are vested in the State. The State Government may, appoint a person to be the Excise and Taxation Commissioner and such other person with such designations, as it thinks fit. The Commissioner and other persons shall perform such functions and duties as may be required by or under this Act or as may be conferred, by the State Government, by notification.
- 3.2** The Commissioner superintends the administration and collection of tax and controls all other officers of the Department.
- 3.3** The Excise and Taxation Commissioner is assisted by the Additional Excise and Taxation Commissioners, Joint Excise and Taxation Commissioners, Deputy Excise and Taxation Commissioners, Assistant Excise and Taxation Commissioners, Excise and Taxation Officers, Excise and Taxation Inspectors and other allied staff for administering the relevant Tax laws and rules.
- 3.4** The Deputy Excise and Taxation Commissioner (HQ) posted at HQ looking after the work of Public Information Officer under Right to information Act.
- 3.5** The assessing authorities have to levy tax and at the same time decide upon objections raised by the assessee. The assessing authorities have for the purpose of this Act, the same powers as are vested in a Court under the Code of Civil Procedure in respect of the following manner:-
- (a) to summon and enforce attendance of any person and examine him on oath or affirmation;
 - (b) to compel the production of documents and accounts and to impound and detain them;
 - (c) to issue commissions for the examination of witness;
 - (d) to require or accept proof of facts on affidavit.
- 3.6** For the purpose of VAT they can determine:-
- (i) whether any person or any branch of any firm is a dealer or;
 - (ii) whether a transaction is sale or;
 - (iii) whether goods purchased by a registered dealer are covered by the Certificate of Registration or not.

Scope of Departmental Instructions

- 3.7** Departmental instructions have no statutory value. A construction placed by the executive Government cannot bind Audit or Tribunal or a quasi-judicial Tribunal. They are merely administrative directions issued by the Executive and must be within the ambit of the laws and the rules.

CHAPTER-4

BASIC FEATURES OF THE VALUE ADDED TAX ACT

- 4.1** The object of the Value Added Tax Act is to impose a tax on sales on the occasion of sale. Its object is not to tax income or profit, nor to tax production or sale of goods but to tax sales effected by persons carrying on the business of selling, supplying or distributing goods since every transaction of sale involves also a purchase by the person to whom the goods are sold, tax sometimes is levied on the purchaser of goods on the occasion of purchase. It is then called a purchase tax.
- 4.2** The following are the basic features of the VAT law:-
- (i) The levy of VAT is on the purchase or sale of goods and payable by the dealer. The authority empowered to collect the tax is the State Government.
 - (ii) The dealer by virtue of registrations is empowered to collect tax from the customer or purchaser.
- 4.3** VAT is leviable at every point of sale to avoid cascading effect. Thus, it is known as multi stage tax.
- 4.4** The charging section enables the State Government to tax the turnover of the dealer and the legislature has left the power to the State Government to frame rules to determine the manner of assessing such tax. Accordingly, the H.P. VAT Rules, 2005, have been framed by the Government. It is the turnover of the dealer which is subject to levy of VAT. The terms business, dealer, turnover, sale, goods etc. are specifically defined in the Act and are important.

Tax on value addition

- 4.5** The H.P. VAT Act postulates a series of sales or purchases by the successive dealers and tax is to be levied at every stage. Tax paid on purchases from registered dealer may be claimed as set off as input tax credit by the purchasing registered dealer. Thus, the successive dealers have to pay tax on value addition.
- 4.6** 1) The person who is assessed to tax under the Act is termed as dealer and the transactions which attract tax are purchase or sale of goods. Dealer as defined in section 2(g) of the Act means any person including a department of Government who in the normal course of trade sells or purchases any goods that are actually delivered for the purpose of the consumption in the Himachal Pradesh, irrespective of the fact that the main place of business of any person is not in the said territory, dealer includes the local manager or agent of such person in Himachal Pradesh in respect of such business.

Explanation - Every department, or its subordinate offices, or a Government which whether or not in the course of business, buys, sells, supplies or distributes goods, directly or otherwise, for cash or for deferred payment or for commission, remuneration or other valuable consideration, shall, except in relation to any sale,

supply or distribution of surplus, unserviceable or old stores or materials or waste products or obsolete or discarded machinery or parts or accessories thereof, be deemed to be a dealer for the purpose of this Act.

(2) A factor, a broker, a commission agent, a dealer's agent, an auctioneer or any other mercantile agent by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of selling, supplying or purchasing goods and who has, in the customary course of business, authority to sell goods belonging to principals or to purchase goods on their behalf is a dealer.

(3) For the purpose of this clause "Government" will include the Central Government or the Government of any other State or Union Territory.

4.7 In the above definition, the expression "person" has the same meaning as given to it in the General Clauses, Act and would include a company or association or body of individuals, incorporated or not. The essential features of the word dealer are:-

- (i) there must be sale / purchase,
- (ii) it must be in the normal course of trade,
- (iii) The sale or purchase should result in actual delivery for the purpose of consumption in the State.
- (iv) It is not necessary that the main place of business should be located in Himachal Pradesh. If the main place of business is located in any other State, the local manager or agent will be treated as dealer.

4.8 It is to be noted that-

- (1) Only those transactions which were carried out in normal course of trade of the dealer are liable to be taxed under the H.P. VAT Act. If the sale is a casual sale having no connection with business for which the dealer is registered or is liable to be registered, the sale price will not be included in the taxable turnover. In order to regard a transaction a part of business, the test of volume and the degree of frequency of similar transactions must be fulfilled. A casual sale of a single item of the assets of the assessee (e.g. disposal of surplus or obsolete machinery) does not make such sale a part of business of the assessee.
- (2) The condition of actual delivery for the purpose of consumption in the State of Himachal Pradesh is important only for determining whether a person is a dealer or not. It does not mean that in the turnover only those goods are to be included which are actually delivered for this purpose. Once a person has been established to be a dealer then all his sales except those which are specially excluded by the Act will be taken into consideration. Similarly, in cases where sale has been taken place and actual delivery made for the purpose of

consumption in Himachal Pradesh, no tax would be payable if it was not in the normal course of trade, because the seller is not a dealer.

- (3) Even if a co-operative society, a club, or any association transacts no business with outsiders, it is none the less a dealer if-
- (a) it sells or supplies goods to its members, or
 - (b) purchase goods which are taxable under the Act, Departments of Governments i.e. Central Government or Government of any State or a Union Territory, are treated as dealers if they purchase or sell goods in the normal course of trade for consumption within the Territory of Himachal Pradesh.
- (4) If a person who falls within this definition has his main place of business outside the State, it does not affect his liability to tax. If he has a local agent / manager, the dealer himself is liable.

Sale or purchases through Commission Agents

4.9 The distinction between a broker and an agent is that the broker only brings the buyer and the seller together and assists them in negotiations. It is in fact the principal who transfers or receives the property in goods and in such cases only the principal can be charged to tax. An agent has, however, dominion over and possession of goods and is thus himself a dealer and chargeable to tax. But the real relationship can be ascertained only from the nature of agreement and the functions performed by the middleman. Where the buyer and the seller are both present on the spot and the agent cannot finalize the transaction without final approval from both, he acts only as a broker and does neither buy nor sell on behalf of the principal. But, where he acts on their behalf and receives or transfers property on their behalf, he becomes liable to tax. The inclusion of 'broker' in the definition of dealer makes no difference in the position explained above and a broker will be taxable only when he acts on behalf of his principal i.e. when he is authorised by the principal to receive or transfer property in goods.

For the purpose of registration, an agent's total turnover is taken irrespective of the volume of turnover transacted on behalf of each principal.

4.10 Every dealer whose gross turnover during a year after commencement of the Act exceeds taxable quantum, shall be liable to pay tax on all sales effected and purchases made unless he deals exclusively in goods declared tax free.

