



**Report of the
Comptroller and Auditor General of India
on
Revenue Sector
for the year ended 31 March 2014**



**Government of Assam
Report No. 4 of 2014**

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PREFACE

This Report on Revenue Sector of Government of Assam for the year ended 31 March 2014 has been prepared for submission to the Governor of Assam under Article 151(2) of the Constitution of India.

The audit of expenditure accounts and revenue receipts of State Governments is conducted under Section 13 & 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971.

Chapter I of this Report presents the information on the State revenues, response of the Departments towards audit, audit planning and results of audit of the State Government relating to tax and non-tax revenues. Chapter II contains a Performance Audit on 'Efficiency and effectiveness of the Scrutiny and Assessment mechanism under the Assam Value Added Tax and Central Sales Tax Acts' (Section – A) and **paragraphs** : Section B relating to taxes on entry of goods into the local areas for sales and Section C relating to Agricultural Income Tax. Chapter III, IV and V contain paragraphs relating to State Excise, Environment & Forest and Mines & Minerals respectively.

The cases mentioned in this Report are those which came to notice in the course of test check of records of various departments during the year 2013-14 as well as those pertaining to earlier years but could not be included in the corresponding years' Reports.

The Audit has been conducted in conformity with Auditing Standards issued (March 2002) by the Comptroller and Auditor General of India.

The Performance Audit on 'Kaziranga National Park – Issues and Challenges' conducted during the year has been presented as a Standalone Report.

OVERVIEW

This Report contains 31 paragraphs relating to non/short levy of taxes, royalty, fees, rent, interest and penalty etc., loss of revenue, irregular exemption and other irregularities. It also contains a performance audit on “Efficiency and effectiveness of Scrutiny and Assessment under AVAT and CST Acts”. Some of the major findings are mentioned below:

I. GENERAL

- The total receipts of the State for the year 2013-14 were ₹ 32,212.79 crore against ₹ 30,690.98 crore in the previous year. Of this, 36 *per cent* was raised by the Government through tax revenue (₹ 8,994.92 crore) and non-tax revenue (₹ 2,705.03 crore). The balance 64 *per cent* was received from the Government of India in the form of State’s share of net proceeds of divisible Union taxes (₹ 11,574.52 crore) and grants-in-aid (₹ 8,938.32 crore).

(Paragraph 1.1)

- 3,216 paragraphs involving revenue implication of ₹ 6,991.70 crore remained unsettled at the end of June 2014 as replies were not furnished by senior officials.

(Paragraph 1.6)

- During the year 2013-14, only three Audit Committee meetings in respect of Revenue, State Excise and Transport Departments were held in which 347 paragraphs were settled.

(Paragraph 1.6.2)

II. TAXES ON SALES, TRADE ETC.

A performance audit on “Efficiency and effectiveness of Scrutiny and Assessment under AVAT and CST Acts” revealed the following:

- Absence of a system for specifying/notifying the processes which do not amount to ‘manufacture’ in view of judicial pronouncements resulted in incorrect grant of exemption/remission under the Assam Industrial Exemption/ Remission Scheme amounting to ₹ 9.44 crore.

{Paragraph 2.3.7.5(I)}

- Due to non-verification of utilisation statement of declaration forms/delivery notes/annual, monthly returns/audit reports, the Assessing Authorities could not detect concealment of purchase/sales turnover leading to short levy of tax of ₹ 69.87 crore including interest.

(Paragraph 2.3.8.1&2)

- Incorrect application of rate of tax resulted in short levy of tax of ₹ 42.03 crore including interest. In some of the above cases, the mis-classification occurred despite clear guidelines issued by the CT way back in 2007.

(Paragraph 2.3.8.3)

- Non-initiation of best judgment assessments in cases of failure to submit return/pay admitted tax, resulted in non-realisaion of revenue of ₹ 12.14 crore including interest.

(Paragraph 2.3.8.4)

- Despite clear provisions in the Assam Value Added Tax Act to verify the correctness of Input Tax Credit (ITC) claimed while scrutinising the returns, the Assessing Authorities could not detect irregular claim of ITC of ₹ 15.05 crore.

(Paragraph 2.3.8.8)

- Despite an industrial unit representing that the processes undertaken by it did not amount to ‘manufacture’, the Department did not initiate action to cancel the authorisation certificate granted to the unit. Consequently, there was undue benefit/remission of tax of ₹ 55.79 crore including interest. Besides, penalty of ₹ 69.32 crore was also leviable.

(Paragraph 2.3.8.11)

Other audit observations

Assam Entry Tax

- Concealment of import purchase turnover under the Assam Entry Tax Act led to non-realisation of tax of ₹ 107.01 lakh including interest.

(Paragraph 2.5)

- Non-levy of entry tax on purchase of tobacco products under the Assam Entry Tax Act led to non-realisation of tax of ₹ 21.17 lakh including interest.

(Paragraph 2.6)

- Application of lower rate of tax resulted in short realisation of tax of ₹ 19.68 lakh including interest.

(Paragraph 2.7)

Agricultural Income Tax

- Incorrect allowance of set off of loss resulted in non-realisation of tax of ₹ 2.32 crore including interest.

(Paragraph 2.11)

- Non-application of new methodology of assessment resulted in short levy of tax of ₹ 24.08 lakh including interest.

(Paragraph 2.12)

III. STATE EXCISE

- Excess allowance of godown wastage over and above the permissible limit led to non-realisation of revenue of ₹ 59.41 lakh.

(Paragraph 3.4)

- Three bonded warehouses, one retail 'Off' and three 'On'/bar licensees did not pay the annual licence fees resulting in non-realisation of licence fees of ₹ 29.50 lakh.

(Paragraph 3.5)

- Variation between the stock register and that found on physical verification conducted at the instance of Audit - evasion of revenue of ₹ 21.97 lakh.

(Paragraph 3.6)

- Non-monitoring of the duty involved in the stock of IMFL held by the bonded warehouses resulted in short realisation of licence fees of ₹ 18 lakh from three bonded warehouses.

(Paragraph 3.8)

- Stock of IMFL having revenue impact of ₹ 17.65 lakh was irregularly deducted from the closing stock while drawing the opening stock leading to short accounting of stock of IMFL.

(Paragraph 3.9)

IV. Environment and Forests

- Permits were issued to the contractors of National Hydro-electric Power Corporation for lifting minor minerals on realisation of royalty at lower rates resulting in short realisation of royalty of ₹ 22.89 crore.

(Paragraph 4.3)

- Failure to levy royalty at correct rates while issuing permits for extraction of minor minerals resulted in short realisation of value added tax of ₹ 2.06 crore.

(Paragraph 4.4)

- Non-detection of unauthorised extraction of stone/boulders by contractor resulted in non-realisation of revenue of ₹ 34.54 lakh; besides, penalty of ₹ 1.38 crore was additionally leviable for illegal extraction of minor minerals.

(Paragraph 4.5)

- Short realisation of revenue of ₹ 67.54 lakh due to application of pre-revised rates of royalty while issuing permits.

(Paragraph 4.6)

- Procurement of materials without availability of funds coupled with inordinate delay in settlement of the payments led to avoidable expenditure of ₹ 60.52 lakh on account of interest.

(Paragraph 4.7)

- Irregular reduction of extractable volume of *mahal* materials and amount payable after settlement of *mahal* resulted in loss of revenue of ₹ 9.17 lakh.

(Paragraph 4.13)

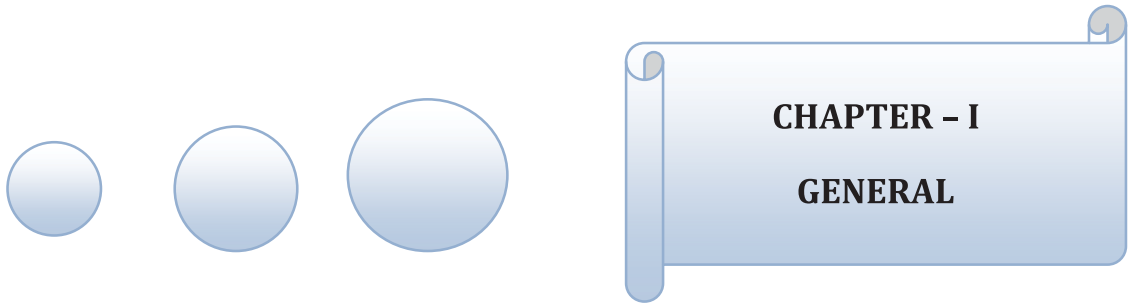
V. MINES AND MINERALS

- Short realisation of royalty of ₹ 40.06 crore due to non-detection of payment of royalty at lower rates by the Oil India Limited.

(Paragraph 5.4)

- Non-detection of short payment of royalty on crude oil by M/s OIL resulted in non-realisation of ₹ 27.03 lakh on which interest of ₹ 1.93 lakh was additionally leviable.

(Paragraph 5.5)



CHAPTER - I
GENERAL



CHAPTER-I: GENERAL

1.1 Trends of Revenue Receipts

1.1.1 The tax and non-tax revenue raised by the Government of Assam during the year 2013-14, the State's share of net proceeds of divisible Union taxes and duties assigned to State and Grant-in-aid received from the Government of India during the year and the corresponding figures for the preceding four years are mentioned in **Table 1.1.1**.

Table 1.1.1
Trend of Revenue Receipts

(₹ in crore)

Sl. No.	Particulars	2009-10	2010-11	2011-12	2012-13	2013-14
1.	Revenue raised by the State Government					
	• Tax revenue	4,986.72	5,929.84	7,638.23	8,250.21	8,994.92
	• Non-tax revenue	2,752.95	2,373.33	2,866.76	2,473.59	2,705.03
	Total	7,739.67	8,303.17	10,504.99	10,723.80	11,699.95
	Percentage of increase over previous year	--	7.28	26.52	2.08	9.10
2.	Receipts from Government of India					
	• Share of net proceeds of divisible Union taxes and duties	5,339.53	7,968.62	9,283.53	10,601.26	11,574.52 ¹
	• Grants-in-aid	6,805.30	6,733.15	7,666.87	9,365.92	8,938.32
	Total	12,144.83	14,701.77	16,950.40	19,967.18	20,512.84
3.	Total receipts of the State Government (1 and 2)	19,884.50	23,004.94	27,455.39	30,690.98	32,212.79
4.	Percentage of 1 to 3	39	36	38	35	36

Source: Finance Accounts.

¹ Note: For details, please see statement No.11: Detailed accounts of revenue by minor heads in the Finance Accounts (Volume-2) of Government of Assam for the year 2013-14. Figures under the "share of net proceeds assigned to States" under the major heads -0020-corporation tax, 0021- taxes on income and expenditure, 0032-taxes on wealth, 0037-customs, 0038-union excise duties, 0044-service taxes and 0045-other taxes and duties on commodities and services booked in the Finance Accounts under 'A- tax revenue' have been excluded from revenue raised by the State Government and included in 'States' share of divisible Union taxes' in the above table.

The above table indicates that during the year 2013-14, the revenue raised by the State Government (₹ 11,699.95 crore) was 36 *per cent* of the total revenue receipts as against 35 *per cent* during the previous year. The balance 64 *per cent* of the receipts during 2013-14 was from the Government of India.

1.1.2 Details of tax revenue raised during the period 2009-10 to 2013-14 are given in table 1.1.2.

Table 1.1.2
Tax revenue

<i>(₹ in crore)</i>							
Sl. No.	Head of revenue	2009-10	2010-11	2011-12	2012-13	2013-14	Percentage of increase (+)/ decrease (-) in 2013-14 over 2012-13
1.	Taxes on sales, trade etc.	3,535.26	4,318.60	5,693.96	6,223.13	6,848.01	10
2.	State excise	239.19	323.12	503.35	568.11	610.26	7
3.	Stamp duty and registration fees						
	Stamps - judicial	9.72	7.66	8.29	9.15	10.63	16
	Stamps - non-judicial	55.56	64.61	90.10	124.12	106.08	(-) 15
	Registration fees	43.18	50.57	76.76	119.02	134.80	13
4.	Taxes and duties on electricity	27.07	41.58	36.67	41.83	40.54	(-) 3
5.	Taxes on vehicles	177.26	231.99	293.70	328.09	351.11	7
6.	Taxes on goods and passengers	545.41	478.10	536.39	369.10	413.89	12
7.	Other taxes on income and expenditure – Tax on professions, trades, callings and employments	150.15	160.60	164.27	168.31	186.36	11
8.	Other taxes and duties on commodities and services	8.67	9.93	11.76	71.11	47.60	(-) 33
9.	Land revenue	116.91	141.88	139.71	145.91	155.65	7
10.	Taxes on agricultural income	78.34	101.20	83.27	82.33	89.99	9
Total		4,986.72	5,929.84	7,638.23	8,250.21	8,994.92	9

Source: Finance Accounts.

The reasons for variation in tax revenue during 2013-14 over those of 2012-13 in respect of principal heads were as follows:

Other Taxes and Duties on Commodities and service: The decrease is mainly due to decline in collection of entertainment tax and luxury tax.

Taxes on Goods and Passengers: The increase is due to increase in rate of entry tax from existing four per cent to six percent on marble, granite and other decorative slabs made therefrom, furniture and fixtures sanitary wares and bathroom fitting of all types.

Other Taxes on Income and Expenditure: The increase is mainly due to increase in collection of taxes on Professional Traders, Callings and Employment.

1.1.3 Details of non-tax revenue raised during the period 2009-10 to 2013-14 are indicated in table 1.1.3.

Table 1.1.3
Non-tax revenue

							(₹ in crore)
Sl. No.	Head of revenue	2009-10	2010-11	2011-12	2012-13	2013-14	Percentage of increase (+) / decrease (-) in 2013-14 over 2012-13
1.	Petroleum	1,574.18	1,625.93	1,970.63	1,589.55	1,791.31	13
2.	Interest receipts	493.63	415.88	475.93	510.21	418.61	(-) 18
3.	Dairy development	0.18	0.20	0.22	0.49	0.48	(-) 02
4.	Forestry and wild life	160.56	131.01	152.85	110.56	100.92	(-) 09
5.	Non-ferrous mining and metallurgical industries	1.24	0.83	0.85	1.10	0.48	(-) 56
6.	Miscellaneous general services	210.88	0.01	0.24	0.01	60.02	6,00,100
7.	Major and medium irrigation projects	0.59	0.38	0.21	0.38	0.43	13
8.	Medical and public health	7.10	8.42	10.42	12.13	11.29	(-) 07
9.	Co-operation	0.28	0.74	0.44	0.58	0.63	09
10.	Public works	3.95	3.15	3.12	3.32	2.01	(-) 39
11.	Police	30.91	25.13	29.51	36.22	59.40	64
12.	Other administrative services	102.06	58.89	49.31	56.75	62.48	10
13.	Coal and lignite	37.54	29.35	26.34	43.95	38.76	(-) 12
14.	Roads and bridges	79.86	22.62	79.19	52.62	50.40	(-) 04
15.	Others ²	49.99	50.79	67.50	55.72	107.81	94
Total		2,752.95	2,373.33	2,866.76	2,473.59	2,705.03	9

Source: Finance Accounts.

² Others include 29 major head of accounts.

The reasons for variation in non-tax revenue during 2013-14 over those of 2012-13 in respect of principal heads were as follows:

Interest Receipts: The decrease is mainly due to decline in interest receipt from cash balance investment account caused by net decrease in investment in GoI treasury bills over previous year.

Petroleum: The increase is due to more collection on account of Petroleum concession fees and royalties.

Miscellaneous General Services: The increase is mainly due to write off of Central loan of ₹ 33.22 crore credited to the head sanctioned by GoI on the recommendation of 13th Finance Commission.

Police: The increase is due to more collection of service charges from police forces supplied to other parties and fees, fine and forfeitures and also receipts under Arms Act.

1.1.4 Analysis of the revenues in respect of some of the major tax and non-tax receipts reported through the Finance Accounts as mentioned in the table 1.1.2 and 1.1.3 above with that reported by the concerned administrative Departments indicated differences in the figures. Details are in the Appendix I. This point towards the need for reconciliation between both these figures.

1.2 Analysis of arrears of revenue

The position of arrears of revenue during the last five years in respect of the Taxation Department is mentioned in the **table – 1.2**.

Table 1.2
Arrears of revenue

Head of revenue	Year	Opening balance of arrears	Amount collected during the year	Percentage of collection	(₹ in crore)
					Closing balance of arrears
Taxation	2009-10	1,175.02	111.25	9.47	1,777.89
	2010-11	1,777.89	110.55	6.22	2,470.82
	2011-12	2,470.82	81.56	3.30	2,027.08
	2012-13	2,027.08	122.88	6.06	2,062.54
	2013-14	2,062.54	86.22	4.18	2,230.22

Thus, the percentage of collection of arrears ranged between 3.30 and 9.47 *per cent* during the last five years and as a result of which the arrears of revenue increased from ₹ 1,175.02 crore as on 1 April 2009 to ₹ 2,230.22 crore at the end of the five year period. The Department needs to make concerted efforts to contain the increasing trend of arrears of revenue as evidenced during the last five year period.

The Department attributed (August 2014) the arrears of revenue to the following reasons:

- The arrears increased drastically in 2009-10 and 2010-11 because assessments were made under Assam Taxation (Specified Land) Act, 1990 and Assam Entry Tax Act, 2008 but taxes could not be realised due to stay orders from Gauhati High Court and the Supreme Court.
- Under the Central Sales Tax Act, an outstanding amount of ₹ 580.78 crore relinquished by the Deputy Commissioner of Taxes (Appeals), Guwahati in 2010-11 is reported to have been reduced in appeal by ST, Digboi during 2011-12. Including this amount, the total amount reduced in Appeal in 2011-12 amounted to ₹ 781.05 crore.
- Untraceability of dealers at the time of arrears of revenue.

1.3 Arrears in Assessments

The details of cases pending at the beginning of the year, cases becoming due for assessments, cases disposed of during the year and number of cases pending for finalisation at the end of the year as furnished by the Sales Tax Department in respect of Sales Tax, Motor sprit Tax, Luxury Tax and Tax on works contracts was as below in Table 1.3.

Table 1.3
Arrears in assessments

Head of revenue	Opening Balance as on 01.04.2013	New cases due for assessments during 2013-14	Total assessment due	Cases disposed of during 2013-14	Balance at the end of the year	Percentage of disposal (col. 5 to 4)
Sales Tax (AGST/VAT/ CST)	13,924	12,247	26,171	9,932	16,239	37.95
Profession Tax	29,000	44,457	73,457	42,431	31,026	57.76
Entry Tax	2,634	2,454	5,088	2,041	3,047	40.11
Luxury Tax (hotels and lodging)	495	437	932	433	499	46.46
Electricity Duty	1,728	572	2,300	523	1,777	22.74
Specified Land	975	705	1,680	577	1,103	34.35
Agricultural Income Tax	1,084	760	1,844	860	984	46.64
Others	06	-	06	06	-	100.00
Total	49,846	61,632	1,11,478	56,803	54,675	50.95

Thus, the assessments pending at the end of the year increased over the opening balance in respect of all the Acts except Agricultural Income Tax Act. Further, the

overall percentage of completion of assessment remained at the level of about 51 *per cent*. This was despite the fact that after introduction of VAT in the State only a percentage of the cases are to be assessed by the Departmental officers. This needs to be looked into by the Taxation Department.

1.4 Evasion of tax detected by the Department

The details of cases of evasion of tax detected by the Taxation Department, cases finalised and the demands for additional tax raised as reported by the Department are given in **Table 1.4**.

Table 1.4
Evasion of tax

Head of revenue	Cases pending as on 31 st March 2013	Cases detected during 2013-14	Total	Number of cases in which assessment/ investigation completed and additional demand with penalty etc. raised.		Number of cases pending for finalisation as on 31 st March 2014
				Number of cases	Amount of demand (₹ in crore)	
Sales Tax/ VAT	64	2,393	2,457	2,235	22.67	222

Thus, the Department detected 2,393 cases of evasion of taxes and raised additional demand of ₹ 22.67 crore during the year. However, the cases pending at the end of the year stood at 222 against the opening balance of 64.

1.5 Pendency of Refund Cases

The number of refund cases pending at the beginning of the year 2013-14, claims received during the year, refunds allowed during the year and the cases pending at the closed of the year 2013-14, as reported by the Department is given in **Table 1.5**.

Table 1.5
Details of pendency of refund cases

Sl. No.	Particulars	(₹ in crore)	
		Sales Tax/Vat	
		No. of cases	Amount
1.	Claims outstanding at the beginning of the year	56	5.20
2.	Claims received during the year	118	25.28
3.	Refunds made during the year	118	20.11
4.	Balance outstanding at the end of the year	56	10.38

Assam VAT Act provides for payment of interest, at the rate of one *per cent* per month, if the excess amount is not refunded to the dealer within 90 days from the date of the order and thereafter at the rate of 1.5 *per cent per* month till the refund is made.

Thus, the Department needs to put in place a mechanism for monitoring the pendency of refund cases to ensure that there is no delay in refund of dues.

1.6 Response of Government/departments towards Audit

The Accountant General (Audit), Assam conducts periodical inspection of the Government departments to test check the transaction and verify the maintenance of important accounts and other records as prescribed in the rules and procedures. These inspections are followed up with the Inspection Reports (IRs) incorporating irregularities detected during the inspection and not settled on the spot, which are issued to the heads of the offices inspected with copies to the higher authorities for taking prompt corrective action. The heads of the offices/Government are required to promptly comply with the observations contained in the IRs, rectify the defects and omissions and report compliance through initial reply to the AG within one month from the date of issue of the IRs. Serious financial irregularities are reported to the heads of the Department and the Government.

Inspection Reports issued upto December 2013 disclosed that 3,216 paragraphs involving ₹ 6,991.70 crore relating to 811 IRs remained outstanding at the end of June 2014 as mentioned below alongwith the corresponding figures for the preceding two years in **Table 1.6**.

Table 1.6
Details of pending Inspection Reports

	June 2012	June 2013	June 2014
Number of IRs pending for settlement	805	882	811
Number of outstanding audit observations	2,721	3,211	3,216
Amount of revenue involved (<i>₹ in crore</i>)	935.88	1,299.15	6,991.70

1.6.1 The Department wise details of the IRs and audit observations outstanding as on 30 June 2014 and the amounts involved are mentioned in the **Table 1.6.1**.

Table 1.6.1
Department wise details of IRs

<i>(₹ in crore)</i>					
Sl. No.	Name of the Department	Nature of receipts	Numbers of outstanding IRs	Numbers of outstanding audit observations	Money value involved
1.	Finance	Taxes on sales, Trade etc.	176	1,260	556.62
		Agricultural Income Tax (AGIT)	13	61	20.20
		Other Taxes	95	225	42.22
2.	Excise	State Excise	64	253	87.15
4.	Transport	Taxes on Motor Vehicles	94	315	36.55
5.	Stamp and Registration	Stamp and Registration fees	82	152	4.84

6.	Mines and Geology	Non-ferrous mining and metallurgical industries	12	63	6,042.88
7.	Forest and Environment	Forestry and Wild Life	275	887	201.24
Total			811	3,216	6,991.70

Audit did not receive even the first replies from the heads of offices within one month from the date of issue of the IRs, for 113 IRs issued during 2013-14. This large pendency of the IRs due to non-receipt of the replies is indicative of the fact that the heads of offices and the Departments did not initiate action to rectify the defects, omissions and irregularities pointed out by the AG in the IRs.

1.6.2 Departmental Audit Committee meetings

The Government setup audit committees to monitor and expedite the progress of the settlement of the IRs and paragraphs in the IRs. The details of the audit committee meetings held during the year 2013-14 and the paragraphs settled are mentioned in table 1.6.2 below.

Table 1.6.2
Details of Departmental audit committee meetings

Sl. No.	Head of revenue	Number of meetings held	Number of paras settled	(₹ in crore)
				Amount
1.	E & F Department (Revenue) Department	01	333	13.32
2.	State Excise Department (Exp)	01	05	--
3.	Transport Department (Exp)	01	09	--
Total		03	347	13.32

Thus, 347 paragraphs could be settled in respect of the above three Departments through the Audit Committee meetings held during the year. Further, an analysis of the outstanding paragraphs indicated that major outstanding objections related to the Taxation Department. The Taxation Department and also the other Departments, thus, need to gear up to arrange Audit Committee Meetings at regular intervals so that the position could be pulled up.

1.6.3 Response of the Departments to the draft audit paragraphs

The draft audit paragraphs proposed for inclusion in the Report of the Comptroller and Auditor General of India are forwarded by the AG to the Principal Secretaries/Secretaries of the concerned Department, drawing their attention to audit findings and requesting them to send their response within six weeks. The fact of non-receipt of the replies from the Departments/Government is invariably indicated at the end of such paragraphs included in the Audit Report.

43 draft paragraphs (involving 67 cases) and two Performance Audits were sent to the Principal Secretaries/Secretaries of the respective Departments by name between April and September 2014. The Principal Secretaries/Secretaries of the Departments

did not send replies to 17 draft paragraphs despite requests and the same have been included in this Report without the response of the Departments.

1.6.4 Follow up on the Audit Reports summarised position

The internal working system of the Public Accounts Committee, notified in December 2002, laid down that after the presentation of the Report of the Comptroller and Auditor General of India in the Legislative Assembly, the Departments shall initiate action on the audit paragraphs and the action taken explanatory notes thereon should be submitted by the Government within three months of tabling the Reports, for consideration of the Committee. In spite of these provisions, the explanatory notes on audit paragraphs of the Reports were being delayed inordinately. 172 paragraphs (including performance audit) included in the Reports of the Comptroller and Auditor General of India on the Revenue Sector of the Government of Assam for the years ended 31st March 2008, 2009, 2010, 2011 and 2012 were placed before the State Legislature Assembly between March 2010 and August 2014. In none of the cases, *suo-motu* reply of the Departments was received within the stipulated date.

During 2013-14, the PAC discussed 48 selected paragraphs pertaining to the Audit Reports for the years from 1991-92 to 2011-12 and its recommendations on 15 paragraphs pertaining to the Audit Reports 1991-92, 1992-93 and 2009-10 relating to Transport, State Excise and Geology & Mining Departments were incorporated in their 134th and 137th Report. However, ATNS have not been received in respect of any of these recommendations of the PAC.

1.7 Analysis of the mechanism for dealing with the issues raised by Audit

To analyse the system of addressing the issues highlighted in the Inspection Reports/Audit Reports by the Departments/Government, the action taken on the paragraphs and Performance Audits included in the Audit Reports of the last five years for one Department is evaluated and included in this Audit Report.

The succeeding paragraphs 1.7.1 to 1.7.2 discuss the performance of the Environment and Forest Department in respect of the cases detected in the course of local audit during the last five years and also the cases included in the audit reports for years 2008-09 to 2012-13.

1.7.1 Position of Inspection Reports

The summarised position of Inspection Reports issued during the last five years, paragraphs included in these reports and their status as on 31st March 2013 are tabulated in **Table 1.7.1**.

Table 1.7.1
Position of Inspection Reports

(₹ in crore)

Year	Opening Balance			Addition during the year			Clearance during the quarter			Closing Balance during the year		
	IRs	Paras	Money value	IRs	Paras	Money value	IRs	Paras	Money value	IRs	Paras	Money value
2008-09	227	672	106.80	21	70	11.40	02	11	0.55	246	731	117.66
2009-10	246	731	117.66	23	104	12.94	02	38	2.84	267	797	127.75
2010-11	267	797	127.75	24	140	24.89	01	08	0.37	290	929	152.27
2011-12	290	929	152.27	20	107	72.45	61	246	49.64	249	790	175.08
2012-13	249	790	175.08	18	87	31.24	--	05	--	267	872	206.32

The Government arranges *ad-hoc* Committee meetings between the Department and AG's office to settle the old paragraphs. As would be evident from the above table, against 227 outstanding IRs with 672 paragraphs as on start of 2008-09, the number of outstanding IRs increased to 267 with 872 paragraphs at the end of 2012-13. In the Audit Committee Meeting held during 2013-14, 333 paragraphs had been settled which resulted in reduction of the outstanding IRs and paragraphs.

1.7.2 Recovery of accepted cases

The position of paragraphs included in the Audit Reports of the last five years, those accepted by the Department and the amount recovered are mentioned in **table 1.7.2**.

