CHAPTER-II: SALES TAX/VALUE ADDED TAX

2.1 Results of audit

Test check of the records relating to sales tax/value added tax, conducted during the year 2006-07 revealed underassessment/short levy/loss of revenue and other deficiencies amounting to Rs. 75.77 crore in 178 cases, which fall under the following categories:

(Rupees in crore)

Sl. No.	Categories	No. of cases	Amount
1.	**Exemption of tax on account of export and high sea sales (A review)**	**1**	**35.43**
2.	Irregular grant of excess exemption on tax paid sales	06	8.59
3.	Irregular grant of exemption of tax on branch transfer/ consignment sales	52	8.17
4.	Short accounting of purchase/sale/stock	44	7.55
5.	Irregular grant of exemption of tax on transit sales	12	7.10
6.	Incorrect application of rate of tax	20	4.70
7.	Irregular grant of exemption on statutory forms	16	2.33
8.	Incorrect allowance of concessional rate/exemption of tax on defective 'C', 'D' and 'F' forms	08	1.03
9.	Incorrect grant of excess credit/reduction of demand of tax	03	0.30
10.	Non-levy of tax on sale of assets	06	0.23
11.	Irregular grant of exemption on unauthorised purchase	04	0.21
12.	Incorrect grant of concessional rate of tax without C forms	06	0.13
Total		**178**	**75.77**

During the year 2006-07, the department accepted underassessments and other deficiencies of Rs. 46.73 crore involved in 99 cases and raised an additional demand of Rs. 7.72 crore pointed out in audit during the year 2006-07.

A few illustrative cases involving Rs. 24.28 crore and results of a review of **"Exemption of tax on account of export and high sea sales"** involving Rs. 35.43 crore are mentioned in the succeeding paragraphs.

2.2 Exemption of tax on account of export and high sea sales

Highlights

- In the absence of any system for ascertaining the genuineness and correctness of 'H' forms submitted by the dealers in support of exemption of tax on account of export through cross verification of transactions from the states concerned, the assessing authorities could not detect the irregularities which led to non-realisation of revenue of Rs. 37.77 crore.

(Paragraph 2.2.7)

- Both the Internal audit cell and the Enforcement branch of the department functioned ineffectively.

(Paragraph 2.2.8 and 2.2.9)

- Grant of incorrect exemption due to non-adherence to the provisions resulted in irregular export exemption of Rs. 12.39 crore.

(Paragraph 2.2.10)

- Grant of incorrect exemption on high sea sale[1] resulted in non-realisation of revenue of Rs. 2.09 crore.

(Paragraph 2.2.11)

- Grant of excess exemption on purchases on H form resulted in non-realisation of revenue of Rs. 80.93 lakh.

(Paragraph 2.2.12)

- Grant of incorrect exemption on sale on ST-49 & H forms resulted in non-realisation of revenue of Rs. 71.28 lakh.

(Paragraph 2.2.13)

2.2.1 Introduction

Article 286 (1) of the Constitution of India prohibits imposition of sales tax on import and export. Imports have been exempted from sales tax since customs duty is charged on it and exports have been exempted to make our exports more competitive in the world market.

Under section 5(1) of the Central Sales Tax Act, 1956 (CST Act), a sale or purchase of goods shall be deemed to take place in the course of export of goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India. Section 5(3) provides

[1] High sea sale is a sale or purchase of goods made in the course of import of goods into the territory of India by transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

that the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after and was for the purpose of complying with the agreement or order for or in relation to such export. Further, under Section 5(2) of the Act, a sale or purchase of goods shall be deemed to take place in the course of import of goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontier of India. As per Rule 12(10) of the CST (Registration & Turnover) Rules, 1957 a dealer in support of his claim that he is not liable to pay tax under this Act in respect of any sale of goods on the ground that the sale of such goods is a sale in the course of export of those goods out of the territory of India, is required to furnish to the prescribed authority a certificate in form 'H' filled and signed by the exporter along with the evidence of export of such goods.

It was decided by audit to review the mechanism for ensuring that the exemptions on account of export and high sea sales were allowed correctly by the Department of Trade and Taxes (DTT). The review revealed a number of system and compliance deficiencies which have been discussed in the subsequent paragraphs.

2.2.2 Organisational set up

The Commissioner of Trade and Taxes is responsible for the administration of the Acts and Rules in the DTT. He is assisted by four Additional Commissioners and six Deputy Commissioners. There are 10 zones each headed by a Joint Commissioner and these zones are further sub divided into 61 circles[2] and six key dealer units headed by sales tax/value added tax (VAT) officers.

2.2.3 Audit objectives

The review was conducted with a view to ascertain whether:

- export/high sea sale exemption allowed by the assessing authority at the time of assessment had correctly been worked out in accordance with the provisions of the applicable Acts and Rules;
- record of exporters and export exemptions granted on statutory form 'H' and ST-49[3] etc. was available to monitor the results of exemptions; and

[2] With the introduction of Delhi value added tax (DVAT) with effect from 1 April 2005, 61 circles are headed by VAT officers. Earlier 106 wards were headed by sales tax officers.

[3] Statutory forms 'H' and ST-49 are used for penultimate sale made to an exporter in other state and local exporter respectively.

- internal controls existed in the department to monitor timely submission and correctness of the documents in support of export and high sea sale exemptions.

2.2.4 Scope and methodology of audit

Assessment cases of exporters/deemed exporters of 20[4] out of 61 circles finalised by the sales tax officers during the years 2003-04, 2004-05 and 2005-06 pertaining to the assessment years 2002-03, 2003-04 and 2004-05 were scrutinised from March 2007 to May 2007. These 20 circles were selected on the basis of tax collection and location/area of wards/circles having maximum number of exporters/deemed exporters to ensure a representative coverage. Assessment cases of exporters/deemed exporters with a gross turnover of more than Rs. 1 crore were requisitioned. While 2,355 assessment cases were requisitioned by audit in respect of dealers who claimed export exemption as exporters/deemed exporters in these circles, the department supplied only 1,074 folders for audit scrutiny. In addition, 1,362 'H' forms relating to inter state transactions above Rs. 1 lakh each in a financial year in respect of all 61 circles were test checked by audit.

2.2.5 Acknowledgement

The Indian Audit and Accounts Department acknowledges the cooperation of the DTT in providing necessary information and records for audit. The draft review report was forwarded to the Government and the department in June 2007 and was discussed in the Audit Review Committee meeting held in September 2007. The Joint Commissioner (Audit), DTT represented the department. Views of the department have been incorporated in the relevant paragraphs.

Audit findings

System deficiencies

2.2.6 Absence of database of tax exemption granted on export and high sea sale

The department allows exemption of tax on export and high sea sale. A reliable database of exporters and deemed exports as well as exemption of tax allowed on account of export and high sea sale, is therefore, a pre-requisite for informed decision making. It was noticed in audit that no data was readily available in respect of exemptions allowed on export/high sea sale. Consequently, the revenue foregone during the assessment years 2002-03 to 2004-05 due to exemption of tax on account of export and high sea sale was not quantifiable by the department.

[4] Circle no. 1, 2, 5, 27, 35, 47 to 61.

2.2.7 Exemption of tax against H forms

Sub section 4 of section 8 of the CST Act provides that exemption of tax on any sale in the course of export is admissible on the furnishing of a declaration in form 'H', duly signed by the registered dealer to whom the goods are sold as well as the export documents. Sub rule 7 of Rule 4 of the CST (Delhi) Rules stipulates that no registered dealer to whom a declaration form is issued by the assessing authority shall either directly or through any other person transfer the declaration form to another person. Further, the CST Act, provides for imposition of penal rate of tax not exceeding one and half times the tax on the dealer in addition to the tax payable in cases of concealment of facts by furnishing inaccurate particulars or making false representations. **The department did not prescribe any system for ascertaining the genuineness and correctness of 'H' forms submitted by the dealers in support of exemption of tax on account of export through cross verification of transactions from the states concerned.**

Cross verification of the records of 61 circles with information/record of the assessing authorities in the States (Haryana, Maharastra, Punjab, Rajasthan, Uttar Pradesh and West Bengal) revealed incorrect/excess grant of exemption of tax against declarations in form 'H'. These as well as the irregularities noticed in verification of 1,047 'H' forms available in the assessment record of the dealers are discussed in the following paragraphs.

