

CHAPTER: IV

REVENUE RECEIPTS

4.1.1 Trend of revenue receipts

The tax and non-tax revenue raised by the Government of Jammu and Kashmir during the year 2008-09, the State's share of divisible Union taxes and grants-in-aid received from the Government of India during the year and the corresponding figures for the preceding four years are mentioned in the following table:

(Rupees in crore)

Sl. no.	Particulars	2004-05	2005-06	2006-07	2007-08	2008-09
I. Revenue raised by the State Government						
•	Tax revenue	1,351.05	1,626.84	1,798.97	2,558.18	2,682.96
•	Non-tax revenue	641.42	535.81	632.53	807.98	837.16
	Total	1,992.47	2,162.65	2,431.50	3,366.16	3,520.12
II. Receipts from the Government of India						
•	State's share of divisible Union taxes	934.43	1,135.36	1,413.43	1,775.01	1,826.95
•	Grants-in-aid	5,939.58	7,017.14	7,337.10	8,135.87	8,955.46
	Total	6,874.01	8,152.50	8,750.53	9,910.88	10,782.41
III. Total receipts of the State		8,866.48	10,315.15	11,182.03	13,277.04	14,302.53
IV. Percentage of I to III		22	21	22	25	25

Thus, during the year 2008-09, the revenue raised by the State Government comprised 25 *per cent* of the total revenue receipts (Rs. 14,302.53 crore) and stood at the same level as in the preceding year. The balance 75 *per cent* of receipts during 2008-09 was from the Government of India.

4.1.1.1 The details of tax revenue raised during the year 2008-09 alongwith the figures for the preceding four years are mentioned in the following table:

(Rupees in crore)

Sl. no.	Head of revenue	2004-05	2005-06	2006-07	2007-08	2008-09	Percentage increase (+)/ decrease (-) in 2008-09 over 2007-08
1.	Sales tax/VAT	804.12	1,014.49	1,159.72	1,804.81	1,835.99	(+) 2%
2.	State excise	272.37	218.68	212.80	244.15	238.67	(-) 2%
3.	Stamps and registration fees	39.25	46.43	56.93	65.63	57.14	(-) 13%
4.	Taxes and duties on electricity	49.36	58.02	59.70	93.49	150.76	(+) 61%
5.	Taxes on vehicles	41.68	49.17	63.96	72.60	65.47	(-) 10%
6.	Taxes on goods and passengers	132.62	236.27	243.16	264.59	271.39	(+) 3%
7.	Taxes on immovable property other than agricultural land	0.30	0.09	0.06	-	-	-
8.	Land revenue	11.24	3.47	2.57	9.58	63.53	(+) 563%
9.	Other taxes and duties on commodities and services	0.11	0.22	0.07	3.33	0.01	(-) 100%
Total		1,351.05	1,626.84	1,798.97	2,558.18	2,682.96	(+) 5%

The reasons for variation in receipts for 2008-09 from those of 2007-08 in respect of principal heads of revenue were as under:

Taxes and duties on electricity: The increase in receipt of the taxes and duties was due to the increase in the sale of power (electricity) during the year.

Land revenue: The increase was due to more receipts from the sale proceeds of the Government land recovered from the occupants whom ownership rights were granted under 'Roshini Act¹'.

Taxes on sales, trades etc. : The increase was due to widening of the tax base with introduction of VAT on different services like hotels, beauty saloons, cellular telecom agencies, private nursing homes, advertisers, courier agencies, banquet halls, catering services and cable operators, etc.

¹ The Act enacted on 13th November 2001 provides for wresting of ownership rights to occupants of state land for purpose of generating fund to finance power projects in the state.

4.1.1.2 The details of major non-tax revenue raised during the year 2008-09 are mentioned in the following table alongwith the figures for the preceding four years:

(Rupees in crore)							
Sl. no.	Head of revenue	2004-05	2005-06	2006-07	2007-08	2008-09	Percentage increase (+)/decrease (-) in 2008-09 over 2007-08
1.	Power	382.87	384.31	478.94	600.94	629.98	(+) 5
2.	Interest receipts, dividends and profits	144.40	25.05	34.02	65.33	56.51	(-) 14
3.	Forest and wild life	43.46	45.51	18.99	32.20	31.61	(-) 2
4.	Public works	11.76	12.63	16.16	16.44	16.89	(+) 3
5.	Medical and public health	8.02	8.83	12.62	13.21	9.92	(-) 25
6.	Water supply and sanitation	7.36	9.58	10.95	13.64	14.65	(+) 7
7.	Police	5.30	8.01	6.59	4.21	10.35	(+) 146
8.	Non-ferrous mining and metallurgical industries	6.01	8.54	9.98	16.43	14.86	(-) 10
9.	Crop husbandry	4.18	4.35	4.31	4.52	5.00	(+) 11
10.	Animal husbandry	3.99	3.98	4.75	4.66	4.70	(+) 1
11.	Others	24.07	25.02	35.22	36.40	42.69	(+) 17
Grand total:		641.42	535.81	632.53	807.98	837.16	(+) 4

The reasons for variations in the receipts for 2008-09 from those of 2007-08 in respect of principal heads of revenue were as under:

Police: The increase was due to more collections on account of fee, fines and forfeitures owing to increase in the number of police battalions created during the year.