Table 1.7.2

Year of Audit Report	Number of paragraphs included	Money value of the paragraphs	Number of paragraphs accepted including money value	Money value of accepted paragraphs	Amount recovered during the year	Cumulative position of recovery of accepted cases as of 31.03.2014
2008-09	03	0.45	02 ³	Nil	NA	Nil
2009-10	--	--	--	Nil	NA	
2010-11	04	2.48	02	1.12	Nil	
2011-12	01 ⁴	1,154.43	--	Nil	NA	
2012-13	--	--	--	Nil	NA	

It is evident from the above table that recovery even in accepted cases was low during the last five years. The Department may take immediate action to pursue and monitor recovery of the dues involved atleast in the accepted cases.

1.7.3 Action taken on the recommendations accepted by the Departments/ Government

The draft performance reviews conducted by the AG are forwarded to the concerned Department/Government for their information with a request to furnish their replies.

³ These paragraphs involve loss of revenue.

⁴ "Performance Audit on Forest Receipts" – a stand alone report.

These reviews are also discussed in an exit conference and the Department's/Government's views are included while finalising the performance reviews for the Audit Reports.

During the last ten year period, one performance audit on 'Forest Receipts' was conducted during 2011-12. The performance review suggested 19 recommendations on various issues ranging from lifting the ban on felling of timber in the State, methodologies for fixing the rates of royalties of various forest produces, timely preparation and approval of working plans, improve the control mechanisms including setting up an internal audit wing for monitoring the revenue generating activities of the Department, setting up revenue optimisation committees etc. The Public Accounts Committee of the Assam Legislative Assembly has taken up the performance review for discussion and has partly discussed the same. Recommendations of the PAC on the issues already discussed are awaited. As per the reply furnished to the PAC, the Department had initiated a number of steps to streamline the system deficiencies pointed out in the performance review. They have also reported action being taken to revise the rates of royalty on some of the forest produces as per the observations of Audit. The matter is under consideration of the PAC.

1.8 Audit Planning

The unit offices under various Departments are categorised into high, medium and low risk units according to their revenue position, past trends of the audit observations and other parameters. The annual audit plan is prepared on the basis of risk analysis which *inter-alia* include critical issues in Government Revenue and tax administration *i.e.* budget speech, white paper on state finances, Reports of the Finance Commission (State and Central), recommendations of the Taxation Reforms Committee, statistical analysis of the revenue earnings during the past five years, factors of the tax administration, audit coverage and its impact during past five years etc.

During the year 2013-14, there were 489 auditable units, of which 112 units were planned and 113 units had been audited, which is 23 *per cent* of the total auditable units. The details are shown in the **Appendix – II**.

Besides the compliance audit mentioned above, one performance audit was also taken up to examine the efficacy of the tax administration of these receipts.

1.9 Results of Audit

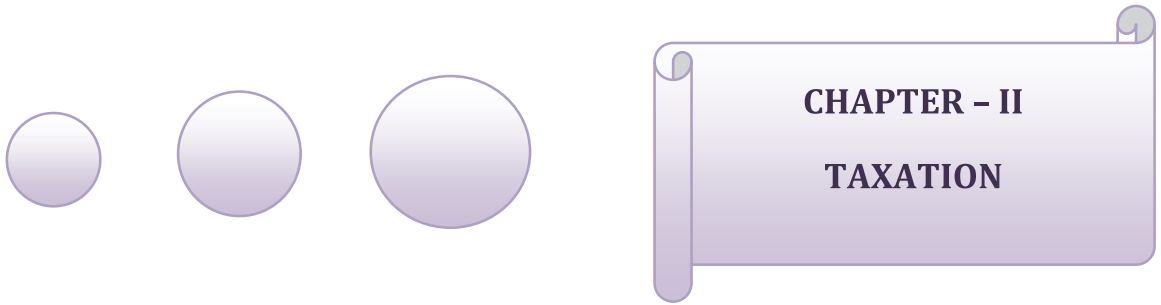
1.9.1 Position of local audit conducted during the year

Test check of records of 113 units of sales tax/Value Added Tax, State Excise, Motor Vehicles, Goods and Passengers, Forest Receipts and other Departmental offices conducted during the year 2013-14 showed under assessment/short levy/loss of revenue etc aggregating ₹ 5,903.87 crore in 590 cases. Besides a performance audit on “Efficiency and effectiveness of Scrutiny and Assessment under AVAT and CST Acts” was also conducted during the year involving revenue impact of ₹ 389.30 crore. During the course of the year, the Departments concerned accepted under assessment and other deficiencies of ₹ 18.46 crore involved in 282 cases which were pointed out in audit during 2013-14. The Departments collected ₹ 1.12 crore in 58 cases during 2013-14, pertaining to the audit findings of previous year.

1.9.2 Coverage of this Report

This Report contains 67 cases compiled into 31 paragraphs (selected from the audit detections made during the local audit referred to above and during earlier years, which could not be included in earlier reports) including one performance audit on “Efficiency and effectiveness of Scrutiny and Assessment under AVAT and CST Acts”, involving financial effect of ₹ 466.20 crore.

The Departments/Government has accepted audit observations involving ₹ 29.90 crore out of which ₹ 81.07 lakh had been recovered. The replies in the remaining cases have not been received (November 2014). These are discussed in succeeding Chapters II to V.



CHAPTER - II
TAXATION



CHAPTER – II : Taxation

2.1 Tax administration

The Finance (Taxation) Department is responsible for the administration of taxes on sales, trade etc., in the State. The Commissioner of Taxes (CT) is the Head of the Department and responsible for administration of all taxation measures and for general control and supervision over the zonal and unit offices and the staff engaged in collection of taxes and to guard against evasion of taxes. He is also the authority for disposing of revision petitions under all Taxation Acts and laws besides providing clarification under Assam Value Added Tax Act, 2003. He is assisted by Additional Commissioner of Taxes, Joint Commissioners of Taxes, Deputy Commissioners of Taxes, Assistant Commissioners of Taxes, Superintendents of Taxes, Inspectors of Taxes both at the Headquarters and regional/unit levels. The Commissionerate of Taxes has one Head Office/Commissioner's Office, 10 Zonal Offices, five Appellate Offices, 34 unit Offices, 23 recovery Offices and 10 check posts.

The functioning of the Department is governed by the provisions of the Assam Value Added Tax (AVAT) Act, 2003 (*w.e.f.* 01.05.2005); the Central Sales Tax (CST) Act, 1956; the Assam Entry Tax Act, 2008 (*w.e.f.* 01.06.2008); the Assam Professions, Trades, Callings and Employments Taxation Act, 1947; the Assam Tax on Luxuries (Hotels and Lodgings Houses) Act, 1989; the Assam Amusement and Betting Taxation Act, 1939; the Assam Electricity Duty Act, 1964; the Assam Taxation (on Specified Land) Act, 1990; the Assam Agricultural Income Tax Act, 1939 and various administrative orders issued from time to time.

2.2 Results of audit

In 2013-14, test check of the records of 29 units relating to VAT/Sales tax assessments and other records showed underassessment of tax and other irregularities involving ₹ 93.94 crore in 305 cases. A Performance Audit on “Efficiency and effectiveness of scrutiny and Assessment under AVAT and CST Acts” was also conducted during the year. The results of Performance Audit involved revenue implication of ₹ 389.30 crore. These are mentioned in **Table – 2.1.**

Table 2.1
Results of Audit

Sl. No.	Categories	Number of cases	Amount (₹ in crore)
Sales Tax			
1.	“Efficiency and effectiveness of Scrutiny and Assessment under AVAT and CST Acts”- A Performance Audit	01	389.30
2.	Under-assessment of tax	81	38.24
3.	Acceptance of defective statutory forms	31	6.99
4.	Evasion of tax due to suppression of sales/purchase	42	17.30
5.	Irregular/incorrect/excess allowance of ITC	27	7.53
6.	Other irregularities	75	16.50
Total		257	475.86
Other Taxes			
1.	Non/Short Credit of lapsed deposits into Government revenue account	48	7.19
2.	Other irregularities	01	0.19
Total		49	7.38
Grand Total		306	483.24

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 5.10 crore in 72 cases which were pointed out in audit during the earlier years. An amount of ₹ 0.77 crore was recovered in 41 cases during the year 2013-14.

A Performance Audit on “Efficiency and effectiveness of scrutiny and assessment under AVAT and CST Acts” involving revenue implication of ₹ 389.30 crore and a few illustrative cases involving ₹ 5.72 crore are discussed in the following paragraphs.

SECTION : A
VALUE ADDED TAX

2.3 Performance Audit on “Efficiency and effectiveness of Scrutiny and Assessment under AVAT and CST Acts”

Highlights

Absence of a system for specifying/notifying the processes which do not amount to ‘manufacture’ in view of judicial pronouncements resulted in incorrect grant of exemption/remission under the Assam Industrial Exemption/ Remission Scheme amounting to ₹ 9.44 crore.

{Paragraph 2.3.7.5(I)}

Due to non-verification of utilisation statement of declaration forms/delivery notes/annual, monthly returns/audit reports, the Assessing Authorities could not detect concealment of purchase/sales turnover leading to short levy of tax of ₹ 69.87 crore including interest.

(Paragraph 2.3.8.1&2)

Incorrect application of rate of tax resulted in short levy of tax of ₹ 42.03 crore including interest. In some of the above cases, the mis-classification occurred despite clear guidelines issued by the CT way back in 2007.

(Paragraph 2.3.8.3)

Non-initiation of best judgment assessments in cases of failure to submit return/pay admitted tax, resulted in non-realisation of revenue of ₹ 12.14 crore including interest.

(Paragraph 2.3.8.4)

Despite clear provisions in the Assam Value Added Tax Act to verify the correctness of Input Tax Credit (ITC) claimed while scrutinising the returns, the Assessing Authorities could not detect irregular claim of ITC of ₹ 15.05 crore.

(Paragraph 2.3.8.8)

Despite an industrial unit representing that the processes undertaken by it did not amount to ‘manufacture’, the Department did not initiate action to cancel the authorisation certificate granted to the unit. Consequently, there was undue benefit/remission of tax of ₹ 55.79 crore including interest. Besides, penalty of ₹ 69.32 crore was also leviable.

(Paragraph 2.3.8.11)

2.3.1 Introduction

Value Added Tax (VAT) is a multi point Sales Tax with the provision for set off of tax paid at the time of purchase of goods from the output tax payable. It is a general tax that is applicable to all commercial activities involving manufacturing and selling of goods. VAT is charged as a percentage of prices. The Assam Value Added Tax (AVAT) Act, 2003 was introduced from 1 May, 2005 replacing the Assam General Sales Tax (AGST) Act, 1993. The AVAT Act, 2003 and the AVAT Rules, 2005 were made with a view to have a hassle-free system for the dealers who could submit self-assessment on tax liability.

Salient features of AVAT Act, 2003:

- The AVAT Act *inter-alia* put forth the following advantages over the erstwhile AGST Act :
 - i. traders are entitled to Input Tax Credit (ITC) for purchase of goods from within the State for resale and manufacturers are also entitled to ITC for purchase of raw material including capital goods within the State for use in manufacture;
 - ii. ITC remaining unadjusted at the end of a year is adjustable in subsequent years;
 - iii. other taxes like turnover tax, surcharge etc., are abolished.
- Under Section 9 and 10 of AVAT Act, goods are classified into five schedules which are as follows:
 - i. first schedule consists of exempted goods;
 - ii. second schedule consists of goods of general importance;
 - iii. third schedule covers bullion species and other precious metals;
 - iv. fourth schedule consists of goods taxable only at the point of first sale in the State; and
 - v. fifth schedule consists of all other goods not covered by any of the schedules, works contract and lease transactions.
- The AVAT Act, 2003 provides for following types of assessment:
 - i. Provisional assessment (Section 34);
 - ii. Self assessment (Section 35);
 - iii. Audit assessment (Section 36);
 - iv. Best judgment assessment (Section 37);
 - v. Assessment of un-registered dealers (Section 38); and
 - vi. Turnover Escaping assessment (Section 40).

- Rule 21 of the AVAT Rules provides that except the cases selected for audit assessment (Section 37), all other cases shall be deemed to have been assessed to tax.
- Time limit for completion of Audit Assessment is five years from the end of the year to which return relates and the limit for assessment under ‘Turnover escaping assessment’ is eight years.
- Under section 33 (1) of the AVAT Act, 2003 every return in relation to any period furnished by a registered dealer shall be subject to scrutiny by the prescribed authority to verify the correctness of calculation, application of correct rate of tax and interest, ITC claimed therein and full payment of tax and interest payable by the dealer during such period. As per the instruction¹ of Commissioner of Taxes (CT), Assam, scrutiny of returns is to be done within 15 days of submission of return.

It is also the responsibility of the Taxation Department to assess the dealers registered under the Central Sales Tax (CST) Act, 1956 and to ensure allowance of exemption and concession² in genuine cases to prevent leakage of revenue.

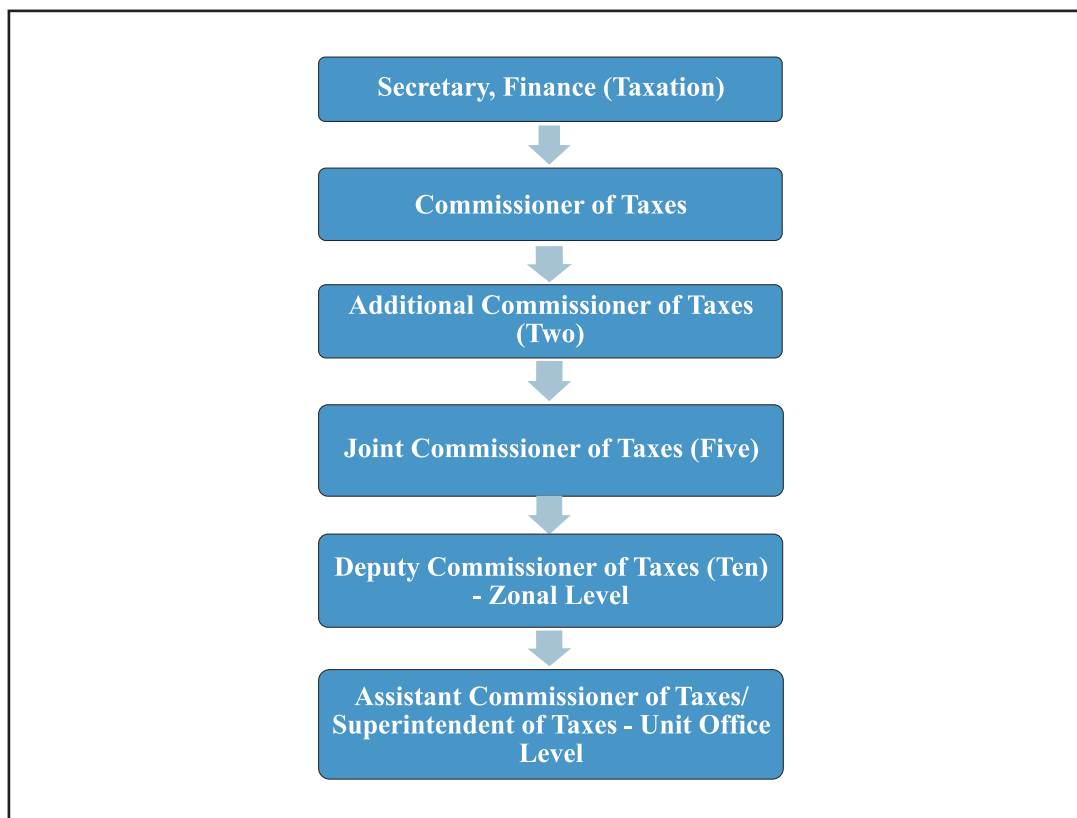
2.3.2 Organisational set up

The Finance (Taxation) Department, Government of Assam is responsible for administration of Sales Tax in the State. The Secretary, Finance (Taxation) is in overall charge of the Department at the Government level. The Commissioner of Taxes (CT) is the Head of the Department and responsible for administration of all tax measures and general control and supervision of scrutiny and assessments carried out at zonal and unit office level. He is assisted by two Additional Commissioners of Taxes (Addl. CT), five Joint Commissioners of Taxes (JCT), 10 Deputy Commissioners of Taxes (DCT) and 36 unit offices headed by Assistant Commissioner of Taxes (ACT)/ Superintendent of Taxes (ST) for carrying out scrutiny of returns/ assessments and realisation of taxes, besides other day to day works.

¹ issued in January 2007.

² Concessional rate of tax was four *per cent* upto 31.3.2007, three *per cent* with effect from 1.4.2007 and two *per cent* with effect from 1.6.2008

ORGANOGRAM OF FINANCE (TAXATION) DEPARTMENT, ASSAM



2.3.3 Scope, methodology and reasons for selection of topic

2.3.3.1 Scope and methodology

The Performance Audit (PA) was conducted between May and August 2014 through examination of records pertaining to scrutiny and assessments conducted by the Department during April 2008 to March 2013. Shortcomings noticed during the course of audit which persisted during 2013-14 had also been covered to present updated position. Out of 36 unit offices (including two Sales Tax Check Posts namely, Jhalukbari and Kabaitary), 11³ unit offices were selected based on Probability Proportional to Size With Replacement (PPSWR) method. Another six⁴ units were also selected on the basis of revenue realisation to give it a wider coverage in the PA. Besides, office of the CT, Assam was taken up as an apex office of the Department. Moreover, audit findings from Inspection Reports issued in respect of other units for the same period covered in this PA, have been suitably incorporated.

³ ACT: Unit A,B,C,D of Guwahati, Dhubri, Golaghat, Silchar; ST: Naharkatia, Digboi, Hojai, Karimganj.

⁴ ACT: Tezpur, Jorhat, Sibsagar, Bongaigaon; ST: Dhemaji and Kabaitary Check Post.

Before commencement of the PA, an Entry Conference⁵ PA was held on 5 March 2014 and the executive was informed about the selection of units, scope and methodology of audit. The PA Report was sent to Taxation Department, and Finance Department, GoA on 12 September 2014. The audit findings and the recommendations were discussed in an Exit Conference on 27 November 2014. The CT, Assam (who is also the Commissioner & Secretary to the Government of Assam, Finance) and two JCT represented the Taxation Department. The replies furnished by the Department in November 2014 have been appropriately incorporated.

2.3.3.2 Reasons for selection

As per Section 33 of the AVAT Act, 2003 and rules made thereunder, returns (self-assessments) are to be scrutinised by the Assessing Authority (AA) to verify the correctness of calculation, application of correct rate of tax and interest, ITC claimed therein and full payment of tax and interest payable by the dealer during period of return. Rule 21 of the AVAT Rules provides that except the cases selected for audit assessment, all other cases shall be deemed to have been assessed to tax. During the course of regular audit, it was noticed that the Department was not paying enough attention for verification of returns filed by the assesseees. Hence, there is an enormous risk of irregular claim of ITC, possibility of difference between tax due and tax paid and chances of irregular adjustment of tax deducted at source (TDS) without presenting documentary evidence by the assesseees in self-assessment. A number of irregularities such as concealment of purchase/ sales turnover, short levy of tax due to incorrect application of rate of tax, irregular adjustment of TDS, short levy of interest, excess adjustment of tax, irregular allowance of ITC, *etc.*, were also observed during the regular audit which had featured in the Audit Reports of respective years. Based on the above the PA on the above subject was planned.

2.3.4 Audit objectives

The PA was conducted with a view to ascertain whether:

- the provisions of the AVAT Act/Rules were adequate and properly enforced to safeguard the revenue of the State;
- the existing provisions on scrutiny and assessment procedures under the AVAT Act/Rules were being followed by the Department;
- the provisions of Act/ Rules and instructions were being followed while completing assessment under CST Act, 1956; and

⁵ The conference was held in the office of the A. G. (Audit), Assam which was attended by the Commissioner of Taxes, Assam and the Deputy Secretary, Finance alongwith seven representatives of the Government of Assam & the Taxation Department. The Accountant General (Audit), Assam, Deputy Accountant General (RS) alongwith six officers of PA team represented the audit side.

- monitoring and internal control mechanism existing in the Department were effective in ensuring proper assessment, levy and collection of taxes under the relevant Acts in force.

2.3.5 Audit criteria

The audit criteria for PA have been derived from the following sources:

- The AVAT Act, 2003 (Assam Act No. VIII of 2005) as amended;
- The AVAT Rules, 2005 as amended;
- The AVAT Audit Manual prepared by the Department;
- The Assam Industries Tax Remission Scheme, 2005;
- The Assam Industries (Tax Exemption for Pipe Line Units) Orders, 2005;
- The CST Act, 1956;
- The CST (Registration & Turnover) Rules, 1957; and
- The CST (Assam) Rules, 1957.

In addition to the above, notifications and circulars issued from time to time were taken into account while conducting the audit.

2.3.6 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation of the Commissioner of Taxes, Assam and all other Heads/ Staff of the unit offices for providing necessary information and records to audit.

2.3.7 Audit findings

2.3.7.1 Analysis of revenue collection

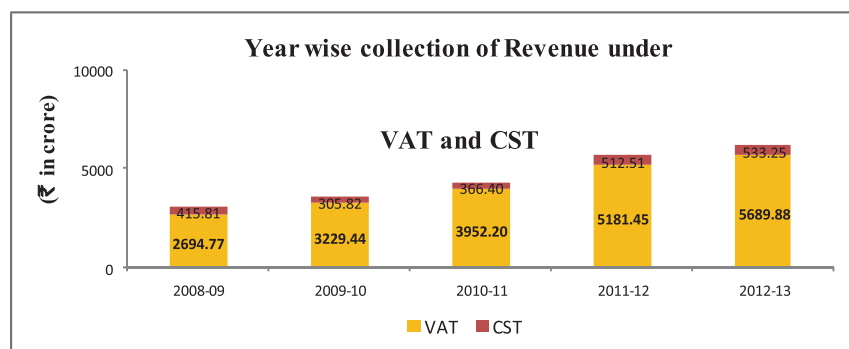
The revenue collection under the AVAT and CST Acts and collection of total revenue during the period 2008-09 to 2012-13 are detailed below:

Table-2.2

Revenue collection under the AVAT and CST Acts

Year	Actual collection under tax revenue (₹ in crore)	Budget Estimate under AVAT/CST (₹ in crore)	Collection under AVAT (₹ in crore)	Collection under CST (₹ in crore)	Total collection under AVAT/CST (₹ in crore)	Percentage of increase over previous year	Percentage of collection on AVAT/CST (colmn 6) over total collection of Tax revenue (colmn 2)
2008-09	4,150.21	2,820.69	2,694.77	415.81	3,110.58	16	75
2009-10	4,986.72	2,900.00	3,229.44	305.82	3,535.26	14	71

2010-11	5,929.84	3,409.00	3,952.20	366.40	4,318.60	22	73
2011-12	7,638.23	4,491.00	5,181.45	512.51	5,693.96	32	75
2012-13	8,250.21	5,700.00	5,689.88	533.25	6,223.13	09	75



It may be seen from the above that:

- VAT and CST revenue constituted 71 to 75 per cent of the total tax revenue of the State.

The increase of revenue under AVAT Act was mainly due to increase in rates of tax during 2008-09 to 2012-13 as shown in **Appendix III**.

2.3.7.2 Analysis of scrutiny cases

As per provision of the Section 33 of the AVAT Act, every return shall be subject to scrutiny by the AA to verify the correctness of calculation, application of correct rate of tax and interest, ITC claimed and full payment of tax and interest payable by the dealer during the period of return. If any mistake is detected as a result of such scrutiny, the AA shall serve a notice for rectifying the defects and payment of balance amount along with interest, if any. As per the executive instruction⁶, scrutiny of return is to be completed within 15 days from the date of filing of annual returns by the dealers. The position of year-wise number of returns scrutinised and revenue raised are given in the following table:

Table-2.3
Delay in scrutiny of Returns

Year of completion of scrutiny	No. of cases in which scrutiny was completed	Year-wise break up of scrutiny cases		Range of delay in scrutiny (in days)	No. of cases against which additional demand raised based on scrutiny		Amount of revenue realised (₹ in crore)	Amount of revenue yet to be realised (₹ in crore)	Percentage of scrutinised cases (colmn. 2) on which short payment detected (colmn. 6)
		Year	No. of cases		No. of cases	Amount (₹ in crore)			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
2008-09	41,210	2005-06	11,809	502 to 866	7,198	4.81	4.11	0.70	17
		2006-07	13,850	137 to 501					
		2007-08	15,551	0 to 136					

⁶ Circular No.1/2007 issued by the Commissioner of Taxes, Assam vide No.CTS-79/2006 dated 11 January 2007.

2009-10	44,674	2005-06	5,808	867 to 1,231	7,726	4.39	3.60	0.79	17
		2006-07	11,917	502 to 866					
		2007-08	19,150	137 to 501					
		2008-09	7,799	0 to 136					
2010-11	54,165	2005-06	5,238	1,232 to 1,596	10,245	10.40	7.11	3.29	19
		2006-07	15,467	867 to 1,231					
		2007-08	18,887	502 to 866					
		2008-09	9,910	137 to 501					
		2009-10	4,663	0 to 136					
2011-12	68,663	2005-06	1,170	1,597 to 1,961	13,946	24.95	10.03	14.92	20
		2006-07	7,055	1,232 to 1,596					
		2007-08	26,861	867 to 1,231					
		2008-09	16,208	502 to 866					
		2009-10	11,218	137 to 501					
		2010-11	6,151	0 to 136					
2012-13	72,248	2005-06	685	1,962 to 2,326	11,941	24.23	19.46	4.77	17
		2006-07	6,217	1,597 to 1,961					
		2007-08	17,368	1,232 to 1,596					
		2008-09	15,809	867 to 1,231					
		2009-10	11,857	502 to 866					
		2010-11	11,490	137 to 501					
		2011-12	8,822	0 to 136					
Total	2,80,960		2,80,960		51,056	68.78	44.31	24.47	18

- Thus, delay in scrutinising the returns ranged between 137 and 501 days in 65,618 cases, 502 and 866 days in 70,678 cases, 867 and 1,231 days in 63,945 cases, 1,232 and 1,596 days in 29,661 cases, 1,597 and 1,961 days in 7,387 cases and 1,962 and 2,326 days in 685 cases.
- 8,072 cases were scrutinised when the cases became time-barred for assessment.
- The Department raised additional demand of ₹ 68.78 crore on scrutiny of 51,056 cases.
- Out of additional demand of ₹ 68.78 crore, the Department realised ₹ 44.31 crore leaving a balance of ₹ 24.47 crore to be realised.
- Delay in scrutiny resulted in delay in raising of demand which was otherwise concealed by the dealers in self-assessment.

The Department while accepting (November 2014) the delay in scrutiny attributed it to engagement of officers in other miscellaneous works and realisation of revenue. The Department further stated that a close monitoring mechanism would be put in place in order to avoid any delay in the verification of returns.

2.3.7.3 Analysis of assessment cases

I. Assessment relating to AVAT Act

The AVAT Act did not specify the number of assessments to be done by each AA or percentage of assessments of dealers to be completed in a year by the AAs of the Department.

The Audit Manual of the Department, however, specified that a certain percentage of dealers should be selected for audit (assessment) every year. For the purpose of

selection of dealers the Department should consider parameters such as economic activity, sales volume, reported annual mark up⁷ and discrepancies resulting from cross checking information system⁸. Department fixed following parameters for assessment:

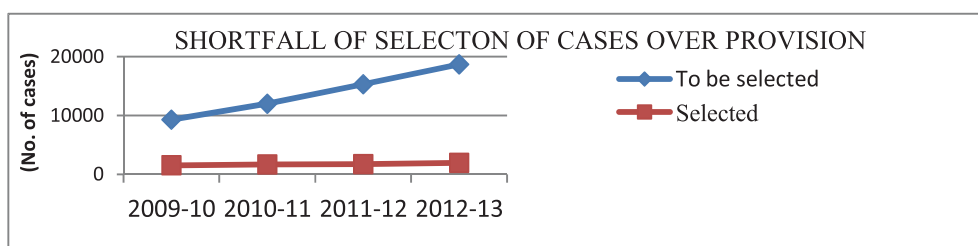
- The selection should be about 30 *per cent* for the dealers in Corporate Division and for the rest it should be about 20 *per cent* in one year. So corporate entities should be audited once in three years.
- The selection of the above percentage may be on the basis that about 75 *per cent* of the audit cases may be selected on the basis of risk analysis, *i.e.* high risk tax payers and the remaining 25 *per cent* will be on random basis.