2.2.7.1 Incorrect grant of exemption of tax

Cross verification of the assessment records in 13 wards[5] with the information/records of sales tax offices in other states revealed that in 81[6] cases, the assessing authorities while finalising the assessments for the years 2002-03 to 2004-05 allowed, between 2003-04 to 2005-06, exemption of tax on taxable turnover of Rs. 116.63 crore, though the dealers were either non-existent or the forms had not been issued by the sales tax office of the concerned state. Since the department did not prescribe any system for the verification of 'H' forms submitted by the dealers in support of exemption of tax, these could not be detected by the assessing authorities while finalising the assessment of the dealers. This resulted in incorrect exemption of tax of Rs. 16.66 crore including interest[7] of Rs. 5.16 crore. Besides maximum penalty of Rs. 17.24 crore was also leviable. The details are mentioned in Appendix I.

After the cases were pointed out, the department stated (August 2007) that additional demands totalling Rs. 1.57 crore had been raised in 14 cases. The registration certificate (RC) of one dealer had been cancelled to whom 25 'H'

[5] No. 17, 19, 20, 24, 32, 39, 47, 52, 66, 70, 73, 76 and 78.

[6] 67 cases relates to fake forms and 14 cases of non-existent dealers.

[7] Rate of interest upto March 2007 for the assessment year 2002-03 is 70 *per cent*, 2003-04 is 52 *per cent* and 2004-05 is 34 *per cent.*

forms involving tax of Rs. 3.72 crore were issued. Notices for reassessment involving tax of Rs. 11.37 crore had been issued in 42 cases.

2.2.7.2 Excess exemption claimed by dealers

Cross verification of the assessment records in three wards[8] with the information/records of sales tax offices in other states revealed that in 11 cases, the assessing authorities while finalising the assessments for the years 2002-03 to 2004-05 allowed, between 2003-04 to 2005-06, exemption of tax on taxable turnover of Rs. 12.49 crore, while details of purchase valued as Rs. 15.70 lakh only were furnished by the dealers to the assessing authority in their own states. Absence of a system of cross verification of transactions led to non-levy of tax of Rs. 1.80 crore including interest of Rs. 59.02 lakh. Additionally, maximum penalty of Rs. 1.81 crore was also leviable. The details are mentioned in Appendix II.

After the cases were pointed out, the department stated (August 2007) that an additional demand of Rs. 30.47 lakh had been raised in one case and notices for reassessment involving tax of Rs. 1.50 crore had been issued in the remaining 10 cases.

2.2.7.3 Misutilisation of forms

Cross verification of the assessment records in four wards[9] with information/ records of sales tax offices in other states revealed that in four cases, the assessing authorities while finalising the assessments for the years 2002-03 to 2004-05 allowed, between 2003-04 to 2005-06, exemption of tax on taxable turnover of Rs. 93.82 lakh, though the 'H' forms were utilised by the dealers other than those to whom these were issued in contravention of the provisions of the CST Act. This resulted in underassessment of tax of Rs. 12.63 lakh including interest of Rs. 3.25 lakh. Additionally, maximum penalty of Rs. 14.07 lakh was also leviable. The details are mentioned in Appendix III.

After the cases were pointed out, the department stated (August 2007) that an additional demand of Rs. 11.68 lakh had been raised in one case and notices for reassessment involving tax of Rs. 95,000 had been issued in the remaining cases.

The irregularities mentioned above were noticed in only nine *per cent* of the 'H' forms verified. However, the revenue involved is 45 *per cent* of the total money value of the cases verified.

The Government may consider prescribing a system of verification of genuineness of 'H' forms filed along with the assessment records in the DTT with the sales tax offices of issuing states of transactions of Rs. 5

[8] No. 32, 47, 73.
[9] No. 5, 44, 47, 102.

lakh and above to facilitate the assessing authorities to determine the correctness of exemption of tax claimed against form 'H' by the dealers.

2.2.8 Internal audit

Internal audit, which provides reasonable assurance of proper enforcement of laws, rules and departmental instructions, is a vital component of internal control. It is generally defined as the control of all controls to enable an organisation to assure itself that the prescribed systems are functioning reasonably well.

The DTT has an internal audit cell (IAC) under the charge of the Joint Commissioner (Audit). Audit noticed that neither has the department prescribed any norms for the inspections of its various wards, nor has it introduced any manual for conducting internal audit. The department also failed to produce the details regarding the number of wards/circles audited during the period 2002-03 to 2004-05, despite being requested.

Sl. No.	Assessment year	No. of auditable units	No. of units audited
1.	2002-03	106	Random test checks were made by the IAC
2.	2003-04	106	
3.	2004-05	106	

The details regarding audit planning, compliance with internal audit observations etc. were also not available with the department. This indicates that the department did not have any effective internal audit and was unable to ascertain whether its various wards were functioning reasonably well to ensure optimum realisation of revenue.

The department needs to take immediate measures for effective functioning of its internal audit cell.

2.2.9 Enforcement branch

The DTT has an enforcement branch under the charge of the Additional Commissioner (Enforcement) {AC(E)}. The main function of the branch is to detect the evasion of sales tax by conducting survey, search and seizures. To streamline the work relating to the assessment of dealers surveyed by the enforcement branch including search and seizures, AC (E) has to first assess whether the case is required to be assessed by the enforcement branch itself or whether it should be transferred to the concerned ward. The enforcement branch/ward has to ensure that cases of evasion of sales tax detected during search and seizures are immediately scrutinised and assessed so that the quantum of evasion is determined and realised promptly. In terms of the circular of May 1999, all the zonal Assistant Commissioners are required to submit a list of pending cases to the AC (E). The enforcement branch has to monitor regularly such cases where search and seizure are involved and also have to maintain statistical data on the subject.

No targets of wards/circles to be selected/covered for search during a relevant year were fixed by the department. Audit noticed the following relating to the search/seizures conducted by the enforcement branch during the period 2002-03 to 2004-05:

Sl. No.	Assessment year	No. of teams deployed	No. of search/seizures
1.	2002-03	1,851	244
2.	2003-04	1,024	123
3.	2004-05	971	266

The relevant records in respect of the search/seizures cases were transferred to the respective wards for reassessment. The enforcement branch did not maintain any records relating to shortcomings/deficiencies/evasion of tax reassessed by the jurisdictional sales tax officer/VAT officer. The results of such search/seizures conducted were also not on record.

Non-maintenance of records and non-follow up of the evasion cases defeated the purpose of detection of evasion of tax by the enforcement branch.

The Government may consider fixing of targets and ensuring their achievement. It may also consider setting up a mechanism for maintenance of the requisite data by the enforcement branch in appropriate formats as well as for review and disposal of pending cases detected by the enforcement branch at regular intervals.

Compliance deficiencies

2.2.10 Irregular grant of exemption in the course of export

As per the circular[10] of December 1995, every dealer is required to produce a certificate from a chartered accountant (CA) in the prescribed format for claiming export exemption, in lieu of bulky export documents.

2.2.10.1 Scrutiny of the records in six wards[11] revealed that the assessing authorities while finalising the assessments for the year 2002-03 between January and May 2004 allowed exemption on the taxable turnover of Rs. 172.54 crore in 11 cases though the requisite detail (date of realisation of export consideration) was not mentioned in the certificate of CA submitted by the dealers. This resulted in irregular exemption of tax of Rs. 11.69 crore

[10] Circular no. 21 of 1995-96 dated 8 December 1995.
[11] No. 3, 88, 91, 92, 93 and 101.

including interest. A few illustrative cases are mentioned below:

(Rupees in lakh)

Sl. No.	Name and RC no. of the dealer	Taxable turnover	Commodity	Rate of tax (*per cent*)	Tax leviable	Interest leviable	Total tax leviable
1.	Panorama Exports LC/92/198135	1,995.44	Readymade garments	8	159.63	111.74	271.37
2.	Boutique International (P) Ltd. LC/91/206582	1,954.14		8	156.33	109.43	265.76
3.	Sonar Creations LC/93/179627	3,499.83	Handicraft items	4	139.99	97.99	237.98
4.	ACPL Exports LC/91/134713	7,693.14	Gold/Silver jewellery	1	76.93	53.85	130.78
5.	Aman Collection LC/92/168327	582.42	Readymade garments	8	46.58	32.60	79.18
Total		**15,724.97**			**579.46**	**405.61**	**985.07**

After the cases were pointed out, the department stated (August 2007) that notices for reassessment involving tax of Rs. 11.69 crore had been issued in all the cases.