Here "taxable quantum" means¹ –

- (a) in relation to any dealer who imports for sale or manufacturing or processing of goods in Himachal Pradesh – Rs. 1/-;

¹ Section 4 of H.P.VAT Act,2005

- (b) in relation to dealer who himself manufacture or produces any goods for sale – Rs. 4,00,000/-²;
- (c) in relation to any dealer who runs a hotel, restaurant, bakery or other similar establishment wherein food preparations including tea are served – Rs. 5,00,000/-;
- (d) in relation to any other dealer – Rs. 8,00,000/-³;
- (e) Taxable quantum for registration of dealers who resides outside the State but deliver any goods for sale in the State or purchase any goods in the State and who purchases the goods specified in Schedule ‘C’⁴, the taxable quantum shall be Rs. 1/-.

It is mentioned that if a person deals exclusively in tax free goods and not liable to tax, needs not to get registered.

- 4.11** Liability to tax is attracted if during any year the gross turnover of a dealer exceeds the ‘taxable quantum’ for the first time. The ‘taxable quantum’ means the limit fixed for different classes of dealers under Section 4(6). The test of liability, therefore, is whether the gross turnover does or does not exceed this limit. Once this liability is attracted, tax will be calculated on the ‘taxable turnover’ i.e. the gross turnover as reduced by certain deductions such as sale of tax free goods. A dealer who has become liable to pay tax once, he shall continue to be liable until the expiry of three consecutive years even his gross turnover fails to exceed the taxable quantum⁵. Thus, there may be cases where the dealer has to pay tax even though his ‘turnover’ is lower than the taxable quantum.
- 4.12** Further, if during any subsequent year his turnover again exceeds the limit, he will again become liable to tax from the date on which his gross turnover first exceeds the taxable quantum.
- 4.13** This is to be noted that these limits are not exemption slabs as in income tax assessments. If the turnover exceeds these limits, tax becomes payable on the entire taxable turnover.
- 4.14** These exemption limits do not apply to a dealer registered under the Central Sales Tax Act. Even, if his total turnover is below these limits, he is liable to tax, unless he deals exclusively in tax exempted goods.
- 4.15** To understand the basic concept of VAT, a few definitions are given below:-
- (a) “Act” means the Himachal Pradesh Value Added Tax Act, 2005;
 - (b) “rules” means the Himachal Pradesh Value Added Tax Rules, 2005;
 - (c) “assessing Authority” means any person appointed by the State Government to make any assessment under this Act;

² Enhanced from Rs. 2 lac to 4 lac w.e.f. 29.09.2011

³ Enhanced from Rs. 6 lac to 8 lac w.e.f. 15.10.2013

⁴ Rule 16 of H.P.VAT, Rules 2005

⁵ Section 4(4)

- (d) “business” includes any trade, commerce, manufacture, any adventure or concern in nature of trade, commerce or manufacture carried on with a motive to earn profit, whether it earns profit or not;
- (e) “capital goods” means plant and machinery or equipment used in the process of manufacturing, processing and packing of goods for sale but excluding civil structure;
- (f) “casual dealer” means any person who carries on occasional transactions of business of buying, selling, supplying or distributing goods whether for cash, deferred payment, commission, remuneration or other valuable consideration;.
- (g) “commissioner” means the Excise and Taxation Commissioner;
- (h) “dealer” means any person who carries on (whether regularly or otherwise) the business. It includes a local authority, a corporate body, a company, a co-operative society, a club, a firm, Hindu Undivided Family or other association of persons, a broker, commission agent, an auctioneer etc. who carries on such business;
- (i) “declared goods” means goods specified under the Central Sales Tax Act, 1956;
- (j) “Deputy Excise and Taxation Commissioner” means the Deputy Excise and Taxation Commissioner appointed to assist the Commissioner and includes the Additional / Joint Excise and Taxation Commissioner.
- (k) “documents” means title deeds, writing or inscription, statement of account and data stored electronically;
- (l) “goods” means every kind of movable property includes live stock, all materials, commodities, articles and every kind of property but excluding news papers, actionable claims, stocks and shares and securities;
- (m) “import” means the bringing of goods into the State from any place outside its territorial jurisdiction;
- (n) “input tax means” the amount of tax paid or payable under this Act by purchasing registered dealer to the selling registered dealer;
- (o) “invoice” means a document listing goods with price, quantity, tax involved and other particulars as may be prescribed and including bill, cash memorandum, slip, receipt or similar record, regardless of its form;
- (p) “notification” means notification published in the Rajpatra of Himachal Pradesh;
- (q) “output tax” means tax payable by a registered dealer under this Act;
- (r) “prescribed” means prescribed by rules made under this Act;
- (s) “purchase” means acquisition of goods for cash or deferred payment or other valuable consideration;
- (t) “registered” means registered under this Act;
- (u) “reverse input tax” means that amount of input tax credit availed by a dealer in relation to any goods, for which he is not entitled, and reversed under the provision of the Act;

- (v) “sale” means transfer of property in goods for cash or for deferred payment or for any other valuable consideration other than a mortgage, hypothecation, charge or pledge, and includes:-
- (i) The transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;
 - (ii) the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
 - (iii) the delivery of goods on hire-purchase or any system of payment by instalments;
 - (iv) the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
 - (v) the supply of goods by any unincorporated association or body of persons to a member for cash, deferred payment or other valuable consideration;
 - (vi) the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating, where such supply or service, is for cash, deferred payment or other valuable consideration;
- and such transfer, delivery or supply of any goods shall be deemed to be as sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made.
- (w) “schedule” means a Schedule appended to the Act;
 - (x) “section” means Section of the Act;
 - (y) “State Government” or “Government” means the Government of Himachal Pradesh;
 - (z) “tax” or “value added tax” means the tax on the sale or purchase of goods;
 - (aa) “tax period” means the period prescribed for filing a return;
 - (bb) “timber” includes tree when they have fallen or have been felled or agreed to be felled and all wood whether cut up or fashioned or hollowed out for any purpose or not;
 - (cc) “Tribunal” means the Tribunal established under the Act;
 - (dd) “turnover” means the aggregate amount of sales, purchases and parts of sales and purchases made by any dealer during the given period and includes any sum charged, on account of freight, storage, demurrage, insurance and for anything done by the selling dealer in respect of goods at the time of or before delivery thereof;
 - (ee) “vehicle” means any carriage or conveyance used on land, water or air;
 - (ff) “year” means the financial year;
 - (gg) “notice” or “show cause notice” means a notice issued under the Act or rules framed there under;
 - (hh) “receipt” means an acknowledgement of receiving the document.

CHAPTER-5

REGISTRATION, AMENDMENT AND CANCELLATION OF CERTIFICATE OF REGISTRATION

Registration of dealers

5.1 The Act forbids the carrying on a business by a dealer who is liable to pay tax, unless he is registered¹. Every dealer who is liable to pay tax under the Act, is required to possess a valid certificate of registration.

Application for registration

5.2 A dealer can be issued a “GENERAL REGISTRATION” certificate in case if eligible for lump sum payment of tax or “VAT REGISTRATION” certificate in case he is eligible for Value Added Tax. A dealer who wants to get registered under the Act shall make an application² to the concerned Assessing Authority. The application for registration shall be submitted along with following:-

- (i) deposit fee of Rs. 100/- in the treasury³;
- (ii) security in shape of cash deposit or Post Office Saving Account or Scheduled Bank Saving Account Pass Book or Fixed Deposit Receipt duly pledged to the Assessing Authority or bank guarantee from a Scheduled bank;
- (iii) personal bond with two solvent sureties.

Application for e-Registration

5.3 An application for grant of registration certificate may be submitted by a dealer electronically⁴, through official website.

Grant of certificate of registration

5.4 Assessing Authority after satisfying himself may register such dealer or such person and issue eleven digit certificate of registration⁵. Assessing Authority shall specify in certificate of registration whether it is a “GENERAL REGISTRATION” or “VAT REGISTRATION” along with commencement of date of liability of tax. The registration certificate shall have the nature of business, location of business and its branches, the tax or the return period and the intervals at which the tax shall be payable.