Others: The increases were mainly due to more receipts under fee, fines and forfeitures under Other Administrative Services and more receipts as subscriptions and contribution towards pension and on account of the recoveries.

4.1.2 Variation between the budget estimates and actuals

The variations between the budget estimates and actuals of the revenue receipts for the year 2008-09 in respect of the principal heads of revenue are mentioned in the following table:

(Rupees in crore)

Head of revenue	Budget estimates	Actuals	Variations excess (+) shortfall (-)	Percentage of variation
Sales tax/VAT	1,778.00	1,835.99	(+) 57.99	3
State excise	245.00	238.67	(-) 6.33	3
Stamps and registration fees	79.17	57.14	(-) 22.03	28
Taxes on goods and passengers	299.50	271.39	(-) 28.11	9
Taxes and duties on electricity	179.65	150.76	(-) 28.89	16
Taxes on vehicles	75.86	65.47	(-) 10.39	14

The departments did not inform (October 2009) the reasons for variation despite being requested (September 2009).

4.1.3 Analysis of collection

The break-up of the total collection at pre-assessment stage and after regular assessment of sales tax and motor spirit tax for the year 2008-09 and the corresponding figures for the preceding two years, in respect of which information was furnished by the department is mentioned in the following table:

(Rupees in crore)

Head of revenue	Year	Amount collected at pre-assessment stage	Amount collected after regular assessment (additional demand)	Penalties for delay in payment of taxes and duties	Total ² collection	Percentage of column 3 to 6
1	2	3	4	5	6	7
Sales tax ³	2006-07	887.11	1.00	Nil	888.11	100
	2007-08	1,160.63	1.16	50.30	1,212.09	96
	2008-09	1,275.28	4.65	55.43	1,335.36	96
Motor spirit tax	2006-07	248.99	-	0.20	249.19	100
	2007-08	268.37	0.02	0.02	268.41	100
	2008-09	294.90	Nil	Nil	294.90	100

The foregoing table indicated that collection under the revenue heads “Sales Tax” and “motor spirit tax” at pre-assessment stage ranged between 96 to 100 *per cent*.

4.1.4 Cost of collection

The figures for gross collection in respect of major revenue receipts, expenditure incurred on collection and the percentage of such expenditure to gross collection during the last three years ended 2008-09 alongwith the relevant all India average percentage of expenditure on collection to gross collection for 2007-08 are mentioned in the following table:

² Variation between departmental figures and figures of finance account has been pointed out to the department. The reply has not been received (October 2009).

³ The figures are exclusive of the collection made under VAT Act.

(Rupees in crore)

Head of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage for the year 2007-08
Sales tax	2006-07	1,159.72	13.88	1	0.83
	2007-08	1,804.81	14.52	1	
	2008-09	1,835.99	15.30	1	
Taxes on vehicles	2006-07	63.96	3.12	5	2.58
	2007-08	72.60	3.98	5	
	2008-09	65.47	4.73	7	
State excise	2006-07	212.80	9.43	4	3.27
	2007-08	244.15	9.88	4	
	2008-09	238.67	11.10	5	
Stamps and registration fee	2006-07	56.93	4.55	8	2.09
	2007-08	65.63	13.41	20	
	2008-09	57.14	6.04	11	

The foregoing table indicates that the percentage cost of collection in respect of revenue heads mentioned above was much higher than the all India average and the Government needs to look into this aspect.

4.1.5 Analysis of the arrears of revenue

The arrears of revenue as on 31 March 2009 in respect of some principal heads of revenue for which information was furnished by the department amounted to Rs. 752.79 crore of which Rs. 401.19 crore was outstanding for more than five years as mentioned in the following table:

(Rupees in crore)

Sl. no.	Head of revenue	Amount outstanding as on 31 March 2009	Amount outstanding for more than five years as on 31 March 2009	Remarks
1.	Sales tax (including Motor Spirit)	735.07	392.07	Out of the total arrears of Rs. 735.07 crore, recovery of Rs. 76.78 crore was stayed by courts/appellate authority. Rs. 0.41 crore were recoverable under motor spirit tax Act. Specific action taken in respect of the remaining arrears of Rs. 657.88 crore has not been intimated by the department (October 2009).
2.	State excise	4.63	4.63	Out of the total arrears of Rs. 4.63 crore recovery of Rs. 0.96 crore was stayed by courts and arrears of Rs. 3.67 crore was proposed to be recovered as arrears of land revenue.
3.	Taxes on goods and passengers	12.87	4.27	Out of the total arrears of Rs. 12.87 crore, recovery of Rs. 5.64 crore was stayed by the courts and Rs. 2.31 crore was proposed to be recovered as arrears of land revenue. Specific action taken in respect of the remaining arrears of Rs. 4.92 crore has not been intimated by the department (October 2009)
4.	Entertainment tax	0.22	0.22	Demand notices for recovery of Rs. 0.22 crore were stated to have been issued.
Total		752.79	401.19	

The arrears outstanding for more than five years constituted 53 *per cent* of the total arrears and need to be recovered quickly.