2.2.10.2 In one case[12] the assessing authority allowed export exemption of Rs. 3.69 crore to M/s. Subha International (LC/104/142869/0290) for the assessment year 2002-03 without obtaining the prescribed certificate of CA or verifying the other export documents. This resulted in non-levy of tax amounting to Rs. 50.22 lakh including interest of Rs. 20.68 lakh.

The department stated (August 2007) that the dealer had now filed the certificate of the CA for the assessment year 2002-03. The reply is not tenable as the assessment was made without the certificate of CA. It was also seen that the CA's certificate/format furnished now does not contain the column 'date of realisation of export consideration and bank's name' which was mandatory for 2002-03 to verify that the export value had actually been realised within the prescribed period.

2.2.10.3 In one case[13], it was observed that assessing authority allowed export exemption of Rs. 3.76 crore to the Delhi branch of the dealer (Amrit Exports - LC/91/71568, assessment year 2004-05) while the actual export was made by the Kolkata branch as depicted in the shipping bill/bill of lading submitted by the dealer for claiming export exemption from Delhi, which was irregular. This resulted in non-levy of tax amounting to Rs. 20.16 lakh including interest.

Reply of the department has not been received (November 2007).

[12] Ward no. 104.
[13] Ward no. 91.

2.2.11 Irregular exemption of high sea sale

The CST Act read with the Rules made thereunder provides that sale of goods made by one registered dealer to another registered dealer are to be allowed as deduction from the turnover of the selling dealer when the goods are sold before they cross the customs frontier of India (high sea sale) by endorsement on documents viz., purchase agreement, bill of entry etc. and fulfilled the following conditions:

- shipping bill was prior to the high sea sale agreement;
- bill of entry was in the name of the purchaser;
- agreement was signed by both the parties;
- shipping bill/bill of lading was authenticated by the customs authorities; and
- high sea sale agreement date was prior to the date on which the goods crossed the customs frontier of India and after crossing customs frontier of foreign country.

It has been judicially[14]held that a sale can be treated to be in the course of import if there is a privity of contract between the Indian importer and foreign exporter and if the intermediary through which such import is effected merely acts as an agent or a contractor for and on behalf of the Indian importer. Acceptance of defective/incomplete documents attracts tax and interest thereon.

Scrutiny of the assessments records in two wards[15] revealed that in five cases, the assessing authorities while finalising the assessments for the years 2003-04 to 2004-05, between 2004-05 to 2005-06, allowed exemption of tax on high sea sale turnover of Rs. 17.49 crore without the above mentioned conditions being fulfilled. Thus, acceptance of incomplete/defective documents for grant of exemption of tax resulted in short levy of tax of Rs. 2.09 crore including interest. The details are mentioned below:

(Rupees in lakh)

Sl. No.	Name & RC no. of the dealer	Taxable turnover	Commodity	Total tax leviable
1.	Bharat Udyog LC/91/254867	913.68	Sale of steel billets	97.94
2.	Clear Water Ltd. LC/91/082361	334.04	Methyl alcohol	53.71
3.	Bharat Udyog LC/91/254867	296.82	Sale of steel billets	36.10
4.	Kesho Ram Industries LC/66/170922	114.56	Stainless coil & sheet	15.35
5.	Aeroplane Shoe Factory LC/91/077923	89.74	Oil bound polymer	5.46
Total		**1,748.84**		**208.56**

[14] In the case of K. Gopinath Nair Vs. State of Kerala (1997) 105 STC 580 (SC).
[15] No. 66 and 91.

After the cases were pointed out, the department stated (August 2007) that notices for reassessment involving tax of Rs. 2.09 crore had been issued in all the cases.

2.2.12 Excess purchase on ST-49 & H forms

Section 5(3) of the CST Act provides for granting of exemption from tax liability to penultimate sale which satisfies the following two conditions:

- such sale or purchase of the goods should take place after the agreement or order for or in relation to their export; and
- such sale or purchase should take place for the purpose of complying with such agreement or order.

It is only then that such penultimate sale is deemed to be a sale in the course of export.

Scrutiny of the assessment records in three wards[16] revealed that in three cases, the assessing authorities while finalising the assessments for the years 2002-03 to 2004-05 allowed, between 2003-04 and 2005-06, exemption of tax to dealers who had purchased goods on 'H' forms in excess of the goods exported as per the CA's certificate. This resulted in non-levy of tax of Rs. 80.93 lakh including interest. A few illustrative cases are mentioned below:

(Rupees in lakh)

Sl. No.	Name & RC. no. of the dealer	Commodity	Value of item purchased on 'H'/ST-49	Value of item exported	Taxable turnover (difference)	Total tax leviable
1.	Kottage India LC/90/142486	Handicrafts	563.37	310.25	253.11	34.42
2.	Ankit Exim Pvt. Ltd LC/66/222394	Spindle assembly	301.42	108.05	193.37	25.91
3.	Blue Exim LC/86/270687	Readymade garments	1,130.50	974.84	153.70	20.60
Total			**1,995.29**	**1,393.14**	**600.18**	**80.93**

After the cases were pointed out, the department stated (August 2007) that notices for reassessment involving tax of Rs. 80.93 lakh had been issued in all the cases.

2.2.13 ST-49/H form not supported by evidence of export of goods

Under the DST Act read with the CST Act and the rules made thereunder, the sale of goods made by one registered dealer to another registered dealer for export are to be allowed as deduction from the turnover of the selling dealer on furnishing the complete list of such sales supported by the statutory forms H/ST-49 duly filled and signed by the exporter alongwith evidence of export of such goods like the bill of lading/bill of export/shipping bills, etc., stamped

[16] No. 66, 86, 90.

by the customs authorities[17] establishing the export of such goods out of the country. Submission of defective/incomplete documents attracts tax and interest thereon.

Scrutiny of the assessments records of seven wards[18] revealed that in 12 cases, the assessing authorities while finalising the assessments for the assessment years 2002-03, 2003-04 and 2004-05, between 2003-04 to 2005-06, allowed tax exemption on taxable turnover of Rs. 5.93 crore without examining the supporting documents submitted by the dealer alongwith the ST-49/H forms. Acceptance of defective/incomplete export documents for grant of exemption of tax not only resulted in short levy of tax of Rs. 71.28 lakh including interest but also undermined the intent and purpose of the Act of ensuring the genuineness of claims for grant of exemption of tax. A few illustrative cases are mentioned below:

(Rupees in lakh)

Sl. No.	Name & RC no. of the dealer	Commodity	Taxable turnover	Form type	Total tax leviable
1.	Shree Metal Co. LC/66/211563	S S utensils	148.04	H	25.16
2.	Baweja Brothers LC/87/152950	Readymade garments	156.47	ST-49	10.63
3.	Om Sai Exports LC/86/240263		41.74	H	5.59
4.	Shree Metal Co. LC/66/211563	S S utensils	36.68		5.56
5.	Sawhney creations LC/92/191594	Readymade garments	25.52		3.41
Total			**408.45**		**50.35**

After the cases were pointed out, the department stated (August 2007) that an additional demand of Rs. 94,000 had been raised in one case and notices for reassessment involving tax of Rs. 70.34 lakh had been issued in the remaining 11 cases.

2.2.14 Incorrect grant of exemption on purchases not exported in original form

Rule (10) A of the DST Rules stipulates that a dealer claiming exemption on account of sale in the course of export needs to submit 'H' forms along with the evidence in support of export of goods. Further, circular no.1 of 2003-04 and notification[19] dated 1 April 2003 also stipulates that the assessing officer shall ensure that the goods purchased were exported in the same form.