¹ Section 14(1) H.P. VAT Act (2005)

² Section 14 & 15 r.w. rule 3 and rule 4 H.P. VAT Rules, 2005

³ Omitted vide notification dated 12.07.2013

⁴ Added vide notification dated 09.09.2011

⁵ Section 14 r.w. rule 5

Duplicate copy of registration

- 5.5** If certificate of registration is lost, destroyed, defaced or mutilated, a dealer may obtain duplicate⁶ from the concerned Assessing Authority on payment of a fee of Rs. 50/- along with application.

Amendment / Cancellation of Certificate of Registration

- 5.6** The Commissioner or any person appointed in this behalf may, after giving an opportunity to the dealer, amend or cancel the certificate of registration on coming to know that (i) the dealer has violated the provisions of the Act or rules, or (ii) the dealer has misused the certificate or (iii) for any other sufficient cause.

- 5.7** In the following cases the cancellation of registration⁷ is compulsory:-

- (i) When a business is discontinued or transferred. However, when the ownership of a business is entirely transferred, the registration certificate is also to be transferred to the name of new owner.
- (ii) If a dealer dies.
- (iii) When the gross turnover of a dealer during each of the three consecutive years falls below the taxable quantum, the Assessing Authority has to send a list of such cases twice a year i.e. by the last day of June and December each year. The cancellation becomes effective from the last day of September or last day of March next. The dealer would cease to be liable for the tax from the last day of September / March.
- (iv) A dealer registered under the Central Sales Tax Act, is liable to tax whenever he makes a taxable sale or purchase in Himachal Pradesh, irrespective of the quantum of turnover. Therefore, whenever registration under the H.P. VAT Act is cancelled, the registration under the Central Sales Tax Act is also to be cancelled provided the dealer is not otherwise liable to pay tax under Section 6 of the Central Sales Tax Act.
- (v) Every certificate which is cancelled should be surrendered within 15 days⁸ of the date of service of the notice along with unused statutory forms⁹ and other information as assessing authority may require. The particulars of the cancelled certificate are required to be notified in the gazette. The Assessing Authority should also make necessary entries in the office records to this effect.

⁶ Rule 7 of H.P. VAT Rules, 2005

⁷ Section 14 r.w. Rule 10 Rule 11 & Rule 12

⁸ Rule 13

⁹ Rule 11

CHAPTER-6

TURNOVER AND TAXABLE TURNOVER

- 6.1** Section 6 of the H.P. VAT Act is charging section, imposes tax on the “taxable turnover” of a dealer.
- 6.2** The amount for which goods are sold includes all sums charged for anything done by the dealer in respect of the goods sold at the time of, or before, the delivery thereof. Sale price means the amount actually received by the vendor for his goods before their delivery and includes VAT, excise duty, arat, dalali (i.e. commission), charity (dharmada) and insurance. However, if the purchaser asks for despatch of goods under insurance of risk and insurance charges are recovered from him, they would not form part of price.

Incidence of Tax

- 6.3** VAT is a multi point / multistage tax. The H.P. VAT Act provides for levy of tax at each stage of sale on the concept of value addition till sale by last registered dealer or say until the goods sold to the ultimate consumer / end user. Though, tax on goods covered under schedule ‘D’ is chargeable at the first stage¹.
- 6.4** Tax is leviable on the taxable turnover of a year. ‘Year’ means a financial year ending on 31st March.

Schedules

- 6.5** There are four schedules to the Act named as Schedule ‘A’, Schedule ‘B’, Schedule ‘C’, Schedule ‘D’ and Schedule ‘E’.
- (i) Part-I of Schedule ‘A’ lists goods taxable at every point of sale @ 1 percent, Part-II lists goods taxable @ 4 percent, Part-II-A lists goods taxable @ 5 percent² Part-II AA goods taxable @ 9 percent and Part-III describe goods taxable @ 13.75 percent³.
 - (ii) Schedule ‘B’ lists goods exempted from tax.
 - (iii) Schedule ‘C’ lists goods subject to purchase tax.
 - (iv) Schedule ‘D’ lists goods taxable at first stage.
 - (v) Schedule ‘E’ lists goods taxable at special rates⁴.

Government may amend any Schedule i.e. can delete any item from one list and / or add to it another.

Note:- Following schedules part of the original Act are no more part of rate structure:-

¹ Petrol including Aviation Turbine Fuel, Diesel and liquor

² Rate of tax on certain items earlier part of Schedule-A, Part-II, have been increased to 5 percent w.e.f. 29.03.2010.

³ Rate of tax have been increased from 12.5 percent to 13.75 percent w.e.f. 15.07.2010.

⁴ Inserted w.e.f. 07.05.2011

Schedule 'A' Part -IV
Schedule 'A' Part-V
Schedule 'A' Part -VI

Goods taxable @20 percent
Goods taxable @30 percent
Goods taxable @100 percent

Returns and Payment of Tax

- 6.6** Dealers are required to furnish returns (manually or electronically)⁵ along with tax due as directed by the Assessing Authority⁶. Assessing Authority can direct a dealer to furnish his return monthly or quarterly. Return should also accompanied with treasury receipt or *challan* in proof of payment of tax due⁷. Tax is required to be paid in the treasury within thirty days of the due date. All dealers having annual turnover of Rs. 40.00 lakh are required⁸ to pay tax electronically w.e.f. April 2014.
- 6.7** Any amount payable in respect of tax, interest or penalty or any other liability under the Act or rules framed there under shall be paid directly into the treasury. Payment of any such amount shall not be accepted in the VAT offices except through a bank draft or crossed cheque payable at a local Scheduled Bank in favour of the Assessing Authority.
- 6.8** A casual dealer is required to deposit the amount of tax due in the treasury on conclusion of the business. If, period of casual business event exceeds seven days, the amount of tax shall be deposited weekly on the first working day⁹ after the close of the week and final instalment immediately on conclusion of the business event whichever is earlier.
- 6.9** The State government may, by notification, exempt any class of dealer from filing return¹⁰.

Note: Where payment of tax or other sum is made electronically, the authorised bank shall generate e-challan. The authorised banks shall forward a statement of such e-challan daily to the concerned treasury and to the Accountant General, Himachal Pradesh.

Composition of Tax

- 6.10** Section 16(2) of the H.P. VAT Act provides to accept from any dealer a lump sum amount in lieu of a general tax. A dealer who opts to pay tax under this scheme, shall furnish such returns by such dates as may be prescribed by the Assessing Authority. A lump sum as determined is to be paid at such intervals and in such manner as may be prescribed, or the lump sum amount may be calculated at a fixed rate on the taxable turnover.

⁵ Inserted w.e.f. 16.11.2010. Before, position was that the dealer could furnish returns manually

⁶ Section 16 r.w. Rule 36 & Rule 37

⁷ A dealer can pay tax dues electronically as inserted vide ordinance dated 16.11.2010

⁸ Inserted vide notification dated 14.03.2014

⁹ Rule 32

¹⁰ Inserted vide ordinance dated 16.11.2010

6.11 A dealer opting for lump sum payment cannot issue tax invoices.

Penal provisions for late submission of returns and late payment of tax

6.12 If a dealer fails without sufficient cause to furnish the return or deposit the tax by the prescribed date, the dealer shall be liable to pay, by way of penalty¹¹ –

- (i) a sum equal to Rs. 25/- per day for delay in furnishing return up to 10 days, where after penalty shall be Rs. 50/- per day till default continues subject to a maximum of Rs. 3000/-. Further, where no tax is payable such penalty cannot exceed Rs. 500/- per return.
- (ii) If a dealer fails to furnish annual return by the prescribed date, he shall be liable to pay Rs. 5000/- as penalty¹².
- (iii) If a dealer fails to pay tax by the due date, he shall be liable to pay¹³ 10 percent of the tax due for a delay up to 15 days, equal to 20 percent of the tax due for delay exceeding 15 day but not exceeding 30 days and 50 percent of the tax due for delay exceeding 30 days.