The important criteria for determination of high risk factors as laid down under Rule 22 of AVAT Act are gross turnover exceeding ₹ 5 crore in a year; ITC exceeding a limit of ₹ 10 lakh in a year; sales disproportionate to purchases; output tax disproportionate to input tax, mismatch of transactions of sale and purchase *etc.* The following table indicates shortfall in selection of cases for assessment:

Table No. 2.4

Shortfall in selection of cases for assessment

Year	Total number of cases due for assessment during the period	No. of cases to be selected (20% minimum)	No. of cases selected	Shortfall in selection for assessment	Percentage of shortfall in selection (colmn 5) for assessment <i>w.e.f.</i> colmn 3
(1)	(2)	(3)	(4)	(5)	(6)
2009-10	46,435	9,287	1,518	7,769	84
2010-11	59,979	11,996	1,660	10,336	86
2011-12	76,592	15,318	1,713	13,605	89
2012-13	93,541	18,708	1,941	16,767	90
Total	2,76,547	55,309	6,832	48,477	88



Audit observed that the Department selected 6,832 cases out of 2,76,547 cases during 2009-10 to 2012-13 which was mere two *per cent* instead of minimum 20 *per cent* of dealers to be selected.

The position of assessment completed during 2008-09 to 2012-13, additional demand raised and revenue realised against demand raised are shown in the following table:

⁷ Selection of dealers based on information received from other departments regarding booking of cases.

⁸ Information received based on cross checking of records of other departments such as Income Tax, Central Excise, etc.

Table-2.5

Details of year-wise assessment completed viz-à-viz additional revenue raised

Year of assessment	No. of cases assessed	Returns related to the period and no. of cases assessed during the period		Demand raised based on assessment (₹ in crore)	Amount realised (₹ in crore)	Balance yet to be realised (₹ in crore)
		Year of returns	No. of cases assessed			
(1)	(2)	(3)	(4)	(5)	(6)	(7)
2008-09	1,061	2005-06	500	36.08	4.87	31.21
		2006-07	381			
		2007-08	180			
2009-10	1,761	2005-06	494	40.65	5.55	35.10
		2006-07	697			
		2007-08	378			
		2008-09	192			
2010-11	2,753	2005-06	458	100.07	12.88	87.19
		2006-07	710			
		2007-08	799			
		2008-09	585			
		2009-10	201			
2011-12	2,208	2005-06	82	139.18	10.17	129.01
		2006-07	262			
		2007-08	598			
		2008-09	717			
		2009-10	399			
		2010-11	150			
2012-13	2,841	2005-06	24	36.36	19.98	16.38
		2006-07	66			
		2007-08	270			
		2008-09	616			
		2009-10	1,030			
		2010-11	694			
		2011-12	141			
Total	10,624			352.34	53.45	298.89

It was noticed that during 2008-09 to 2012-13 based on the assessment in 10,624 cases the Department raised additional demand of ₹ 352.34 crore, of which ₹ 53.45 crore could be realised during 2008-09 to 2012-13. The balance demand of ₹ 298.89 crore remained unrealised. The additional demand for revenue arose due to the fact that returns submitted by the dealers were not according to the correct rate of tax, concealment of turnover, non-levy of interest *etc.* Therefore, the effectiveness of the self-assessment needs to be looked into by the State Government.

Out of 10,624 cases assessed during 2008-09 to 2012-13, 172 cases relating to the period 2005-06 and 2006-07 were assessed after these cases became time barred. Reasons for delay in assessment in such cases were not on record.

The demand of ₹ 352.34 crore raised from assessment of 10,624 cases could have been much higher had the Department assessed minimum 20 *per cent* as prescribed in the Departmental Manual.

Recommendation: To avoid leakage of revenue, the Department should evolve a mechanism for timely completion of assessments to see that none of these assessments become time barred.

II. Assessment relating to CST Act

As per the CST Act 1956 and Rules made thereunder, the registered dealers are entitled to certain concessions and exemption from levy of tax on inter-State transactions on submission of prescribed declaration forms. It is the responsibility of the AA to ensure that concessions or exemptions claimed by the dealers are in accordance with the provision of the Act to prevent leakage of revenue.

The CT, Assam instructed (between April 2009 and February 2012) the AAs to complete assessments of dealers registered under CST Act, whose turnover was ₹ 10 lakh or more for the periods 2005-06 and 2006-07; 2007-08 and 2008-09; 2009-10 and 2010-11 within September 2009, March 2010, March 2012 and June 2012 respectively.

The details of pending cases for assessment are shown in the following table:

Table-2.6

Pending cases of assessment under CST Act

Returns relates to period	Number of assessment to be done	Number of assessment completed (upto 31 March 2013)	Number of cases pending for assessment	Percentage of assessment completed (column 3) w.e.f. column 2
(1)	(2)	(3)	(4)	(5)
2008-09	28,486	1,759	26,727	6
2009-10	30,944	1,273	29,671	4
2010-11	33,326	946	32,380	3
2011-12	36,024	262	35,762	1
Total	1,28,780	4,240	1,24,540	3

From the preceding table, it is seen that:

- Out of 1,28,780 cases, assessments of 4,240 cases could be completed leaving 1,24,540 cases un-assessed upto March 2013.
- The percentage of completion of assessment by the Department ranged between one (2011-12) and six (2008-09) which indicated a shortfall of 99 and 94 *per cent* respectively.

The details of completion of assessment and realisation of additional revenue against demand raised are given in the following Table:

Table-2.7

Delay in assessment of CST cases

Year of assessment	No. of cases assessed	Returns related to the period and no. of cases assessed during the period			Demand raised based on assessment (₹ in crore)	Amount realised (₹ in crore)	Balance yet to be realised (₹ in crore)
		Year of returns	No. of cases	Delay in assessment (in months)			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
2008-09	1,001	2005-06	307	-	783.39	1.64	781.75
		2006-07	358	-			
		2007-08	336	-			
2009-10	1,783	2005-06	347	-	68.47	14.45	54.02

		2006-07	464	-			
		2007-08	431	-			
		2008-09	541	-			
2010-11	2,151	2005-06	319	6 to 18	53.06	13.55	39.51
		2006-07	416	6 to 18			
		2007-08	461	1 to 12			
		2008-09	534	1 to 12			
		2009-10	421	-			
2011-12	1,895	2005-06	75	18 to 30	59.61	10.35	49.26
		2006-07	212	18 to 30			
		2007-08	305	12 to 24			
		2008-09	409	12 to 24			
		2009-10	509	-			
		2010-11	385	-			
2012-13	1,746	2005-06	37	30 to 42	21.94	11.95	9.99
		2006-07	68	30 to 42			
		2007-08	200	24 to 36			
		2008-09	275	24 to 36			
		2009-10	343	1 to 12			
		2010-11	561	-			
		2011-12	262	-			
Total	8,576				986.47	51.94	934.53

From the preceding table, it was observed that:

- The Department completed assessments in 8,576 cases during the years 2008-09 to 2012-13.
- There was delay in assessment in 3,654 cases ranging between one month and 42 months.
- The Department raised additional demand of ₹ 986.47 crore, of which only ₹ 51.94 crore could be realised leaving balance of ₹ 934.53 crore unrealised upto March 2013.
- The realisation of revenue was mere 5.27 per cent of additional demand.

The huge demands arising out of assessments carried out by the Department under AVAT as well as CST Acts as discussed in the above paragraphs indicated that the existing system of returns/ self assessments is fraught with the risk of substantial evasion of tax. There is thus, a need for plugging the gaps in the system of returns so that revenue interest of the State is safeguarded.

Recommendation: The Department may consider drawing up of action plan to complete the assessments under CST Act.

2.3.7.4 Position of assessment by Central VAT Audit Team

The Central VAT Audit Team was constituted in April 2007⁹ with an objective to conduct audit assessment under Section 36 of the AVAT Act. Accordingly, the CT delegated the power of assessment to five ACT/ ST during 2008-13 under the

⁹ Published in the Assam Gazette Extraordinary No.118 dated 24 April 2007.

supervision of the JCT for assessment of dealers registered in all the units of Assam. Selections of cases for assessment are made by the CT.

The CT, Assam fixed (Circular No. 37/2007 dated 27 November 2007) the target for completion of at least five assessments by each ACT/ST of the team per month.

The year wise position of assessments completed during 2009-10 to 2011-12 by Central VAT audit team is shown in the following table:

Table-2.8
Completion of assessment by Central VAT Audit Team

Year	Total no. of cases selected for assessment for Central VAT Audit team	Assessment completed by Central VAT audit team during the year			As per norms assessment required to be completed		Short fall in assessment (column. 7-column. 5)
		VAT	CST	Total	Nos. of ACT/ST attached to Central VAT audit team	Nos. of assessment required to be completed	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
2009-10	170	76	95	171	5	300	129
2010-11	200	133	101	234	5	300	66
2011-12	150	80	50	130	5	300	170
Total	520	289	246	535	15	900	265

Thus, there was shortfall in assessment of at least 265 cases during 2009-10 to 2011-12 as per the norms fixed by the CT. Further, the target of five assessments per ACT/ST when seen against the number of assessments to be completed annually indicates that the target is on lower side and there is a need to review targets to fix it suitably in line with the total assessments due in a year.

2.3.7.5 Deficiencies in provisions of the AVAT Act and Rules

I. Non-prescription of processes which do not come under manufacture

As per Section 2(30) of the AVAT Act, ‘manufacture’ includes any activity that brings out a change in an article or articles as a result of some process, treatment, labour and results in transformations into a new and different articles so understood in commercial parlance having a distinct name, character use, but does not include such activity of manufacture as may be prescribed.

The State Government was, however, yet to prescribe the process/(es) which would not come under ‘manufacture’ even after passage of more than nine years since the introduction of the AVAT Act in May 2005.

Audit observed that due to this lack of clarity on the term ‘manufacture’, the correctness of the AVAT exemption/remission allowed under Assam Industries (Tax Remission) Scheme, 2005 and the Assam Industries (Tax Exemption for Pipeline Units) Order, 2005 was not properly ascertainable as discussed in the succeeding paragraphs.

It was judicially¹⁰ held by the Hon'ble Supreme Court that crushing of stone boulder into stone chips, processing tea, and tyre retreading do not amount to manufacture as the identity of the used raw materials and the processed finished product remains the same.

The Commissioner of Taxes (CT), Assam *vide* his Circular/Order dated May 2009 and June 2012 clarified that transformation of raw water into purification and packaging of drinking water does not involve manufacture and asked the AAs to cancel the entitlement certificates and to realise due tax from such units.

Examination of records revealed that the AAs allowed exemption of ₹ 9.44 crore of seven¹¹ unit offices in 24 cases though the dealers were involved in the processing of tea, stone aggregate to stone chips, bottling of water, retreading of tyre which did not qualify as 'manufacture' as per judicial pronouncements/CTs orders referred to above. The incorrect exemption resulted in non-levy of tax of ₹ 9.44 crore. Details are mentioned in the following table:

Table-2.9

(₹ in crore)

Sl. No.	Type of cases	No. of Cases	Period of A/cs	Activity involvement	Tax Exemption allowed
(1)	(2)	(3)	(4)	(5)	(6)
1.	Assessment cases	17	2005-06 to 2012-13	Processing of tea, stone aggregate to stone chips, bottling of water, retreading of tyre.	7.43
2.	Scrutiny cases	3	2005-06 to 2011-12	Processing of tea, stone aggregate to stone chips	1.51
3.	Deemed assessment cases	4	2005-06 to 2012-13	Processing of tea, stone aggregate to stone chips	0.50
Total		24			9.44

Recommendation: The State Government may consider specifying/notifying the processes which do not come under 'manufacture' as pronounced by Hon'ble Supreme Court/different High Courts.

II. Non-inclusion of price mechanism of manufactured goods

As per Section 2(44) of the AVAT Act, 'Sale Price' means the amount of valuable consideration paid or payable to a dealer for any sale made including any sum charged for anything done by the dealer in respect of goods at the time of or before delivery of the goods other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged.

¹⁰ (a) The Commissioner of Sales Tax, UP, *Vs* Lal Kumar Stone Crusher (P) Ltd.-Gitti, Stone Chips and dust obtained on crushing of stone are not different commercial goods. The nature of activity does not result in manufacture because no new commercial commodity comes into existence.

(b) CST *vs.* D.S. Bist & Dehradun Tea Company Ltd. *Vs* State of Uttaranchal-Processing of tea leaves is not manufacture.

(c) PC Cherigan *Vs* Barfi Devi-Retreading of old tyre is not manufacture as no new commodity comes into existence.

¹¹ ACT: Silchar, Jorhat, Golaghat, Sivasagar and ST: Digboi, Hailakandi, Karimganj

The AVAT Act and Rules made thereunder does not provide any price mechanism for manufactured goods based on entire landing cost of raw materials as required under Cost Analysis.

A manufacturing dealer has to fill up Annexure-III (attached to the annual return) showing value of finished goods produced and sale of the same. It was seen that some dealers engaged in manufacture of same products purchasing same raw materials involving same landing cost declared sale value of finished goods several times more than the other dealer. Some illustrative cases are given in the following table:

Table-2.10

Sl. No.	Name of the dealer	Period	Value of raw materials consumed in manufacture (₹ in lakh)	Value of finished goods produced (₹ in lakh)	Opening stock of finished goods (₹ in lakh)	Closing stock of finished goods (₹ in lakh)	Sale of finished goods (₹ in lakh)	Total sale value of finished goods derived from raw materials utilised during the year (column 8+ column 7-column 6)	Increase in Sale value (column. 9) over the value of raw material (column. 4) (in %)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	M/s Balaji Coke Industry	2006-07	739.73	776.30	5.85	30.11	953.61	977.87	32
2.	M/s Global Coke	2008-09	1,489.90	1,644.41	96.40	117.22	3,154.45	3,175.27	113
3.	M/s RPG Coke	2009-10	742.95	1,031.16	455.47	110.07	2,202.40	1,857.00	150
4.	M/s Assam Alloys Ltd.	2010-11	372.41	567.38	8.21	26.78	534.00	552.57	48
5.	M/s Barak Ispat Pvt. Ltd.	2010-11	2,172.61	2,172.61	85.77	106.14	2,350.18	2,370.55	9

It is evident that increase of sale value over the value of raw material varied from 32 *per cent* to 150 *per cent* in respect of coke industry and from nine *per cent* to 48 *per cent* in respect of iron industry.

Thus, there was no mechanism to determine the manufacturing cost and selling price of the manufactured goods uniformly for the same nature of industries.

Recommendation: The State Government may take action to include price mechanism of manufactured goods based on landing cost of raw materials, manufacturing expenses, overhead expenses, etc. under the provision of relevant AVAT Act / Rules.

2.3.8 Irregularities noticed during scrutiny of returns and assessments under VAT Act

2.3.8.1 Concealment of purchase turnover

As per section 62 of AVAT Act, every dealer whose turnover exceeds ₹ 40 lakh¹², has to submit Audit Report (prepared by Chartered Accountant) along with annual return.

Under section 33(1) of the AVAT Act, every return in relation to any period furnished by a registered dealer shall be subject to scrutiny by the Prescribed Authority to verify the correctness of full payment of tax and interest payable by the dealer during such period. As per departmental instruction (January 2007), return submitted by a dealer is to be scrutinised within 15 days of its submission. Rule 21 of the AVAT Rules provides that except for cases selected for audit assessment, all other cases shall be deemed to have been assessed under Section 35 of the Act.

The dealer has to submit the utilisation statement of declaration forms issued earlier while applying for issue of new declaration forms. Such utilisation statements are to be filed in the case records for verification at the time of scrutiny of returns/ assessments by the AAs.

Examination of records revealed that in 89 cases of 13¹³ unit offices the dealers disclosed purchase turnover of ₹ 5,419.08 crore relating to the periods from 2005-06 to 2011-12, which were accepted by the AAs. Verification of utilisation statements of declaration forms/ monthly returns revealed that as per these documents these dealers imported taxable goods worth ₹ 5,618.14 crore. Details are mentioned in the following table:-

Table-2.11

(₹ in crore)

Sl. No.	Type of cases	No. of Cases	Period of A/cs	Purchase Turnover disclosed and accepted	Purchase Turnover as per utilisation statement of declaration forms/ monthly return etc.	Concealment of turnover	Tax leviable	Interest leviable	Total of tax and interest
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	Assessment cases	15	2005-06 to 2009-10	220.92	229.57	8.65	1.00	0.55	1.55
2.	Scrutiny cases	63	2005-06 to 2011-12	5,119.72	5,301.81	182.09	20.99	12.07	33.06
3.	Deemed assessment cases	11	2007-08 to 2011-12	78.44	86.76	8.32	1.11	0.64	1.75
Total		89		5,419.08	5,618.14	199.06	23.10	13.26	36.36

Concealment of purchase turnover of ₹ 199.06 crore resulted in short levy of minimum tax of ₹ 36.36 crore including interest without taking into consideration

¹² The limit has been enhanced to ₹ 1 crore from 2009-10 onwards vide CT's Notification No. CTS-1/2009/270 dated 17 November 2009.

¹³ ACT: Unit A, B, C, D of Guwahati, Tezpur, Sibsagar, Tinsukia, Silchar, Golaghat and Bongaigaon; ST: Jhalukbari, Hojai and Dhemaji.

the profit element. This concealment of purchase turnover could have been detected had the AAs verified the utilisation statements of declaration forms/monthly returns.

2.3.8.2 Concealment of sales turnover

As per section 40 of the AVAT Act, read with the CST Act if any dealer conceals or fails to fully disclose the particulars of his turnover, the AA may, within eight years from the end of relevant years, make an assessment/ re-assessment of the dealer. Further, section 90 of the AVAT Act provides that the dealer shall pay by way of penalty, in addition to tax and interest, a sum not exceeding two times the amount of tax evaded or sought to be evaded.

- Examination of records of nine¹⁴ unit offices revealed that in 16 cases, the dealers disclosed turnover of ₹ 161.33 crore relating to the period 2005-06 to 2011-12 which were accepted by the AAs. Verifications of audit reports of these dealers revealed that they had actual sales turnover of ₹ 208.12 crore. The AAs could have detected the difference if they had verified the CA certified audit reports submitted by the dealers along with the annual returns. Details are mentioned in the following table:-

Table-2.12

(₹ in crore)

Sl. No.	Type of cases	No. of Cases	Period of A/cs	Sales Turnover claimed/ accepted	Sales Turnover as per Audit Report/ Other report	Concealment of turnover	Tax leviable	Interest leviable	Total of tax and interest
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	Assessment cases	9	2005-06 to 2009-10	101.99	127.49	25.50	2.43	1.85	4.28
2.	Scrutiny cases	5	2005-06 to 2011-12	55.65	76.07	20.42	1.73	0.72	2.45
3.	Deemed assessment cases	2	2008-09 to 2010-11	3.69	4.56	0.87	0.11	0.03	0.14
Total		16		161.33	208.12	46.79	4.27	2.60	6.87

Thus, concealment of sales turnover of ₹ 46.79 crore by the dealer in returns resulted in short levy of tax ₹ 6.87 crore including interest.

- Examination of records revealed that in 109 cases of 11¹⁵ unit offices for the period 2005-06 to 2011-12, the dealers disclosed turnover of ₹ 2,361.70 crore, which were accepted by the AAs. Examination of Annexure-I¹⁶ of annual returns revealed that these dealers had actual sales turnover of ₹ 2,562.23 crore which the AAs could have detected if they had verified the Annexure-I of the annual return. Details are mentioned in the following table:-

¹⁴ ACT: Unit A, C, D of Guwahati, Nagaon, Dhubri, Tinsukia, and Sivasagar; ST: Naharkatia and Mangaldoi.

¹⁵ ACT: Unit A, B, C, D of Guwahati, Nagaon, Dhubri, Tinsukia, Sivasagar, Jorhat, and Bongaigaon; ST: Naharkatia.

¹⁶ In Annexure –I of Annual Return, the dealer is required to furnish information regarding opening stock, purchase of goods from within the State & outside the State, type of goods rate of tax wise, closing stock, etc.

Table-2.13

(₹ in crore)

Sl. No.	Type of cases	No. of Cases	Period of A/cs	Sales Turnover claimed/accepted	Sales turnover based on Annexure I of Annual Return	Concealment of turnover	Tax leviable	Interest leviable	Total of tax and interest
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	Assessment cases	16	2005-06 to 2008-09	277.03	343.29	66.26	3.27	3.44	6.71
2.	Scrutiny cases	79	2005-06 to 2011-12	2,017.27	2,141.38	124.11	12.75	5.67	18.42
3.	Deemed assessment cases	14	2005-06 to 2011-12	67.40	77.56	10.16	0.97	0.54	1.51
Total		109		2,361.70	2,562.23	200.53	16.99	9.65	26.64

Thus, there was concealment of sales turnover of ₹ 200.53 crore which resulted in short levy of tax of ₹ 26.64 crore including interest.

2.3.8.3 Short levy of tax due to incorrect application of rate of tax

As per Section 33 of the AVAT Act, the AA is required to apply correct rate of tax while completing scrutiny/assessment. Further, as per instruction (January 2007) of the CT, Assam, every return submitted by the dealer was to be scrutinised within 15 days of the submission of return.

As per Fifth schedule attached to the AVAT Act, the items Kerosene Oil, Motor Vehicles, Chassis of Motor Vehicle, Confectionery, Food Supplements, Coconut Oil, Lubricants, Water purifiers, Water Treatment Plant, RCC Pole, PSC Pole, Chips, Cigarettes etc., and works contract registered under Tax Identification Number (TIN) were taxable at the rate 12.5 *per cent* and 13.5 *per cent* from the respective date of notification. Further, the items Electrical goods and writing materials were taxable at the rate of 12.5 *per cent* during 2005-06 and IMFL was taxable at the rate of 27 *per cent* during 2008-09 & 2009-10.

Item Frooti Mango Drink and Appy Fizz Apple Drink containing ingredients apart from fruit juice were taxable at the rate of 12.5 *per cent* upto 30 October 2009 and 13.5 *per cent* from 31 October 2009. The CT, Assam *vide* order dated March 2007 clarified that drink that contains, apart from fruit juice, many other ingredients such as sugar, herbs, citric acid etc. cannot be treated as fruit juice and were taxable at 12.5 *per cent* as unspecified item.

- Examination of records of nine¹⁷ unit offices revealed that the AAs while finalising assessments/scrutiny for the periods from 2005-06 to 2012-13 levied tax on the above mentioned items at the rate of four/ five *per cent* instead of 12.5/13.5/27 *per cent*. Details are mentioned in following table:-

¹⁷ ACT: Unit A, B, C, D of Guwahati, Sibasagar, Dhubri, Bongaigaon, Jorhat and Silchar.

Table-2.14

(₹ in crore)

Sl. No.	Type of cases	No. of Cases	Period of A/cs	Sales Turnover	Tax levied (@4%/5%)	Tax leviable (@12.5%/13.5 %/ 27%)	Short levy of Tax	Interest leviable	Total of tax and interest
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	Assessment cases	3	2005-06 to 2006-07	5.17	0.21	0.65	0.44	0.27	0.71
2.	Scrutiny cases	28	2005-06 to 2011-12	133.63	6.25	17.35	11.10	6.78	17.88
3.	Deemed assessment cases	13	2005-06 to 2012-13	78.32	3.83	10.47	6.64	3.42	10.06
Total		44		217.12	10.29	28.47	18.18	10.47	28.65

Thus levy of tax at lower rate on turnover of ₹ 138.80 crore in respect of 31 cases resulted in short levy of tax of ₹ 18.59 crore including interest.

Further, the payment of tax at lower rate on turnover of ₹ 78.32 crore in respect of 13 cases by the dealers resulted in short payment of tax of ₹ 10.06 crore including interest. This remained undetected due to non-completion of assessment/scrutiny.

- Examination of records of Guwahati, Unit-C revealed that a dealer (M/s Padmesh Beverage) was engaged in manufacture of Frooti Mango Drink and Appy Fizz Apple Drink which contained sugar, citric acid, water, added flavour, synthetic fruit flavour *etc.* apart from mango pulp (19 *per cent*) and apple juice concentrate (3.9 *per cent*). The AA while finalising assessment for the period 2005-06 to 2012-13 levied tax at the rate of four and five *per cent* instead of 12.5 and 13.5 *per cent* respectively. This resulted in short levy of tax of ₹ 8.16 crore. In addition, interest of ₹ 5.22 crore was also leviable. Thus, the dealers's liability stood at ₹ 13.38 crore.

The Department stated (November 2014) that the dealer was assessed for the years 2005-06 to 2008-09 rejecting the claim of 99 *per cent* remission for other goods for which Eligible Certificate was not obtained and the dealer preferred revision for grant of remission on goods other than 'Mango Juice' which was admitted by the Department. The Department's reply is not acceptable as the audit observation related to application of lower rate of tax on 'Mango Juice' and not claim of remission.

2.3.8.4 Non-initiation of action in time resulted in non-realisation/ loss of revenue

Section 34 of AVAT Act provides that where a dealer fails to furnish a tax return before the due date or if the return furnished by him appears to the Prescribed Authority to be incorrect or incomplete or if the dealer fails to furnish returns with evidence of payment of tax and interest, the Prescribed Authority shall proceed to assess the dealer provisionally for the period of default to the best of his judgment.

As per Section 39 of the AVAT Act, no assessment shall be made after the expiry of five years from the end of the year to which the assessment relates.

Section 43 (5) and 43 (6) of the AVAT Act read with CST Act provide that if a dealer fails to make payment of tax assessed or interest levied or penalty imposed within 30 days of the date of service of the notice of demand, the amount shall be recoverable as arrears of land revenue.

- Examination of records of five dealers in four¹⁸ unit offices for the period 2005-06 to 2011-12 revealed that the dealers did not pay taxes on turnover of ₹ 15.98 crore and subsequently, discontinued to submit returns. The AAs were to assess the dealers on best judgment basis for the period for which returns were submitted without payment of tax. Thus, non-completion of the assessments of these dealers resulted in leakage of revenue of ₹ 2.57 crore including interest of ₹ 1.01 crore.
- Examination of records of 11¹⁹ unit offices revealed that in 26 cases the dealers were assessed between March 2008 and June 2013 for the periods 2001-02 to 2010-11 and levied tax and interest of ₹ 9.13 crore, of which tax of ₹ 0.05 crore was paid. Though the dealers did not pay the balance dues of ₹ 9.08 crore, no action was initiated to issue arrear certificates to recover the same through *Bakijai*²⁰ process.
- In another case, the AA assessed a dealer (M/s Luit Enterprise registered with ACT, Unit 'C' of Guwahati) in August 2009 for the period 2007-08, but the dealer failed to pay tax and interest of ₹ 49.34 lakh. Though the dealer was defaulter in payment of tax, the AA issued arrear certificate after a lapse of 14 months of issue of demand notice when the dealer was not traceable. The scope of realisation of ₹ 49.34 lakh is remote.

The Department accepted (November 2014); the delayed action. However, latest position of realisation could not be furnished to Audit.

2.3.8.5 Irregular adjustment of TDS/non-realisation of tax

Under the Section 47 of AVAT Act read with Rule 28 of AVAT Rules made thereunder, the amount of tax payable by the supplier/works contractor shall be deducted at source by the Drawing and Disbursing Officer (DDO) who shall deposit it into the Government account within 10 days from the expiry of each calendar month. The DDO shall also issue a Tax Deduction Certificate (TDC) in Form 29 to the dealer concerned within seven days from the date of deposit of the amount together with attested copy of treasury challan. Rule 28(5)(b) of the AVAT Rules

¹⁸ ACT: Unit B of Guwahati, Silchar, Barpeta Road and Golaghat.

¹⁹ ACT: Unit B, C & D of Guwahati, Dhubri, Sibsagar, Jorhat, Golaghat and Bongaigaon; ST: Hojai and Naharkatia.

²⁰ Bakijai is a process for recovery of outstanding revenue as arrear of land revenue under Assam Land and Revenue Regulation, 1886 and the Bengal Public Demands Recovery Act, 1913, which includes attachment of movable and immovable property, arrest and detention of defaulting dealers.

provides that every DDO shall submit return in Form-35 yearly showing the name and complete address of the contractor/person with TIN/GRN²¹ from whom tax was deducted, bill number and date of the bill with amount of bill against which tax was deducted and details of tax deposited.

Under Rule 28(1) of the AVAT Rules, if a dealer intends to adjust the tax deducted at source (TDS) from his tax liability, he shall furnish one copy of the TDC and copy of challan for adjustment of such deposit against his dues to the prescribed authority.

Further, as per Section 33 AVAT of Act, every return shall be subject to scrutiny by AA to verify, *inter-alia*, full payment of tax and interest payable by the dealer during the period of return.