Scrutiny of the records of seven wards[20] revealed that in 7 cases, the assessing authority, while finalising the assessments for the years 2002-03 and 2004-05,

[17] Circular no.17 of 1994-95 dated 30 September 1994.
[18] No. 09, 66, 86, 87, 91, 92, 93.
[19] No. F18(33)/97-PPR/PF-I/226.
[20] No. 13, 44, 65, 66, 90, 91and 93.

allowed, between 2003-04 and 2005-06, exemption of tax on taxable turnover of Rs. 7.06 crore which were exported in a condition other than that in which these were purchased. Thus, the dealers were not eligible to claim exemptions. This resulted in short realisation of tax of Rs. 55.48 lakh including interest. A few illustrative cases are mentioned below:

(Rupees in lakh)

Sl. No.	Name & RC no. of the dealer	Item purchased on 'H'/ST-49	Commodity exported	Amount claimed under export	Total tax leviable
1.	Ranvik Export LC/93/167792	Hardware	Alluminium artware & Christmas tree.	231.48	24.81
2.	Upgrade Export LC/90/150096	Heena, shampoo, gordian powder	Dye & herbal body products	104.89	16.85
3.	Sneh Plastic LC/65/166928	Plastic goods	Motorcycle parts	45.27	6.06
4.	Sunder Export LC/66/223583	MS rods	S S Utensils	20.67	2.77
5.	Mahabira Exporters LC/13/162536	Precious stone, diamonds	Gold jewellery	115.84	1.55
			Total	**518.15**	**52.04**

After the cases were pointed out, the department stated (August 2007) that an additional demand of Rs. 2.31 lakh had been raised in one case and notices for reassessment involving tax of Rs. 53.17 lakh had been issued in the remaining six cases.

2.2.15 Non-levy of tax on the sale of export licences

Under section 2(g) of the DST Act, replenishment licences (REP), duty entitlement pass book licences (DEPB), special import licences (SIL), quotas and other tradable licences, which are granted by the Director General of Foreign Trade (DGFT) in recognition of the export of certain goods, can be transferred by way of sale.

Scrutiny of the assessment records of five wards[21] revealed that in 11 assessment cases, the dealers sold DEPB licences for Rs. 4.45 crore but the assessing authority failed to detect the sale of licences from the accounts/records filed by the dealer at the time of assessment. This resulted in non-levy of tax amounting to Rs. 28.62 lakh including interest. A few

[21] No. 7, 55, 86, 91, 100.

illustrative cases are mentioned below:

(Rupees in lakh)

Sl. No.	Name & RC no. of the dealer	Commodity	Taxable turnover	Tax rate *(per cent)*	Total tax leviable
1.	ACPL Exports LC/91/134713	Gold & silver	143.62	4	8.72
2.	Amrit Exports LC/91/2711568	Readymade garments, jute	32.17	10	4.31
3.	SS Shawls LC/86/171083	Shawls	55.68	4	2.99
4.	Bindra Motors LC/100/076639	Automobile spare parts	39.76	4	2.42
5.			40.32	4	2.16
Total			**311.55**		**20.60**

After the cases were pointed out, the department stated (August 2007) that additional demands totalling Rs. 3.26 lakh had been raised in two cases and notices for reassessment involving tax of Rs. 25.36 lakh had been issued in the remaining nine cases.

2.2.16 Conclusion

A reliable database of revenue foregone on account of exemptions which is a pre-requisite for informed decision making was absent. Hence the revenue foregone relating to the assessment years 2002-03 to 2004-05 regarding exemption of tax on account of export and high sea sale could not be quantified by the DTT. In the absence of any system for ascertaining the genuineness and correctness of 'H' forms submitted by the dealers in support of exemption of tax on account of export through cross verification of transactions from the states concerned, the assessing authorities could not detect the irregularities which led to non-realisation of revenue of Rs. 37.77 crore. The internal controls of the department are also weak as is evidenced by the non-maintenance of the records and non-follow up of the evasion cases by the enforcement branch. The functioning of the internal audit cell is also ineffective.

2.2.17 Summary of recommendations

The Government may consider implementation of the following recommendations for rectifying the system and compliance issues:

- prescribing a system of verification of genuineness of 'H' forms filed along with the assessment records in the DTT with the sales tax offices of issuing states of transactions of Rs. 5 lakh and above to facilitate the assessing authorities to determine the correctness of exemption of tax claimed against form 'H' by the dealers;
- taking immediate measures for effective functioning of the internal audit cell; and

- fixing of targets and ensuring their achievement by the enforcement branch. It may also consider setting up a mechanism for maintenance of the requisite data in appropriate formats as well as for review and disposal of pending cases detected by the enforcement branch at regular intervals.

2.3 Irregular grant of exemption of tax on branch transfer/ consignment sales

2.3.1 Under the provisions of the CST Act, every dealer is required to declare his places of business in other States at the time of seeking registration. The Act also provides that any dealer who claims that he is not liable to pay tax in respect of any goods on the ground that the movement of such goods from one State to another was occasioned by transfer of such goods by him to any other place of his business or to his branch or to his agent or principal as the case may be, and not by reason of sale, the burden of proving it shall be on that dealer. For this purpose he may furnish to the assessing authority (AA) a declaration duly filled and signed by the principal officer of the other place of business or his agent or principal as the case may be. If the dealer fails to furnish such declaration then the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale.

Test check of the records of 14 wards[22] of the DTT conducted during April 2006 to March 2007 revealed that in 18 cases for the assessment year 2004-05, the AAs while finalising the assessments during April 2005 to March 2006, allowed exemption on the basis of 'F' forms on goods valuing Rs. 36.53 crore on account of branch transfer to places other than those specified in the registration certificate (RC) of the dealers or of consignment sales to other dealers without consignment agreements. This resulted in underassessment of tax of Rs. 4.89 crore including interest of Rs. 1.24 crore.

After the cases were pointed out, the department stated in July 2007 that an additional demand of Rs. 2.76 lakh had been raised in one case and notices for reassessment involving revenue of Rs. 1.69 crore had been issued in six cases. The replies of the department in 11 cases involving revenue of Rs. 3.07 crore are not tenable for the reasons mentioned below:

Sl. No.	Transfer or sale	Ward No.	Reply of the department	Reasons for the reply being untenable
1.	Branch transfer	52, 54, 63	The dealer had intimated timely about the opening of branches and these have now been entered in the RC.	The department failed to furnish the copy of amended RC either with the reply or at the time of verification of reply in September 2007.
2.	Consign-ment sale	33	There is no provision under the law for filing an agreement between the consignor and consignee.	As per rule 4D of the CST (Delhi) Rules, the exemption of tax on account of the transfer of goods to his agent is admissible subject to certain conditions which include an agreement between the consignor and consignee.

[22] Ward Nos. 2, 21, 32, 33, 47, 52, 54, 63, 74, 77, 79, 82, 89, 91.

Sl. No.	Transfer or sale	Ward No.	Reply of the department	Reasons for the reply being untenable
3.	Consign-ment sale	21, 47, 77, 82	The dealer submitted separate F forms for each month correctly.	The audit observation is on transfer of goods to the consignees without agreements to which the department has not given a reply.
4.	Consign-ment sale	89	The dealer submitted the copies of agreements entered into with the consignees.	The agreements entered into with the two consignees were not valid for 2004-05.

2.3.2 The CST Act read with the Rules made thereunder provide that a single declaration in form 'F' may cover the transfer of goods effected during a calendar month by a dealer to any other place of his business or to his agent or principal outside the State as the case may be. The declaration in form 'F' should contain full particulars of the goods, mode of transport and date on which the delivery was taken by the transferee. Further, production of 'F' forms in support of branch transfer/consignment sale was made mandatory with effect from May 2002. Otherwise, the transactions are to be treated as inter state sales and taxed accordingly.

2.3.2.1 Test check of the records of 19 wards[23] of DTT conducted during April 2006 to March 2007 revealed that the AAs while finalising the assessments in 29 cases for the assessment years 2003-04 and 2004-05 assessed between March 2005 and March 2006, allowed exemption of taxable turnover of Rs. 30.20 crore supported by declarations in form 'F'. Of this, turnover of Rs. 22.84 crore was supported with the declaration in 'F' form covering the period beyond one month and was thus liable to be treated as inter state sales not supported by valid declaration. This resulted in underassessment of tax of Rs. 2.20 crore including interest of Rs. 56.69 lakh.

After the cases were pointed out, the department stated in July 2007 that additional demands totalling Rs. 57.70 lakh had been raised in eight cases and notices for reassessment involving revenue of Rs. 61.82 lakh had been issued in eight cases. The replies of the department in 13 cases involving revenue of Rs. 88.90 lakh for the assessment year 2004-05 are not tenable as mentioned below:

Sl. No.	Ward No.	Reply of the department	Reasons for the reply being untenable
1.	27, 41, 43, 66, 93	The dealer has now furnished all F forms separately for each month.	These forms cannot be accepted without reassessment under section 24 of the DST Act.
2.	62, 98	As per the judgement of the High Court of Tamil Nadu in the case of M/s Bindal Bearing Ltd. Vs State of Tamil Nadu (1993) 90 STC 128 (MAD), requirement of one F form	The submission of F forms has been made mandatory with effect from 11 May 2002. The judgement cited pertains to an earlier period.