Determination of Taxable Turnover

6.13 In calculating the taxable turnover, deductions¹⁴ as given below may be allowed to a dealer:-

- (i) turnover of tax free goods;
- (ii) turnover of sales made in the course of inter-State trade or commerce and imports of goods into India;
- (iii) turnover of goods exported out of India;
- (iv) amount charged separately as interest under any system of payment by instalments;
- (v) sale price of taxable goods returned by the purchasing dealer or sale cancelled;
- (vi) amount allowed as cash discounts;
- (vii) sales made to United Nations Organisation and its constituent agencies, diplomatic missions etc.

¹¹ Section 16(6) & 16(7)

¹² Inserted vide notification dated 19.09.2009

¹³ Substituted vide notification dated 19.09.2009. Before provision for levy of penalty ranging 10 percent to 150 percent of the tax due was in operation.

¹⁴ Rule 17

CHAPTER-7

ASSESSMENT OF TAX

Tax is leviable on “taxable turnover”. The taxable turnover of commodities bearing the same rate of tax is grouped together. The H.P. VAT Act provides for (i) deemed assessment and (ii) scrutiny of the dealer.

Deemed Assessment

- 7.1** If returns filed by a dealer are correct and complete in material particulars and does not fall under criteria prescribed for scrutiny, the dealer shall be deemed to have been assessed¹ for the year.
- 7.2** Provided that where returns are not complete in material particulars, the dealer shall be given an opportunity to complete the same within thirty days of service of notice.
- 7.3** For the purpose of deemed assessed (i) correct means that return version conforms to that of accounts maintained by the dealer and the account version cannot be impeached by any adverse information, to the contrary, available on records till 30th November of the following financial year; and (ii) complete in material particulars means that it contains entire information required to be furnished, arithmetically correct and is accompanied by the statutory or prescribed lists, documents and proof of payment of the full tax due according to the returns and is duly signed by the dealer.
- 7.4** Assessing Authority shall pass an order recording his satisfaction about completeness of returns in material particular and supply copy of such order to the dealer.

Scrutiny / Assessment of a dealer

- 7.5** The Assessing Authority shall serve a notice on the dealer not coverable under the deemed assessment, specifying date and place, to produce such information or records as may be required by the Assessing Authority. The dealer is required to produce evidence in support of returns. Assessing Authority after satisfying him may assess the amount of tax due from the dealer.
- 7.6** If a dealer fails to comply with the terms of notice issued by the Assessing Authority, the Assessing Authority shall assess the tax due within five years after the expiry of period specified in the notice.
- 7.7** In case, a dealer does not furnish returns in respect of any period by the stipulated period or fails to get himself registered on being liable to pay tax, the Assessing Authority shall proceed to assess the tax due on best of his judgement.

¹ Section 16 r.w. Rule 64 and Rule 65

The Assessing Authority shall give reasonable opportunity to the dealer before assessment of dues.

Selection of cases for scrutiny

7.8 The H.P. VAT Act provides for selection of cases for scrutiny² of returns filed by the dealer. For Selection of cases for scrutiny following criteria have been prescribed in the Act-

- (a) gross turnover exceeding Rs. one *crore*;
- (b) claim of input tax credit exceeding Rs. five *lakh*³;
- (c) claim of refund exceeding Rs. three lakh⁴;
- (d) claim of sales made in the course of inter-State Trade and commerce or export of goods or import of goods into the territory of India exceeding Rs. one lakh in a year⁵;
- (e) industrial units claiming concessional rate of tax;
- (f) fall in gross turnover or payment of tax comparing to previous year⁶;
- (g) mis-match in claim of sale, purchase, branch transfer, consignment sale⁷;
- (h) exceptional cases where ratio between purchases and sale, input tax and output tax or between stocks and sales are not as per general trade practices⁸.
- (i) Cases based on definite intelligence about evasion of tax;
- (j) Cases selected by the Commissioner;
- (k) Cases of any particular trade or trades which the Commissioner may select⁹;
- (l) Cases in which the dealer fails to complete the returns in material particulars or fails to correct the same after being given an opportunity to do so within maximum period of fifteen days from the date of notice.

7.9 Assessment of works Contractors

‘Work Contract’ as defined in the CST Act means a contract for carrying out any work which includes assembling, construction, building, erection, installation, fitting out, improvement, repair or commissioning of any movable property.

Thus, a work contract is a contract for carrying on work on movable or immovable property and differs from a contract of sale of goods.

² Section 21(2) r.w. Rule 66

³ Substituted vide notification dated 14.08.2012. Prior to this, it was Rs four lakh

⁴ -do-. Prior to this, it was Rs. Fifty thousand

⁵ Omitted vide notification dated 14.08.2012

⁶ -do-

⁷ -do-

⁸ -do-

⁹ -do-

Types of work contracts

7.10 A work contract can be local or inter-State. A sale contract is exigible to tax on the complete consideration whereas in a works contract the tax is to be levied on that portion of contract involving transfer of property in goods.

Also a works contract transaction may fall under one of the category as under:

1. Pure Labour Contracts and also pure and simple supply of goods. The former is not taxable while the latter is exisible to tax.
2. Divisible Contracts: The elements of goods and labour can be clearly demarcated.
3. Indivisible Contracts: In this case the parties agree for a total consideration to execute the contract where the labour and the sale component cannot be demarcated.
4. Composite Contract: Here there are two portions of consideration involved and the tax is to be levied under the specific act on the corresponding portion.

Determination of taxable turnover

7.11 The value of goods involved in the execution of works contract shall be determined by taking into account the value of the entire works contract and deducting therefrom the components of payment made towards labour and services¹⁰, including:

- (i) labour charges for execution of the works;
- (ii) amount paid to the sub-contractor for labour and services;
- (iii) charges for planning, designing and architects fees;
- (iv) charges for obtaining for hire, machinery and tools used for execution of the works contract;
- (v) cost of consumables, such as, water, electricity and fuel, used in the execution of the works contract, the property in which is not transferred in the course of execution of a works contract;
- (vi) cost of establishment of the contractor to the extent it is relatable to supply of labour and services;
- (vii) other similar expenses relatable to supply of labour and services;
- (viii) profit earned by the contractor to the extent it is relatable to supply of labour and services;

The amount deductible under these heads shall be determined in the light of the facts of each particular case on the basis of the material produced by the contractor.

7.12 Further, Rule 69 prescribes a table whereby the labour expenses which are deductible from the taxable turnover of a contractor as a percentage of the contract in case such expenses are too high or are not discernable from the accounts of such contractor.

¹⁰ Rule 17(4)

Tax deduction from the bills / invoices

- 7.13** Section 17 read with Rule 38, provides for deduction of 2 percent tax from the bills / invoices of the contractor (i) for the transfer of property in goods, whether as goods or in some other form, involved in execution of works contract, and (ii) for the transfer of property in goods on account of sales of such goods made to the Government of India or to any State Government.

Recording of dealer's objections and evidence

- 7.14** A dealer in response to notice served by the Assessing Authority may appear personally or through an agent. Assessing Authority may make such enquiries in respect of objections as he deems fit and record his findings thereon. Accordingly, dealer's objections and evidence in support thereof shall also be recorded¹¹. The Assessing Authority may also visit the business premises and inspect the records and stocks of any dealer for the purpose of ascertaining the latest position of the business.

Assessment of Tax and imposition of penalty

- 7.15** The assessing authority, after considering objections made by the dealer, evidence produced in support thereof and enquiries made, shall assess the amount of tax and impose penalty. The amount of tax, penalty and interest payable under the Act shall be paid by the dealer by such date (which shall not be less than fifteen days and not more than 30 days) as may be specified in tax demand notice. Further, time for payment of dues may be extended up to ninety days with prior approval of the district-in-charge.