4.1.6 Arrears in assessment

The details of cases pending assessment at the beginning of the year 2008-09, cases due for assessment, those disposed during the year and cases pending at the end of the year 2008-09, as furnished by the Commercial Taxes Department in respect of sales tax is mentioned in the following table:

Sl. no.	Head of revenue	Opening balance	New cases due for assessment during 2008-09	Total number of assessments due	Cases disposed during the year 2008-09	Balance at the end of the year	Percentage of disposed of cases to total number
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	Sales Tax						
	• Tax on works contracts	11,667	8,517	20,184	5,278	14,906	26
	• Others	6,612	2,298	8,910	4,560	4,350	51
	Total	18,279⁴	10,815	29,094	9,838	19,256	34

The foregoing table indicates that the percentage of disposal of assessment was very low. The government may consider issuing directions to the Department to complete pending assessment in a time bound manner in the interest of revenue.

4.1.7 Evasion of tax

The details of cases of evasion of tax detected in the departments, cases finalised and the demand for additional tax raised during 2008-09, as reported by the departments, are mentioned in the following table.

Sl. no.	Name of tax/duty	Cases pending as on 31 March 2008	Cases detected during 2008-09	Total	Cases in which assessment/investigations completed and additional demand including penalty etc. raised		Cases pending finalisation as on 31 March 2009
					No. of cases	Amount (Rupees in crore)	
1.	Sales tax	585	2,592	3,177	2,910	2.00	267
2.	State excise	1	Nil	1	Nil	Nil	1
3.	Taxes on goods and passengers	36	1,593	1,629	1,629	0.10	-

The progress of recovery of amount was not intimated (October 2009) despite being requested (September 2009).

⁴ The variation in closing balance ending 31 March 2008 and opening balance as on 01 April 2009 has been pointed out to the Department (September 2009), the reply is awaited (October 2009).

4.1.8 Write-off and waiver of revenue

The status of arrears pertaining to Sales tax/VAT waived off and reduced due to rectification, appeals and remission during 2008-09 is given in the following table:

(Rupees in crore)	
Amount of the arrears waived off	36.77
Amount of arrears reduced due to rectification, appeals effect and remission	72.38

4.1.9 Refund

The number of refund cases pending at the beginning of the year 2008-09, claims received during the year, refunds allowed during the year and the cases pending at the close of year 2008-09, as reported by the sales tax department, is mentioned in the following table.

(Rupees in crore)			
Sl. no.		Sales tax	
		No. of cases	Amount
1.	Claims outstanding at the beginning of the year 2008-09	85	3.35
2.	Claims received during the year	19	0.19
3.	Refund made during the year	1	0.0004
4.	Balance outstanding at the end of the year 2008-09	103	3.54

The pendency of refund cases under Sales Tax entails mandatory payment of interest at the rate of 18% per annum. The Government may, therefore, take effective steps for immediate disposal of the cases.

4.1.10 Response of the departments to draft audit paragraphs

Draft paragraphs are forwarded to the Principal Secretary/Secretary of the concerned administrative department seeking confirmation of facts and figures as well as comments within six weeks. Five draft paragraphs and two reviews were forwarded to the concerned departments/Government in April, June, July and October 2009. Replies of the department in respect of the draft paragraphs were received (between May and July 2009). The reviews were discussed in the exit conference with the concerned departmental authorities.

4.1.11 Follow up on Audit Reports - summarised status

Status of reviews/paragraphs of Revenue Receipts Chapter pending discussion by the Public Accounts Committee as on 31 March 2009 was as under:

Period of Audit Reports	Total number of reviews and paragraphs that appeared in Revenue Receipts Chapter of Audit Report		No. of reviews and paragraphs pending discussion	
	Reviews	Paragraphs	Reviews	Paragraphs
1990-1991	-	5	-	5
1991-1992	-	8	-	8
1992-1993	1	5	1	5
1993-1994	2	5	2	5
1994-1995	1	14	1	14
1995-1996	4	9	4	9
1996-1997	2	4	2	4
1997-1998	-	9	-	4+2 ⁵
1998-1999	1	11	1	9+2 ⁵
1999-2000	-	7	-	6+1 ⁵
2000-2001	1	7	1 ⁵	7
2001-2002	1	8	1	6+2 ⁵
2002-2003	1	8	1	7+1 ⁵
2003-2004	-	4	-	4
2004-2005	1	5	1	1+2 ⁵
2005-2006	-	8	-	2+3 ⁵
2006-2007	1	4	1	4
2007-2008	2	7	2	7
Total	18	128	18	120

4.1.12 Results of audit

Test-check of the records of sales tax/VAT, state excise, stamp duty and registration fee and motor vehicles tax conducted during the year 2008-09 indicated underassessment/short levy/loss of revenue amounting to Rs. 43.06 crore in 1,667 cases. During the year, the concerned departments accepted/issued notices on account of short levy/loss of revenue of Rs. 9.20 crore in 192 cases.