- Examination of records revealed that the AAs while finalising scrutiny/assessment, adjusted tax of ₹ 47.90 crore in 97 cases of 16²² unit offices for the period from 2005-06 to 2011-12. Further examination of records revealed that out of ₹ 47.90 crore, challans for only ₹ 2.27 crore were available in case records. Copies of challans/other evidence of deposit for balance amount of ₹ 45.63 crore were neither available in case records nor recorded in the assessment orders. Details are mentioned in the following table:-

Table-2.15

(₹ in crore)

Sl. No.	Type of cases	No. of Cases	Period of A/cs	Tax determined	Tax adjusted	Tax for which challans were available	Tax for which challans not available	Irregular adjustment of tax
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	Assessment cases	28	2005-06 to 2011-12	23.47	17.77	0.25	17.52	17.52
2.	Scrutiny cases	54	2005-06 to 2011-12	39.24	26.97	1.39	25.58	25.58
3.	Deemed assessment cases	15	2005-06 to 2011-12	3.29	3.16	0.63	2.53	2.53
Total		97		66.00	47.90	2.27	45.63	45.63

Thus, tax of ₹ 45.63 crore was incorrectly adjusted.

The Department while accepting the statutory provision stated (November 2014) that it was practically impossible to collect challans by individual dealers from Government departments/undertakings. The Department further stated that the AA should collect returns along with challan and take punitive action against defaulting DDOs.

- Examination of case records revealed that the AAs while finalising assessment in six cases of two²³ unit offices for the periods 2006-07 to 2011-12 did not adjust tax of ₹ 5.52 crore deducted at source as the TDC was not accompanied by challan. Though the amount of ₹ 5.52 crore remained un-adjusted for non-availability of

²¹ GRN: General Registration Number.

²² ACT: Unit A, B, C, D of Guwahati, Silchar, Tinsukia, Sibsagar, Golaghat, Dhubri, Tezpur, Jorhat and Bongaigaon; ST: Hojai, Naharkatia, North Lakhimpur and Barpeta.

²³ ACT: Jorhat and Silchar

challan, no action was found to have been initiated to collect challans or other evidence of deposit of tax into Government account.

- During Examination of selected units it was observed that none of the unit offices received returns from the DDOs. Further, it was noticed that the Department did not maintain list of DDOs. In absence of returns, the actual amount of tax deducted at source, amount of tax deposited thereagainst and delay in deposit of TDS by the DDOs could not be ascertained.

As the DDOs did not submit return to the Taxation Department, the actual position of tax deduction and deposit remained outside the monitoring mechanism of the Taxation Department.

Recommendation: The Department should ensure that the DDOs submit TDS returns in a timebound manner so that adjustment of tax in respect of dealers against whom tax deducted at source by the DDOs can be monitored.

2.3.8.6 Short levy/ non- levy of interest

As per Section 30(2) of AVAT Act read with CST Act, if a dealer fails to pay tax in time (within 21 day of the subsequent month) he is liable to pay interest at the rate of one and half *per cent* of tax per month till the date of payment of tax.

Examination of records revealed that due to delayed payment of tax, the AAs levied interest of ₹ 12.82 crore instead of ₹ 15.71 crore in 34 cases of seven²⁴ unit offices for the periods 2005-06 to 2010-11, which resulted in short levy of interest amounting to ₹ 2.89 crore. Details are mentioned in the following table:-

Table-2.16

(₹ in crore)

Sl. No.	Type of cases	No. of Cases	Period of A/cs	Interest payable	Interest paid/ levied	Short levy /paid of interest
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Assessment cases	15	2005-06 to 2010-11	2.39	1.51	0.88
2.	Scrutiny cases	17	2005-06 to 2010-11	13.23	11.31	1.92
3.	Deemed assessment cases	2	2006-07 to 2007-08	0.09	0	0.09
Total		34		15.71	12.82	2.89

2.3.8.7 Incorrect/excess adjustment of tax

As per Section 43 of the AVAT Act and Rule 26 of the AVAT Rules read with CST Act, a dealer shall pay the amount of tax due alongwith the amount of interest, penalty or any other sum payable into bank by Challan in Form 24 or by way of a crossed cheque or a crossed demand draft in favour of the Prescribed Authority and shall furnish a receipt showing the payment of such amount alongwith return. The

²⁴ ACT: Unit-A, B, C, D of Guwahati, Bongaigaon and Sibsagar; ST: Barpeta Road.

AA has to adjust tax against the liability of the dealer on the basis of *challan*/evidence of payment.

- Examination of record of one dealer (M/s Mukesh Hyundai of Guwahati) for the period 2006-07 revealed that the dealer actually paid tax of ₹ 4.56 crore as evident from challans available in the case records, but the AA adjusted tax of ₹ 4.59 crore. As such, excess adjustment of ₹ 3.07 lakh was allowed in favour of the dealer. The dealer was also liable to pay interest of ₹ 4.20 lakh. Thus dealer's total liability stood at ₹ 7.27 lakh.
- Analysis of case records of two IMFL dealers of two unit offices²⁵ for the years 2008-09 to 2011-12 revealed that the AAs adjusted tax of ₹ 17.10 crore though challans or other evidence of payment were not available in case records. The AA also did not record challan number and date in these assessment orders. In absence of challans/evidence of deposit, genuineness of payment of tax could not be ascertained in audit.

2.3.8.8 Excess/irregular allowance of Input Tax Credit (ITC)

Section 14 of the AVAT Act provides that ITC shall be allowed to the extent of the amount of tax paid by the purchasing dealer on his purchase of taxable goods other than the goods specified in the Fourth Schedule from a registered dealer of the same State. Further, the Act provides that no ITC is allowable against purchase of goods made from outside the State and amount received as discount²⁶ by the purchasing dealer. Section 14(6)(h) of the Act further provides that if a dealer after purchase of goods locally transfers the same to a place outside the State, Input Tax already adjusted is to be reversed proportionately.

Further, Section 33 of the AVAT Act provides that every return furnished by the dealer shall be scrutinised by the Prescribed Authority to verify the correctness of calculation, application of correct rate of tax, ITC claimed therein and full payment of tax and interest payable by the dealer.

The GoA vide notification dated 29 March 2008 made amendment of Form-13²⁷ by inserting Part-G in the return and directed the dealers to submit quarterly the purchase made from the registered dealers within the State during that quarter.

- Examination of records revealed that the AAs in 35 cases of eight²⁸ unit offices for the periods from 2005-06 to 2011-12 allowed ITC of ₹ 29.01 crore. Further examination of purchase records indicated that these dealers were eligible for ITC of

²⁵ ACT: Unit C of Guwahati and ST: Hojai.

²⁶ Section 2 of AVAT Act provides that discount allowed by the selling dealer to the purchasing dealer is not part of sale price. Again, CT, Assam vide his Circular No.34/2007 issued on 12 November 2007 directed all ACT/ST not to allow ITC on the amount of discount received by the dealer.

²⁷ Form 13 is meant for submission of monthly/quarterly return by a dealer showing details of purchase and sales.

²⁸ ACT: Unit A, C, D of Guwahati, Silchar, Nagaon, Jorhat, Dhubri and ST: Karimganj.

₹ 27.91 crore. The excess allowance of ITC was due to irregular admission of claim on discount and excess payment. Details are mentioned in the following table:-

Table-2.17

(₹ in crore)						
Sl. No.	Type of cases	No. of Cases	Period of A/cs	ITC allowed /claimed	ITC allowable	Excess ITC
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Assessment cases	2	2005-06 to 2008-09	0.99	0.90	0.09
2.	Scrutiny cases	30	2005-06 to 2011-12	23.71	22.78	0.93
3.	Deemed assessment cases	3	2005-06 to 2007-08	4.31	4.23	0.08
Total		35		29.01	27.91	1.10

Thus, the excess ITC claim of ₹ 1.02 crore in respect of 32 cases was allowed by the AAs and ₹ 0.08 crore in respect of three cases was undetected due to non-completion of assessment/scrutiny. This indicates that assessment/scrutiny was not conducted by the AAs effectively.

- Examination of case records of ACT, Unit-C, Guwahati revealed that M/s Assam Roofing Ltd. purchased raw materials of ₹ 152.12 crore during the periods 2007-08 to 2008-09 from outside the State and claimed ITC of ₹ 6.98 crore which the AA allowed. Since, ITC is not allowable on tax paid on purchases made from outside the State, this resulted in incorrect grant of ITC of ₹ 6.98 crore. In addition to the tax of ₹ 6.98 crore the dealer was also liable to pay interest of ₹ 6.97 crore. Thus, dealer's total liability stood at ₹ 13.95 crore.

The Department stated (November 2014) that the assessment proceedings had been re-opened on the basis of audit observation.

- Examination of records of 12²⁹ unit offices revealed that the AAs allowed ITC of ₹ 35.60 crore in 77 cases (70 numbers of scrutiny cases amounting to ₹ 33.42 crore and seven numbers deemed assessment cases amounting to ₹ 2.18 crore) for the periods 2008-09 to 2012-13 though the dealers did not furnish purchase list in support of claim of ITC. Thus, the allowance of ITC by the AAs was not only without documentary evidence but also defeated the purpose of amendment in Form 13 made by the GoA.

2.3.8.9 Non-levy of penalty for non-submission of Audit Report

Under Section 62 of the AVAT Act, 2003 if any dealer fails to furnish a true copy of the Audit Report within seven months along with annual return where the dealer's

²⁹ ACT: Unit C, D of Guwahati, Sibsagar, Jorhat, Dhubri, golaghat and Silchar; ST: Digboi, Hojai, Karimganj, Dhemaji and Naharkatia.

gross turnover exceeds rupees forty lakh³⁰, the Assessing Officer may impose on him, in addition to any tax payable, a sum by way of penalty equal to half *per cent* of the gross turnover or a sum of rupees one lakh, whichever is less.

The CT, Assam in March 2009 passed order against revision petition filed by M/s Ananda Tea Estate, North Lakhimpur that there was no scope for any relaxation to the dealer regarding penalty provision for non-submission of Audit Report in time.

Examination of records revealed that in 59 cases of nine³¹ unit offices, though the dealers' gross turnover ranged from ₹ 1.21 crore to ₹ 6.78 crore, they failed to submit audited accounts for the periods 2005-06 to 2012-13. However, the AAs levied penalty of ₹ 0.23 lakh instead of ₹ 55.90 lakh as per the provision. This resulted in short-levy of penalty of ₹ 55.67 lakh. Details are mentioned in the following table:-

Table-2.18

(₹ in lakh)

Sl. No.	Type of cases	No. of Cases	Period of A/cs	Penalty leviable	Penalty levied	Short levy of penalty
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Assessment cases	3	2005-06 to 2007-08	3.00	0	3.00
2.	Scrutiny cases	32	2005-06 to 2011-12	31.10	0.23	30.87
3.	Deemed assessment cases	24	2005-06 to 2012-13	21.80	0	21.80
Total		59		55.90	0.23	55.67

2.3.8.10 Irregular grant of exemption under Assam Industrial remission Scheme

The Assam Industrial Sales Tax Concessions Scheme (AISTCS), 1997 provides that a new industrial unit shall be exempted from payment of tax for a period of seven years subject to a maximum limit of 150 *per cent* of the capital investment. Further, as per the Scheme, the existing industries going for expansion/ modernisation/ diversification shall be entitled to the benefit of part exemption of tax on sale of finished products for nine years subject to a maximum limit of 90 *per cent* of the additional fixed capital investment. Consequent upon implementation of the AVAT Act *w.e.f* 1 May 2005, the existing scheme was replaced by remission scheme and the industrial units are entitled to remission of 99 *per cent* of the tax payable by them during return periods until the amount of such remission exceeds the unavailed quantum of monetary ceiling.

³⁰ Limit of gross turnover enhanced to ₹ 1 crore from 2009-10 onwards *vide* CT's Notification No. CTS-1/2009/270 dated 17 November 2009.

³¹ ACT: Unit C, D of Guwahati, Silchar, Bongaigaon and Dhubri; ST: Diphu, Digboi, Dhemaji and Naharkatia.

Examination of records revealed that five industrial units enjoying benefit under Assam Industrial remission Scheme were allowed benefit of ₹ 11.33 crore during the periods 2005-06 to 2008-09 against maximum limit of ₹ 8.83 crore prescribed in Eligible and Entitlement Certificates issued by the Industry and Taxation Departments respectively. Details are mentioned in the following table:-

Table-2.19

(₹ in crore)

Sl. No.	Type of cases	No. of Cases	Period of A/cs	Amount eligible for remission	Amount actually granted for remission	Excess grant of remission	Tax leviable	Interest leviable	Total of tax & interest
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	Assessment cases	4	2005-06 to 2008-09	5.05	7.21	2.16	2.16	0.84	3.00
2.	Scrutiny cases	1	2005-06 to 2008-09	3.78	4.12	0.34	0.34	0.09	0.43
Total		5		8.83	11.33	2.50	2.50	0.93	3.43

Thus the dealers were allowed excess benefit of ₹ 2.50 crore. Besides, interest of ₹ 0.93 crore was also leviable.

2.3.8.11 Incorrect grant of authorisation certificate to industrial unit

The Assam Industrial Sales Tax Exemption (Pipe Line Unit) Orders, 2005 provides that industrial unit will enjoy benefit of tax remission of 99 *per cent* of tax collection for a period of seven years subject to a maximum limit of 100 *per cent* of the fixed capital investment. To avail such exemption, the intending industrial unit shall have to obtain a certificate of authorisation from the concerned Sales Tax office on the basis of Eligibility Certificate issued by the Industries Department. It was held by the Hon'ble Supreme Court in case of CCE Vs Technoweld Industries that conversion of Wire rod to Wire is only reduction in gauge and the product continues to be "wire". Thus, there is no manufacture of new product. The AVAT Manual prepared by the Department suggested the AAs to ensure while allowing exemption /remission that the unit really carried manufacturing activity.

As per provision of Section 30(2) of AVAT Act read with CST Act, if a dealer fails to pay tax in time (within 21 day of the subsequent month), he is liable to pay interest at the rate of one and half *per cent* of tax per month till the date of payment of tax.

Section 85 read with section 90 of the AVAT Act provides that if a dealer willfully evades or attempts to evade tax leviable under this Act in any manner whatsoever, he is liable to imposition of a penalty of an amount not exceeding twice the amount of tax involved.

Examination of records revealed that the AA while completing assessment of M/s PDP Steel Ltd., allowed exemption of ₹ 34.66 crore under the Assam Industries (Tax Exemption for Pipeline Units) order, 2005 during the periods from 2006-07 to

2013-14. The dealer availed this exemption on the ground that he manufactured Cold Rolled (CR) Coil. However, it was noticed that in order to avoid payment of Entry Tax, the dealer himself stated that he simply reduced the thickness of coil which was not a manufacturing process. He also argued that sheets in coil form even after reduction of thickness remain sheets in coil form. He further argued that Hot Rolled(HR) Coil after reduction of thickness does not get consumed in the process and even after reduction of its thickness is considered in the common parlance as coil and retains the same coil form as the one utilised. The dealer in support of his argument referred judgments of the Hon'ble Supreme Court in *State of Orissa vs Titaghur Paper Mills Co. Ltd* and *Board of Revenue vs Pio Food Packers* which pronounced that a mere change of form was not manufacture such as processing of Timber to dressed logs and pineapple fruit to pineapple slices.

Thus, in view of the Apex Court's verdict, the authorisation/ entitlement certificate granted to the dealer by the Sales Tax Department to avail exemption was irregular and resulted in undue benefit of exemption/remission of ₹ 34.66 crore. In addition, interest of ₹ 21.13 crore was also leviable. Besides, penalty of ₹ 69.32 crore being twice the amount of tax evaded was also leviable as the dealer evaded tax with full knowledge of the fact that his process was not manufacturing activity.

The Department stated (November 2014) that the conversion involves a process which amounts to manufacture. The reply of the Department was contrary to the submission of the dealer who had himself claimed that the conversion of HR coil into CR coil did not amount to manufacture. Besides, the essence of the judicial pronouncements referred to by the dealer also was against the contention of the Department.

2.3.8.12 Irregular deduction of taxable turnover

Rule 39 (1) of the AVAT Rules provides that a contractor shall not be liable to pay tax under sub-section (2) of section 69 if he produces documentary evidence of the payment of tax on the taxable turnover of the goods involved in execution of works contract by the sub-contractor along with a declaration from such sub-contractor to this effect.

Further, the item 'Hiring of machineries' is included as 'lease transaction' under Fifth Schedule of the AVAT Act and is covered by the extended meaning of "sale" by which the dealer/contractee is liable to deduct tax on hiring of vehicle/machineries at the rate of 12.5 *per cent* and to deposit the tax so deducted into Government account.

The CT *vide* order dated February 2010 instructed all the AAs to deduct tax at source on hiring of vehicle *etc.*, and deposit the same into Government account.

- Examination of records revealed that while finalising one assessment and scrutiny of the two cases for the periods 2007-08 to 2009-10 the AAs of two³² unit offices deducted taxable turnover of ₹ 14.09 crore from the aggregate turnover of ₹ 26.69 crore on the ground that the work was done by sub-contractors. However, evidence of payment of tax against this turnover was neither on record nor could be produced to audit. Besides, no declaration from the sub-contractors regarding execution of above works and payment of tax against this turnover could be produced to audit. This incorrect deduction of taxable turnover of ₹ 14.09 crore involved tax of ₹ 68.57 lakh.
- Examination of records revealed that the AAs while finalising assessment in six cases of two³³ unit offices deducted turnover of ₹ 20.79 crore being hire charges though there was no evidence of payment of tax against the hire charges. As such, deduction of ₹ 20.79 crore was irregular, which involved tax of ₹ 2.45 crore.

2.3.8.13 Evasion of tax by disclosing less value of raw materials in manufacture accounts

An industrial unit has to consider the entire cost of raw materials including inward freight, entry tax (if any), service tax (if any), etc. while utilising those goods for manufacturing process.

Examination of records revealed that eight dealers of two³⁴ unit offices purchased total value of coal including freight, entry tax *etc.* for ₹ 320.76 crore from Meghalaya during the periods 2005-06 to 2010-11 to manufacture coke. However, examination of manufacturing accounts revealed that the dealers incorporated value of coal (raw material) as ₹ 176.19 crore. As such, value of raw material was suppressed by ₹ 144.57 crore in the manufacturing account. Thus, short disclosure of value of raw materials resulted in short determination of finished products. This resulted in short payment of tax of ₹ 11.19 crore including interest of ₹ 5.85 crore.

2.3.9 Irregularities in assessment under CST

2.3.9.1 Incorrect grant of concessional rate of tax

Section 8 of the CST Act provides that if a dealer sells goods to a registered dealer in course of inter-State trade and commerce supported by valid and duly filled in declaration in Form 'C' he is entitled to pay tax at the concessional rate. Otherwise, tax is payable at the rate of 10 *per cent* or at the rate of tax applicable under the State Act whichever is higher upto March 2007. From April 2007 onwards, in case

³² ACT: Unit A of Guwahati and Jorhat.

³³ ACT: Unit-D of Guwahati and ST: Barpeta.

³⁴ ACT: Unit-A & C of Guwahati.

of inter-State sales not supported by declaration in Form-‘C’, tax is leviable at the rate of tax applicable under State Act. In addition, interest at the prescribed rate is also leviable.

The CT, Assam instructed (May and September 1999)³⁵ all the AAs to examine very carefully the claims of inter-State sales and to cross verify CST declaration forms submitted by some unscrupulous dealers and to verify the transaction while making the assessment and ensure that no false claim of such inter-State sales is accepted.

Tax Information Exchange System (TINXSYS) is a web based application authored by the Empowered Committee of State Finance Ministers and designed to improve effectiveness in monitoring inter-State movements of taxable goods, revenue collection, compliance monitoring and vigilance/surveillance operations. It contains information of declaration forms issued/utilised by dealers of each State. TINXSYS can be used by the AAs to verify the central statutory forms issued by the various Sales Tax Departments and submitted by the dealers in support of their claims for exemption/concessions.

Examination of records revealed that in 109 cases the AAs allowed concessional rate of tax on turnover of ₹ 272.97 crore for the periods 2005-06 to 2011-12 on the basis of Form-‘C’ furnished by the dealers. The grant of concessional rate of tax was incorrect due to various reasons such as non-issuance of Forms to the purchasing dealers by the authority of the concerned State, non-registration of dealers in the concerned State, turnover not supported by forms, defective forms. This resulted in short payment of tax amounting to ₹ 56.56 crore including interest. Details are shown in the following table:-

Table-2.20

(₹ in crore)

Sl. No.	Name of Dealer	Period of a/cs	Turnover on which concessional rate of tax granted irregularly	Short levy of tax	Interest	Total tax & interest
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	M/s Union Bonded Warehouse (ACT, Silchar)	2010-11	1.01	0.25	0.13	0.38
Audit finding: Audit through ‘CST Form Verification System’ of Department of Taxes, Government of Nagaland of National Informatics Centre (NIC) verified Form ‘C’ and found that two Forms ‘C’ involving ₹ 1.01 crore were not issued to the purchasing dealer <i>i.e.</i> M/s Redemption Enterprises, Dimapur but to M/s Renaissance Enterprises, Dimapur.						
2.	M/s TML Distribution Co. Ltd. (ACT, unit C, Ghy)	2009-10	15.81	1.75	1.34	3.09
Audit finding: Audit through ‘CST Form Verification System’ of Department of Taxes, Government of Nagaland of National Informatics Centre (NIC) verified Form ‘C’ and found that four Forms ‘C’ involving ₹ 15.81 crore were not issued to the purchasing dealer <i>i.e.</i> M/s Dimapur Diesel, Dimapur but to M/s Tata Motors, Dimapur.						

³⁵ CT, Assam *vide* Circular No.14/99 & 5/99 issued on 6 May and 22 September 1999 respectively instructed the AAs to examine very carefully the claims of inter-State sale to neighbouring North Eastern States, while making the assessment and ensure that no false claim of such inter-States sale is accepted. For this purpose, the particulars of the ‘C’ Forms submitted by the dealer have to be cross-verified with concerned transporters and also with records of the nearest check gate.

3.	M/s KDC Bonded Warehouse Pvt. Ltd. (ACT, unit C, Ghy)	2010-11	64.33	15.77	9.22	24.99
Audit finding: The AA (ST) while allowing (22 November 3013) concessional rate of tax stated that the authenticity of transaction was confirmed by the ST, Dimpur, Nagaland on 4 October 2013. However, after completion of assessment the ACT (Head of the Unit Office) not being satisfied about grant of concessional rate of tax, sought (6 February 2014) clarification from the Taxation Authority of Nagaland about authenticity of 'C' form and the value covered by these declaration forms. However, no reply was received. As such, the assessment completed by the AA (ST) was reopened. Audit through 'CST Form Verification System' of Department of Taxes, Government of Nagaland of National Informatics Centre (NIC) verified all the 'C' forms and found that Form 'C' for ₹ 64.33 crore were not used and utilisation of these forms had not been submitted.						
4.	M/s J. K. Avtar Pvt. Ltd. (Unit-II) (ACT, Unit-C, Ghy)	2004-05 to 2008-09	16.14	1.46	2.21	3.67
Audit finding: The dealer was granted concessional rate of tax on inter-State sales amounting to ₹19.98 crore on production of Form 'C'. On cross verification of Form 'C', it was noticed that M/s J. K. Avtar Pvt. Ltd. (Unit-II) made inter State sales amounting to ₹ 16.14 crore (covered by 15 nos. of Form 'C') to seven ³⁶ dealers of Arunachal Pradesh. These seven dealers were not actually registered in the State of Arunachal Pradesh. As such, grant of concessional of rate of tax on turnover of ₹ 16.14 crore covered by 15 Form-'C' of these un-registered dealers was incorrect, resulting in short levy of tax of ₹ 3.67 crore including interest of ₹ 2.21 crore.						
5.	Five cases	2007-08 to 2010-11	4.19	0.27	0.14	0.41
Audit finding: The AAs granted concessional rate of tax on inter-State sales of ₹ 45.86 crore in five cases of three ³⁷ unit offices. Out of turnover of ₹ 45.86 crore, turnover of ₹ 41.67 crore was supported by Form-'C' and balance turnover of ₹ 4.19 crore was not supported by Form-'C'. This incorrect grant of concessional rate of tax on ₹ 4.19 crore resulted in short levy of tax of ₹ 0.41 crore including interest of ₹ 0.14 crore.						
6.	100 cases	2005-06 to 2011-12	171.49	14.41	9.61	24.02
Audit finding: The AAs allowed concessional rate of tax in 100 cases of 13 ³⁸ unit offices on turnover of ₹ 4,341.60 crore of which turnover of ₹ 171.49 crore was covered by Forms 'C' having defects such as: (i) forms declared obsolete by the concerned State; (ii) forms issued prior to date of registration of purchasing dealer; (iii) forms not containing date of registration; (iv) forms issued prior to period of transaction; (v) forms not having names of selling dealers, (vi) forms covering transactions of multiple quarters; (vii) forms having amounts recorded only on the reverse without being authenticated by the purchasing dealer etc. As such, grant of concessional rate of tax against these defective forms was irregular resulting in short levy of tax of ₹ 24.02 crore including interest.						
Total	109 cases		272.97	33.91	22.65	56.56

2.3.9.2 Irregular grant of exemption on stock transfer

Section 6 of the CST Act provides that when any dealer claims exemption from payment of tax in respect of goods by reason of transfer of such goods to any other place of his business, outside the State, he may furnish to the AAs, a valid declaration in Form 'F' duly filled in and signed by the transferee along with evidence of dispatch of such goods failing which tax at the prescribed rate is to be

³⁶ (1) M/s Rajdhani Trading Agency (2) M/s East Arunachal Trade & Agency (3) M/s Domin Traders (4) M/s Menam Enterprises (5) M/s D.T. Trade House (6) M/s Associated Trade & Agency and (7) M/s D.T. Trade & Agency.

³⁷ ACT: Unit-D, Jorhat and Mangaldoi.

³⁸ ACT: Unit A,B,C,D of Guwahati, Silchar, Bongaigaon, Jorhat, Dhubri and Tezpur; ST: Karimganj, Jhalukbari, Kabaitory and North Lakhimpur.

levied. One Form-F may cover the transaction of one calendar month. Furnishing of Form 'F' is mandatory with effect from May 2002.

A dealer seeking registration is required to specify in the application for registration, the list of places of business in other States along with address of every such place and particulars of registration under the CST Act. Further, in case of stock transfer to consignment agents, copies of agreement are required to be furnished by the dealer for claiming exemption.

Examination of records revealed that in 72 cases the AAs allowed exemption on turnover of ₹ 172.75 crore for the periods 2005-06 to 2011-12 on the basis of Form-'F' furnished by the dealers. The grant of exemption was incorrect due to various reasons such as non-registration of consignee dealers in the concerned State, non-production of forms and production of defective forms. This resulted in non-levy of tax amounting to ₹ 18.56 crore including interest. Details are shown in the following table:-

Table-2.21

(₹ in crore)

Sl. No.	Name of Dealer or No. of cases	Period of a/cs	Turnover granted exemption irregularly	Tax leviable	Interest	Total of tax & interest
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	9 cases	2005-06 to 2010-11	12.49	0.68	0.41	1.09
Audit finding: The AAs while completing assessment in nine cases of five ³⁹ unit offices allowed exemption of stock transfer of goods valued at ₹ 26.23 crore though the stock transfer of ₹ 12.49 crore was not supported by Form 'F'. The exemption granted for ₹ 12.49 crore was irregular resulting in non-levy of tax amounting to ₹ 1.09 crore including interest of ₹ 0.41 crore.						
2.	13 cases	2005-06 to 2009-10	65.50	3.90	2.85	6.75
Audit finding: The AAs while finalising assessment in 13 cases of seven ⁴⁰ unit offices allowed exemption on turnover of ₹ 65.50 crore on the ground that this turnover was covered by Form-'F'. These Form-'F' contained transactions of more than one calendar month. As such, the exemption allowed was irregular, which resulted in non-levy of tax of ₹ 6.75 crore including interest.						
3.	35 cases	2005-06 to 2010-11	42.38	2.81	2.08	4.89
Audit finding: While completing assessments in 35 cases of 14 ⁴¹ unit offices the AAs allowed exemption on stock transfer of ₹ 42.38 crore which was supported by Form 'F'. These forms were defective on the grounds (i) forms declared invalid by the concerned State; (ii) forms were issued prior to transaction; (iii) only photocopies of forms were produced; (iv) acceptance of duplicate portion of form; (v) transactions relating to other periods; (vi) value of goods recorded tampered with; (vii) forms issued to other dealers etc. Thus, grant of exemption was incorrect which resulted in non-levy of tax of ₹ 4.89 crore including interest of ₹ 2.08 crore.						
4.	14 cases	2005-06 to 2008-09	52.01	4.01	1.75	5.76
Audit finding: The AAs allowed exemption on turnover of ₹ 52.01 crore in 14 cases of four ⁴² unit offices for transfer of goods to branches/consignment agents. The places to which branch transfers made were not included in the registration certificate of the dealers and in case of stock transfer to commission agents, the dealer did not submit relevant copies of agreements. This irregular						

³⁹ ACT: Unit- D of Guwahati, Silchar; ST: Diphu, Digboi and Mangaldoi

⁴⁰ ACT: Unit-D, Guwahati, Sibsagar, Golaghat, Jorhat and Silchar; ST: Karimganj and Digboi.