Re-assessment of tax and rectification of mistakes

- 7.16** The Assessing Authority or the Appellate Authority or any officer appointed under Section 3 of the Act or the Commissioner may rectify any clerical or arithmetic mistake¹² apparent from the record of any order passed by it unless it results in enhancement of tax.

Jurisdiction of Assessing Authority

- 7.17** In case of Assessing Authority jurisdiction shall be extended to all dealers falling in his jurisdiction subject to overall jurisdiction of the Deputy Excise and Taxation Commissioner of the concerned zone. The Deputy Excise and Taxation Commissioner may, suo-moto or on application made to him, transfer any case from one assessing authority to another assessing authority.

¹¹ Rule 68

¹² Section 23 r.w. rule 72

Refund of Tax

7.18 Application for refund¹³ of any amount admissible containing grounds of refund shall be made to the concerned Assessing Authority. The dealer may also make such application electronically¹⁴.

Determination of refund and sanction

7.19 Assessing Authority shall determine the amount of refund after satisfying himself after scrutiny of accounts and such inquiries as it considers necessary that claim of refund is admissible. Following procedure shall be adopted to sanction a refund by the assessing authority-

- (i) sanction refund up to Rs. 25000¹⁵/-;
- (ii) submit the record of the case to the Assistant Excise and Taxation Commissioner or Excise and Taxation Officer in-charge of the district for orders if amount of refund is above rupees twenty five thousand and not exceeding rupees seventy five thousands¹⁶;
- (iii) submit the record of the case to the Deputy Excise and Taxation Commissioner or in-charge of the Zone, along with his recommendations, through the Assistant Excise and Taxation Commissioner or Excise and Taxation Officer in-charge of the district for orders if amount of refund is above rupees seventy five thousand and not exceeding rupees three lakhs¹⁷;
- (iv) if amount of refund exceeds rupees three lakh¹⁸, case shall be submitted to the Commissioner through officers in-charge of the district and concerned Zone.

7.20 The Assessing Authority shall record the order sanctioning refund in accordance with the orders of the authorities specified above. Refund may be made in cash or amount of refund can be adjusted against future liability of tax, as desired by the dealer.

¹³ Section 28 r.w. rule 74 & 75

¹⁴ Inserted vide Act dated 29.09.2011

¹⁵ Substituted for Rs. 10000/- vide notification dated 23.08.2012

¹⁶ Substituted vide notification dated 23.08.2012. Earlier it was Rs. Ten thousand and twenty five thousand

¹⁷ -do-. Earlier it was Rs. Twenty five thousand and Rs. fifty thousand

¹⁸ Substituted for words and figures "fifty thousand" vide notification dated 23.08.2012

CHAPTER-8

INPUT TAX CREDIT

- 8.1** Input Tax Credit¹ or set off of the tax paid or payable on purchase of goods by a registered dealer to a registered dealer is one of the main features of Value Added Tax. Purchasing dealer is required to maintain the tax invoices, the registers and books of accounts as prescribed.
- 8.2** The input tax credit shall be allowed² to the extent of tax paid on purchase of goods made by him in the State, which are intended for the purpose of-
- (a) Sale or re-sale of goods by him in the State; or
 - (b) Sale in the course of inter-State trade or commerce; or
 - (c) Sale in the course of export out of the territory of India; or
 - (d) Use as raw material or as capital goods in the manufacturing or processing of taxable goods for sale of the nature referred in (a), (b) or (c); or
 - (e) Use as containers or packing material of taxable goods for sale of the nature referred to in clauses (a), (b) or (d).
- 8.3** The Act provides for proportionate input tax credit where goods purchased are used partially for the specified purposes. Further, in case of purchase of fuels and lubricants for manufacturing, input tax credit shall be allowed to the extent it exceeds 4 percent.
- 8.4** Section 11(4) of the Act provides for allowance of input tax credit to the extent by which it exceeds 4 percent on purchase of goods where such goods have been sent outside the State otherwise than by way of sale or export.
- 8.5** Section 11(6) of the Act provides for input tax credit on purchase of plant and machinery directly connected with the manufacturing or processing of goods. Such input tax credit is to be adjusted against tax payable starting from the date of production over a period of three years.
- 8.7** Section 11(7) of the Act provides that input tax credit shall not be claimed / allowed for-
- (i) purchase of taxable goods used in manufacturing, processing or packing of tax free goods;
 - (ii) balance input tax credit on purchase of capital goods if business closes within three years;
 - (iii) purchases from un-registered dealer, casual dealer, a dealer who has opted for payment in lump sum, a dealer whose certificate of registration has been suspended, purchases used as free samples or gifts or for personal use, goods lost in fire, destroyed due to any natural calamity, stock remaining unsold at

¹ Section 11 of the Act

² Section 11(3)

the time of closure of business and purchase of goods for sale under the transfer of right to use goods for any purpose.

- (iv) The Act provides that input tax credit shall not be claimed / allowed to a dealer where original tax invoice is not available with the dealer or there is evidence that tax invoice has not been issued by the selling dealer or original tax invoice does not contain the details of tax charged separately.
- (v) Besides, input tax credit shall not be available on purchase of goods specified by the Government from time to time.

8.8 If any dealer claims input tax credit to which he was not entitled, he shall be liable to pay such amount as reverse input tax credit³ along with interest under Section 19 from the date immediately succeeding the last date prescribed for filing the return for the concerned period.

8.9 Where a dealer claims input tax credit falsely with the intention to defraud the State Government, Commissioner or any person appointed under Section 3, after making such enquiry as he thinks fit and giving a reasonable opportunity of being heard, deny the benefit of input tax credit to such registered dealer.

Burden of proof

8.10 In respect of any sale or purchase effected by a dealer the burden of proving that he is not liable to pay tax under Section 6 or Section 8 or that he is eligible to input tax credit under section 11 shall be on him.

³ Section 11(11)

CHAPTER-9

APPEAL AND REVISION

9.1 Every dealer who feels aggrieved with orders of the Assessing Authority to pay additional demand of tax, interest or penalty under the Act, may file an appeal¹:-

- (i) in case of orders of Assessing Authority or in-charge of the checking post to the Deputy Excise and Taxation Commissioner;
- (ii) in case of orders passed by the Deputy Excise and Taxation Commissioner, to the Commissioner or the Additional Excise and Taxation Commissioner posted at the State Headquarters;
- (iii) in case of orders passed by the Excise and Taxation Commissioner or the Additional Excise and Taxation Commissioner, to the Tribunal.

No appeal shall be entertained unless it is filed within sixty days from the date of communication of such orders.

Revision

9.2 The Commissioner may, call for record of any proceedings pending before or have been disposed of by, any Authority subordinate to him, for the purpose of satisfying himself² as to the legality or propriety of such proceedings or orders.

- (i) The Tribunal, on application made to it against an order of the Commissioner within sixty days from the date of the communication order for the purpose of satisfying the legality and propriety of such order, may call for and examine the record of any such case and may pass such orders thereon as it thinks just and proper.
- (ii) Any person aggrieved by the order made by the tribunal may apply to the High Court of Himachal Pradesh within 90 days of the communication of such order for revision of such orders if it involves any question of law arising out of erroneous decision of law or failure to decide a question of law.

Rectification of mistakes

9.3 The Tribunal or Commissioner may at any time within one year from the date of any order passed by him on an application made to him or of his own motion, rectify any mistake³ apparent from the record, and shall within a like period rectify any such mistake which has been brought to his notice by any person affected by such order.

Further, where such rectification has the effect of enhancing the tax or reducing the amount of refund, reasonable opportunity shall be provided to the person concerned.