This Chapter contains five paragraphs and two reviews relating to non/short levy of tax, fees, interest and penalty etc involving Rs. 28.58 crore. Of these, the departments/Government accepted audit observations amounting to Rs. 6.50 crore. The reply in the remaining cases has not been received. These are discussed in the succeeding paragraphs.

⁵ Partly discussed.

PERFORMANCE REVIEWS

FINANCE DEPARTMENT

4.2 Review on Transition from Sales Tax to VAT

Highlights

- Though there was increase in revenue growth after the implementation of VAT in the State, revenue per assessee decreased from Rs. 0.03 crore in 2004-05 to Rs. 0.02 crore in post-VAT period.
(Paragraph: 4.2.6)
- The existing shortage of person in position in the pre-VAT period, coupled with the increased workload under VAT, was not addressed by the department which affected proper implementation of the Act.
(Paragraph: 4.2.7.2)
- Non-levy of penalty of Rs. 98.10 crore on dealers collecting tax as unregistered dealers and availing input tax credit of Rs. 16.21 crore irregularly.
(Paragraph: 4.2.8.2)
- Non-levy of penalty for delayed submission of returns/audit reports resulted in short realisation of government revenue of Rs. 4.39 crore.
(Paragraph: 4.2.11)
- Non-verification of the correctness of opening stock declared by the dealer as on 1 April 2005 resulted in revenue loss of Rs. 48.03 lakh including interest and penalty.
(Paragraph: 4.2.14.5)
- Prescribed registers/records were either not maintained or were not maintained in the prescribed form, in three out of 11 commercial tax circles test-checked.
(Paragraph: 4.2.18.1)
- The Deputy Commissioners (Audit) had failed to check even the minimum prescribed percentage of tax remission cases.
(Paragraph: 4.2.19)

4.2.1 Introduction

The Government of India decided to implement State Level Value Added Tax (VAT) in all the states on the basis of decision taken on 23 January 2002 in the empowered committee of the States' Finance Ministers. The empowered committee brought out on 17 January 2005 a white paper on state level VAT. The following are the main features of VAT:

- it would eliminate cascading effect due to credit of tax paid on purchase for resale or for use in production;
- other taxes will be abolished and overall tax burden will be rationalised;

- overall tax will increase and there will be higher revenue growth and
- there will be self assessment by the dealers and set off will be given for input tax paid on previous purchases.

The Government of Jammu and Kashmir enacted the Jammu and Kashmir Value Added Tax Act, 2005 effective from 1 April 2005. However, the Jammu and Kashmir General Sales Tax Act 1962 (J&K GST Act), continued to apply in respect of the items (i) India made foreign liquor, beer and other fermented drinks, (ii) resin, (iii) lottery tickets, (iv) natural gas, (v) aviation turbine fuel and fourteen services. The GST Act ceased to be applicable in respect of goods on which VAT was applicable with effect from 1 April 2005. Some of the differences between the existing J&K VAT and J&K GST were as under:

- VAT is a multi point system while sales tax was a single point system. VAT system relies more upon the dealers to pay tax willfully. Thus, the VAT system is based on self assessment whereas supporting documents were required along with the returns in J&K GST;
- Unlike the sales tax regime, there is no statutory assessment of dealers. Instead, the J&K VAT Act provides for identification of the selected dealers annually for conducting tax audit and audit assessments by the department and finalising assessments thereafter;
- There are five schedules being part of the VAT Act. While in schedule-A, commodities under zero *per cent* are classified, schedule B, C and D contain commodities taxable at the rates of 1%, 4% and 12.5%, respectively. Schedule-E contains commodities placed in the negative list for input tax credit. The registered dealers whose gross turnover is more than Rs. 7.50 lakh but does not exceed Rs. 20 lakh can opt for payment of tax at the rate of one *per cent* of taxable turnover. They are classified as Turn over Tax dealers and assigned a registration number and issued a registration certificate. Registered dealers other than turnover tax dealers are assigned tax payer's identification number (TIN).
- Self assessment by the dealer is provided in the VAT Act whereas hundred *per cent* assessment was required to be done under the J&K GST Act.
- Reduced control of VAT Administration on dealers is envisaged in J&K VAT unlike the J&K GST.

4.2.2 Organisational set-up

The Commissioner-cum-Secretary, Finance is responsible for overall working of Commercial Taxes Department at Government level. The control and superintendence of Commercial Taxes Department vests with the Commissioner Commercial Taxes (CCT). He is assisted by the three Additional Commissioners of Commercial Taxes (two at Jammu and one at Srinagar) and 11 Deputy Commissioners, Commercial Taxes for carrying out various functions of the department. The State of J&K has been divided into 45 Commercial Taxes Circles, each headed by a Commercial Taxes Officer (CTO).

4.2.3 Audit objectives

The review was conducted with a view to ascertain whether the:

- planning for implementation and the transition from the J&K GST Act and Rules made thereunder to J&K VAT Act and Rules made thereunder was effected timely and efficiently;
- organisational structure was adequate and effective;
- provisions of the J&K VAT Act and Rules made thereunder were adequate and enforced properly to safeguard the revenue of the State and
- internal control mechanism existed in the department and was adequate and effective to prevent leakage of the revenue.