⁴¹ ACT: Unit-B,C,D, Guwahati, Sibsagar, Tezpur, Tinsukia, Golaghat, Jorhat, Silchar and Dhubri; ST: Naharkatia, Karimganj, North-lakhimpur and Digboi.

⁴² ACT: Unit-B, Guwahati and Tinsukia; ST: North-lakhimpur and Jhalukbari

exemption resulted in non-levy of tax of ₹ 5.76 crore including interest.						
5.	M/s PKG Import & Export Co.		0.37	0.03	0.04	0.07
Audit finding: Examination of records of M/s PKG Import & Export Co. registered under ACT, Unit-C, Guwahati revealed that the AA allowed exemption of stock transfer of ₹ 37.19 lakh supported by four Forms 'F' issued by a dealer ⁴³ of Arunachal Pradesh. However, cross-verification revealed that the dealer of Arunachal Pradesh, to whom stock transfer was made, was not registered in the concerned State. Grant of exemption was irregular, resulting in non-levy of tax of ₹ 0.07 crore including interest of ₹ 0.04 crore.						
Total	72 cases		172.75	11.43	7.13	18.56

The above observations on irregular acceptance of invalid/obsolete declarations without carrying out further verification with the information available online or otherwise indicates that the AAs were not adhering to the instruction of the CT issued in 1999.

Recommendation: The Department may re-iterate the instructions making it mandatory for the AAs to verify at least the information available online before accepting the declaration forms. Accountability may be fixed in cases where non-verification of the available information leads to short levy of tax.

2.3.9.3 Incorrect grant of exemption of export

As per Section 5 of CST Act, a dealer may claim exemption from payment of tax for sale in course of export provided the sales are supported by Form 'H' duly filled in and signed by the exporter along with evidence (bill of lading, custom certificate etc) of such export.

Examination of records revealed that the AAs while finalising assessment in nine cases of seven⁴⁴ unit offices for the periods 2004-05 to 2010-11 allowed exemption of turnover of ₹ 83.51 crore on the ground that the turnover of export was supported by Form 'H'. However, no records such as bill of lading, certificate from custom authority regarding crossing of goods beyond custom frontier of India for ₹ 83.08 crore were either found in case records or could be produced to audit. As such, grant of exemption was irregular resulting in non-levy of tax of ₹ 27.16 crore including interest.

2.3.9.4 Irregular grant of exemption of transit sale

Section 3(b) read with Section 6(2) of the CST Act provides that any subsequent sale of goods during their movement from one State to another effected by transfer of documents of title of such goods to a registered dealer shall be exempted from levy of tax provided such sale is supported by a certificate in Form E-I or E-II duly filled in and signed by the selling dealer along with duly filled in Form 'C'. It was

⁴³ M/s APA Trader, Itanagar

⁴⁴ ACT: Unit-C,D of Guwahati and Golaghat; ST: Naharkatia, Jhalukbari, Marigaon and Diphu

held⁴⁵ by the Hon'ble Supreme Court that where a dealer books goods to self without a purchaser and subsequently finds a purchaser and transfers title to the goods while the goods are in transit, he is eligible for exemption under the Act. The Hon'ble Supreme Court had in another case observed⁴⁶ that the dividing line between sales or purchase under Section 3(a) and those falling under Section 3 (b) is that in the former case the movement is under the contract whereas in the latter case the contract comes into existence only after the commencement and before termination of the inter-State movement of the goods.

- Examination of records revealed that the AAs exempted turnover of ₹ 33.45 crore of seven dealers for the periods from 2005-06 to 2010-11 from levy of tax on the ground that they effected sales in transit. However, verification of records revealed that the dealers did not submit Form-‘C’ / Form-E1 for ₹ 6.32 crore. As such grant of exemption of ₹ 6.32 crore was irregular resulting in non-levy of tax of ₹ 87.94 lakh including interest.
- Examination of records revealed that the AAs allowed exemption of turnover of ₹ 3.15 crore to four dealers for the periods 2005-06 to 2009-10 on the ground that the dealers effected sales in transit. Scrutiny of records revealed that the dealers had supplied goods against prior agreement and supply orders. This was in contravention of the requirement of Section 3 (b). Thus, the grant of exemption was irregular which resulted in non-levy of tax of ₹ 37.39 lakh including interest.

2.3.9.5 Non-completion of CST assessment

The CST (Registration and Turnover) Amendment Rules, 2005 (effective from October 2005) provide that the declarations in form ‘C/D/E-I/E-II/F/H’ shall be furnished to the prescribed authority within three months after the end of the period to which the declaration form or the certificate relates.

The CT, Assam instructed (between April 2009 and February 2012) the AAs to complete assessments of dealers registered under CST Act, whose turnover was ₹ 10 lakh or more for the periods 2005-06 and 2006-07; 2007-08 and 2008-09; 2009-10 and 2010-11 within September 2009, March 2010, March 2012 and June 2012 respectively.

Examination of records revealed that 46 dealers either did not submit declaration forms, bill of lading, custom certificates *etc.*, after completion of each quarter or submitted defective forms. However, these dealers claimed concessional rate of tax/exemption from payment of tax. The AAs also did not complete assessments till the date of audit inspite of instruction issued by the CT for completion of assessments. The dealers were liable to be taxed at the rate applicable for local sale.

⁴⁵ Tata Iron and Steel Co. Ltd vs S.R. Sarkar {1960-11 STC 665 (SC)}

⁴⁶ In M/s A&G Projects & Technologies Ltd Vs State of Karnataka in civil Appeal No.7233 of 2008.

Thus, non-assessment of these dealers resulted in non-raising of demand of ₹ 612.53 crore. Details are mentioned in the following table:-

Table-2.22

(₹ in crore)

Sl. No.	No. of dealers	Period of A/cs	Concessional rate of Tax/exemption claimed on turnover	Tax paid at concessional rate of tax	Tax payable	Short payment of tax	Interest leviable	Total of tax & interest
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	26	2006-07 to 2010-11	8,616.97	176.70	398.76	222.06	95.77	317.83
Audit findings: In nine ⁴⁷ unit offices, 26 dealers submitted returns disclosing turnover of ₹ 8,616.97 crore under CST Act and paid tax of ₹ 176.70 crore at concessional rate. However, the dealers submitted Form 'C' for ₹ 108.05 crore only in support of claim of concessional rate till the date of Audit (May-August 2014). In absence of Form 'C', the tax liability of dealer was ₹ 222.06 crore.								
2.	11	2008-09 to 2010-11	797.23	0	179.66	179.66	101.46	281.12
Audit findings: In six ⁴⁸ unit offices, 11 dealers claimed exemption on turnover of ₹ 797.23 crore as stock transfer and did not pay any tax. The dealers, however, did not submit declaration Form 'F' in support of claim till the date of audit (May-August 2014). In absence of Form 'F', the dealers were liable to pay tax of ₹ 281.12 crore including interest.								
3.	01	2008-09 to 2009-10	40.51	0	5.05	5.05	3.87	8.92
Audit findings: The dealer claimed exemption on turnover of ₹ 40.51 crore being transit sale. However, the dealer did not submit certificate in Form-E I and connected Form-'C' till the date of audit (August 2014). In absence of these documents, the dealer was liable to pay tax of ₹ 8.92 crore including interest.								
4.	03	2005-06 to 2009-10	23.21	0	1.67	1.67	1.65	3.32
Audit findings: In three ⁴⁹ unit offices, three dealers claimed exemption on turnover of ₹ 23.21 crore on the ground that the goods were exported. However, no documentary evidence such as Form 'H', bill of lading, custom certificates etc. were furnished by the dealers in support of claim till the date of audit (May-August 2014). In absence of these documents, the dealers were liable to pay tax of ₹ 3.32 crore including interest.								
5.	01	2009-10	19.95	0	0.80	0.80	0.39	1.19
Audit findings: In one ⁵⁰ unit office, one dealer claimed exemption on turnover of ₹ 19.95 crore being supported by form 'F' having transaction for multiple months. This resulted in non-payment of tax of ₹ 1.19 crore including interest.								
6.	04	2007-08 to 2010-11	2.22	0.04	0.13	0.09	0.06	0.15
Audit findings: In two ⁵¹ unit offices, four dealers claimed concessional rate of tax on turnover of ₹ 2.22 crore being supported by defective form 'C'. The defects were due to transaction made prior to registration; forms declared invalid by Govt. of Nagaland, etc. Hence, claim of concessional rate of tax on defective forms was irregular and resulted in short payment of tax of ₹ 0.15 crore including interest.								
Total	46		9,500.09	176.74	586.07	409.33	203.20	612.53

The AAs could have detected the same if they had completed the assessment resulting in non-raising of demand.

Recommendation: The department may ensure that all the dealers submit declaration forms/other documents as per provision of the Act and assessment may be completed in a timebound manner.

⁴⁷ ACT: Unit-C, D of Guwahati, Jorhat, Golaghat, Sibsagar, Silchar and Tezpur; ST: Karimganj and Digboi

⁴⁸ ACT: Unit-C, D of Guwahati, Jorhat, Dhubri, Golaghat and Silchar.

⁴⁹ ACT: Unit-B, C of Guwahati and Tezpur.

⁵⁰ ACT: Unit-D of Guwahati.

⁵¹ ACT: Unit-D of Guwahati and Bongaigaon.

2.3.10 Internal Control Mechanism

Internal control is an integral component of an organisation's management processes established in order to provide reasonable assurance that organisation's operations are carried out effectively, economically and efficiently. Deficiencies in internal control mechanism of the Taxation Department are discussed in the following paragraphs:

2.3.10.1 Internal Audit

Internal Audit, vital component of the internal control mechanism, functions as 'eyes' and 'ears' of the Department and is a vital tool which enables the management to assure itself that the prescribed systems are functioning reasonably well.

Audit observed that an Internal Audit Wing (IAW) was created by the Government in May 1998 with staff strength of eight internal auditors in the office of the CT, Assam. However, it was found that no internal audit was conducted in the Department during the period covered by this Performance Audit.

The Department stated that the wing was defunct at the time of audit.

2.3.10.2 Deficiency in reports and returns

A dealer is required to submit annual return in Form-14⁵² duly filled in all the relevant annexures attached to the return such as local purchase and outside purchase (tax rate wise), closing stock, manufacture accounts, refunds of claim (if any) etc. Moreover, dealers whose turnover exceed rupees one crore are required to submit audited accounts prepared by a qualified chartered accountants in Form-47⁵³ alongwith annual return on or before 31 October of each year relating to previous years transactions. Besides, a dealer who imports goods from outside the State is required to submit utilisation statement of Delivery Note in Form-61⁵⁴ or Road Permit in Form-62⁵⁵ as the case may be, showing all the details of goods purchased. In case of purchase of goods with concessional rate of tax or stock transfer from outside the State, the dealer is required to submit utilisation of declaration forms to the prescribed authority.

In course of audit, it was seen that most of the dealers did not submit returns duly filled in. The return contains Annexure-I to V. Annexure-I indicates the position of purchase within and outside the State according to rate of tax, opening and closing stock of the goods. However, most of the dealers did not fill up Annexure-I showing rate-wise purchase of goods from within and outside the State separately.

⁵² Form 14 relates to submission of Annual Return under AVAT Act.

⁵³ Form 47 relates to Certificate of Audit of Accounts by Chartered Accountants.

⁵⁴ Form 61 relates to delivery note for purchase of taxable goods from outside state for resale.

⁵⁵ Form 62 relates to Road Permit for purchase of goods for personal consumption and utilisation in manufacturing purposes.

In absence of the information, actual purchase of goods *vis-a-vis* rate-wise sale of goods could not be ascertained. This was fraught with the risk of evasion by applying lower rate of tax.

Further, it was noticed that though the dealers submitted statement of utilisation against Delivery Notes, Road Permits, Declaration Forms, in most of the cases the dealers did not mention names of goods or value of goods or invoice numbers and dates of invoice. In absence of this, submission of utilisation statement was of no use as the information submitted was not sufficient to prevent evasion of tax. The details are shown in the following table:

Table-2.23

Sl. No.	Book No./Road permit No./Delivery Note No.	Invoice No. & date	Value(₹)	Name of goods
(1)	(2)	(3)	(4)	(5)
1.	126614/3165326	5683 to 5686, 30/10/10	2,46,368	Not mentioned
2.	126614/3165327	5800 to 5804, 4/11/10	3,20,743	
3.	126614/3165330	101632	3,28,477	
4.	126614/3165331	Not mentioned	4,70,230	
5.	126614/3165332	7414 to 7417, 7444, 31/12/10	5,85,704	
6.	111962/2799026	Not mentioned	2,58,46,165	
7.	111962/2799033	Not mentioned	1,66,15,392	
8.	114087/2852153	Not mentioned	2,76,92,320	
9.	0000156	82800093 dt.Nil	37,79,193	
10.	0000158	DS/70271	10,61,780	

The Department while accepting deficiency in return in respect of medium and small dealers stated that they insisted and examined utilisation statement of delivery notes *etc.*, before issuance of new declaration forms. The reply of the Department was not tenable as the Audit has specifically mentioned in table above regarding acceptance of defective utilisation statement of statutory forms.

2.3.10.3 Absence of documentation

With the introduction of VAT audit, assessments are made at different levels such as Unit Offices, Zonal DCT and Central VAT Audit Cell. The Zonal DCT conducts some of the assessments from the Unit Offices falling under his jurisdiction. The Central VAT Cell conducts assessment in respect of all units of Assam, if selected by CT, Assam. Case records are accordingly sent to these wings from the unit office for assessment.

It was noticed that there was no proper documentation regarding sending of case records and receipt of the same after assessment, in the absence of which, no audit trail of the movement of files could be maintained in the unit offices. During the course of the Audit, it was found that some required files could not be produced within reasonable time as the files were not traceable and in absence of audit trail, the unit offices were not sure whether these files had been sent to other Offices for assessment.

2.3.10.4 Discrepancy in information furnished

I. The position of newly registered dealers as furnished by the CT office and the unit offices are shown in the following table:

Table-2.24

Name of unit	Information Furnished by	Number of newly registered dealers				
		2008-09	2009-10	2010-11	2011-12	2012-13
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Hojai	CT Office	162	273	383	292	211
	Unit office	155	282	378	256	208
Silchar	CT Office	311	488	530	546	585
	Unit office	355	492	517	556	544
Guwahati Unit-A	CT Office	460	612	684	644	528
	Unit office	273	323	358	378	335
Guwahati Unit-C	CT Office	634	936	1,223	1,230	1,112
	Unit office	135	222	768	948	1,038

Source: Information furnished by the Department.

II. The position of number of assessments completed by Central VAT Audit Team (CVAT) as furnished by CVAT cell and CT office are shown in the following table:

Table-2.25

Year	No. of assessments completed	
	As communicated by CT office	As information furnished by CVAT cell
2008-09	369	267
2009-10	171	171
2010-11	234	182
2011-12	130	163
2012-13	314	244

Source: Information furnished by the Department.

Audit observed that there were discrepancies in figures appearing in the above tables, which indicates:

- There was no co-ordination between unit offices and CT Office.
- There was lack of proper monitoring mechanism on the part of CT office.

The Department accepted the discrepancy and stated that the information furnished by CVAT cell was the actual figure.

2.3.10.5 Non-maintenance of database of dubious/risky/absconding dealers

Maintenance of database of dubious/risky/absconding dealers was essential for the Department so that unscrupulous dealers may not become absconding without clearing their outstanding dues and start business somewhere else with new registration. Besides, these information could be uploaded in the TINXSYS website to alert the Taxation Departments of other States.

However, it was observed that the Department did not maintain such database to black list these dealers and circulate their names across the State.

Improvement in these areas would certainly help the Department in ensuring better controls and arresting leakage of revenue.

2.3.11 Conclusion

- There were huge arrears in scrutiny of returns and shortfall in assessment of selected cases even when the numbers of selected cases were far below the norms fixed by the Department.
- The considerably high tax demands arising out of the abysmally low percentage of scrutiny of returns/assessments carried out under AVAT and CST Acts pointed towards a need to review the mechanism for submission of returns to make it foolproof.
- The dealers were allowed ITC claims from the payable output tax without furnishing details of dealers from whom purchases were made from within the State. The dealers were also taking undue benefit of ITC against the purchase of goods from outside the State.
- DDOs were not submitting the returns in Form 35 showing the bill-wise deduction of tax at source and details of tax deposited as required under the AVAT Rules. Besides, the Department did not have a database of DDOs who were responsible for deduction and deposition of tax deducted at source. However, it was found in many cases that the AAs adjusted tax deducted at source without supporting deposit particulars.
- In spite of instruction of the CT, Assam, proper examination and cross verification of declarations forms were not being done resulting in leakage of revenue. TINXSYS, despite being a central repository of declaration forms was not used by the AAs while finalising the assessments.
- The internal control mechanism in the Department was weak as evident from (i) absence of an internal audit, (ii) non-maintenance of documentation on movement of files in the unit offices, (iii) production of different figures by the unit/CT Office etc.

2.3.12 Summary of recommendations

The GOA/Taxation Department may consider implementing following recommendations:

- A well laid out system for timely completion of the scrutiny of returns and assessments.
- Specifying/notifying the processes which do not come under ‘manufacture’ considering the judicially pronounced cases.

- Include price mechanism of manufactured goods based on Cost Analysis in AVAT Act and Rules.
- Prescribing that the DDOs should submit TDS returns in a time bound manner.
- Issuing instruction to AAs to record *challans*/ evidence of deposit of tax in the assessment order.
- Making it mandatory for the AAs to verify at least the information available online before accepting the declaration forms and fixing accountability in cases where non-verification of the available information leads to short levy of tax.
- Strengthening the internal control mechanism by putting in place an effective internal audit facility in the Department.

2.4 Other audit observations

Examination of records relating to sales/value added tax (VAT)/entry tax and agricultural income tax in the Taxation Department revealed several cases of non-observation of provisions of Acts/Rules/departmental orders and other cases as mentioned in the succeeding paragraphs. These cases are illustrative and are based on a test check carried out by Audit. Some of the omissions on the part of assessing officers (AO) are pointed out in audit each year, but not only do the irregularities persist; these remain undetected till next audit is conducted. It is a matter of concern as these observations are also sent to the higher authorities including the Government each time these are detected. Government and the Department need to strengthen measures to effectively monitor the cases, arrest recurrence of the irregularities and improve the internal control system including internal audit so that such mistakes and omissions are detected, corrected and avoided.

SECTION : B

ENTRY TAX

2.5 Concealment of import purchase turnover under the Assam Entry Tax Act led to non-realisation of tax of ₹ 107.01 lakh including interest

[Assistant Commissioner of Taxes (ACT), Golaghat; Superintendent of Taxes (ST), Morigaon; October - November 2013; July – August 2013]

As per the Assam Entry Tax (AET) Act, 2001 and 2008, a registered dealer liable to pay tax is required to submit to the assessing officer his monthly statement of all such purchase along with a copy of the treasury *challan* showing full payment of tax payable on the purchase value of goods disclosed in the statement. The statement is to be furnished before the expiry of the next succeeding month. As per Section 39 of the Assam Value Added Tax (AVAT) Act, 2003, no assessment⁵⁶ shall be made after the expiry of five years from the end of the year to which the assessment relates. However, in cases where specific information is available, assessment can be made on best judgment basis under Section 40 of the AVAT Act as a special case within a period of eight years. Interest⁵⁷ at 1.5 *per cent* per month is leviable for delayed payment of tax.

2.5.1 During examination of the case records of M/s Punj Lyod Ltd, Golaghat in the Office of the ACT, Golaghat, it was noticed that the dealer was registered under the AET Act and paid entry tax of ₹ 31.76 lakh in April 2006 on import of taxable

⁵⁶ Assessments under the Assam Entry Tax Act are to be conducted following same provisions as incorporated in the Assam Value Added Tax Act.

⁵⁷ Notified vide Government notification dated 28 February 2011.

goods from outside the State of Assam for the year 2005-06. Further verification revealed that the dealer also imported goods (DG sets, hot mix plant, pumpsets, weighing machines etc) valued at ₹ 12.17 crore during the above year by utilising declaration forms. The dealer neither paid entry tax on the above turnover nor disclosed these in the returns submitted under the AET Act. Though the information regarding import of goods taxable under AET Act was available in the case records, the assessing officer failed to co-relate the records and raise demand notice for recovery of the tax involved. This resulted in non-realisation of entry tax of ₹ 49.81 lakh, on which interest of ₹ 23.91 lakh (upto the period of Audit) was additionally leviable.

2.5.2 Similarly, during examination of the case records of M/s Hindustan Paper Corporation Ltd., Morigaon in Office of the ST, Morigaon, it was noticed that the dealer submitted monthly statement of purchase of ‘Bamboo’, ‘Coal’, ‘Chemicals’, ‘Pumps’ and ‘PVC Pipes’ of ₹ 35.39 crore for the year 2007-08 and paid entry tax of ₹ 1.24 crore. However, cross verification of Central Sales Tax case records revealed that in addition to the above items, the dealer also imported ‘lime’ valued at ₹ 5.86 crore from outside the State of Assam during the same year by utilising four declaration forms ‘C’⁵⁸ which were issued to the dealer by the Office of the ST, Morigaon. Though the information on import of ‘lime’ was available in the case records, the assessing officer failed to co-relate the returns with the utilisation statement of declaration forms. Non-detection of concealment of purchase turnover of lime, thus, resulted in evasion of entry tax of ₹ 23.44 lakh⁵⁹, on which interest of ₹ 9.85 lakh (from 1 March 2011 upto the period of Audit) was additionally leviable.

Scope of recovery in the above cases is remote as the cases had become barred by limitation of time. However, the assessing officers have the only option of resorting to assessing the dealers under Section 40 of the AVAT Act as a special case to recover the tax due alongwith the interest accrued.

On being pointed out, the Department stated (July 2014) that in respect of M/s Punj Lloyd Ltd assessments were completed levying tax of ₹ 17.85 lakh and demand notice had been issued accordingly. Report on realisation is awaited (October 2014). As regards the other dealer, the Department stated that in pursuance to the audit observation assessment was completed raising a demand of ₹ 35.05 lakh. The assessment had been rectified as per the orders of the appellate authority revising the demand as ₹ 23.44 lakh (excluding the interest amount of ₹ 11.61 lakh); of which the dealer had paid ₹ 8.76 lakh. Report on recovery of the balance amount is awaited (October 2014). However, the exclusion of the interest was irregular as the Government had notified levy of interest from March 2011 onwards and the calculation of the interest in the audit observation had been made accordingly. Report on further developments is awaited (November 2014).

⁵⁸ Bearing numbers 590651, 590652 & 590653 issued to M/s Meghalaya Lime and Mineral Industries, Meghalaya and 590258 issued to M/s RNB Minerals and Chemicals Ltd, Meghalaya.

⁵⁹ Calculated at four *per cent* on ₹ 5.86 crore.

The cases were reported to the Department/Government between September and December 2013 and followed up in June 2014; their replies have not been received (November 2014).

2.6 Non-levy of entry tax on purchase of tobacco products under the Assam Entry Tax Act led to non-realisation of tax of ₹ 21.17 lakh including interest

[SsT, Goalpara and Hojai; October 2012 and June 2012]

As per the AET Act, the item 'Tobacco' was taxable at the rate of 10 *per cent* with effect from February 2005. Besides for delayed payment of tax, interest⁶⁰ at 1.5 *per cent* is leviable. As per Section 39 of the AVAT Act, no assessment⁶¹ shall be made after the expiry of five years from the end of the year to which the assessment relates. However, in cases where specific information is available, assessment can be made on best judgment basis under Section 40 of the AVAT Act as a special case within a period of eight years.

During examination of records in the above Offices, it was noticed that two dealers M/s PremChand Champalal (under ST, Goalpara) and M/s Chunilal Ahuja (under ST, Hojai) imported 'tobacco' from outside the State valued at ₹ 1.65 crore⁶² during the year 2005-06 as per the utilisation of delivery notes/monthly returns submitted by these dealers. Though the information on import of taxable goods was available in the case records, the assessing officers did not initiate any action to levy entry tax of ₹ 16.52 lakh. Besides, interest of ₹ 4.65 lakh at 1.5 *per cent* per month was also leviable.

On being pointed out, both the SsT accepted the audit observation and stated (January and March 2013) that tax of ₹ 17.07 lakh had been levied of which the dealer under ST, Goalpara had paid ₹ 6 lakh. The reply was silent as to the reasons for non-levy of interest while raising demand of tax. As regards the dealer under ST, Hojai it was reported that as the dealer failed to pay the dues, recovery proceedings had been initiated and ₹ 20,000 had been recovered through recovery proceedings. Further developments in the cases are awaited (November 2014). Though the cases had become barred by limitation of time, timely intervention by Audit has resulted in detection of evasion and recovery of tax.

The case was reported to the Department/Government between July and November 2012 and followed up in June 2014; their replies have not been received (November 2014).

⁶⁰ Notified vide Government notification dated 28 February 2011.

⁶¹ Assessments under the Assam Entry Tax Act are to be conducted following same provisions as incorporated in the Assam Value Added Tax Act.

⁶² M/s PremChand Champalal (₹ 115.02 lakh during 2005-06) and M/s Chunilal Ahuja (₹ 50.15 lakh during 2005-06 and 2006-07).

2.7 Application of lower rate of tax resulted in short realisation of tax of ₹ 19.68 lakh including interest

[ACT, Unit – A, Guwahati; August – October 2013]

As per Section 40 of the AVAT Act, 2003 if the assessing officer is satisfied that whole or any part of the turnover of a dealer in respect of any period has been assessed at a rate lower than the rate at which it was assessable, he may within eight years from the end of the relevant year make a reassessment of the dealer. Besides for delayed payment of tax, interest⁶³ at 1.5 *per cent* is leviable. Under the AET Act, ‘electrical goods of all types’ and ‘chassis of motor vehicles’, ‘cement’ and ‘pump sets of any types’ are taxable at four *per cent* from 4 January 2010 and 14 September 2009 respectively.

During examination of records in the above Office, it was noticed that a dealer M/s Calcom Cements India Ltd. was assessed for the years 2009-10 and 2010-11 in December 2011 by determining taxable import as ₹ 31.34 crore⁶⁴ and ₹ 34.22 crore⁶⁵ for the said years respectively on which tax of ₹ 84.96 lakh and ₹ 79.76 lakh was assessed which was paid by the dealer. Further scrutiny of the imports revealed that the dealer imported cement, electrical goods, transformer, chassis of motor vehicle, pump sets etc. of ₹ 6.72 crore which were classified as taxable at two *per cent* instead of the revised rate of four *per cent* effective from various dates. The application of lower rates of tax has resulted in short levy of tax by ₹ 13.43 lakh. Besides, interest of ₹ 6.25 lakh (calculated upto the period of Audit) was also leviable due to non-payment of tax on time.

On being pointed out, the Department while admitting the audit observation stated (July 2014) that the dues arising out of classification of the items under lower rate of tax had been adjusted against excess tax paid by the dealer.

The case was reported to the Department/Government in November 2013 and followed up in June 2014; their replies have not been received (November 2014).

⁶³ Notified vide Government notification dated 28 February 2011.

⁶⁴ Goods valued as ₹ 11.14 crore @ four *per cent* goods and good valued as ₹ 20.20 crore @ two *per cent*.

⁶⁵ Goods valued as ₹ 5.66 crore @ four *per cent* goods and good valued as ₹ 28.56 crore @ two *per cent*.