¹ Section 45 r.w. rule 77

² Section 46 & Section 48(1)

³ Section 47(1)

Recovery of Tax, Interest and Penalty

- 9.4** Notwithstanding anything to the contrary contained in any law, any amount of tax and penalty including interest if any payable by a dealer shall be a first charge⁴ on the property of the dealer.
- 9.5** The amount of any tax, interest and penalty which remains unpaid after the due date, shall be recoverable as arrear of land revenue⁵.
- 9.6** Government dues can also be recovered from a person from whom any amount is due or may become due and who holds or may subsequently hold any money for or on account of such defaulting dealer⁶.
- 9.7** In case of an undivided Hindu family, firm or other association of persons, where partition, dissolution or disruption has taken place, every person who was, at the time of such partition, dissolution or disruption, member⁷ shall be liable to pay tax and penalty including interest.
- 9.8** In case of death of the dealer against whom tax, penalty or interest is due, the legal heir/representative⁸ of such dealer shall be liable to pay the tax and penalty including interest.

⁴ Section 26

⁵ Section 25

⁶ Section 27

⁷ Section 41

⁸ Section 42

CHAPTER-10

THE CENTRAL SALES TAX ACT

Background

- 10.1** Before the Constitution, each State tried to subject under its law the inter-State sale transaction which was contrary to the principle of free movement of goods within Indian Territory. In order to check this tendency, Article 286 of the constitution was framed. According to that Article, no law of a State could bring to tax a sale taking place outside the State or a sale taking place in the course of import of goods into or export of goods out of the territory of India. A similar ban was put on taxation or inter-State sale or purchase except as authorised by Parliament, by law. There was also a further limitation on State law viz that no law of State legislature could validly impose a tax on sale or purchase of goods declared by Parliament, by law, to be essential for life of the community unless it has been reserved for the consideration of the President and has received his assent.
- 10.2** By the Constitution (Sixth amendment) Act, 1956, certain amendments were made in the Constitution, whereby (a) taxes on sales or purchase of goods in the course of inter-State trade or commerce were brought expressly within the purview of the legislative jurisdiction of Parliament, (b) restrictions could be imposed on the powers of State Legislatures with respect to the levy of taxes on the sale or purchase of goods within State where the goods are of special importance in inter-State trade or commerce. To provide for the legislation authorised by the Constitution as amended by the said Amendment Act of 1956 of the Central Sales Tax Bill was introduced in the Parliament.

Statement of objects and reasons

- 10.3** In the interest of national economy of India certain amendments were undertaken in the Constitution by the Constitution (Sixth amendment) Act, 1956, whereby-
- (a) Tax on sales or purchases of goods in the course of inter-State trade or commerce were brought expressly within the purview of the legislative jurisdiction of Parliament;
 - (b) Restrictions could be imposed on the powers of State legislatures with respect to the levy of taxes on the sale or purchase of goods within the State where the goods are of special importance in the inter-State trade or commerce.
- 10.4** The amendments at the same time authorised Parliament to formulate principles for determining when a sale or purchase takes place in the course of inter-State trade or commerce or in the course of export or import or outside a State in order that the legislative spheres of Parliament and the State legislatures become clearly demarcated. In the case of goods of special importance in inter-State trade or commerce, a law of Parliament is to lay down the restrictions and conditions subject to which any State law may regulate the tax on sales or purchases of such goods in the State.

10.5 This Bill seeks to provide for the legislation authorised by the Constitution as amended above with a view to enabling the State Governments to raise additional revenues by levying tax on inter-State transactions which are at present immune from tax under their respective sales tax laws. After taking into account the recommendations of the Taxation Enquiry Commission and in consultation with the States, the Government of India were of the view that the following principles should govern the scheme of the detailed legislation on the three inter-related subjects:

- (i) The Central Government should authorise the State Governments to impose on behalf of the Central Government tax on the sale or purchase of goods in the course of inter-State trade or commerce. The Central legislation should also delegate to the States the Central Government's power to levy, and collect the tax and for this purpose prescribe the same system of registration, assessment, etc., as prevails in the States concerned under their own sales tax system.
- (ii) An important aspect of the Central legislation will be concerned with the definition of the locale of sales for the purpose of defining in detail the relative jurisdiction, firstly of the Union and the States, and secondly, of the States *inter se*. It is, therefore, necessary that the law should define clearly, with specific reference to sales tax the circumstances in which a sale or purchase becomes taxable by a particular State and no other. It should also define for the purpose of the Constitutional restrictions on the State's power to impose a tax under Item 54 of the State List, when a sale or purchase of goods may be said to take place-
 - (a) in the course of export out of India,
 - (b) in the course of import into India, and
 - (c) in the course of inter-State trade or commerce.
- (iii) The Central legislation should provide for the declaration of certain commodities which are in the nature of raw materials and of special importance in inter-State trade or commerce and lay down the restrictions and conditions as to the rate, system of levy and other incidents of tax subject to which the States may impose tax on the sale or purchase thereof.

Necessary provisions have, therefore, been made in the different Chapters of this Bill incorporating the principles stated above.

Liability to pay CST

10.6 Section 8(1) specifies that every dealer who in the course of inter-State trade or commerce sells:-

- (a) to the Government any goods ; or
- (b) sells to the registered dealer other than the Government shall be

liable to pay tax under the Act. Thus, liability is on the dealer who ‘sells’ goods.

The tax shall be calculated and payable at a concessional rate of 1.5% of the taxable turnover of such goods w.e.f 1/04/2013 for a period of five years or till the implementation of GST, whichever is earlier.¹

The tax @ 1% shall be levied on the new industrial units coming into operation on or after 1/04/2013 for a period of five years or till the implementation of GST, whichever is earlier.

Dealer

10.7 The word ‘dealer’ has been elaborately defined in section 2(b) of the CST Act. “Dealer” means any person who carries on (whether regularly or otherwise) the business of buying, selling, supplying or distributing of goods, directly or indirectly, for cash, or for deferred payment, or for commission remuneration or other valuable consideration, and includes –

- (i) a local authority, a body corporate, a company, any cooperative society, or other society, club, firm, Hindu undivided family or other association of persons which carries on such business;
- (ii) a factor, broker, commission agent or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of buying, selling, supplying or distributing, goods belonging to any principal whether disclosed or not, and
- (iii) an auctioneer who carries on the business of selling or auctioning goods belonging to any principal, whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal.

Registration of dealers

10.8 There are two kinds of registration under the Act namely, compulsory registration and voluntary registration. The dealers effecting sales in the course of inter-State trade or commerce have to be compulsorily registered, irrespective of the quantum of turnover². In such case application has to be submitted within 30 days from the date on which liability to Central Sales Tax is first attracted³. Every dealer

¹ Notification No. EXN-F(5)-6/2006-Vol.I dated 01/04/2013

² Section 7(1)

³ Rule 4 of the CST(Registration & Turnover Rules), 1957

registered under the HP VAT Act may also get himself registered even though he is not otherwise liable to pay tax under the Central Sales Tax Act⁴. This is voluntary registration. Dealers in exempted goods are also entitled to get themselves registered.

10.9 The certificate of registration (Form-B) shows the class / classes of goods which the dealer deals in. Only those goods in which he actually deals can be mentioned and not those in which he proposes to deal in future. The certificate may be got amended on making an application, or may be got cancelled⁵. The amendment is effective from the date on which the dealer makes application for the purpose. The assessing authority may also cancel / amend the certificate for sufficient reasons.

10.10 No person other than a registered dealer can collect tax in respect of any sale of goods by him in the course of inter-state trade or commerce any amount by way of tax under the Act. Further, no registered dealer can collect only such taxes except in accordance with the Act and rules made thereunder⁶. The offences connected with registration of dealers which are punishable with simple imprisonment which may extend to six months or with fine or with both⁷ are given below:-

- (i) When he fails to get himself registered even though compulsory registrable;
- (ii) being a registered dealer, falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration; or
- (iii) not being a registered dealer, falsely represents when purchasing goods in the course of inter-State trade or commerce;
- (iv) after purchasing any goods on the strength of Form 'C' fails to use them for the declared purposes;
- (v) collects any amount by way of tax in contravention of the provisions contained in Section 9(A) of the Act.