4.2.4 Scope of audit

Test-check of the records was conducted for the period 2005-06 to 2007-08 in 11 circles⁶ covering six districts⁷ out of 45 circles falling in 14 districts, existing at the time of introduction of VAT. Of these, four circles fell in Kashmir division while the remaining seven circles fell in Jammu division of the state. The districts were selected on the basis of maximum revenue, maximum number of dealers and geographical areas.

4.2.5 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation of the Commercial Taxes Department (CTD) and their officers and staff in providing necessary information and records for audit. An entry conference was held on 15 July 2009 in the office of the CCT, Srinagar in which the audit objectives and methodology were explained. The draft review report was forwarded to the department and the Government in October 2009. The exit conference was held on 28 October 2009 in the office of CCT, Srinagar in which the audit findings and recommendations were discussed. The CCT accepted the conclusions/recommendations mentioned in the report and assured that remedial action would be taken. The replies of the department given during the exit conference and at other times have been appropriately reflected in the review report.

Audit findings

System deficiencies

4.2.6 Pre-VAT and Post-VAT Tax Collection

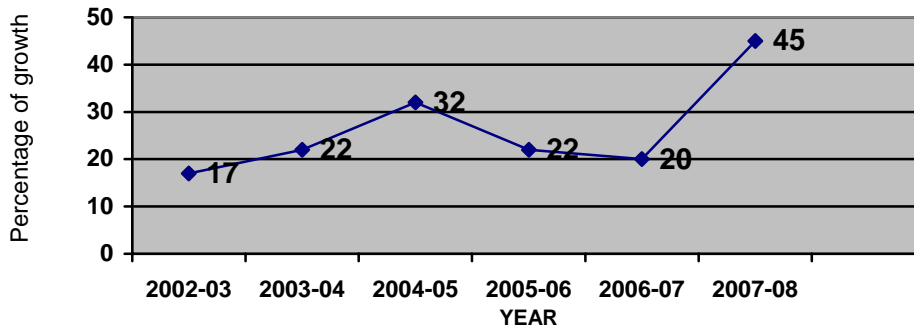
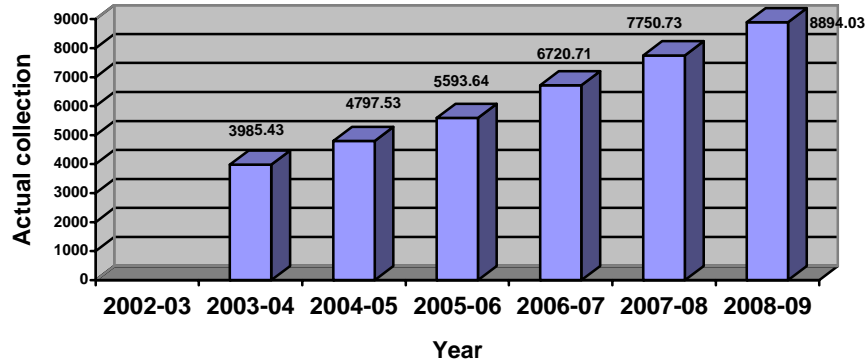
The comparative position of pre-VAT sales tax collection (2002-03 to 2004-05) and post-VAT (2005-06 to 2007-08) tax collection including VAT and growth rate each year during the above said periods is mentioned below:

⁶ CTOs Circles: (1) A-Srinagar (2) Anantnag-I (3) Baramulla (4) A-Jammu (5) C-Jammu (6) J-Jammu (7) L-Jammu (8) Kathua (9) Udhampur-I (10) M-Jammu and (11) Sopore.

⁷ District: Anantnag, Baramulla, Jammu, Kathua, Srinagar and Udhampur.

(Rupees in crore)

Pre-VAT			Post-AT		
Year	Actual collection	Percentage of growth	Year	Actual collection	Percentage of growth
2002-03	379.10	17	2005-06	740.19	22
2003-04	462.15	22	2006-07	888.12	20
2004-05	609.04	32	2007-08	1,287.71	45



The average growth rate during 2002-03 to 2004-05 (i.e. pre-VAT period) was 24 *per cent* while the average growth rate for 2005-06 to 2007-08 (i.e. post-VAT period) was 29 *per cent*.

Audit observed that while there was growth in revenue, the revenue collection per assessee in the post-VAT period was 33 *per cent* lower than that in the pre-VAT period as detailed in the following table:

(Rupees in crore)

Year	No. of assesses	Revenue collected	Revenue per assessee
2004-05	22,426	609.04	0.03
2005-06	36,806	740.19	0.02
2006-07	46,861	888.12	0.02
2007-08	52,804	1,287.71	0.02

Regarding expected fall in prices of commodities, as envisaged while introducing VAT, no records/information were made available to indicate that the impact of the VAT in reducing the prices at any stage was ascertained/analysed by the department.

4.2.7 Preparedness and Transitional Process

There was lack of adequate preparedness by the Government for switching over from Sales Tax system to VAT system as would be evident from the following paragraphs.