2.8 Non-registration of a dealer under the AET Act and consequent non-levy of entry tax on purchase of goods taxable under AET Act led to non-realisation of tax of ₹ 5.92 lakh including interest

[ACT, Tinsukia; July - September 2012]

As per Section 38 of the AVAT Act, if the prescribed authority is satisfied that a dealer who has been liable to pay tax under this Act, in respect of any period has failed to get himself registered, he shall proceed to assess on best judgment basis the amount of tax due from the dealer for any periods. As per Section 39 of the AVAT Act, no assessment⁶⁶ shall be made after the expiry of five years from the end of the year to which the assessment relates. However, in cases where specific information is available, assessment can be made on best judgment basis under Section 40 of the AVAT Act as a special case within a period of eight years. ‘Chemical’ is taxable at two *per cent* under the AET Act from 28 February 2005.

During examination of records in the above Office, it was noticed that a dealer M/s Vachan Foams (manufacturer of PU foams) imported ‘chemicals’ from outside the State valued at ₹ 2.33 crore⁶⁷ between the years 2005-06 and 2008-09 as per the utilisation of declaration forms ‘C’ submitted by the dealer. Despite the fact that the item ‘chemicals’ was taxable under the AET Act, the dealer neither applied for registration under the AET Act nor paid the due tax on the turnover of ₹ 2.33 crore. Though the information on import of taxable goods was available in the case records, the assessing officer did not initiate any action to register the dealer and assess the entry tax payable on best judgment basis as per the extant provisions. This resulted in non-registration of a dealer coupled with non-levy of tax of ₹ 4.66 lakh. Besides, interest of ₹ 1.26 lakh at 1.5 *per cent* per month was also leviable.

On being pointed out, the ACT intimated (January 2014) that in view of audit observation, tax, interest and penalty of ₹ 11.14 lakh has been levied, of which, the dealer had paid an amount of ₹ 2.78 lakh. The Department in their reply stated (July 2014) that the appellate authority had set aside the assessments made for the years 2005-06 and 2006-07 (tax involved ₹ 5.11 lakh) as those years were barred by limitation of time. Thus, due to timely intervention by audit evasion of tax by the dealer could be detected. However, revenue pertaining to the years 2005-06 and 2006-07 is lost due to non-initiation of timely action by the authorities. Further developments had not been reported (November 2014).

The case was reported to the Department/Government between October 2012 and followed up in June 2014; their replies have not been received (November 2014).

⁶⁶ Assessments under the Assam Entry Tax Act are to be conducted following same provisions as incorporated in the Assam Value Added Tax Act.

⁶⁷ 2005-06 = ₹ 36.53 lakh; 2006-07 = ₹ 67.73 lakh; 2007-08 = ₹ 84.47 lakh and 2008-09 = ₹ 44.35 lakh.

2.9 Eight dealers failed to pay tax/paid tax belatedly on which interest of ₹ 1.30 crore though leviable was not levied by the assessing officers

[ACT, Unit – A, Guwahati; August – October 2013]

The AET Act, 2001 and 2008, states that a registered dealer is liable to pay tax is required to submit to the assessing officer his monthly statement of all such purchase along with a copy of the treasury *challan* showing full payment of tax payable on the purchase value of goods disclosed in the statement. The statement is to be furnished before the expiry of the next succeeding month. For delayed payment of tax, interest⁶⁸ at 1.5 *per cent* per month is to be levied.

During examination of records in the above Office, it was noticed that in case of eight dealers, tax of ₹ 2.18 crore was paid belatedly between April 2011 and June 2013. Tax of ₹ 2.52 crore remained unpaid for various periods falling

Name of dealer	Period/date of assessment	Tax details (₹ in lakh)	Paid/unpaid	Interest leviable (₹ in lakh)
M/s BSNL	April & May 2005/ 29-9-2012	119.09	Paid between 11/12 and 2/13	40.73
M/s Gupta's	March 2005, 2005-06 and 2006-07/ 15-5-2012	150.74	Unpaid	33.39
M/s K D Coke	2005-06 and 2007-08/ 5-12-2010	49.87 (2005-06) 78.98 (2007-08)	Of ₹ 128.85 lakh, ₹ 56.31 lakh for 2007-08 has been paid between 4/11 and 6/11	29.81
M/s Seven Sisters Trade & Distilleries Pvt Ltd	2006-07/ 31-3-2012	38.08	Unpaid, recovery certificate issued in 1/13	12.81
M/s Vodafone Essar Spacetel Ltd	2007-08/ 6-3-2013	17.12	Paid on 5-4-2013	6.57
M/s Dishnet Wireless Ltd	2008-09/ 6-6-2013	9.41	Paid on 18-6-2013	3.96
M/s Bharat Heavy Electricals Ltd	2007-08/ 11-10-2012	11.86	Paid on 3-10-2012	2.14
M/s Dudhoria Brothers	2006-07/ 27-3-2012	2.33	Paid on 31-3-2012 and 16-5-2012	0.47
	2007-08/ 27-3-2012	2.58	Paid on 16-5-2012	0.57
Total				130.45

between 2005-06 and 2008-09. Though interest of ₹ 1.30 crore was leviable at 1.5 *per cent* per month till the date of payment of tax/ assessment, the assessing officers did not levy it while assessing the dealers between December 2010 and June 2013. This resulted in non-levy of interest of ₹ 1.30 crore as shown in the table.

On being pointed out, the Department stated (July 2014) the following:

In respect of M/s BSNL and M/s Seven Sisters Trade and Distilleries Pvt Ltd, the assessments were made levying interest as pointed out by audit. However, the appellate authority set-aside the assessment on the ground that since the period of assessment was prior to 28 February 2011 (date of interest provision coming into

⁶⁸ Notified vide Government notification No. LGL. 3/2007/97 dated 28 February 2011.

force) interest was not leviable. Fact remains that interest is leviable on quantum of tax remaining unpaid at rates notified by the Government from time to time. Since interest provision was made applicable from 28 February 2011, interest is leviable on unpaid tax as on that date. The replies of the Commissioner of Taxes, Assam against another dealer (M/s K D Coke) is also in the same lines wherein it was clearly stated that interest was leviable if there were tax dues as on 28 February 2011. Thus, the Department needed to re-examine the contention of the appellate authority in the above two cases.

In respect of M/s Gupta's, the assessments were completed raising a demand of ₹ 1.24 crore. Being aggrieved the dealer filed a case in the Supreme Court of India which had directed (5 May 2014) the dealer to deposit ₹ 75 lakh within three months. However, the dealer had not remitted any dues till date of reply (22 July 2014). Further developments had not been intimated (October 2014).

In respect of the remaining five dealers⁶⁹, assessments were revised raising demand of ₹ 16.62 lakh. Of this, ₹ 9.27 lakh had been remitted by three dealers⁷⁰. M/s Dishnet Wireless Ltd had filed a revision petition while in case of M/s Bharat Heavy Electricals Ltd recovery proceedings had been initiated. Report on further developments is awaited (November 2014).

The cases were reported to the Department/Government in November 2013 and followed up in June 2014; their replies have not been received (November 2014).

2.10 Completion of assessment solely based on the information available with the assessing officer without co-relating with other records resulted in short levy of entry tax of ₹ 24.29 lakh including interest

[ACT, Nagaon; November - December 2012]

Under Section 40 of the AVAT Act, if the assessing officer is satisfied that whole or any part of the turnover of a dealer in respect of any period has been assessed at a rate lower than the rate at which it was assessable, he may within eight years from the end of the relevant year make a reassessment of the dealer. Besides for delayed payment of tax, interest⁷¹ at 1.5 *per cent* is leviable.

Mention was made in paragraph 2.45 of the Report of the Comptroller and Auditor General of India for the year ended 31 March 2012, (Revenue Sector), Government of Assam regarding non-completion of the assessments of a dealer M/s R J Cement Industries Ltd. for the years 2006-07 and 2007-08 by the assessing officer. Tax

⁶⁹ M/s K D Coke, M/s Vodafone Essar Spacetel Ltd, M/s Dishnet Wireless Ltd, M/s Bharat Heavy Electricals Ltd and M/s Dudhoria Brothers.

⁷⁰ M/s K D Coke, M/s Vodafone Essar Spacetel Ltd and M/s Dudhoria Brothers.

⁷¹ Notified vide Government notification dated 28 February 2011.

impact of ₹ 7.91 lakh for those two years was worked out by comparing the declared turnover i.e. 'Nil' and the utilisation of road permits totalling ₹ 98.83 lakh.

During examination of records in the above Office in December 2012, it was noticed that assessment for the year **2007-08** had been completed in February 2012. From the recitals of the assessment order sheet, it was noticed that the assessing officer did not accept the return of the dealer and mentioned that "*as per information available with us (i.e. utilisation of road permits) the dealer imported items worth ₹ 42.03 lakh taxable at eight per cent during the period*". The assessment was completed accordingly levying tax of ₹ 3.36 lakh⁷². Further, audit analysis of the Audited Accounts appended with the return of the dealer available in the case records, however, revealed that during 2007-08 the dealer disclosed import of 'clinker' and 'limestone' aggregating ₹ 2.50 crore and ₹ 1.48 crore respectively on which tax of ₹ 21.83 lakh⁷³ was leviable. Thus, completion of assessment solely based on information available with the assessing officer without co-relating the same with other available records resulted in short levy of tax of ₹ 18.47 lakh (₹ 21.83 lakh - ₹ 3.36 lakh). Besides, interest of ₹ 5.82 lakh was additionally leviable.

On being pointed out, the Department stated (July 2014) that assessment had been completed raising demand of ₹ 17.03 lakh (including interest and penalty) after adjusting ₹ 3.36 lakh already paid by the dealer. As the dealer failed to pay the dues, recovery proceedings had been initiated (July 2014). Report on further developments had not been received (November 2014).

The case was reported to the Department/Government in January 2013 and followed up in June 2014; their replies have not been received (November 2014).

SECTION : C

AGRICULTURAL INCOME TAX

2.11 Incorrect allowance of set off of loss resulted in non-realisation of tax of ₹ 2.32 crore including interest

[Agricultural Income Tax Officer (AITO), Assam; March 2013]

Under the provision of the Assam Agricultural Income Tax (AAIT) Act, 1939 (as amended from time to time) the loss sustained by any assessee in agricultural income for any year is allowed to be carried forward for set off against the profits or gains of the following years. However, to avail such benefit of set off, the return of loss for any year has to be filed by 31 December of the relevant assessment year.

⁷² Out of the amount of ₹ 7.91 lakh commented upon in Audit Report for the year 2011-12.

⁷³ Clinker worth ₹ 2.50 crore taxable at four per cent = ₹ 9.99 lakh; Limestone worth ₹ 1.48 crore taxable at eight per cent = ₹ 11.84 lakh. Thus, total tax leviable = ₹ 9.99 lakh + ₹ 11.84 lakh = ₹ 21.83 lakh.

Further, loss was allowed to be carried forward only upto six years till 31 March 2002 which was reduced to three years from 1 April 2002⁷⁴.

During examination of records in the above Office, it was observed that in 11 cases⁷⁵ the AITOs while completing the assessments between June 2009 and December 2011 for the years falling between 2005-06 and 2010-11 allowed set off of losses aggregating ₹ 4.58 crore⁷⁶ and finalised the assessments accordingly. However, Audit scrutiny of the case records of the above 11 assessees revealed that in two cases⁷⁷ there were no losses to be carried forward, in four cases⁷⁸ the dealers submitted the claims after the prescribed date of 31 December, in three cases⁷⁹ the claims pertained to periods earlier than three/six years from the year of assessments while in two cases⁸⁰ set off was allowed in excess of what was admissible. Thus, the claims of set off in the above 11 cases should have been disallowed by the AITOs and the turnovers brought under tax which was not done. The irregular allowance of set off resulted in non-levy of tax of ₹ 2.32 crore including interest.

On being pointed out, the Department stated the following:

- Assessments in respect of four assessees⁸¹ had been revised by allowing set off of loss sustained during other years.
- Assessments had been revised in respect of six assessees⁸² raising an additional demand of ₹ 1.06 crore; of which ₹ 17.17 lakh had since recovered. For recovery of the balance amount of ₹ 88.76 lakh, recovery proceedings had been initiated. Report on further developments is awaited (November 2014).
- In respect of M/s Satyanarayan Tea Co (P) Ltd, revised assessments had been made as per the orders of the appellate authority and in line with the assessments made under Income Tax Act.

⁷⁴ Government notification No. LGL 22/2002/12 dated 7 May 2002.

⁷⁵ (1) M/s Rossel Tea Ltd {Assessment Year (AY) 2008-09}; (2) M/s Jatinga Tea Ltd (AY 2010-11); (3) M/s Bhaskar Tea and Industries Ltd (2008-09); (4) M/s Barphukan Tea Co Ltd (AY 2007-08); (5) M/s Barbheta Estate Pvt Ltd (AY 2007-08); (6) M/s Jalan Golaghat Tea Co Pvt Ltd (AY 2007-08); (7) M/s New Manas Tea Estate Pvt Ltd (AY 2008-09); (8) M/s The Jorehaut Group Ltd (AY 2005-06); (9) M/s Grab Tea Co (AY 2007-08); (10) M/s Satyanarayan Tea Company Pvt Ltd (AY 2008-09); and (11) M/s Jalannagar Dev Pvt Ltd (2007-08).

⁷⁶ Amount of set off allowed in the same sequence as at footnote No. 2 above – (1) ₹ 234.52 lakh; (2) ₹ 88.86 lakh; (3) ₹ 31.36 lakh; (4) ₹ 7.46 lakh; (5) ₹ 15.03 lakh; (6) ₹ 3.54 lakh; (7) ₹ 27.94 lakh; (8) ₹ 17.06 lakh; (9) ₹ 22.28 lakh; (10) ₹ 4.75 lakh; and (11) ₹ 5.47 lakh.

⁷⁷ M/s Rossel Tea Ltd and M/s The Jorehaut Group Ltd.

⁷⁸ M/s Jatinga Tea Ltd; M/s Bhaskar Tea and Industries Ltd; M/s Barphukan Tea Co Ltd – besides, loss suffered in 2002-03 was irregularly set off from the assessments of 2007-08 (more than three years); M/s Satyanarayan Tea Company Pvt Ltd.

⁷⁹ M/s Barbheta Estate Pvt Ltd; M/s Jalan Golaghat Tea Co Pvt Ltd and M/s Grab Tea Co.

⁸⁰ M/s Jalannagar Dev (P) Ltd. and M/s New Manas Tea Estate

⁸¹ (1) M/s Rossel Tea Ltd, (2) M/s Barphukan Tea Co Ltd, (3) M/s Barbheta Estate Pvt Ltd and (4) M/s Grab Tea Co.

⁸² (1) M/s Jatinga Tea Ltd, (2) M/s Bhaskar Tea and Industries Ltd, (3) M/s Jalan Golaghat Tea Co Pvt Ltd, (4) M/s New Manas Tea Estate Pvt Ltd, (5) M/s The Jorehaut Group Ltd and (6) M/s Jalannagar Dev Pvt Ltd.

The case was reported to the Department/Government between April 2012 and April 2013 and followed up in April 2014; their replies have not been received (November 2014).

2.12 Non-application of new methodology of assessment resulted in short levy of tax of ₹ 24.08 lakh including interest

[*AITO, Assam; March 2013*]

As per Section 8B (inserted in February 2009) of the AIT Act in case of an assessee, being a company, which derives income from cultivation, manufacture and sale of tea, if the agricultural income tax payable under this Act on the 60 per cent of the portion of agricultural income computed as per provision of the Income Tax Act, 1961 is less than 10 per cent of the 60 per cent of the book profit computed in the manner as referred to in Section 115JB of the Income Tax Act, 60 per cent of such book profit shall be deemed to be the agricultural income for the purpose of levy of agricultural income tax at the rate of 10 per cent revised to 18 per cent from September 2010. Further, for non-payment of tax within the prescribed dates, interest at the rates of 1.5/2 per cent is also leviable.

During examination of records in the above Office it was observed that while completing the assessments of three assesseees M/s ITP Limited, M/s Tangani Tea Co Limited and M/s Nidhi Packers Pvt Limited between July 2010 and February 2012 for the year 2009-10, the AITO determined the agricultural income as 'Nil', 'Nil' and ₹ 11,007 respectively by calculating 60 per cent of the agricultural income as per provision of the Income Tax Act. It was observed that though the Section 8B had been inserted in February 2009 which required comparison between agricultural income as per the Income Tax Act and the book profit to determine the taxable income, the AITO did not do so. Examination of the balance sheets appended with the returns of the assesseees, however, revealed that 10 per cent of the 60 per cent of the book profit in the above three cases were ₹ 9.82 lakh, ₹ 1.80 lakh and ₹ 2.85 lakh respectively which were higher than the 60 per cent of the agricultural income as per the Income Tax Act and thus, 60 per cent of the book profit should have been determined as the taxable income by the AITO and tax levied accordingly. Failure to do so resulted in non/short levy of tax of ₹ 14.44 lakh⁸³ on which interest of ₹ 9.64 lakh was additionally leviable.

On being pointed out, the Department stated (June 2014) that assessments had been revised raising a demand of ₹ 16.82 lakh⁸⁴; of which, ₹ 13.35 lakh had since been recovered. For the balance amount of ₹ 3.86 lakh pertaining to M/s ITP Ltd, recovery proceedings had been initiated. Report on further development is awaited (November 2014).

⁸³ 10 per cent of ₹ 98.20 lakh, ₹ 18.04 lakh and ₹ 28.49 lakh = ₹ 14.47 lakh minus ₹ 3,303 paid by the third dealer = ₹ 14.44 lakh.

⁸⁴ The figure is less than the objected amount as M/s ITP Ltd had submitted a revised return which had been accepted.

The case was reported to the Department/Government in April 2013 and followed up in April 2014; their replies have not been received (November 2014).

2.13 Irregular deduction of subsidy income in excess of the allowable percentage resulted in short levy of tax of ₹ 4.05 lakh on which interest of ₹ 3.81 lakh was additionally leviable

[*AITO, Assam; March 2013*]

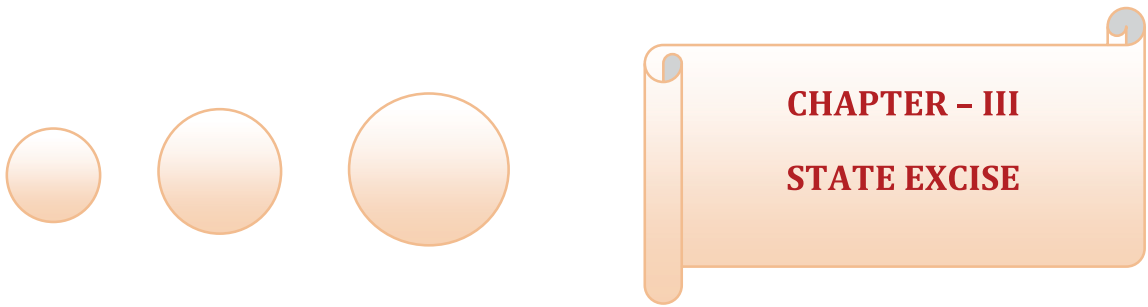
Under the provision of the AAIT Act (as amended from time to time), subsidy or interest received on subsidy is not an agricultural income, but is *cent per cent* central income to be taxed under Income Tax Act, 1961.

During examination of records in the above Office, it was observed that the AITO while completing the assessment of M/s Bokahola Tea Co (P) Ltd in January 2012 for the year 2009-10 worked out the agricultural income as ₹ 18.84 lakh from the composite income of ₹ 3.15 crore *i.e.* 5.98 *per cent* of composite income. However, while setting off the interest on subsidy received by the assessee which was to be treated as central income the AITO allowed deduction of 60 *per cent* of the total interest on subsidy amount of ₹ 23.99 lakh *i.e.* ₹ 14.40 lakh instead of restricting it to 5.98 *per cent*⁸⁵ of the interest received *i.e.* ₹ 1.43 lakh. The excess allowance of deduction of ₹ 12.97 lakh on account of interest on subsidy resulted in short levy of tax of ₹ 4.05 lakh on which interest of ₹ 3.81 lakh was additionally leviable.

On being pointed out, the Department admitted the audit observation and re-assessed (August 2013) the assessee raising an additional demand of ₹ 8.14 lakh by adding further interest. As the dealer failed to pay the dues, recovery proceedings had been initiated. Report on further development is awaited (November 2014).

The case was reported to the Department/Government in April 2013 and followed up in April 2014; their replies have not been received (November 2014).

⁸⁵ Upto the percentage of composite income determined as agricultural income.



CHAPTER - III

STATE EXCISE



CHAPTER – III: State Excise

3.1 Tax administration

The State Excise Department is responsible for collection of Excise Revenue under the Assam Excise Act and enforcement of the Excise laws on prohibition of illicitly distilled liquor *Ganja*, *Bhang* and Opium. In addition, the Department is given the responsibility to enforce the provisions of Narcotic Drugs & Psychotropic substances Act and the Medicinal & Toilet preparation Act. The Commissioner of Excise, Assam is the head of the Department. He is primarily responsible for administration and execution of excise policies and programmes of the State Government. He is assisted by an Additional Commissioner of Excise, a Joint Commissioner of Excise and two Deputy Commissioners of Excise.

Further, the department is trying hard to increase revenue and achieve more than the budgeted target of Excise revenue. In order to achieve the same, few more licences to set up distilleries and bottling plants for producing and bottling I.M.F.L have been sanctioned. Brewery licences have been sanctioned in the State for brewing beer and two breweries are already in operation. These steps have provided an increasing trend to the Excise revenue and also generating employment opportunities to the skilled and unskilled section of workers. In order to facilitate credit of excise levies by single *challan* by the retailers, the excise levies are made *ad-valorem* resulting increase in collection of revenue.

3.2 Working of internal audit

Internal audit, a vital component of internal control mechanism, functions as ‘eyes and ears’ of the Department and is a vital tool which enables the management to assure itself that prescribed systems are functioning reasonably well.

The Department stated that the Financial Department has not put in place any separate internal audit system for Excise Department. However, Department stated that inspections of different establishments under Excise Department are conducted by officers of the Department at different levels. Thus, had there

been an effective internal audit system in the Department, deficiencies detected during local audit could possibly have been detected, rectified and prevented.

Recommendation: The Department may in coordination with Finance Department, arrange to conduct internal audit of its records/ accounts through the Director of Local Audit regularly.

3.3 Results of audit

In 2013-14, test check of the records of 17 units relating to excise duty, license fee receipts etc., showed non/short realisation of excise duty/license fee/interest/penalty/ renewal fee and other irregularities involving ₹ 13.94 crore in 79 cases, which fall under the **Table 3.1**.

Table 3.1
Results of Audit

Sl. No.	Category	Number of cases	(₹ in crore)
			Amount
1.	Non/ Short realisation of Excise Duty/ <i>Advelorem</i> Duty.	14	4.56
2.	Non/Short payment of licence fee/interest/VAT/ Penalty/ renewal fee	16	1.13
3.	Other irregularities	49	8.25
Total		79	13.94

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 5.80 crore in 85 cases which were pointed out in earlier years. An amount of ₹ 0.33 crore was recovered in 14 cases during the year 2013-14.

A few illustrative cases involving ₹ 1.84 crore are discussed in the following paragraphs.

Audit observations

3.4 Excess allowance of godown wastage over and above the permissible limit led to non-realisation of revenue of ₹ 59.41 lakh

[Superintendents of Excise (SE), Bongaigaon, Tinsukia and Deputy Superintendent of Excise (DSE), Hojai; February 2014, March 2014 and February 2014]

As per Rule 37 of the Assam Bonded Warehouse Rules, 1965 (ABWR) and subsequent executive instructions, the Superintendent of Excise or the officer-in-charge of the bonded warehouse shall take stock of all spirits in the warehouse on the last day of the quarter and the licensee shall pay duty at prescribed rates on all spirits in excess of an allowance of one *per cent* on account of wastage allowance.

During examination of records in the above Offices, it was observed that during the quarter endings falling between September 2010 and December 2013, five licensees of bonded warehouses claimed godown wastage of 83,879.57 LPL¹ against the admissible wastage of 30,649.16 LPL calculated at one *per cent* of the closing stock of 30,64,930.10 LPL. The excess and inadmissible wastage of 53,248.44 LPL or 8,068 cases of India made foreign liquor (IMFL) pertaining to various brands claimed by the licensees escaped notice of the departmental officers. The excess deduction of godown wastage led to non-realisation of revenue of ₹ 59.41 lakh (excise duty of ₹ 45.73 lakh and VAT of ₹ 13.68 lakh) as shown in the following table.

Table 3.2

Name of the licensee/ Name of controlling SE/DSE	Quarter ended falling between	Closing balance disclosed	Godown wastage permissible (@ one <i>per cent</i> of the closing balance as at col 3)	Godown wastage claimed	Excess godown wastage over and above one <i>per cent</i>	Excise duty/VAT involved (₹ in lakh)
Kanark BW/SE, Bongaigaon	September 2010 and September 2013	14,41,360.11	14,413.60	41,580.99	27,167.39	29.47
SubhaLakhi BW/ SE, Tinsukia	December 2012 and June 2013	5,92,426.31	5,924.26	10,504.49	4,580.23	5.59

¹ London proof Litre – strength of alcohol 13 parts of which weigh exactly equal to 12 parts of water at 51 degree Fahrenheit is assigned 100 degree proof. Apparent volume of a given sample of alcohol when converted into volume of alcohol having strength 100 degree is called LPL.

Name of the licensee/ Name of controlling SE/DSE	Quarter ended falling between	Closing balance disclosed	Godown wastage permissible (@ one per cent of the closing balance as at col 3)	Godown wastage claimed	Excess godown wastage over and above one per cent	Excise duty/VAT involved (₹ in lakh)
Mohit Enterprise BW/ SE, Tinsukia	December 2012 and December 2013	1,59,468.27	1,594.68	7,697.13	6,120.48	5.80
Eastern Wines (P) Ltd. BW/ SE, Tinsukia	March 2013 and June 2013	1,33,281.68	1,332.80	3,017.06	1,684.26	2.34
AD BW/ Dy SE, Hojai	June 2011 and September 2013	7,38,393.73	7,383.82	21,079.90	13,696.08	16.21
Total		30,64,930.10	30,649.16	83,879.57	53,248.44	59.41

On being pointed out, the SE, Bongaigaon stated (July 2014) that for calculation of chargeable excess wastage in store/godown of a bonded warehouse, there is a method as prescribed in Assam Excise Manual (Volume III)². In the light of the audit observation and in view of the above Rules, the chargeable excess godown wastages for the years 2010-11 to 2013-14 have now been calculated as ₹ 2,918 which had since been deposited by the licensee M/s Kanark Bonded Warehouse. Fact remains that the Form No. and the provisions of the Assam Excise Manual for calculating the chargeable duty highlighted by the SE, Bongaigaon relates to the Distillery and Country Spirit Warehouses and not the Bonded Warehouses storing India made foreign liquor/Beer. Further the copy of form attached with the reply clearly mentions the words blending, reduction which clearly indicates that the form was meant for the bottling units. The bonded warehouses are guided by the ABWR and the Rule 37 specifically mentions quarterly stock taking by the SE or by his nominated Officers and duty on the excess deficiencies found during such verification is realisable from the licensees. Reply in respect of the other licensees had not been received (November 2014).

The cases were reported to the Department/Government between February 2014 and March 2014 and followed up in May 2014; their replies have not been received (November 2014).

² Form No. 14 (Annexure A) of the Assam Schedule XXXI (Section III. Distillery and Warehouse).

3.5 Three bonded warehouses, one retail ‘Off’ and three ‘On’/bar licensees did not pay the annual licence fees resulting in non-realisation of licence fees of ₹ 29.50 lakh

[SsE, Dibrugarh, Jorhat and Tezpur; February 2014, March 2013 and December 2013]

The Assam Excise Rules provides that the licensee of whole sale bonded warehouses and retail licensees are required to pay annual licence fees and wholesale licence fees (for bonded warehouses), in advance, before the commencement of the financial year. From 30 September 2010, the licence fees

Bond limit (excise duty involved in IMFL/Beer)	Licence Fees
Upto ₹ 25 lakh	₹ 1 lakh
From ₹ 25 lakh to ₹ 50 lakh	₹ 1.50 lakh
From ₹ 50 lakh to ₹ 1 crore	₹ 2.50 lakh
₹ 1 crore and above	₹ 5 lakh

for retail ‘Off’ and ‘On’/Bar licensees³ are ₹ 1 lakh and ₹ 50,000 per annum respectively. The bonded warehouses are required to pay licence fees depending upon the bond limits as shown in the table in the inset. Besides, the bonded warehouses are also required to pay wholesale licence fees at prescribed rates ranging between ₹ 1 lakh and ₹ 2 lakh depending upon the bond limits enjoyed by them.