In lieu of prosecution in respect of offences at (ii), (iii) and (iv) above penalty may be imposed under Section 10(A).

Declared goods

10.11 Section 14 of the Central Sales Tax Act describes goods declared of special importance in inter-State Trade or Commerce. Article 286(3) of the Constitution lays down restriction on the power of the States to impose tax on goods of special importance.

Levy and collection of tax

10.12 The Union Government has delegated the administration of the CST Act to the States. The Executive machinery provided in the State Law is employed for administering the Act. Provision of State law regarding the filing of returns,

⁴ Section 7(2)

⁵ Section 7(4) & Section 7(5) r.w. rule 9 of the CST(R&T) Rules

⁶ Section 9(A)

⁷ Section 10

appeals, revisions, penalties, compounding of offences, are applicable *mutatis mutandis*. The proceeds in any financial year of any tax, including any interest and penalty, levied and collected under this Act in any State on behalf of the Government of India shall be assigned to that State and shall be retained by it⁸.

10.13 The general scheme of taxation on the sale or purchase is as under:

- (i) sales / purchases in the course of export out of India or import into India - not taxable;
- (ii) sales / purchases in the course of inter-State trade or commerce taxable under the Central Sales Tax Act.
- (iii) Sales / purchases within a State- taxable under the State Act.

Sale in the course of export / import

10.14 A sale or purchase of goods shall be deemed to take place in the course of the export of goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India⁹. Similarly, a sale or purchase of goods shall be deemed to take place in the course of the import of goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the custom frontiers of India¹⁰.

10.15 To constitute a sale in the course of export there must be –

- (i) an intention on the part of both the buyer and the seller to export;
- (ii) an obligation to export;
- (iii) actual export.

A sale in the course of export predicated a connection between the sale and export, the two activities being so integrated that the connection between the two cannot be voluntarily interrupted without a break of contract.

Sale in the course of inter-State trade or commerce

10.16 As per Section 3 of the CST Act, a sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase (a) occasions the movement of goods from one State to another, or (b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

The first mode is ‘direct inter-State sale’, while second mode is ‘by transfer of documents’.

⁸ Section 9(3)

⁹ Section 5(1)

¹⁰ Section 5(2)

Branch transfer / consignment sale

10.17 One of the basic and obvious conditions of inter-State sale is that there should be a sale. If a manufacturer sends goods to his branch in other State, it is not a 'sale' as you cannot sell to yourself. Similarly, if a dealer sends goods to his agent in other States who stocks goods on behalf of the dealer, it is not sale. Such agent is usually called 'consignment agent'.

Declaration forms under the CST Act

10.18 Following declaration forms are used frequently to claim movement of goods under the CST Act-

- (i) Form 'H' in the support of export out of territory of India;
- (ii) Form 'C' in support of sale in the course of inter-State trade or commerce;
- (iii) Form 'F' in support of claim against branch transfer / consignment sale;
- (iv) Form 'E' where sale of goods in the course of inter-State trade or commerce has either occasioned in the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer.

CHAPTER-11

RECORDS AND REGISTERS OF THE DEPARTMENT

In this chapter, the several records and registers maintained by the Excise and Taxation Officers are discussed in brief.

11.1 An assessment file is opened for every assessee which would contain:-

- (1) Correspondence relating to application for registration and orders thereon.
- (2) Monthly, quarterly and yearly returns of turnover, VAT payable and VAT paid in Form VAT-XV.
- (3) Challans or receipts from the treasury or bank in Form VAT-II in support of payment of dues.
- (4) Notes of verification report and order sheet.
- (5) Assessment orders.
- (6) Returns showing the tax realised in contravention of the provision of the Act in Form VAT-XV-C and a list of persons from whom such tax was realised in Form LS-3.
- (7) Office copies of the tax demand notices and acknowledgements.
- (8) Correspondence relating to further action for recovery of the tax.
- (9) Correspondence relating to penal action.
- (10) Appeal order / Revision order.
- (11) Copies of notices issued.
- (12) Declaration forms under the CST Act.

Under the HP VAT Act (1) Registration Fee, VAT, interest, penalty and composition fee etc are leviable. The amounts are required to be paid into the appropriate Government Treasury. No payment is acceptable at the Excise and Taxation office except by crossed cheques or bank drafts, in favour of the appropriate assessing authority.

The important registers maintained in the VAT offices are discussed in the following paragraphs:

Register of Registered Dealers

11.2 This is a register maintained in Form VAT-V. It contains the name and other particulars of all the dealers registered under the Act. The number and date of registration certificate are entered in this register. In the remarks column, note of closure of business and cancellation of registration etc. is kept.

A list of dealers holding provisional registration certificate under Section 14(2) of the Act is maintained in Form VAT-VI.

Daily Collection Register

11.3 This register is maintained in Form VAT-XIV. It contains complete information regarding deposit of VAT, Purchase Tax, Interest, Penalty, Composition Money, fees in the treasury or Bank in respect of each dealers. It is daily record maintained

from the copies of *challans* received from the treasury. The number and date of *challans* and the amount paid is mentioned in this register.

Cheque register

- 11.4** This register is maintained to record the receipt and collection of cheques / drafts tendered with the returns by the dealers.

Register of receipt and issue of declaration forms

- 11.5** This register is maintained to record the receipt and issue of forms VAT-XXVI-A in Form VAT XXVI-C.

Dealer wise register

- 11.6** A dealer wise register is required to be maintained by every assessing authority in which particulars of the declaration forms received from check posts / barriers shall be entered.

Peshi register

- 11.7** This register is maintained by the assessing authority in Form VAT-XXXI in which particulars of each case instituted, entered respectively.

Register of assessments and recovery of demands

- 11.8** This register is maintained by the assessing authority in Form VAT-XXXI in which particulars of assessments and recovery of demands entered.

Institution register or Appeals / Applications / Revisions

- 11.9** This register is maintained by the Appellate Authority in Form VAT-XXXIX. In this register, particulars of applications received for revision or appeals instituted and decided are entered.

Demand and Collection Register

- 11.10** This register is maintained in Form VAT-XVII by the assessing authority to record payment of tax dues and input tax credit carried over by the dealer.

Disposal Register of Appeals / Applications / Revisions

- 11.11** This register is maintained to enter disposal of appeals / applications / revisions.

CHAPTER-12

PROCEDURE OF AUDIT

Procedure regarding Local Audit of Value Added Tax Offices

- 12.1** On the first day of local audit, the Assistant Audit Officer should prepare a list of cases to be checked by the audit party. The selection should be approved by the supervising officer when he joins the party. A detailed scrutiny of the assessments cases should be undertaken by the Auditor, A.A.O. and Supervising Officer according to allocation of work. It should be ensured that cases of huge turnover are checked by the Assistant Audit Officer or Supervising Officer. A percentage of cases checked by the Assistant Audit Officer should also be reviewed by the Supervising Officer. When any irregularity or mistake is noticed same should be immediately brought to the notice of the Assessing Authority by issuing an 'Audit Memo'. The Assessing Authority Should be requested to offer his comments on the 'Memos' at the earliest and return them within a day or two.
- 12.2** Care should be bestowed in drafting the 'Audit memo'. They should be courteously worded and there should not be any definite conclusion drawn on under assessment or over-assessment. Wording should not also be indicative of any directions to the departmental officer. It should only bring out the omission that appeared to have occurred in the assessment and request the departmental officer to verify the audit observations and to take action as deemed necessary under intimation to Audit. The tax involved may be specifically mentioned wherever possible.
- 12.3** The local audit report should be drafted on the last day of the local audit as far as possible by the Supervising Officer himself from the material available, and the draft report should be discussed with the Assistant Excise and Taxation Commissioner, Excise and Taxation officer, or in-charge of the district.
- The local audit report should be in three parts indicated below:-
- | | |
|----------|--|
| Part-I | Introductory para and outstanding objections from the previous report in brief. |
| Part-II | Current Audit and Inspection Note serious irregularities and other irregularities. |
| Part-III | Test Audit Note (Minor Objections). |
- Part-II is again divided into Section 'A' and Section 'B'. Section-A should contain serious irregularities which the Supervising officer feels are likely to develop into draft paras.
- 12.4** The local audit report should be vetted at the Headquarters and issued within one month of the completion of local audit duly approved by the Group Officer. The report should be sent to the Assistant Excise and Taxation Commissioner or Excise and Taxation Officer in-charge of the district. Copies of the report are also

endorsed to the Deputy Excise and Taxation commissioner of the zone, the Commissioner (Excise and Taxation) and the Pr. Secretary (Excise and Taxation). Important cases of irregularities should be brought to the notice of Government by special letter. A reply to part III of the report is not required to be watched by headquarters; it is enough if the disposal is checked during the next audit.