4.2.7.1 Planning for Implementation of VAT in the State

VAT in J&K was introduced with effect from 1 April 2005 by an ordinance No. III dated 01 February 2005. The J&K VAT Act was enacted under Act No. III of 2005 dated 03 April 2005 and the J&K VAT Rules 2005 were notified vide SRO No. 159 dated 09 June 2005, after more than two months from the date of introduction of VAT in the State. Thus, for tax regulation no rules were available for the first two months of 2005-06 which indicated that VAT in the State was implemented without adequate planning/preparedness.

4.2.7.2 Analysis of Staff requirement and re-organisation of Taxation Department

The re-organisation of the department in view of the increased workload, under General Sales Tax Act, creating eight additional commercial taxes circles, was made in December 2005. However, no analysis of staff requirement, to cater to the increased workload after implementation of VAT, was carried out.

As per the information furnished by the department there was a shortage of staff in the department vis-a-vis sanctioned strength of pre-VAT period as mentioned below.

Year	Sanctioned strength	Effective strength	Shortage	Percentage of shortfall
2005-06	1,371	1,090	281	21
2006-07	1,371	1,032	339	25
2007-08	1,371	1,006	365	27

The issue was not addressed by the department. In the meanwhile, the number of dealers had increased by 135 *per cent* from 22,426 (as on 01.04.2005) to 52,804 (as on 31.03.2008).

4.2.7.3 Computerisation of taxation department and check gates and their interlinking

For efficient functioning of VAT administration and for its effective control over the import and export of goods into and out of the state, computerisation of the check gates and linking these with the commissionerate office and assessing officers is of immense importance. Computerisation of the department has not been done so far despite the fact that funds amounting to Rs. one crore were sanctioned by Government of India in 2004-05. This has adversely affected the working of the department relating to monitoring of the receipt of returns from the dealers and cross checking of ITC claimed by the dealers, thereby increasing the chances for tax evasion.

The Government may consider taking steps for early computerisation of the taxation department.

4.2.7.4 Preparation of manuals and training of staff

In order to facilitate smooth implementation of the Act and Rules made thereunder, it was necessary to issue guidelines in the form of manuals and impart training to the implementing officers/officials. However, it was seen in audit that no manuals had been prepared by the department.

As per the information furnished by the department, 11 training programmes were held in the Kashmir division during 2004-05 to 2007-08. Information in respect of the training programmes organised for the Jammu division was not made available to audit. The extent and adequacy of training of the staff could not, therefore, be ascertained by audit.

4.2.7.5 Completion of Assessments pertaining to pre-VAT period and collection of arrears of taxes due under the Sales Tax Act

The status of assessments of revenue pending collection during 2005-06 to 2007-08 and the arrears are detailed in the following tables:

- **Number of assessments in arrear**

Year	Assessments under GST Act	Assessments under CST Act	Total assessments
2005-06	15,969	443	16,412
2006-07	11,654	463	12,117
2007-08	11,232	877	12,109
Total	38,855	1,783	40,638

- **Arrears of revenue pending recovery**

(Rupees in crore)

Year	Opening balance	Additions during the year	Total	Clearance during the year	Closing balance of arrears outstanding
2005-06 (J)	248.69	61.68	310.37	19.56	290.81
(K)	340.66	45.03	385.69	31.01	354.68
2006-07 (J)	290.81	81.18	371.99	53.39	318.60
(K)	354.68	46.39	401.07	13.03	388.04
2007-08 (J)	318.60	31.81	350.41	59.42	290.99
(K)	388.04	10.63	398.67	67.45	331.22
Total outstanding as on 31.3.2008					622.21

Audit observed that the Commercial Taxes Department was not only engaged with finalisation of assessments pertaining to the pre-VAT period but was also entrusted with the job of recovery of old arrears. This hampered the pace of transition from Sales Tax to VAT.

4.2.8 Registrations and database of dealers

To prevent tax evasion, registration of dealers and preparation of their database is of immense importance in any system of taxation. **Audit noticed absence of monitoring in the process of registration of the dealers and preparing their database as discussed in the subsequent paragraphs.**

4.2.8.1 Creation of database of the dealers

The Commercial Taxes Department has not been computerised so far and no database of the dealers has been created. Records in the department/circles during the period from 2005-06 to 2007-08 in respect of dealers continued to be maintained manually as was being done in the pre-VAT period. The department had not identified the dealers eligible for registration under VAT regime to pre-empt any scope of tax evasion by such run-away dealers.

4.2.8.2 Non-registration of the dealers

Section 104 of the Act and Rule 13 of J&K VAT Rules 2005 provide for transition of the dealers registered under J&K GST Act 1962 to VAT. Rule 13 of J&K VAT Rules 2005 provides that every dealer registered under the GST Act 1962 on the appointed day shall be issued a registration certificate and be deemed to be registered under the Act, provided that the dealer had made an application for the purpose within three months of the appointed day. Further, Taxpayer's Identification Numbers were issued in advance to every dealer registered under the existing GST Act on the appointed day with the condition that such dealers would obtain registration under VAT Act 2005 within three months from the appointed day, failing which the deemed registration granted on the appointed day would stand cancelled and they would no more be registered dealers.