[23] Ward Nos. 26, 27, 32, 41, 42, 43, 57, 61, 62, 66, 69, 72, 74, 75, 82, 89, 90, 93, 98.

		for one month's transaction is only a direction and cannot be constituted as mandatory.	
3.	26	There is no concealment of branch transfer.	The audit observation relates to exemption on invalid F forms to which the department has not given a reply.
4.	82	The dealer has filed photocopies of the agreements entered into with the consignees.	
5.	61	In the review order, one F form has been rejected.	The audit observation pertains to those F forms which were accepted and against which the exemption was granted by the department at the time of the assessment.

2.3.2.2 Test check of the records of four wards[24] of DTT conducted during April 2006 to March 2007 revealed that in four cases for the assessment year 2004-05, the AAs while finalising the assessments between April 2005 and March 2006, had allowed exemption of tax on branch transfer/consignment sales of Rs. 1.26 crore without obtaining statutory forms 'F'. This resulted in underassessment of tax of Rs. 16.84 lakh including interest of Rs. 4.28 lakh.

After the cases were pointed out, the department stated in July 2007 that notice for reassessment involving revenue of Rs. 3.86 lakh had been issued in one case. In two cases involving revenue of Rs. 4.71 lakh, the department stated that the dealer's consignee agents submitted F forms after deducting their expenses. The replies are not tenable as F forms should be of the value for which the dealers had claimed exemption during 2004-05. Reply in the remaining case has not been received (November 2007).

2.3.3 Under the DST Act, the goods purchased against statutory forms ST-1 and ST-35 and transferred to the branch offices or on consignment outside Delhi for resale shall be subject to tax on purchase price of such goods. If a dealer conceals the particulars of his purchases or furnishes inaccurate particulars of the turnover, he shall be liable to pay as penalty, in addition to the amount of tax payable, a sum not exceeding two and a half times of the amount of tax due.

Test check of the records of ward no. 47 of DTT conducted during April 2006 to March 2007 revealed that in one case, the dealer purchased goods valued as Rs. 5.88 crore against declarations in forms ST-35 during 2004-05 and transferred the same against form 'F' to his consignment agent outside Delhi. While framing the assessment in March 2006, the consignment sale of the above goods was allowed by the AA but tax on purchase value of these goods was not levied. This resulted in underassessment of tax of Rs. 31.52 lakh including interest of Rs. 8 lakh. Besides maximum penalty of Rs. 58.81 lakh was also leviable.

[24] Ward Nos. 27, 42, 45, 98.

After the case was pointed out, the department stated in July 2007 that an additional demand of Rs. 30.21 lakh had been raised. A report on recovery and reply in remaining balance amount has not been received (November 2007).

The matter was reported to the Government in June 2007; their reply has not been received (December 2007).

2.4 Incorrect application of rate of tax

The DST Act specifies the rates of sales tax payable by a dealer in respect of the goods or classes of goods specified in the various schedules appended to the Act. If the AA is satisfied that particulars in the return submitted by a dealer are true and correct, he may proceed to assess the dealer as per the provisions of the Act. Furnishing of incorrect particulars of turnover attracts penalty not exceeding two and a half time the tax avoided.

Test check of the records of 16 wards[25] of DTT conducted between April 2006 and March 2007 revealed that in 20 cases relating to the assessment year 2004-05 assessed between April 2005 and March 2006, the AA while accepting the returns of the dealers levied tax on sales valued as Rs. 70.91 crore at a lower rate than those prescribed. This resulted in short levy of tax amounting to Rs. 4.70 crore including interest of Rs. 1.19 crore.

After the cases were pointed out, the department stated in July 2007 that additional demands totalling Rs. 37.64 lakh had been raised in nine cases and notices for reassessment involving revenue of Rs. 3.38 lakh had been issued in two cases. The replies of the department in eight cases involving revenue of Rs. 4.14 crore are not tenable as mentioned below:

Sl. No.	Ward No.	Brief of cases	Reply of the department	Reasons for the reply being untenable
1.	89	The dealer sold adhesive which was taxable at 12 *per cent,* but the AA assessed these goods as chemical and levied tax at four *per cent.*	The dealer sold adhesive through the agent and the balance sales were of chemical.	Out of the total purchases of Rs. 32.44 crore, the dealer purchased adhesive worth Rs. 32.41 crore and as per the assessment order his four *per cent* sales (chemical) are of Rs. 15.08 crore which is not correct.
2.	87	The dealer sold projector which was taxable at 12 *per cent* while the AA assessed these goods as computer peripherals and levied tax at four *per cent.*	The dealer was engaged in the sale of computer data projector which was operated through computers.	As per the department's clarification[26] of March 2000 projectors are not included in the computer hardware.

[25] Ward Nos. 15, 21, 23, 42, 49, 51, 56, 57, 80, 85, 87, 89, 93, 102, 104, 106.
[26] No. F.9(J)/97-98 Policy/22754-23157 dated 02 March 2000.

Sl. No.	Ward No.	Brief of cases	Reply of the department	Reasons for the reply being untenable
3.	49	The dealer sold poultry medicine taxable at eight *per cent* while the AA assessed these goods as poultry feeds which falls under tax free items.	The dealer purchased poultry medicines and feed supplement which were transferred from the Chandigarh office against F forms.	As per the requisition sheet submitted by the dealer and computer issue sheet, the dealer was authorised to transfer medicines and not feed supplement.
4.	93	The dealer sold flasks and refills which were taxable at 12 *per cent* while the AA assessed these goods as electrical goods and levied tax at eight *per cent.*	The dealer received electrical goods on stock transfer basis which are taxable at eight *per cent.*	As per the utilisation sheet of F forms, the dealer purchased flasks which are taxable at 12 *per cent.*
5.	104	The dealer sold electronic goods in inter state sales which were taxable at 10 *per cent* (without C forms) while the AA levied tax at six *per cent.*	The dealer submitted C forms during review and the demand was reduced to nil.	The dealer was liable to pay tax at 10 *per cent* (without C forms) and at four *per cent* after submission of C forms.
6.	80	The dealer sold chlorinated paraffin wax which was taxable at 20 *per cent* while the AA assessed these goods as chemicals and levied tax at four *per cent.*	The dealer had purchased and sold plasticizer wax compound taxable at four *per cent.*	The dealer is a consignee agent and his principals are manufacturers of chlorinated paraffin wax taxable at 20 *per cent.*

The reply in the remaining one case has not been received (November 2007).

The matter was reported to the Government in June 2007; their reply has not been received (December 2007).

2.5 Irregular grant of excess exemption on tax paid sales

The DST Act provides that the goods notified as taxable at the first point of sale, shall be exempt from tax on all the subsequent points of their sale. The selling dealer is allowed to claim deduction from his turnover in respect of any sale of the first point goods, provided he shows to the satisfaction of the AA that the tax due on their sale had been paid at the first point.

Test check of the records of three wards[27] of DTT conducted during April 2006 to March 2007 revealed that in six cases while finalising the assessments during March 2005 to March 2006, the AAs allowed exemption on sale of tax paid goods of Rs. 77.87 crore against the admissible sale of Rs. 23.73 crore resulting in excess exemption of Rs. 54.14 crore. This resulted in the short

[27] Ward Nos. 44, 45, 85.

levy of tax of Rs. 3.04 crore including interest of Rs. 81.54 lakh. Besides maximum penalty of Rs. 5.55 crore was also leviable.

After the cases were pointed out, the department stated in July 2007 that additional demands totalling Rs. 3.03 crore had been raised in five cases. In the remaining one case involving revenue of Rs. 94,000, the department stated that the dealer has now furnished the RC nos. of the selling dealers from whom he had purchased the tax paid goods. The reply is not tenable as the addresses of the two selling dealers are of out of Delhi and in the case of one dealer, RC no. has not been mentioned.

The matter was reported to the Government in June 2007; their reply has not been received (December 2007).