12.5 The Following checks should be exercised in the audit of assessment:-

- (1) Whether the returns along with Balance Sheet (i.e. Trading Account and Profit & Loss Account), assessment orders and other documents are filed in the assessment case of the dealer.
- (2) Perusal of the registration certificate would give an idea to the auditor about the nature of business, the goods the dealer deals in, branches within and outside the State etc.
- (3) Whether the tax due was credited to the proper head of account and there are no misclassifications.
- (4) It should be seen that there are no arithmetical or computation errors in determining the turnover of the tax payable.
- (5) Whether the order of assessment has been properly and correctly made out with reference to the turnover, rate of tax etc. and whether the assessing authority has properly carried out the checks required to be conducted by him.
- (6) Where any concessional rate has been levied or exemption allowed, it should be seen that the conditions prescribed for the grant of concession or exemption have been duly fulfilled.
- (7) Whether the demands raised have been correctly recorded in the registers and recoveries watched. It should be seen that the *challans* in support of remittances are genuine and whether the reconciliation between the departmental figures and the treasury figures is done properly and promptly. A test check of *challans* for tax paid furnished by the dealers should be conducted with the Treasury Accounts.
- (8) Whether the assessments are made according to the provisions of the Act and the Rules and also in conformity with directions issued by Government, Commissioner etc.
- (9) Whether gross, exempted and net turnover have been correctly calculated taking into account all the transactions of the dealer.
- (10) Whether correctness of any figures furnished by the assessee has been verified by the department by a cross reference to the relevant documents, wherever possible.
- (11) Whether the assessment records contain the details of verification of goods subjected to tax in the State before allowance of input tax credit.
- (12) Whether transactions relating to all branches of the dealer have been considered for assessment.
- (13) Where there is difference between the turnover returned by the assessee and determined in the assessment, (if yes) differences properly explained.

- (14) Whether there is inordinate delay in finalising the assessment and in the recovery of tax from the dealer.
- (15) Whether mandatory penalties leviable under the Act have been levied.
- (16) Whether the amount of tax paid on self assessment basis have been correctly accounted for in the assessment orders.
- (17) Whether the tax collected by the dealer has been made over to Government as required under the Act.
- (18) Whether Computerized System is being worked out on the basis of co-ordination between the tax authorities of the State Government and the authorities of Central Excise and Income Tax to compare constantly the tax returns and related documents of VAT system of the states and those of Central Excise and Income Tax.
- (19) Whether the transactions and documents from Sales Tax Authorities are being cross checked from Public Works Department to ascertain the genuineness of the transactions in respect of material consumption, labour deductions, profit or labour etc.

12.6 Simultaneously, with the audit of an assessment under the H.P. VAT Act in respect of exemption of turnover relating to sale in the course of inter-State trade or commerce, it would be seen in audit that the turnover is correspondingly considered for assessment under the Central Sales Tax Act. It should be seen:-

- (1) That the dealer holds a valid certificate of registration under the Central Sales Tax Act.
- (2) Whether the goods purchased by him are only those which the dealer is authorised to purchase on production of declaration in form 'C' in case of purchases.
- (3) Whether for all transactions of Sale, for which tax was levied at f rate, form 'C' in support thereof is produced.
- (4) Whether the form 'C' produced contains all the prescribed particulars.
- (5) Whether declaration forms in support of branch transfer / consignment sale and export out of territory of India are produced.
- (6) Whether E-I and E-II certificates as prescribed in Rule 12(4) of the CST (R&T) Rules, 1957, in support of subsequent inter-State sales as mentioned in Sub-section (2) of Section 6 of the Central Sales Tax are on the assessment records.
- (7) There are no overwriting, corrections, erasures etc. in declaration forms produced.
- (8) Whether penalty was considered under Section 10-A of the Central Sales Tax Act when the goods purchased by using declaration form 'C' were not used for specified purpose.
- (9) Where sales, branch transfer / consignment sale not supported by the declaration forms are subjected to rate of tax as prescribed in Section 8(2) of the Act.

Pointing out over-assessments

- 12.7** Over assessments found during the course of local audit are also to be pointed out. In Revenue audit, it is the duty of Audit to point out any commission of irregularity and over-assessment is as much as irregularity, as an under-assessment.

Audit of VAT Receipts and Refunds

- 12.8** The audit and the nature of checks to be exercised in the course of the audit of VAT receipts and refunds are to be carried out to the extent prescribed by the Comptroller and Auditor General. The review by the Assistant Audit Officer and the Supervisory Officer are to be carried out to the extent prescribed.

Headquarters Section

- 12.9** The following items of work are specifically required to be done in the headquarters section. All government orders and notifications, Departmental Circulars, instructions and clarification in so far as they relate to assessments and realisations of tax, classification of goods according to the entries in the Schedules etc. under the tax laws should be examined in audit in this section and copies circulated to the parties and instructions where necessary issued to them. If any issue is to be taken up with the Government / Department, it should be referred to promptly and pursued properly. A perusal of the Audit Reports of the various States in respect of VAT paragraphs should also be done in this section and guidance rendered to the parties regarding the various types of irregularities where necessary. The fortnightly issue of the VAT cases should also be pursued with a view to give guidance and instructions to the field parties. This section will be responsible for processing of draft paragraphs on VAT receipts to be included in the Audit Report.
- 12.10** The Inspection Report after its receipt at the headquarters should be scrutinized by the Assistant Audit Officer (Vetting), there after put up to Audit Officer/Sr. Audit Officer and thereafter submitted to the Deputy Accountant General (Receipt Audit) for his approval and issue to the department concerned. All cases recommended by the inspecting officer and considered fit for further processing as tentative draft paras submitted to Sr. Audit Officer/Audit Officer of Audit Report Cell and should be pursued vigorously by a that cell. Other paras will, however, continue to be pursued by the section concerned through the Inspection Report.
- 12.11** Time schedule for issue of Audit and Inspection notes.
- The Audit and Inspection Notes are to be issued within one month from the date of completion of the local audit / inspection.
- The period of one month for issue of inspection Notes / Reports from the date of completion of audit has to be computed as under:-
- (i) 5 working days for the receipt of the draft report from the Audit Party (the draft report is expected to be discussed with the officer in charge before the close of the day of inspection).
 - (ii) 5 working days for the Section to submit the Audit and Inspection Note.

- (iii) 4 working days for the Audit Officer and the Group Officer to pass the Audit and Inspection Note.
- (iv) 10 working days for the typing and feeding in Headquarters entry form i.e. Inspection Report Processing System (IRPS) and issue of the Audit and Inspection Note.
- (v) Total 24 working days (say one month).

12.12 An objection book and an adjustment Register should be separately maintained for recording, watching and pursuance of paras relating to under / over assessment in the Local Audit of VAT. A progress register should also be maintained separately for watching the receipt of draft inspection report, its replies, clearance etc. at headquarters Section. The Registers, objection books etc. should be submitted to the Deputy Accountant General in-charge every month, duly closed.