- Test-check of five circles⁸ indicated that the TIN issued in 2004-05 in advance by the department to 396 dealers have not been cancelled till date. Out of these, 201 dealers had collected output tax of Rs. 49.05 crore. In absence of their registration, the dealers were liable to be treated as unregistered dealers and were liable to pay a penalty of Rs. 98.10 crore⁹.

Further, 175 such dealers in seven circles had also availed of the input tax credit (ITC) of Rs. 16.21 crore which was against the provisions of the Act.

After this was pointed out, the department stated (September 2009) that the J&K VAT Rules 2005 were published in June 2005 whereas VAT was implemented with effect from 01 April 2005 which resulted in some technical defaults on the part of the dealers and as it involved no revenue loss, the penalty had not been levied.

4.2.8.3 Delay in registration of dealers

- Registration of a new dealer is governed by section 27 of the Act. Rule 12 of the VAT Rules provide for issuing registration certificate in the prescribed form to the applicants within 20 days from the receipt of application. A dealer requiring a registration has to apply within three months from the date he becomes liable to pay the tax in the first instance to the prescribed authority and in the prescribed form, accompanied by the treasury receipt of Rs. 500 on account of registration fee. After satisfying himself of the genuineness of the application in terms of the Act, the prescribed authority shall assign the TIN in case of the VAT and voluntary registered dealers and the registration number

⁸ Circles: Anantnag-I, J-Jammu, L-Jammu, Sopore and Udhampur-I.

⁹ Double of the tax collected.

to other dealers. The Act provides that the delay in applying for the registration by a dealer could be condoned by the CCT.

Audit scrutiny in two circles (Kathua and A-Jammu) indicated that

- In 103 cases, registration certificates were not issued within 20 days from the date of receipt of the application.
- Further, 73 dealers applied for the registration after three months from the appointed day i.e. 1.4.2005. They were registered by the department without getting the delay condoned by the CCT. They were also liable to pay a registration fee of Rs. 36,500 which was also not demanded by the department.
- Three¹⁰ dealers applied for the registration after 30 days from the start of their business. However, the assessing authority registered the dealers from dates prior to their dates of applying for the registration and allowed ITC credit of Rs. 10.27 lakh. The registration of the dealers from retrospective dates was incorrect. They were required to be treated as unregistered dealers for the purpose of claiming ITC. This resulted in non-realisation of tax of Rs. 19.19 lakh including the interest.

After this was pointed out, the assessing authority, Kathua circle accepted the audit observation and issued notice to a dealer while in respect of the other two cases, the assessing authority circle A, Jammu stated that in absence of any rules, the dealer could not apply for registration. The reply is not in consonance with the provisions of section 27 (4) of the Act which envisages registration of the dealers from the date of filing the application.

4.2.8.4 Periodic analysis of dealers below threshold limit

Section 25 of the Act read with Rule 11 of J&K VAT Rules 2005 provides for payment of turnover tax of one *per cent* by such registered dealers who sell their goods locally and whose gross turnover of sales during a year does not exceed Rs. 20 lakh. In case the turnover limit of Rs. 20 lakh is exceeded, the dealer should get himself registered as VAT dealer and pay tax at the rate prescribed for the class of goods sold by him.

Audit noticed in four circles (J-Jammu, Kathua, L-Jammu and Udhampur-1) that the trading accounts required to be enclosed with the annual returns under rule 28 (3) of the VAT Rules were not attached, in absence of which the dealers who had crossed threshold limit could not be identified.

After this was pointed out, the assessing authority circle J-Jammu stated that the relevant information would be called for from the assessee. Reply in respect of other circles has not been received (September 2009).

The Government may consider putting in place a mechanism for conducting periodic verification of books of accounts of such TOT dealers to avoid evasion of tax by the dealers crossing the threshold limit.

¹⁰ 1. CTO circle Kathua: 1 dealer ITC: Rs. 3.57 lakh, Interest: Rs. 3.57 lakh; 2: CTO circle A Jammu: 2 dealer: ITC Rs. 6.70 lakh, interest: Rs. 5.36 lakh.

4.2.8.5 Database of dubious/risky dealers

In order to safeguard Government revenue and pre-empt any scope for tax evasion under VAT system, database of dubious/risky dealers on the basis of their track record under GST should have been prepared and made available to all offices of the taxation department. However, it was seen in audit that no such database had been prepared by the department. Absence of such a database leaves scope for tax evasion by such dubious/risky dealers.

4.2.8.6 Periodic analysis of registration certificates to detect dormant registration

J&K VAT Act/Rules 2005 have no provision for periodic analysis of registration certificates, register of dealers, returns register to find out the dealers that have failed to file their returns and have remained dormant. Audit noticed that 118 registrations were dormant, on which no action had been taken by the department.

The Government may consider instituting a system for identification of the dealers who have remained dormant and canceling their registration.