2.6 Short accounting of purchase/sale/stock

The DST Act provides that every dealer liable to pay tax shall maintain a true account of the value of goods bought and sold by him. The dealer shall also be liable to pay simple interest at one *per cent* per month for a period of one month and at one and a half *per cent* per month thereafter. If a dealer conceals the particulars of his purchases or furnishes inaccurate particulars of turnover, he shall be liable to pay penalty, in addition to the amount of tax payable, a sum not exceeding two and a half times of the amount of tax due.

2.6.1 Test check of the records of five wards[$] of DTT conducted during April 2006 to March 2007 revealed that in six cases for the assessment year 2004-05 assessed during April 2005 to March 2006, the closing balance of stock as per the trading account was shown as Rs. 2.78 crore against the actual balance of Rs. 25.91 crore while in one case the opening balance of stock in trading account was shown as Rs. 47.85 lakh against the actual balance of Rs. 75.91 lakh. This resulted in short accounting of stock and consequent short levy of tax of Rs. 98.13 lakh including interest of Rs. 24.90 lakh. Besides maximum penalty of Rs. 1.83 crore was also leviable.

After the cases were pointed out, the department stated in July 2007 that notices for reassessment involving revenue of Rs. 24.40 lakh had been issued in two cases. The replies of the department in five cases involving revenue of Rs. 73.73 lakh are not tenable as mentioned below:

Sl. No.	Ward No.	Brief details of the cases	Reply of the department	Reasons for the reply being untenable
1.	02	The dealer showed closing stock of Rs. 72.75 lakh as against the actual closing stock of Rs. 1.68 crore.	The trading account include balancing figures being transferred to the head office for accounting and consolidation purposes.	The dealer had neither shown stock transfer in the sales summary nor had submitted F forms in support of the transfer of goods to the head office at the time of assessment.

[$] Wards Nos. 01, 02, 42, 46, 53.

Sl. No.	Ward No.	Brief details of the cases	Reply of the department	Reasons for the reply being untenable
2.	01	The dealer showed closing stock of Rs. 30.08 lakh as against the actual closing stock of Rs. 1.14 crore.	The dealer sold goods at a discount at the best possible price and the difference pertained to this.	The department has failed to furnish the copies of purchase/transfer bills and sale bills showing that the goods were sold at a lower price than the purchase/transfer price either with the reply or at the time of verification of reply in September 2007.
3.	02	The dealer showed closing stock of Rs. 65.80 lakh as against the actual closing stock of Rs. 1.11 crore.	The value of closing stock was shown which was the lowest of the two i.e. transfer price and selling price.	
4.	02	The dealer showed closing stock of Rs. 9.58 lakh as against the actual closing stock of Rs. 1.12 crore.	The dealer replied that it was an adjustment of excise duty.	The department neither verified the facts with the books of accounts maintained by the dealer nor furnished a reconciliation statement.
5.	53	The dealer showed closing stock of Rs. 99.50 lakh as against the actual closing stock of Rs. 4.89 crore.	The dealer had undertaken both the sale and the job work and 75 *per cent* manufacturing expenses are that of job work.	Audit has worked out the suppression of closing stock taking into account the purchases and sales only and manufacturing expenses have not been taken into the account.

2.6.2 Test check of the records of 12 wards[28] of DTT conducted during April 2006 to March 2007 revealed that in 14 cases, the AAs, while finalising the assessments for the assessment year 2004-05 during April 2005 to March 2006 assessed sale turnover as Rs. 486.77 crore against actual sale turnover of Rs. 497.63 crore. This underassessment of sale turnover of Rs. 10.86 crore resulted in short levy of tax of Rs. 91.40 lakh including interest of Rs. 23.20 lakh. Besides maximum penalty of Rs. 1.54 crore was also leviable.

After the cases were pointed out, the department stated in July 2007 that additional demands totalling Rs. 37.73 lakh had been raised in five cases and notices for reassessment involving revenue of Rs. 34.65 lakh had been issued in three cases. The replies of the department in six cases involving revenue of Rs. 19.02 lakh are not tenable as mentioned below:

Sl. No.	Ward No.	Reply of the department	Reasons for the reply being untenable
1.	20, 50	The figures of sales of the fourth quarter were inadvertently taken as gross turnover.	No rectification order has been issued by the department as required under section 48 of the DST Act.
2	86	The difference is due to the sale of work contract and the dealer has been separately assessed under the Work Contract Tax (WCT) Act.	The department failed to furnish the copy of assessment order under WCT Act either with the reply or at the time of verification of reply in September 2007.

[28] Ward Nos. 2, 15, 20, 22, 32, 42, 50, 80, 86, 87, 91, 106.

Sl. No.	Ward No.	Reply of the department	Reasons for the reply being untenable
3.	02	Due to a clerical mistake, wrong figures in sales tax register were written by the dealer and he has now submitted the revised sales tax register.	Submission of revised documents after assessment and after pointing out by audit indicates that the dealer did not submit true accounts at the time of assessment and action under section 38 is warranted.
4.	22	The figures of receipt on credit side of trading account are modvat excise duty adjustment.	The receipt on account of excise duty mentioned on credit side in trading account other than sales is a part of sales.
5.	106	The department has furnished the details of goods return.	The department failed to furnish the details of corresponding sales against which the goods were returned either with the reply or at the time of verification of reply in September 2007.

2.6.3 Test check of the records of 17 wards[29] of DTT conducted during April 2006 to March 2007 revealed that in 23 cases relating to the assessment years 2003-04 to 2004-05, the dealers purchased goods valued as Rs. 134.35 crore on the strength of statutory forms[30] or otherwise but disclosed only Rs. 125.49 crore in their books of accounts thereby concealing purchases of Rs. 8.86 crore. The AA while finalising the assessments between March 2005 and March 2006 failed to detect the suppression of purchases and corresponding sales of Rs. 9.45 crore[31]. This resulted in short levy of tax of Rs. 81.45 lakh including interest of Rs. 22.31 lakh. Besides, maximum penalty of Rs. 1.48 crore was also leviable.

After the cases were pointed out, the department stated in July 2007 that additional demands totalling Rs. 2.66 lakh had been raised in two cases and notices for reassessment involving revenue of Rs. 57.95 lakh had been issued in 13 cases. The replies of the department in eight cases involving revenue of Rs. 20.84 lakh for the year 2004-05 are not tenable as mentioned below:

Sl. No.	Ward No.	Reply of the department	Reasons for the reply being untenable
1.	02	The difference was due to the purchase of fixed assets on C forms which were not to be included in purchases.	As per the requisition account of C forms, the dealers did not purchase the fixed assets.
2.	02	The difference was due to an error in drawing the trading account and revised trading account has now been submitted.	Submission of the revised documents after assessment and after the matter being pointed out by audit indicates that the dealer did not submit true

[29] Ward nos. 2, 15, 19, 20, 25, 33, 37, 42, 44, 46, 50, 73, 75, 90, 91, 97, 105.

[30] ST-1 for purchase of last point goods, ST-35 for purchase of first point goods, ST-35/1 for purchase of first point goods by the extended seller, ST-49 for purchase of goods for export, C form for purchase of goods on the concessional rate of tax from outside Delhi, F form for transfer of goods from branch or consignee agent, H form for purchase of goods from outside Delhi for export.

[31] Including profit element.

Sl. No.	Ward No.	Reply of the department	Reasons for the reply being untenable
3.	73	The dealer has furnished the revised list of tax paid purchases and according to that there is no short accounting of purchases.	accounts at the time of assessment. Action under section 38 is, therefore, warranted.
4.	44	Audit has taken the figures of stock transfer out of Delhi while stock transfer in Delhi has been correctly accounted for. Revised trading account has been attached.	
5.	50	The purchases on C forms as worked out by audit include purchase of machinery which was not included in the purchases by the dealer.	As per the registration certificate (Central) the dealer was not authorised to purchase machinery against C form.
6.	33, 37	Stock transfer not being purchases, has not been shown in the central purchases.	The sales of the dealer were assessed as per the sales shown in the trading account which does not include consignment sales.
7.	97	The dealer had returned the goods and is not demanding F forms for the gross amount.	As per the requisition account, the dealer has demanded the F forms for the gross amount.

The matter was reported to the Government in June 2007; their reply has not been received (December 2007).