During examination of the records in the above SE Offices, it was observed that though the licence fees are to be paid in advance before the commencement of the year, three bonded warehouses, one retail licensee and three bar licensees did not pay the annual licence fees, wholesale licence fees etc. for various years between 2007-08 and 2013-14. Neither did the licensees pay the amounts as prescribed, nor was any demand notice issued by the concerned SsE to recover the outstanding amounts from the licensees. This resulted in non-realisation of licence fees of ₹ 29.50 lakh. Details are shown in the following table.

³ ‘Off’ licensees – where IMFL/Beer can be sold and cannot be consumed in the premises of the licensee and ‘On’ licensees – where IMFL/Beer can be consumed in the premises of the licensee.

Table 3.3

Name of the licensee	Name of SE	Type of licence	Year	Category/Rate per year	Licence fees remaining unpaid (₹ in lakh)
M/s Associated alcohol and Beverages Company	SE, Jorhat	Bottling & Bonded warehouse	2007-08 to 2013-14	Wholesale licence fees/ ₹ 2 lakh	10.00
M/s Juri & Co. (P) Ltd	SE, Dibrugarh	Bonded W/H	2013-14	Renewal Licence fees & wholesale licence fees/ ₹ 5 lakh and ₹ 2 lakh	5.00 2.00
M/s Mid Assam Bonded warehouse	SE, Tezpur	-do-	2012-13	-do-	5.00 2.00
M/s Sonitpur Bonded warehouse		-do-	2013-14	Renewal Licence fees & wholesale licence fees/ ₹ 1.50 lakh and ₹ 1.50 lakh	1.50 1.50
Shri Mukul Lahkar		‘Off’	2013-14	Retail licence fee/ ₹ 1 lakh	1.00
Shri Jona Ram Saikia		‘On’	2013-14	Bar licence/ ₹ 50,000	0.50
Shri Himlal Lahkar		-do-	2013-14	-do-	0.50
Shri Debanan Hazarika		-do-	2012-13	-do-	0.50
Total					29.50

On being pointed out, the SE, Tezpur reported during the exit conference that the licensee Shri Jona Ram Saikia had deposited the unpaid licence fees of ₹ 0.50 lakh on 21 December 2013. In respect of M/s Juri & Co., the SE, Dibrugarh stated (June 2014) that the licence had been suspended due to discrepancy in stock. Fact remains that the licensee is liable to pay licence fees till cancellation of the licence. Replies in respect of the remaining cases had not been received (November 2014).

The cases were reported to the Department/Government between April 2013 and March 2014 and followed up in May 2014; their replies have not been received (November 2014).

3.6 Variation between the balance shown in the stock register and IMFL/Beer actually found during physical verification conducted at the instance of Audit led to evasion of revenue of ₹ 21.97 lakh

[SE, Tezpur; December 2013]

The Assam Excise Act and Rules made thereunder allow the bonded warehouses to store IMFL/Beer under bond that excise duty and value added tax would be paid at the time of issue of the above goods from the warehouses to the retailers. The stock of IMFL/Beer is to be maintained in a separate register to be kept at the disposal of the Officers-in charge of the bonded warehouses. A monthly report is to be submitted to the Commissioner of Excise (CE), Assam showing the opening stock, receipt, issue and closing stock and revenue remitted during the period duly authenticated by the Officers-in-charge of the bonded warehouses. As per the Assam Bonded Warehouse Rules 1965, the SE or any other officer on his behalf shall take stock of all spirits in the warehouse on the last day of the quarter and the licensee shall pay excise duty on any shortfall (after allowing prescribed percentage as godown wastage) found during such exercise.

During test check of records in the above Office in December 2013, it was observed that a bonded warehouse licensee (M/s Sonitpur Bonded Warehouse) did not have transactions from October 2012 onwards while the stock register and the statements submitted to the CE, Assam disclosed stock of 22,484.88 BL IMFL⁴ and 10,880.25 BL Beer. In view of this, the Officer-in-charge of the bonded warehouse was requested by Audit to conduct a physical verification of the stock actually present in the warehouse. The Officer-in-charge accordingly carried out a physical verification on 13 December 2013 and found 1,711.08 BL IMFL⁵ and 3,673.80 BL Beer. The difference of stock worked out to 2,306 cases of IMFL and 923 cases of Beer involving revenue of ₹ 21.97 lakh (excise duty of ₹ 13.47 lakh and VAT of ₹ 8.50 lakh) which was evaded by the licensee. The pilferage of stock was despite the fact that the warehouse is under joint supervision of the licensee as well as the Officer-in-charge from the Excise Department. Besides, during the

⁴ General brand – 2,449.79 BL; Regular brand – 15,727.19 BL; Luxury brand – 2,901.07 BL; Premium brand – 1,065.27 BL; Classic Premium brand – 1.89 BL and Cheap Brand – 339.68 BL.

⁵ General brand – 815.04 BL; Regular brand – 583.56 BL; Luxury brand – 115.92 BL; Premium brand – 43.56 BL; Classic Premium brand – nil and Cheap Brand -153 BL.

period October 2012 to November 2013, four physical stock verification were to be conducted by the Officer-in-charge of the bonded warehouse. Had these verifications been carried out properly, the above deficiency in stock could have been noticed.

The case was reported to the Department/Government in March 2014 and followed up in May 2014; their replies have not been received (November 2014).

3.7 Non-realisation of revenue of ₹ 18.79 lakh against damaged stock allowed for destruction

[SE, Tinsukia; January – February 2014]

As per the ABWR, if spirits stored in a bonded warehouse are found to be of inferior quality or otherwise unsuitable for the purpose for which they were stored, they might be rejected or destroyed or otherwise dealt with under the orders of the CE. Rule 32 of the ABWR mentions that the State Government shall not be held responsible for the destruction, loss or damage of any spirits stored in warehouse by fire or by gauging or by any other cause, whatsoever.

During test check of the records in the above Office, it was observed that the SE, Tinsukia in June 2013 intimated the CE about 42,471.98 BL IMFL lying in the godown of M/s Gaytri Distillers and Bottling Industries Bonded warehouse which had become unfit for human consumption. The Report of the chemical examiner certifying the same was also enclosed. The CE, Assam in response to the above letter instructed (June 2013) the SE, Tinsukia to destroy the above volume of IMFL. While issuing the orders for destruction, the CE specifically mentioned that the destruction is allowed without exemption of excise duty of ₹ 18.79 lakh. However, it was observed that despite clear directives of the CE, Assam, the amount of excise duty was neither paid by the licensee nor was any demand notice issued by the SE, Tinsukia for recovery of the same. Consequently, there was non-realisation of revenue of ₹ 18.79 lakh. Besides, the inferior quality liquor had also not been destroyed even after 10 months of the order of the CE.

The case was reported to the Department/Government in March 2014 and followed up in May 2014; their replies have not been received (November 2014).

3.8 Non-monitoring of the duty involved in the stock of IMFL held by the bonded warehouses resulted in short realisation of licence fees of ₹ 18 lakh from three bonded warehouses

[DSE, Hojai and SsE Nagaon and Tezpur; January 2014, November 2013 and December 2013]

The Assam Excise Rules provides that the licensee of whole sale bonded warehouses and retail licensees are required to pay annual licence fees and wholesale licence fees (for bonded warehouses), in advance, before the commencement of the financial year. From 30 September 2010, the bonded warehouses are required to pay licence fees at various rates depending upon the bond limits as shown in the table in the inset. Besides, the bonded warehouses are also required to pay wholesale licence fees at prescribed rates ranging between ₹ 1 lakh and ₹ 2 lakh depending upon the bond limits. The stock of IMFL/Beer is to be maintained in a separate register to be kept at the disposal of the Officers-in charge of the bonded warehouses.

Bond limit (excise duty involved in IMFL/Beer)	Licence Fees
Upto ₹ 25 lakh	₹ 1 lakh
From ₹ 25 lakh to ₹ 50 lakh	₹ 1.50 lakh
From ₹ 50 lakh to ₹ 1 crore	₹ 2.50 lakh
₹ 1 crore and above	₹ 5 lakh

During examination of the records in the above SE Offices, it was observed that in case of three bonded warehouses, the bond limits were fixed at various amounts ranging between ₹ 49 lakh and ₹ 1 crore. The annual licence fees were accordingly paid by these bonded warehouses. However, examination of the stock registers maintained by the licensees and monthly reports submitted to the CE, Assam revealed that the excise duty involvement in the stock of IMFL/Beer held on various dates by these licensees had increased above the bond limit fixed by the CE, Assam which made them liable to payment of licence fees at rates higher than that paid by them. The differential licence fees were neither paid by the licensees of the bonded warehouses nor did the concerned Officer-in-charge /SE detect the excise duty involvement in IMFL/Beer in stock crossing the bond limit fixed by the CE. Consequently there was short-realisation of licence fees of ₹ 18 lakh. Details are shown in the following table.

Table 3.4

Name of the licensee/ bond limit fixed by CE	Name of SE	Year/ Licence fees paid (₹ in lakh)	Instances of duty involved in stock crossing over the bond limit		Licence fees payable (₹ in lakh)	Licence fees short realised (col 6 – col 3) (₹ in lakh)
			Month	Excise duty involved in the stock held (₹ in lakh)		
AD BW/ ₹ 99 lakh	DSE, Hojai	2012-13/ 2.50	July 2012	102.79	5.00	2.50
			August 2012	103.90		
		2013-14/ 2.50	August 2013	104.13	5.00	2.50
			September 2013	119.85		
LV BW/ ₹ 50 lakh	SE, Sonitpur, Tezpur	2012-13/ 2.50	October 2012	118.33	5.00	2.50
			December 2012	133.36		
			March 2013	148.32		
		2013-14/ 2.50	April 2013	141.49	5.00	2.50
			September 2013	180.26		
			October 2013	130.26		
Dynasty BW/ ₹49 lakh	SE, Nagaon	2011-12/ 1.50	March 2012	105.00	5.00	3.50
		2012-13/ 1.50	March 2013	82.44	2.50	1.00
		2013-14/ 1.50	October 2013	148.78	5.00	3.50
Total						18.00

The cases were reported to the Department/Government between January 2014 and March 2014 and followed up in May 2014; their replies have not been received (November 2014).

3.9 Stock of IMFL having revenue impact of ₹ 17.65 lakh was irregularly deducted from the closing stock while drawing the opening stock leading to short accounting of stock of IMFL

[SE, Nagaon; November 2013]

The Assam Excise Act and Rules made thereunder allow the bonded warehouses to store India made foreign liquor (IMFL)/Beer under bond that excise duty and value added tax would be paid at the time of issue of the above goods from the warehouses to the retailers. The stock of IMFL/Beer is to be maintained in a separate register to be kept at the disposal of the Officers-in charge of the bonded warehouses.

A monthly report is to be submitted to the CE, Assam showing the opening stock, receipt, issue and closing stock and revenue remitted during the period duly authenticated by the Officers-in charge of the bonded warehouses.

During test check of records of M/s Dynasty Bonded Warehouse under the SE, Nagaon, it was observed that the closing stock of IMFL pertaining to Luxury brand for the month of March 2013 was 70,324.81 LPL against which the opening balance as of 1 April 2013 was shown as 66,574.20 LPL and the stock statement for that month was drawn accordingly. Similarly, in the month of June 2013, the closing stock of IMFL pertaining to Regular, Luxury, Premium and Classic Premium brands were 13,896.70 LPL, 1,00,620.76 LPL, 4,126.51 LPL and 594.51 LPL respectively. However, the opening stock of these brands as on 1 July 2013 was shown as 11,731.23 LPL, 93,165.25 LPL, 3,257.47 LPL and 448.17 LPL respectively. The stock of 14,386.97 LPL⁶ was deducted from the closing stock and not taken into the opening stock. This led to evasion of revenue of ₹ 17.65 lakh including VAT of ₹ 4.07 lakh.

The case was reported to the Department/Government in January 2014 and followed up in May 2014; their replies have not been received (November 2014).

⁶ 70,324.81 LPL minus 66,574.20 LPL = 3,750.61 LPL (A); 13,896.70 LPL minus 11,731.23 LPL = 2,165.47 LPL (B); 1,00,620.76 LPL minus 93,165.25 LPL = 7,455.51 LPL (C); 4,126.51 LPL minus 3,257.47 LPL = 869.04 LPL (D) and 594.51 LPL minus 448.17 LPL = 146.34 LPL (E). (A)+(B)+(C)+(D)+(E) = 14,386.97 LPL.

3.10 Short realisation of transport and import permit fees amounting to ₹ 11.90 lakh

[SsE, Bongaigaon, Nagaon and Tezpur; February 2014, January 2014 and March 2014]

As per Government of Assam notification of 29 September 2010, the transport and import permit fees were revised as ₹ 50 and ₹ 90 per case respectively.

During test check of records in the above Offices, it was observed that transport/import permits were issued by these Offices to the licensees allowing them to transport/import 6,61,756 cases between October 2010 and November 2013. However, while issuing the permits, fees of ₹ 329.53 lakh was realised at pre-revised rates instead of ₹ 341.43 lakh realisable at new rates applicable *w.e.f* October 2010. This resulted in short realisation of permit fees to the tune of ₹ 11.90 lakh as shown in the following table.

Table 3.5

Name of the SE/DSE	Type of permits	Cases of IMFL allowed to be transported/imported	Period involved	Permit fees realised	Permit fees realisable	Permit fees short realised
				(₹ in lakh)		
SE, Bongaigaon	Transport	1,00,198	October 2010 to November 2013	47.83	50.10	2.27
	Import	14,690	August 2013 to November 2013	11.68	13.22	1.54
SE, Nagaon	Transport	2,01,118	April 2011 to October 2013	97.96	100.56	2.60
SE, Tezpur	Transport	3,45,750	February 2013 to November 2013	172.06	177.55	5.49
Total		6,61,756		329.53	341.43	11.90

On being pointed out, the SE, Bongaigaon and Nagaon stated (July and November 2014 respectively) that the permit fees are leviable for 12 bottles of 750 ml of IMFL (9 BL) or equivalent quantity and as the cases containing 180 ml totals up to 8.64 BL IMFL, the rates of permit fees had been proportionately reduced. The reply is not in conformity with the notification as the permit fees is charged as administrative fees for issuing the permits and has no link with the volume of IMFL contained in a case. Since the cases of 375 ml and 180 ml contain 24 bottles and 48 bottles respectively, the notification mentions the words ‘or equivalent quantity’. Further, the Office

of the Commissioner of Excise, Assam, confirmed that permit fees are fixed and payable for each case irrespective of the sizes of bottles it contains. Reply of the SE, Tezpur had not been received (November 2014).

The cases were reported to the Department/Government between January 2014, February 2014 and March 2014 and followed up in May 2014; their replies have not been received (November 2014).

3.11 Transit loss claimed in excess of permissible limit could not be detected by the SE resulting in non-realisation of revenue of ₹ 7.12 lakh

[SE, Tezpur; December 2013]

The Assam Excise Rules and subsequent executive orders issued by the Excise Department provides for allowance of transit loss upto 0.5 *per cent* of the dispatched quantity, beyond which excise duty is to be recovered from the consignee licensee.

During test check of the records of the SE, Tezpur, it was noticed that in 205 cases pertaining to M/s Sun International, transit loss of 8,458.87 BL was claimed by the licensee against 4,714.68 BL allowable at 0.5 *per cent* of the dispatched volume of IMFL *i.e.* 9.43 lakh BL IMFL pertaining to Regular and Luxury brands. The excess transit loss of 2,660.74 BL (Regular brand = 1,083.45 BL and Luxury brand = 2,660.74 BL) involved revenue of ₹ 4.10 lakh (excise duty of ₹ 2.46 lakh and value added tax of ₹ 1.64 lakh⁷) which was recoverable from the licensee.

Similarly, in case of M/s Universal Enterprise, a truck carrying IMFL of 4,878 BL IMFL⁸ (550 cases) met with an accident on 20 September 2013 and the consignee received 2,220.48 BL (248 cases) and the balance 2,657.52 BL (302 cases) IMFL was claimed as lost in transit. After allowing the maximum transit loss of 2.75 cases (0.5 *per cent*), the licensee was liable to pay excise duty and value added tax of ₹ 3.02 lakh (excise duty of ₹ 1.80 lakh and value added tax of ₹ 1.22 lakh⁹).

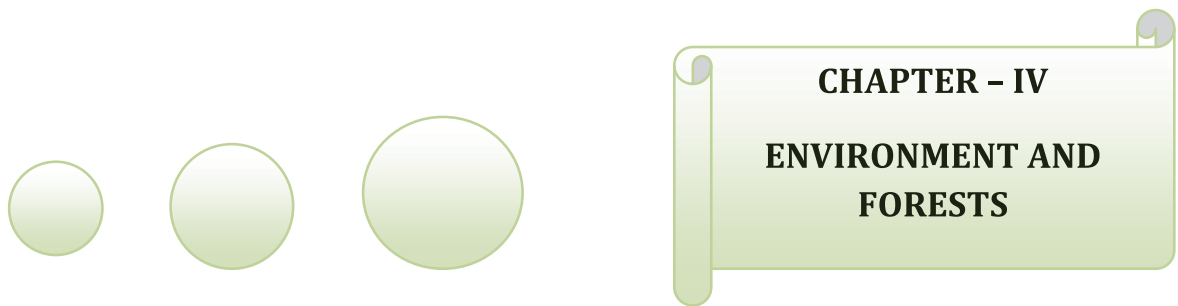
⁷ Regular brand – 1,083.45 BL or 123 cases X ₹ 600 (min cost price per case of Regular brand) = ₹ 73,800 + ₹ 64,546 (excise duty) = ₹ 1,38,346 X 30 % VAT = ₹ 41,504.
Luxury brand – 2,660.74 BL or 302 cases X ₹ 750 (min cost price per case of Luxury brand) = ₹ 2,26,500 + ₹ 1,81,077 (excise duty) = ₹ 4,07,577 X 30 % VAT = ₹ 1,22,273.
Thus, ₹ 1,22,273 + ₹ 41,504 = ₹ 1,63,777.

⁸ Vide transport permit No. 148/2012-13/pt-1/431 dated 28 August 2013.

⁹ 302 cases minus 2.75 cases (allowable transit loss) = 299.25 cases X ₹ 750 (min cost price per case of Luxury brand) = ₹ 2,24,438 + ₹ 1,80,867 (excise duty) = ₹ 4,05,305 X 30 % VAT = ₹ 1.22 lakh.

Thus, revenue of ₹ 7.12 lakh was recoverable from the above two licensees on account of revenue involved in excess transit loss. However, neither the licensees paid the amount nor was any demand notice issued by the SE, Tezpur to recover the same till the date of Audit.

The cases were reported to the Department/Government in March 2014 and followed up in May 2014; their replies have not been received (November 2014).





CHAPTER – IV: Environment and Forests

4.1 Tax administration

The Principal Chief Conservator of Forests (PCCF) who is in overall charge of the Department is assisted by seven Chief Conservators of Forests (CCF) and 19 Conservators of Forests (CF). There are 58 forest divisions each headed by Deputy Conservator of Forests (DCF)/ Divisional Forest Officers (DFO). The divisions are further divided into ranges and beats for ensuring effective control and supervision of the forests of the State.

The principal Acts under which the functioning of Department of Environment and Forests is governed are the Assam Forest Regulation, 1891; Assam Sale of Forest Produce Coupes and *Mahals* Rules, 1977; Assam Minor Minerals Concession Rules, 1994 as amended and Rules and notifications/ orders issued thereunder, from time to time.

4.2 Results of audit

In 2013-14, test check of the records of 28 units relating to forest receipts showed non/short recovery of royalty, non-levy of interest/VAT/extension fee and other irregularities involving ₹ 9.05 crore in 115 cases, which fall under the following categories in the **Table 4.1** below. Besides, a Performance Audit was also conducted on a topic titled ‘Kaziranga National Park-Issues and Challenges’ which had been presented as a standalone Report.

Table 4.1
Results of Audit

Sl. No.	Category	Number of cases	Amount (₹ in crore)
1.	Non/Short recovery of royalty	13	1.93
2.	Non levy of interest/VAT	06	0.73
3.	Non levy of extension fee	04	0.34
4.	Other irregularities	92	6.05
Total		115	9.05

During the course of the year, the Department accepted 53 cases with revenue implication of ₹ 3.11 crore and recovered ₹ 1.65 lakh during 2013-14 in three cases.

A few illustrative audit observations with financial implication of ₹ 28.93 crore are mentioned in the succeeding paragraphs.

Audit observations

4.3 Permits were issued to the contractors of National Hydro-electric Power Corporation for lifting minor minerals on realisation of royalty at lower rates resulting in short realisation of royalty of ₹ 22.89 crore

[Divisional Forest Officer (DFO), Dhemaji Forest Division; October-November 2011]

As per the system prevailing in the Environment and Forest (E&F) Department, minor minerals like sand, stone, boulders etc can be extracted by any individual from the designated areas on payment of full royalty in advance and on obtaining a permit from the concerned Forest Division. However, for extraction of minor minerals by the contractors of various organisations carrying out works in the State, the State Government has the power to decide on the rate of royalty to be paid by these organisations on extraction of minor minerals.

During examination of the records in the above Forest Division, it was noticed that the Government of Assam had fixed (November 2005) the rate of royalty payable by the contractors of the National Hydro-electric Power Corporation (NHPC) on extraction¹ of boulders/aggregate as ₹ 500/cum and sand as ₹ 350/cum. These rates of royalty were accordingly communicated (November 2005) to the NHPC as well as the DFO, Dhemaji for compliance. It was also noticed that against the remittance of advance forest royalty of ₹ 10 lakh by the NHPC in May 2006, the DFO, Dhemaji while mentioning the rates of royalty fixed by the Government requested (July 2006) the former to deposit additional amount of ₹ 40 lakh to enable the forest division to start issuing permits for extraction of the minor minerals.

Further examination of the permit books² revealed that on contrary to the above developments, 20 permits for extraction of 4.72 lakh cum of

¹ for construction of Diversion Tunnels, Coffor Dams, concrete Gravity Dam etc.

² Permits issued during the period covered by Audit i.e. December 2008 to September 2011 has been considered.

stone/boulders and 1.91 lakh cum of sand from various forest *mahals* (falling under the jurisdiction of the forest division) was issued between August 2009 and June 2011 on realisation of simple royalty rates³ (₹ 70/90 per cum of sand and ₹ 100/130 per cum of stone/boulders) instead of that fixed by the State Government in November 2005. Against ₹ 30.25 crore payable on the aforesaid volume of minor minerals at the rates fixed by the Government, an amount of ₹ 7.36 crore was only recovered by the forest division at simple royalty rates. This resulted in short realisation of royalty by ₹ 22.89 crore.

On being pointed out, the DFO stated (November 2011) that demand notice would be served for recovery of balance royalty. The reply was silent about the reasons for levy of royalty at simple rates instead of the rates fixed by the State Government. Report on recovery has not been received (November 2014).

The case was reported to the Department/Government in December 2011 and followed up in April 2014; their replies have not been received (November 2014).

4.4 Failure to levy royalty at correct rates while issuing permits for extraction of minor minerals resulted in short realisation of value added tax of ₹ 2.06 crore

[DFO, Dhemaji Forest Division; October – November 2011]

Under the Assam Value Added Tax (AVAT) Act, 2003, the officers of the E&F Department are required to levy tax on the royalty and any other sum charged while issuing permits for extraction of minor minerals and remit the same under proper head of accounts of the Taxation Department within 10 days from the expiry of each calendar month. Goods not specified in any of the schedules attached to the AVAT Act were taxable at 12.5 *per cent* upto 30 October 2009 and 13.5 *per cent* thereafter.

At Para 4.3 of this Report, short realisation of royalty by ₹ 22.89 crore had been pointed out. Further examination revealed that while issuing the permits issued between August 2009 and June 2011 on realisation of ₹ 7.36 crore (₹ 30.25 crore - ₹ 22.89 crore) at simple royalty rates⁴, the value added tax was calculated on the simple rate of royalty instead of the royalty rates fixed by the Government. This resulted in short levy of value added tax by ₹ 2.06 crore⁵.

³ Rate of royalty leviable on sand and stone was ₹ 70/cum and ₹ 100/cum which were revised from 1 September 2009 as ₹ 100/cum and ₹ 130/cum respectively.

⁴ Rate of royalty leviable on sand and stone was ₹ 70/cum and ₹ 100/cum which were revised from 1 September 2009 as ₹ 100/cum and ₹ 130/cum respectively.

⁵ ₹ 3.04 crore leviable as value added tax on the royalty fixed by the Government of Assam minus ₹ 97.24 lakh levied and realised by the Division.

The case was reported to the Department/Government in December 2011 and followed up in April 2014; their replies have not been received (November 2014).

4.5 Non-detection of unauthorised extraction of stone/boulders by contractor resulted in non-realisation of revenue of ₹ 34.54 lakh; besides, penalty of ₹ 1.38 crore was also additionally leviable for illegal extraction of minor minerals

[DFO, Aie Valley Division, Bongaigaon; June 2011]

As per the system prevailing in the E&F Department, minor minerals like sand, stone, boulders etc can be extracted by any individual from the designated areas on payment of full royalty in advance and on obtaining a permit from the concerned Forest Division. Rule 46 of the Assam Minor Minerals Concession Rules, 1994 prescribes for levy of penalty upto four times the royalty in case of unauthorised extraction of minerals from any area without permit granted by the Forest Divisions of the E&F Department.

During examination of records in the above Office it was observed that against the indent of North East Frontier Railways (NF Railways), the E&F Department allowed (November 2006) extraction of 50,000 cum stone by the designated contractor for supplying it to the Railway authorities on payment of royalty from the Southern side of the Chaprakata Hill Stone Quarry. To ensure availability of the materials, the said quarry was also kept reserved for the Railway works. In course of scrutiny of records, relating to the said works as available in the DFO's Office, it was noticed⁶ that by 6 August 2010, the contractor had supplied 46,285 cum stone ballast to the Railway authorities. However, records of the Aie Valley Forest Division stated that the contractor had extracted only 11,750 cum stone against 15 permits issued between July 2007 and September 2010 and paid royalty of ₹ 12.43 lakh. The unauthorised extraction of 34,535 cum stone has resulted in non-realisation of revenue of ₹ 34.54 lakh⁷ in the form of royalty. Besides, penalty of ₹ 1.38 crore was additionally leviable for evasion of royalty.

The Divisional Forest authorities neither detected the unauthorised extraction and removal of stone nor took any action even after receipt (August 2010) of information from Railways regarding supply of stone material in excess of permits issued.

⁶ Letter of Senior Section Engineer, NF Railways available in the records of the Division which reported completion of 92.57 per cent of the works as on that date.

⁷ Calculated at the rate of ₹ 100/cum – royalty rate of stone effective from 1 March 2005 to 31 August 2009 as majority of the works were carried out between these dates.

The case was reported to the Department/Government in July 2011 and followed up in April 2014; their replies have not been received (November 2014).

4.6 Short realisation of revenue of ₹ 67.54 lakh due to application of pre-revised rates of royalty while issuing permits

[DFOs, Dhansiri and Cachar Forest Divisions; November 2012 and January – February 2013]

The Government of Assam, E&F Department in its notification⁸ dated 1 September 2009 had revised the rate of royalty in respect of various forest produces viz., sand, stone/gravel at the rate of ₹ 90 and ₹ 130 per cum respectively *w.e.f* the date of notification. There is no clause in the conditions of permit requiring the permit holder to pay the balance amount in case of any upward revision of royalty by the Government, information on which is received in the Division after issue of the permit.

During test check of records in the above Divisions, it was observed that the Divisions issued permits for extraction of 31,982.41 cum of sand, 2,64,696.08 cum of stone/gravel⁹ between September and October 2009. However, instead of issuing the permits at revised rates notified by the State Government effective from 1 September 2009, the divisions levied royalty at pre-revised rates of ₹ 70/cum for sand and ₹ 100/cum for stone and ₹ 114/cum for gravel. This resulted in short realisation of revenue of ₹ 67.54 lakh.

On being pointed out, the DFO, Dhansiri Division stated (April 2013) that the Government notification was received by the Division on 31 October 2009 and on receipt of the same new rates of royalty was implemented immediately. The reply was silent regarding action taken/proposed to be taken to recover the balance amount as while forwarding the Government notification to the Division, it was clearly stated by the Council Head, Bodoland Territorial Council that forest royalty would be realised as per the notification of the State Government. Reply of the DFO, Cachar has not been received (November 2014).