2.7 Irregular grant of exemption of tax on transit sales

Under the CST Act, where sale of any goods in the course of inter state trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods (sale in transit) to the Government or to a registered dealer shall be exempt from tax. However, the exemption is subject to production of a certificate in form E-I or E-II duly filled and signed by the registered dealer from whom the goods were purchased and declaration in form 'C' or certificate in form 'D' obtained from the buyer.

Test check of the records of nine wards[32] of DTT conducted during April 2006 to March 2007 revealed that in 12 cases for the assessment year 2004-05, the AAs while finalising the assessments during April 2005 to March 2006, allowed exemption of tax on transit sales of Rs. 66.89 crore without obtaining the valid statutory forms[33]. This resulted in underassessment

[32] Ward Nos. 01, 18, 20, 43, 66, 77, 91, 103, 104.

[33] In four cases exemption of Rs. 3.75 crore was allowed without obtaining form 'C', in six cases exemption of Rs. 53.66 crore was allowed without obtaining form E-I, in two cases exemption of Rs. 3.11 crore was allowed on forms E-I which pertained to the previous years and in one case exemption of Rs. 6.37 crore was allowed on photo copy of form E-I.

of tax of Rs. 2.48 crore including interest of Rs. 62.84 lakh. Additionally, maximum penalty of Rs. 4.62 crore was also leviable.

After the cases were pointed out, the department stated in July 2007 that additional demands totalling Rs. 29.85 lakh had been raised in four cases and notice for reassessment involving revenue of Rs. 1.37 crore had been issued in one case. The replies of the department in four cases involving revenue of Rs. 27.21 lakh are not tenable as mentioned below:

Sl. No.	Ward No.	Nature of defect	Reply of the department	Reasons for the reply being untenable
1.	103	Submitted C form issued by the Delhi dealer though no sales to him were shown in the details of E-1 sales submitted by the dealer at the time of assessment.	The dealer sold goods to the Delhi dealer but at his instructions goods were dispatched out of Delhi as transit sales.	As per the details of E-1 sales submitted by the dealer at the time of assessment, there was no sale to the Delhi dealer.
2.	20	E-1 forms not submitted.	The dealer has now submitted all the E-1 forms.	Fresh forms cannot be accepted without reassessment under section 24 of the DST Act.
3.	43	E-1 form pertained to 2003-04 and no C form of the number mentioned in the E-1 form was issued to the dealer.	The issuing dealer of E-1 form inadvertently mentioned wrong number of C form in the E-1 form.	The details of transactions mentioned in the E-1 form pertained to 2003-04.
4.	01	E-1 forms pertained to 1999-2000 to 2003-04.	The dealer sold goods on hire purchase basis in the earlier years but the sales were accounted for on the actual date of receipt of the money.	The E-1 forms pertained to the period earlier to 2004-05 and, therefore, exemption of tax is not admissible in the year 2004-05.

Replies in the remaining three cases have not been received (November 2007).

The matter was reported to the Government in June 2007; their reply has not been received (December 2007).

2.8 Irregular grant of exemption on statutory forms

2.8.1 Under the proviso of Rule 11 of the DST Rules and notifications issued from time to time, "listed goods" purchased by a dealer against statutory form ST-35 cannot be further sold to another dealer against the same statutory form.

Test check of the records of seven wards[34] of DTT conducted during April 2006 to March 2007 for the assessment year 2004-05 revealed that 10 dealers made purchases of listed goods against statutory form ST-35 and subsequently resold the same goods valued as Rs. 20.76 crore against the same statutory form which was irregular. The AAs while finalising the assessments between April 2005 and March 2006 allowed these resulting in non-levy of tax of Rs. 1.11 crore including interest of Rs. 28.23 lakh.

[34] Ward Nos. 23, 62, 63, 66, 74, 82, 106.

After the cases were pointed out, the department stated in July 2007 that an additional demand of Rs. 11.36 lakh had been raised in one case and notices for reassessment involving revenue of Rs. 25.69 lakh had been issued in three cases. The replies of the department in six cases involving revenue of Rs. 74.22 lakh are not tenable as mentioned below:

Sl. No.	Ward No.	Item purchased	Item sold	Reply of the department	Reasons for the reply being untenable
1.	82	Copper rods	Copper wire	The dealers were allowed to purchase iron/copper/ aluminum rods against ST-35 for manufacture of iron/ copper/aluminum wires. The sale of resultant wire against ST-35 is correct.	As per decision[35] of the Supreme Court, the process of drawing of wire out of wire rods/rods is not a manufacturing activity and wires are considered to be an integral part of rods and are not distinct from rods.
2.	63	GI wire	GI wire of thinner magnitude		
3.	82	Copper rods	Copper wire		
4.	82	Copper rods	Copper wire		
5.	66	Stainless steel flats	Stainless steel flats	The dealer purchased stainless steel plates which were sold after cutting these into pieces.	As per the assessment records, the dealer purchased and sold stainless steel flats.
6.	23	Steel tubes and pipes	Steel tubes and pipes	The dealers to whom the goods were sold against ST-35 would have paid the tax either in the form of local sales tax or central sales tax when further sold and it would not be justified for them to pay tax again.	Under the DST Rules, "listed goods" purchased by a dealer against statutory form ST-35 cannot be further sold to another dealer against the same statutory form.

2.8.2 Under the DST Rules, a registered dealer may deduct from his turnover the amount of sale on the ground that he is entitled to make such deduction under the DST Act on production of statutory forms in ST-1, ST-35 and ST-49. Deductions against ST-1, ST-35 and ST-49 are, however, admissible for sale of last point goods, first point goods and export respectively.

2.8.2.1 Test check of the records of ward no. 2 of DTT conducted during April 2006 to March 2007 revealed that one dealer who was assessed in March 2006, was incorrectly granted exemption of Rs. 12.16 crore from the gross turnover for the assessment year 2004-05 against form ST-1 though goods were taxable at the first point for which form ST-35 was required. This resulted in short levy of tax of Rs. 65.15 lakh including interest of Rs. 16.53 lakh.

After the case was pointed out, the department stated in July 2007 that the dealer had sold wire rope which was taxable at the last point sale against form

[35] In the case of M/s. Telangana Steel Industries vs. State of Andhra Pradesh (1994) 93 STC 187 (SC).

ST-1 instead of ST-35. The reply is not tenable because the dealer had received iron and steel goods only which are first point goods from his principal against form F as is evident from the requisition sheets[36] and computer issue sheets[37] of form F issued to the dealer.

2.8.2.2 Test check of the records of two wards[38] of DTT conducted during April 2006 to March 2007 revealed that in two cases, for the assessment year 2004-05 and assessed between April 2005 to March 2006, the dealers were allowed exemption amounting to Rs. 4.27 crore on statutory forms. It was, however, noticed that the dealers had submitted statutory forms for Rs. 3.36 crore only, resulting in excess exemption of Rs. 90.57 lakh. This resulted in short levy of tax of Rs. 9.71 lakh including interest of Rs. 2.46 lakh.

After the cases were pointed out, the department stated in July 2007 that notices for reassessment have been issued in both the cases.

2.8.3 Under the proviso to Rule 11 of the DST Rules and notifications issued from time to time, "listed goods" can be sold to a registered dealer against ST-35/1 by a first point seller viz., an importer or manufacturer of first point goods, to his nominated or appointed sole selling agent/distributor/stockist only for resale in Delhi. Goods purchased against ST-35/1 and resold outside Delhi shall be subject to tax on the purchase price of such goods. The rules further provide that there should be a written agreement between the first point seller and the extended first point seller.

2.8.3.1 Test check of the records of two wards[39] of DTT conducted during April 2006 to March 2007 revealed that in two cases, the dealers purchased goods valued as Rs. 1.24 crore against declarations in forms ST-35/1 during 2004-05 and resold the same outside Delhi. While framing the assessment orders during April 2005 to March 2006, the AAs allowed the outside sale of the above goods, but tax on the purchase value of these goods was not levied. This resulted in underassessment of tax of Rs. 13.27 lakh including interest of Rs. 3.37 lakh. Additionally, maximum penalty of Rs. 24.76 lakh was also leviable.

After the cases were pointed out, the department stated in July 2007 that an additional demand of Rs. 5.99 lakh had been raised in one case and notice for reassessment involving revenue of Rs. 7.28 lakh had been issued in the other case.

2.8.3.2 Test check of the records of ward no. 42 of DTT conducted during April 2006 to March 2007 revealed that dealer 'A' who was a consignee

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[36] Requisition sheets are submitted by the dealer to the department for obtaining forms for making purchases without payment of tax.

[37] Computer issue sheets are issued by the department at the time of issue of forms. It contains the details of purchases.

[38] Ward Nos. 10, 15.

[39] Ward Nos. 15, 43.

agent, sold goods (adhesive) against statutory form ST-35/1 for Rs. 54.62 lakh to dealer 'B' during 2004-05. While framing the assessment order in March 2006, the AA allowed exemption of tax on this sale though there existed no written agreement of appointment of dealer 'B' as the sole selling agent/distributor/stockist. This resulted in underassessment of tax of Rs. 8.78 lakh including interest of Rs. 2.23 lakh.

After the case was pointed out, the department stated in July 2007 that the dealer 'A' was a consignee agent of the principal at Noida and the principal had an agreement with dealer 'B' as stockist in Delhi and supplies were effected through dealer 'A'. The reply of the department is not tenable as under the rules, first point goods can be sold against ST-35/1 only by an importer or manufacturer to its agent/distributor/stockist. In this case no agreement had been entered into between the dealers 'A' and 'B' and dealer 'B' was the stockist of the Noida based company.

The matter was reported to the Government in June 2007; their reply has not been received (December 2007).

2.9 Incorrect allowance of concessional rate/exemption of tax on defective 'C', 'D' and 'F' forms

Under the CST Act read with the Rules made thereunder, sale of goods by one registered dealer to another registered dealer may be allowed at the concessional rate of tax of four *per cent* if the dealer furnishes a declaration in form 'C'/'D' covering all the transactions of sales. In the case of branch transfer/consignment sale, exemption of tax is admissible subject to the furnishing of 'F' forms. Otherwise, the transactions are to be treated as inter state sales and taxed accordingly.

Test check of the records of seven wards[40] of DTT conducted during April 2006 to March 2007 revealed that in eight cases for the assessment years 2003-04 and 2004-05, the AA while finalising the assessments during March 2005 to March 2006, allowed concessional rate/exemption of tax on inter state sale/branch transfer/consignment sale of Rs. 8.29 crore without obtaining the valid statutory forms[41]. This resulted in underassessment of tax of Rs. 1.03 crore including interest of Rs. 26.37 lakh.

After the cases were pointed out, the department stated in July 2007 that additional demands totalling Rs. 8.02 lakh had been raised in three cases and a notice for reassessment involving revenue of Rs. 76.50 lakh had been issued

[40] Ward Nos. 26, 36, 42, 54, 60, 62, 106.

[41] In one case duplicate/counter foils of forms of the value of Rs. 99.87 lakh were submitted, in three cases forms of the value of Rs. 6.22 crore were not addressed to the dealer, in three cases the forms of the value of Rs. 81.77 lakh did not pertain to the assessment year, while in one case forms of the value of Rs. 25.37 lakh was not completely filled in.

in one case. The replies of the department in four cases involving revenue of Rs. 16.62 lakh are not tenable as mentioned below:

Sl. No.	Ward No.	Nature of defect	Reply of the department	Reasons for the reply being untenable
1.	106	Exemption allowed on duplicate/counter foil portion of D form.	Correct rate of tax has been levied.	The audit observation relates to exemption allowed on defective D or F forms which has not been replied to.
2.	26	F forms pertained to 2003-04 and/or duplicate portion submitted.	Full details had been submitted at the time of assessment.	
3.	54	C/D forms addressed to another branch.	Dealer does not have any branch in India.	Issuing dealers/departments have clearly mentioned addresses of the dealer other than that of Delhi.

The matter was reported to the Government in June 2007; their reply has not been received (December 2007).

2.10 Incorrect grant of excess credit/reduction of demand of tax

Under the provisions of the DST Act, the amount of tax assessed, reassessed or recomputed for any period less the amount if any, already paid by the dealer in respect of the said period, shall together with any penalty that may be directed to be paid under any of the provisions of the Act be paid by the dealer or the person liable therefore into a Government treasury.

Test check of the records of three wards[42] of DTT conducted between April 2006 to March 2007 revealed that while finalising the assessments for the year 2004-05 between April 2005 to March 2006, the AAs allowed excess credit of deposit of tax in two cases of Rs. 16.76 lakh while in one case the demand was reduced in excess by Rs. 5.53 lakh in the review order. This resulted in short recovery of tax of Rs. 29.87 lakh including interest of Rs. 7.58 lakh.

After the cases were pointed out, the department stated in July 2007 that additional demands totalling Rs. 25.71 lakh had been raised in two cases and a notice for reassessment involving revenue of Rs. 3.04 lakh had been issued in the remaining case.

The matter was reported to the Government in June 2007; their reply has not been received (December 2007).

2.11 Non-levy of tax on sale of asset

The DST Act stipulates that "business" includes any transaction in connection with or incidental or ancillary to such trade, commerce, manufacture, adventure or concern.

[42] Ward Nos. 13, 72, 77.

Test check of the records of three wards[43] of DTT conducted during April 2006 to March 2007 revealed that in six cases the dealers sold assets for Rs. 1.40 crore during 2004-05 which were in connection with their business. The AA, however, failed to levy tax while finalising the assessments during April 2005 to March 2006. This resulted in non-levy of tax amounting to Rs. 22.45 lakh including interest of Rs. 5.70 lakh.

After the cases were pointed out, the department stated in July 2007 that additional demands totalling Rs. 3.59 lakh had been raised in four cases and notices for reassessment involving revenue of Rs. 18.86 lakh had been issued in the remaining two cases.

The matter was reported to the Government in June 2007; their reply has not been received (December 2007).

2.12 Incorrect grant of concessional rate of tax without 'C' forms

Section 8(4) of the CST Act read with the Rules made thereunder stipulates that the sale of goods by one registered dealer to another registered dealer may be allowed at the concessional rate of tax of four *per cent* if the dealer furnishes a declaration in form 'C' covering all the transactions of sales. Otherwise, tax is leviable at eight *per cent* in the case of declared goods and 10 *per cent* or at the rate applicable in the state whichever is higher in case of goods other than the declared goods..

Test check of the records of four wards[44] of DTT conducted during April 2006 to March 2007 revealed that in six cases for the assessment year 2004-05, the AA, while finalising the assessments during April 2005 and March 2006, allowed concessional rate of tax on inter state sales of Rs. 1.89 crore. These sales were not supported by the statutory form 'C'. This resulted in underassessment of tax of Rs. 13.67 lakh including interest of Rs. 3.47 lakh.

After the cases were pointed out, the department stated in July 2007 that additional demands totalling Rs. 7.95 lakh had been raised in three cases and notice for reassessment involving revenue of Rs. 1.65 lakh had been issued in one case. In one case involving revenue of Rs. 1.58 lakh, the department stated that the dealer had been allowed concessional rate of tax at five *per cent* as per the notification of 21 October 1975. The reply is not tenable as the notification issued by the Government of India did not allow concessional rate of tax at five *per cent* without submission of C form/exemption certificate. Reply in the remaining case has not been received (November 2007).

The matter was reported to the Government in June 2007; their reply has not been received (December 2007).

[43] Ward Nos. 42, 100, 103.
[44] Ward Nos. 02, 60, 63, 104.

2.13 Irregular grant of exemption on unauthorised purchase

The DST Act and the CST Act stipulate that a registered dealer can purchase goods from another registered dealer without paying sales tax, on furnishing of the statutory forms. However, the registered dealer can purchase only such goods which have been so allowed to him and specified in his certificate of registration and such goods can be used for the specified purposes only. Contravention of these provisions attracts penalty equal to a sum not exceeding two and a half times the tax leviable under the DST Act and one and a half times under the CST Act.

Test check of the records of two wards[45] of DTT conducted during April 2006 to March 2007 revealed that in two cases, the dealers purchased goods valued at Rs. 2.40 crore during the period 2004-05, which were not covered by their registration certificates. The AA, while finalising the assessments between April 2005 and March 2006, however, failed to notice these unauthorised transactions and levy penalty. This resulted in non-levy of penalty of Rs. 10.10 lakh.

After the cases were pointed out, the department stated in July 2007 that additional demands totalling Rs. 10.10 lakh had been raised in both the cases. A report on recovery has not been received (December 2007).

The matter was reported to the Government in June 2007; their reply has not been received (December 2007).

[45] Ward Nos. 25 and 57.