The case was reported to the Government in November 2012/March 2013 and followed up in April 2014; their replies have not been received (November 2014).

⁸ Notification No. FRS.1/2004/Pt/47 dated 1 September 2009.

⁹ 1,82,734 cum stone/gravel – DFO, Cachar Forest Division and 81,962.08 cum stone/gravel – Dhansiri Forest Division.

4.7 Procurement of materials without availability of funds coupled with inordinate delay in settlement of the payments led to avoidable expenditure of ₹ 60.52 lakh on account of interest

[Principal Chief Conservator of Forests (PCCF), Assam; June 2011]

Financial discipline requires that before placing supply orders or entering into contractual obligations, Government Departments should ensure availability of funds.

During examination of records in the above Office, it was observed that M/s Agarwal Tube Company (supplier) – a small scale industrial unit had supplied fencing materials to seven¹⁰ divisional forest offices under jurisdiction of Conservator of Forests (CF), Social Forestry during 1995-97 through the Assam Small Industries Development Corporation Limited (ASIDC). Accordingly, the ASIDC presented the claim for ₹ 17.38 lakh between January and June 1996. However, the Department did not make the payments due to non-availability of funds.

Being aggrieved, the supplier approached the Industry Facilitation Council (IFC) – a *quasi* judicial body constituted under Small Scale Ancillary Industrial Undertakings (SSAIU) Act, 1993 and filed a petition against the CF, Social Forestry to release the principal amount of ₹ 17.38 lakh and interest amounting to ₹ 60.52 lakh upto April 2005. The Council directed (May 2004) the Chief Conservator of Forests to furnish necessary confirmation of the claim and pay admissible amount of ₹ 77.90 lakh including interest of ₹ 60.52 lakh under SSAIU Act within 15 days. The Council also mentioned that if the confirmation was not communicated to them within 15 days, they would pass *ex-parte* award. After serving two reminders in December 2004 and January 2005, the Council awarded *ex-parte* verdict in May 2005 for payment of ₹ 77.90 lakh to the supplier as per provision of SSAIU Act.

Consequent upon directions/orders of the Council, sanction for ₹ 17.38 lakh and ₹ 60.52 lakh were accorded by the Government, being the principal amount and interest on 26 March 2010 and 25 October 2010 respectively. The respective payment of principal amount and interest was made through ASIDC on 12 May 2010 and 30 November 2010 respectively.

In view of above, it was observed that:

- (i) Although the claims were preferred by ASIDC between January and June 1996, the Department/Government failed to make the necessary funds available till 2010-11, thereby inviting huge interest liability;

¹⁰ Biswanath Chariali, Gauripur, Goalpara, Guwahati, Mongoldoi, Nagaon and Sivasagar.

- (ii) Even after a lapse of eight years (till the date of award by the IFC), the Department was not able to confirm the receipt of materials supplied as per the terms and conditions of the Agreement and because of absence of such confirmation, IFC made the *ex-parte* award which the Department had to accept.

Thus, due to laxity on the part of the Department/Government towards providing adequate budgetary provisions before placing supply orders and making the payments after inordinate delay coupled with failure to present the fact relating to receipt of materials before the IFC, an additional amount of ₹ 60.52 lakh on account of interest had to be borne by the Department/Government.

On being pointed out, the Department stated (August 2011 and March 2014) stated that due to drastic cut in budget provision, the flow of fund was restricted for which payment could not be made in time.

The case was reported to the Department/Government in December 2011 and followed up in April 2014; their replies have not been received (November 2014).

4.8 Non-deduction of value added tax of ₹ 20.34 lakh at source coupled with undue financial benefit to the suppliers to that extent

[Field Director, Tiger Project, Manas and DFO, Eastern Assam Wild Life Division, Bokakhat; December 2012 and May 2013]

The AVAT Act provides that the drawing and disbursing officer shall deduct the tax at source while making any payment against the supply of goods and shall deposit the same into the Government accounts within 10 days from the expiry of each calendar month. Further, the Commissioner of Taxes, Assam requested the Principal Chief Conservator of Forests, Assam to strictly adhere to the statutory provisions of the AVAT Act regarding tax deduction at source.

During test check of records in the above Offices, it was observed that the Divisions procured materials from the suppliers against 139 vouchers during the months March 2011 and March 2012 aggregating ₹ 1.91 crore. However, it was noticed that instead of deducting the tax of ₹ 20.34 lakh from the bills of the suppliers, the Divisions released full payments to these suppliers. This resulted in non-deduction of tax at source to the extent of ₹ 20.34 lakh and also undue financial benefit to the suppliers to that extent.

On being pointed out, the DFO, Eastern Assam Wildlife Division while furnishing the proof of payment of taxes for the purchases made during 2010-

11 stated (July 2014) that for 2011-12 deduction of tax could not be ensured as the purchases were made at the fag end of the financial year. It was also stated that the concerned suppliers had duly deposited the tax under proper heads of accounts. However, in support of such claim no documentary evidence was received. Reply from the Field Director, Manas Tiger Reserve had not been received (November 2014).

The cases were reported to the Government in January/May 2013 and followed up in April 2014; their replies have not been received (November 2014).

4.9 Non-realisation of forest royalty of ₹ 20.27 lakh on forest produce utilised for departmental works

[Field Director, Tiger Project, Manas and DFO, Eastern Assam Wild life Division, Bokakhat; December 2012 and March 2013]

The Government of Assam revised (1 September 2009) the rates of royalty of all classes of forest produce payable by the departments of the State Government for undertaking works in the State. Further, as per the system in place, while taking delivery of forest produce from the suppliers, proof of payment of forest royalty is to be insisted and if the same is not produced by the supplier, it should be deducted from the bills of the suppliers while making the payments.

During examination of records in the above Offices, it was observed that the Division purchased 4,008.46 cum timber¹¹ pertaining to various species like *sal, gamari, siddha etc.*, 3,673 cum sand¹², 7,653 cum chips/boulders/sand gravel¹³, 12,565 cum earth and 3,300 cum soil from various suppliers for construction works *i.e.* roads, buildings and bridges. It was noticed that while taking delivery of the forest produce, the Division neither obtained proof of payment of royalty from the suppliers nor deducted the same while making the payments. It was further noticed from the Divisional cash book of Field Director, Tiger Project, Manas that the forest produce was collected locally which evidences that no royalty was paid on the forest produce. This, not only resulted in non-realisation of forest royalty of ₹ 20.27 lakh, but also extension of undue financial benefit to the suppliers.

¹¹ 2,876.96 cft timber – Field Director, Tiger Project, Manas and 1,131.5 cft timber – DFO, Eastern Assam Wildlife Division, Bokakhat.

¹² 1,820 cum – Field Director, Tiger Project, Manas and 1,853 cum – DFO, Eastern Assam Wildlife Division, Bokakhat.

¹³ 7,112 cum – Field Director, Tiger Project, Manas and 541 cum – DFO, Eastern Assam Wildlife Division, Bokakhat.

The case was reported to the Department/Government in January/May 2013 and followed up in April 2014; their replies have not been received (November 2014).

4.10 Failure to deduct tax alongwith forest royalty while issuing permits for extraction of minor minerals resulted in non-realisation of revenue of ₹ 18.98 lakh at source

[DFO, Dhemaji Division; October – November 2011]

Under the Assam Value Added Tax (AVAT) Act, 2003, the officers of the Environment and Forests Department are required to levy value added tax on the royalty and any other sum charged while issuing permits for extraction of minor minerals and remit the same under proper head of accounts of the Taxation Department within 10 days from the expiry of each calendar month. Further, the Commissioner of Taxes, Assam requested the Principal Chief Conservator of Forests, Assam to strictly adhere to the statutory provisions of the AVAT Act regarding tax deduction at source. Goods not specified in any of the schedules attached to the AVAT Act are taxable at 13.5 *per cent* from 1 November 2009.

During examination of records in the above Office, it was observed that the Division while issuing permits in seven cases for extraction of minor minerals between March 2010 and February 2011 levied only the forest royalty aggregating ₹ 1.41 crore¹⁴ as applicable to the minor minerals allowed to be extracted. However, value added tax at 13.5 *per cent* which was also leviable on the minor minerals was neither levied by the Division nor paid by the permit holders. This resulted in non-realisation of revenue of ₹ 18.98 lakh.

The case was reported to the Department/Government in December 2011 and followed up in April 2014; their replies have not been received (November 2014).

4.11 Short-deduction of value added tax of ₹ 17.53 lakh at source coupled with undue financial benefit to the suppliers to that extent

[DFO, Eastern Assam Wild Life Division, Bokakhat; May 2013]

The AVAT Act provides that the drawing and disbursing officer shall deduct the tax at source while making any payment against the supply of goods and shall deposit the same into the Government accounts within 10 days from the expiry of each calendar month. Further, the Commissioner of Taxes, Assam

¹⁴ ₹ 1,40,57,534.

requested the Principal Chief Conservator of Forests, Assam to strictly adhere to the statutory provisions of the AVAT Act regarding tax deduction at source. During the relevant period, the item ‘reinforced cement concrete porcupine post’ was taxable at 13.5 *per cent*.

During examination of records in the above Office, it was observed that the Division procured 30,600 reinforced cement concrete porcupine posts at the rate of ₹ 603 per pole (all inclusive) from the suppliers against 25 vouchers aggregating ₹ 1.92 crore during the month of March 2011. However, it was noticed that instead of deducting the tax of ₹ 24.91 lakh at 13.5 *per cent* from the bills of the suppliers, the Division deducted tax of ₹ 7.38 lakh. This resulted in short-deduction of tax at source to the tune of ₹ 17.53 lakh and also undue financial benefit to the suppliers to that extent.

The case was reported to the Department/Government in May 2013 and followed up in April 2014; their replies have not been received (November 2014).

4.12 Short levy of royalty coupled with non-levy of monopoly fee on minor minerals transported outside the Karbi Anglong Autonomous Council area led to short realisation of revenue of ₹ 10.67 lakh

[DFO, Karbi Anglong East Division, Diphu; February 2014]

For augmenting the revenue receipts, the Karbi Anglong Autonomous Council (KAAC) in November 2010 notified¹⁵ levy of monopoly fee at 50 *per cent* of the forest royalty leviable on the extraction of minor minerals from the areas falling under the Council and transported to other districts of Assam. Further, the Government of Assam, E&F Department in its notification¹⁶ dated 1 September 2009 had revised the rate of royalty in respect of various forest produces *viz.*, earth, sand, stone/gravel at the rate of ₹ 15, ₹ 90 and ₹ 130 per cum respectively with effect from the date of notification. The rates of royalty so notified by the Government of Assam were applicable to minor minerals extracted from areas under KAAC.

During examination of records in the above Office, it was observed that while issuing permits in 26 cases between November 2010 and December 2012 for extraction of 4,363 cum of earth, 5,629 cum sand and 19,096 cum gravel/stone/boulders, the Division either did not levy royalty at revised rates effective from 1 September 2009 or did not levy the monopoly fee at 50

¹⁵ Notification No. KAAC/F/Monopoly fees/2010-11 dated 18 November 2010.

¹⁶ Notification No. FRS.1/2004/Pt/47 dated 1 September 2009.

per cent of the forest royalty as prescribed by the KAAC with effect from 18 November 2010. This resulted in short realisation of revenue of ₹ 10.67 lakh.

The case was reported to the Department/Government in March 2014 and followed up in April 2014; their replies have not been received (November 2014).

4.13 Irregular reduction of extractable volume of *mahal* materials and amount payable after settlement of *mahal* resulted in loss of revenue of ₹ 9.17 lakh

[DFO, Kamrup West Division, Bamunigaon; April 2012]

Accumulation and depletion of sand/stone in the riverine *mahal*¹⁷ due to river current is a constant process and failure to extract these within the stipulated timeframe results in washing away of the materials, leading to loss of revenue. Clause 7 of the Sale Notice prescribed under the Assam Sale of Forest Produce and *Mahal* Rules, 1977 (ASFPMR) provided that the tenderers should fully satisfy themselves about the availability of the *mahal* materials before quoting their bids and no complaint whatsoever is to be entertained later on. Further, the terms and conditions of the agreement form *inter alia* stipulate the periodicity of extraction, quantity of forest material, total amount to be paid and the dates of payment of instalments, security deposits etc. Clause 5 of the agreement form provides that in case of failure to pay any instalment(s) on time would result in the *mahal* being sold at the risk of the *mahaldar* and loss suffered by the Government, if any, would be recovered from the *mahaldar*. There is no provision for reduction of quantity of forest produce once the operation of the *mahal* commences.

During examination of records, it was observed that the Amtola Sand *Mahal* was settled (August 2009) with a *mahaldar*¹⁸ for extraction of 15,000 cum sand to be extracted between 26-8-2009 and 15-2-2011 at an agreed price of ₹ 27.51 lakh payable in six equal instalments starting from 26-8-2009. As per the terms of the agreement entered into between the Department and the *mahaldar*, the latter deposited security deposit of ₹ 2.29 lakh and first instalment of ₹ 4.59 lakh by the due dates and work order was issued by the DFO on 1 September 2009. After payment of two more instalments of ₹ 4.59 lakh each, the *mahaldar* requested (18 May 2010) the DFO and the Chief Conservator of Forests (CCF) (Territorial) to reduce the extractable volume of sand (from 15,000 cum to 6,000 cum) as well as revise the amount payable proportionately due to non-availability of sand. The DFO turned down (21 May 2010) the request drawing attention of the *mahaldar* to clause 7 of the

¹⁷ A well defined area from where certain types of forest produce are sold.

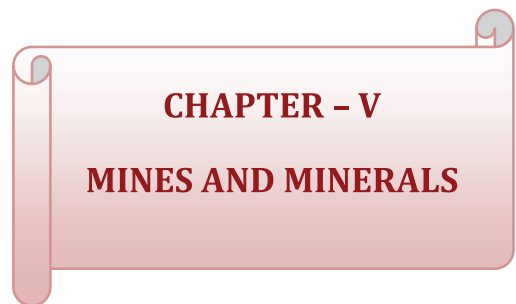
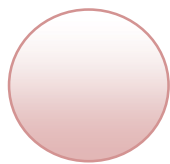
¹⁸ Shri Pankaj Kumar Das.

Sale Notice which puts the onus on the *mahaldars* to inspect and satisfy themselves about the availability of *mahal* materials before bidding for the *mahals*.

The CCF, Territorial, however, directed (24 May 2010) the DFO to submit a report on the request of the *mahaldar*. The DFO accordingly deputed an Officer of the Division to examine the request of the *mahaldar* who in his report, recommended for reduction of the volume of sand from 15,000 cum to 10,000 cum. The report was forwarded (26 May 2010) to the CF by the DFO. The CF in turn directed (31 May 2010) the DFO to re-fix the volume to 10,000 cum and proportionately revise the amount payable as ₹18.34 lakh. The action of the CF in allowing the reduction in the extractable volume of sand and value of the amount payable after commencement of the working period was in violation of the clause 7 of the AFSPMR¹⁹. In such case, the AFSPMR (clause 5 of the agreement form) provided for re-sale of the *mahal* at the risk of the original *mahaldar* and recovery of the difference of money, if any, from him as arrears of land revenue, which was not resorted to. The irregular and unauthorised allowance of reduction of *mahal* materials and amount receivable led to loss of revenue of ₹ 9.17 lakh.

The case was reported to the Department/Government in May 2012 and followed up in April 2014; their replies have not been received (November 2014).

¹⁹ Which absolved the Department of any responsibility in case of any complain on shortage of *mahal* materials after commencement of the working period.



CHAPTER - V
MINES AND MINERALS



CHAPTER – V: Mines and Minerals

5.1 Tax administration

Coal, crude oil and natural gas are the major minerals and limestone, boulder, stone and sand are the minor minerals in the State of Assam. The Mines and Minerals Department of the Government of Assam realises revenue from major minerals and from limestone (minor mineral), which comprises application fees for mining lease/ prospecting licence, royalty, dead rent, surface rent, fines/penalties and interest on belated payment of dues. Levy and collection of royalty from other minor minerals are entrusted to the Environment and Forest Department.

For conservation, systemic development and regulation of mining activities in India, the Government of India enacted the Mines and Minerals Development and Regulation Act (MMDR Act), 1957; the Minerals Concession Rules, 1960; the Minerals Conservation and Development Rules, 1988; the Granite Conservation and development Rules, 1999 and Colliery Control Rules, 2004. The mining activities in Assam are governed under the above Acts and Assam Minor Minerals Rules, 1994 framed by the Government of Assam in exercise of the powers conferred under the MMDR Act. The levy and collection of royalty, dead rent and surface rent on minerals are regulated under above cited Acts/Rules. The conservation, development and extraction of oil and natural gas are regulated under the Oilfield Regulation and Development Act, 1948 and the Petroleum and Natural Gas (PNG) Rules, 1959.

5.2 Working of internal audit

Internal audit, a vital component of internal control mechanism, functions as ‘eyes and ears’ of the Department and is a vital tool which enables the management to assure itself that prescribed systems are functioning reasonably well.

It was noticed that the Government had not put in place any separate internal audit wing in the Directorate of Geology and Mining nor arranged for any internal audit by the Director of Local Audit. Had there been an effective internal audit system in the Department, deficiencies detected during local audit could possibly have been detected, rectified and prevented.

Recommendation: The Department may, in coordination with Finance Department, arrange to set up an internal audit wing in the Directorate or conduct internal audit of its records/accounts through the Director of Local Audit.

5.3 Results of audit

Test check of records of a unit relating to the Mines and Minerals Department during 2013-14 revealed that cases of short payment/ realisation of royalty, loss due to absence of standard norms for deduction etc. involving ₹ 5,775.57 crore in eight cases as mentioned in **Table 5.1**.

Table 5.1
Results of Audit

Sl. No.	Category	Number of cases	Amount (₹ in crore)
1.	Short/ Non realisation of surface rent due to non-fixation of surface rent of Petroleum Mining lease area	01	520.97
2.	Non-insertion of standard norms for deduction on account of operational utilisation in Petroleum and Natural Gas	01	73.41
3.	Short payment due to levy of royalty at different rates	01	40.06
4.	Other irregularities	05	5,141.13
Total		08	5,775.57

A few illustrative audit observations with financial implication of ₹ 40.41 crore are mentioned in the succeeding paragraphs.

Audit observations

5.4 Short realisation of royalty of ₹ 40.06 crore due to non-detection of payment of royalty at lower rates by the Oil India Limited

[Director of Geology and Mining (DGM), Assam; June 2013]

The Petroleum and Natural Gas Rules, 1959 (PNG Rules) stipulate that a lessee shall pay to the State Government a royalty at 10 *per cent* of the value at well head for natural gas obtained by the lessee from the leased area. Ministry of Petroleum and Natural Gas, Government of India (MoPNG, GoI) however, vide letter dated 22 December 2009 conveyed their decision that Oil India Limited (OIL) shall follow the methodology of computation of Royalty on Administered

Price Mechanism (APM) Gas on producer price basis (instead of that on well head value of the natural gas) similar to that being followed by the Oil and Natural Gas Corporation Limited (ONGC).

Mention was made in paragraphs 6.2.13 and 5.7 of the Reports on Revenue Sector of the Comptroller and Auditor General of India for the year ended 31 March 2010 and 31 March 2012, Government of Assam regarding short realisation of royalty due to payment of royalty by OIL at lower rates compared to what was paid by ONGC.

During examination of records, it was noticed that despite the clarification by the MoPNG, GOI in December 2009, while OIL continued to pay royalty at average rates varying between ₹608.63 per 1,000 scum¹ (2011-12) and ₹693.90 per 1,000 scum (2012-13) as against ₹699.09 per 1,000 scum and ₹807.04 per 1,000 scum respectively was paid by M/s ONGC during those years. After the matter was pointed out by Audit through the Audit Reports of 2009-10 and 2011-12 as referred above, the DGM initiated action to recover the outstanding royalty from OIL and reported (September 2012) recovery of ₹ 5.72 crore out of ₹ 8.05 crore outstanding pointed out in Audit Report for 2011-12. Subsequently, however, the Directorate failed to detect the short payment of royalty to the extent of ₹ 90.46/1000 scum in 2011-12 and ₹ 113.14/1000 scum in 2012-13 by OIL which resulted in short realisation of royalty of ₹40.06 crore².

The case was reported to the Department/Government in August 2013 and followed up in April 2014; their replies have not been received (November 2014).

5.5 Non-detection of short payment of royalty on crude oil by M/s OIL resulted in non-realisation of ₹ 27.03 lakh on which interest of ₹ 1.93 lakh was additionally leviable

[DGM, Assam; June 2013]

The Oilfield (Regulation and Development) Act, 1948 and Rules made thereunder provide that the lessee shall pay royalty in respect of any mineral oil mined, quarried, excavated or collected by him from the leased area at the rates specified in the schedule of the Act. The royalty is to be paid on monthly basis on the last day of the month succeeding the period in respect of which it is payable. The PNG Rules further provide that all licence fees, royalties and other payments, if

¹ Standard cubic meter – unit in which gas is measured.

²

Period	Volume of Gas (in scum)	Difference in rate of royalty (₹/1,000 scum)	Short payment (₹in crore)
2011-12	196,13,84,719	90.46	17.74
2012-13	197,27,18,044	113.14	22.32
Total			40.06

not paid within the specified time, would be increased by 200 basis points over the prime lending rate of State Bank of India for the delayed period.

During examination of records, it was noticed that M/s OIL disclosed production of 31.08 lakh kilo litres of crude oil during the period April 2012 to December 2012³. Royalty of ₹ 894.09 crore was payable on the above quantity of crude oil extracted against which the licensee paid ₹ 893.82 crore⁴. The balance royalty of ₹ 27.03 lakh was neither paid by the licensee nor was any demand notice issued by the DGM for payment of the same till the date of Audit (June 2013). This resulted in non-realisation of ₹ 27.03 lakh on account of royalty on which interest of ₹ 1.93 lakh⁵ was additionally leviable.

The above reveals that there was deficiency in scrutiny of the returns submitted by the licensee as existence of such a system could have enabled the Directorate of Geology and Mining to detect the short payment and timely action could have been initiated to recover the same.

The case was reported to the Department/Government in August 2013 and followed up in April 2014; their replies have not been received (November 2014).

5.6 Non-levy of additional royalty due to delayed payment of royalty on crude oil by M/s OIL resulted in non-realisation of revenue of ₹ 5.58 lakh

[DGM, Assam; June 2013]

The Oil-field (Regulation and Development) Act 1948 and Rules made thereunder provide that the lessee shall pay royalty in respect of any mineral oil mined, quarried, excavated or collected by him from the leased area at the rates specified in the schedule of the Act. The royalty is to be paid on monthly basis on the last day of the month succeeding the period in respect of which it is payable. The PNG Rules further provide that all licence fees, royalties and other payments, if not paid within the specified time, would be increased by 200 basis points over the prime lending rate of State Bank of India per month for the delayed period.

Mention was made in paragraphs 6.2.14 and 5.9 of the Reports on Revenue Sector of the Comptroller and Auditor General of India for the year ended 31 March 2010 and 31 March 2012 (Government of Assam) respectively regarding non-levy of interest on delayed payment of royalty.

³ Return for the fourth quarter (January to March 2013) had not been furnished by the licensee till the date of Audit in June 2013 though the same was to be submitted before 30 April 2013.

⁴ ₹ 679.77 crore paid alongwith the returns while ₹ 214.05 crore related to excess payments made in 2011-12 and carried over to 2012-13.

⁵ At 14.25 per cent on ₹ 27.03 lakh for six months (January to June 2013).

During examination of records of the above Office, it was noticed (June 2013) that M/s OIL paid the royalty amounting to ₹ 45.31 crore against ₹ 46.89 crore payable on extraction of crude oil for the months from April to August 2011. The balance amount of ₹ 1.58 crore was paid belatedly on 31 October 2011 after delay ranging from one to five months. For delayed payment of royalty, additional interest of ₹ 5.58 lakh was leviable which was neither paid voluntarily by the licensee nor any demand was raised by the DGM levying the same. This resulted in non-realisation of revenue of ₹ 5.58 lakh.

The case was reported to the Department/Government in August 2013 and followed up in April 2014; their replies have not been received (November 2014).

Guwahati

Dated : 18 February 2015



(C H KHARSHIING)

**Accountant General (Audit),
Assam**

Countersigned

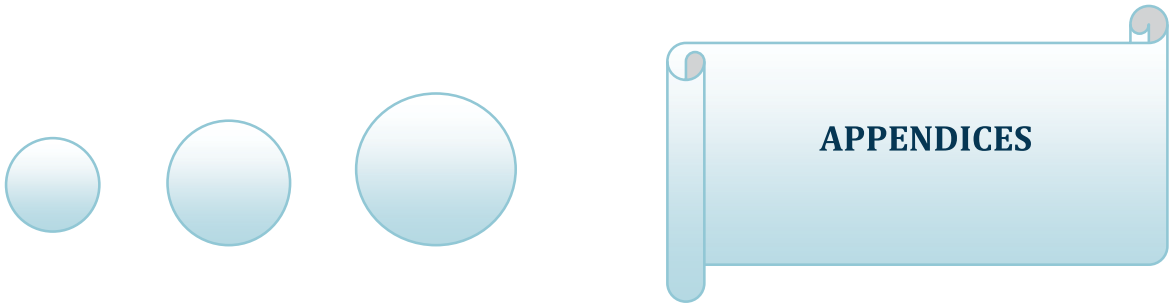


New Delhi

Dated : 20 February 2015

(SHASHI KANT SHARMA)

Comptroller and Auditor General of India



Appendix – I
(Reference paragraph 1.1.4)

Variation between the figures of Finance Accounts and Departmental figures

(₹ in crore)

Sl. No.	Head of revenue	Revenue as per Finance Accounts	Revenue as reported by the concerned Department	Variation
1.	Taxes on Sales Trade etc.	7,212.50	7,719.62	507.12
2.	State Excise	610.26	616.40	6.14
3.	MVT	351.11	361.54	10.43
4.	Registration	134.80	136.34	1.54
5.	Geology and Mining	1,830.06	1,826.96	(-) 3.10

Appendix – II
(Reference paragraph 1.8)

Number of auditable and audited units

Sl. No.	Name of the Department	Total number of auditable units	Total number of units due for audit during 2013-14	Units planned for audit during 2013-14	Units actually audited during 2013-14
1.	Sales Tax	83	82	30	29
2.	Transport	52	48	15	17
3.	Stamp Duty & Registration	82	76	10	12
4.	State Excise	50	50	20	17
5.	Agricultural Income Tax	02	02	01	01
6.	Mines and Minerals	01	01	01	01
7.	Land Revenue	161	145	08	08
8.	Forest	89	85	27	28
Total		520	489	112	113

Appendix – III
(Reference paragraph 2.3.7.1)

Increase of revenue under AVAT Act during 2008-09 to 2012-13

Years	Items	Increase of rate of tax
2008-09	i. India Made Foreign Liquor (IMFL) and Country spirit ii. Sports goods except Football and Volleyball iii. Plastic goods	27 per cent from 24 per cent w.e.f. 1 April 2008 4 per cent w.e.f. 1 April 2008 12.5 per cent from 4 per cent w.e.f. 16 June 2008
2009-10	i. Petrol ii. Diesel iii. Taxable goods on which tax leviable at the rate of 4 per cent and 12.5 per cent iv. Supari	27.50 per cent from 25.75 per cent 16.50 per cent from 15.50 per cent 5 per cent and 13.5 per cent respectively w.e.f. 31 October 2009 5 per cent w.e.f. 31 October 2009
2010-11	i. Candle, Exercise book, Graph book, Laboratory book, paper envelope, paper tray, Geometry boxes, pencil, sharpeners and erasers. ii. Tyre and tubes of Bi-cycle, Tri-cycle, Cycle-rickshaw and wheel chair	5 per cent w.e.f. 19 July 2010 5 per cent w.e.f. 29 April 2010.
2011-12	i. Crude Oil ii. Petroleum coke, bitumen, tea, bamboo and furnace oil iii. PSF and DMT iv. Tobacco and tobacco products v. IMFL and country spirit	5 per cent from 4 per cent w.e.f. 12 April 2011 5 per cent from 4 per cent w.e.f. 21 July 2011 5 per cent from 1 per cent w.e.f. 21 July 2011 20 per cent from 13.5 per cent w.e.f. 21 July 2011 30 per cent from 27 per cent w.e.f. 21 July 2011
2012-13	Works contract under composition scheme	5 per cent from 4 per cent w.e.f. 1 April 2012

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