4.2.8.7 Suspension and cancellation of the registrations

Section 27 (7) of the Act provides for suspension of the certificate of registration of the dealers who fail to file any return or fail to pay any tax, penalty or interest payable under the Act. In case the dealer fails to get his certificate of registration restored within 90 days from the date of its suspension, the Assessing Authority has to cancel the registration certificate of that dealer. **Audit noticed that the department had not devised any mechanism to monitor the restoration and cancellation of the suspended registration certificates.**

Test-check in nine circles¹¹ indicated that the registration certificates in respect of 781 dealers were suspended by the assessing authorities during 2005-06 to 2007-08. Of these, the registration certificates of 73 dealers were restored, 107 registration certificates were cancelled while no action was taken for 601 suspended registrations.

The Government may consider devising a mechanism to monitor the restoration and cancellation of the suspended registration certificates.

4.2.9 Deficiencies in the Act and Rules

The review in audit indicated existence of a number of deficiencies in the provisions of the VAT Act and the rules, which persisted during the period covered under the review. Significant deficiencies are discussed in the following paragraphs.

4.2.9.1 Deficiencies in “returns forms”

Section 31 of the VAT Act read with rule 28 of the VAT rules prescribe the manner and form in which the return was to be filed by a registered dealer. The return is to be filed in Form VAT-11 under rule 28 of the VAT Rules. Further, under section 35 of the Act, every quarterly tax return furnished by the dealer is to be scrutinised to verify the

¹¹ CTOs Circles: Anantnag, Baramulla, Sopore, A-Srinagar, L-Jammu, J-Jammu, Udampur-I, Kathua and A-Jammu.

correctness of (i) rate of tax applied on the sales mentioned in the return, (ii) calculation of tax/interest payable and (iii) calculation of input tax credit claimed/utilised.

However, the return form does not provide any column for recording the nomenclature of the goods purchased/sold. Thus, correctness of the rate of tax charged, calculation of tax payable/ITC claimed and interest payable cannot be verified in scrutiny, which can lead to leakage of tax. The Form also did not provide columns for recording of the treasury receipt number under which tax was paid. Audit noticed that in the Kashmir division 47,732 returns filed by the dealers during 2005-06 to 2007-08 were not in the format prescribed under the Act. However, the format used for filing returns in Kashmir division was more elaborate than the prescribed one. It contained essential details like tax deposited, goods sold, challan number, etc. which were not specified in the prescribed format.

The Government may consider revising the format prescribed for the ‘returns’ to include columns for indicating nomenclature of the goods, treasury receipts, details of tax deposited, etc. and provision for submission of accounts in support of sale and purchase.

4.2.9.2 Monitoring filing of the returns

Registers for recording the receipt of “returns” filed by the dealer was maintained by the departments. However, audit noticed that these registers were not reviewed by any officer at higher levels.

The percentage of the dealers who did not file returns ranged between 20 to 23 *per cent* during the period from 2005-06 to 2007-08 as detailed in the following table.

Year	Total number of dealers	Number of dealers who did not file returns	Percentage of dealer not filing returns
2005-06	36,806	7,392	20
2006-07	46,861	9,744	21
2007-08	52,804	11,879	23

The number of the dealers who did not file their returns had increased from 7,392 to 11,879 indicating the need for constant monitoring at higher levels.

4.2.9.3 Creation of awareness among stake holders

Public awareness of VAT was sought to be created by the department through print and electronic media campaigns as well as VAT *melas*, before and after implementation of VAT in the State. Though adequate media campaign had been made through print, electronic media and interactions with traders, despite this, a significant number of dealers failed to file the returns as mentioned in the foregoing table.

4.2.9.4 Inadequate documentation to be given along with the returns

Jammu and Kashmir VAT Act 2005 does not provide for submission of any account in support of sales/purchases alongwith the return, thereby weakening control of assessing authority over assesseees.

Further, there is no provision in the Act/rules made thereunder for cross verification of the particulars depicted in the returns received from the dealers with the records

maintained by other departments/sources like Income Tax, Central Excise or any other department. In the absence of such cross verification, the evasion of tax cannot be ruled out.

The Government may consider making provisions for mandatory cross verification of the transactions with other states, central department or undertakings.

4.2.10 Tax audit

Under section 36 of the Act, Commissioner Commercial Tax or any other tax officer as directed by him can undertake tax audit of records of dealers selected for the purpose by the Commissioner. Tax audit involving examination of returns and admissibility of the ITC is to be conducted in the office or business premises of the dealer.

4.2.10.1 Timeframe and percentage of dealers to be taken up for Tax Audit

The Act does not prescribe any timeframe for completion of tax audit. As per the Act, report of tax audit is to be submitted to Commissioner, Commercial Taxes within 30 days. But the date from which these 30 days are to be counted is not mentioned.

The Act does not prescribe any percentage of dealers for selection for tax audit. However, during review it was seen that no dealer was selected for tax audit during 2005-06 while 233 dealers were selected during 2006-07 and 119 in 2007-08 as mentioned in the following table:

Year	Number of registered dealers	Number of dealers selected for tax audit	Percentage selected
2005-06	36,806	-	0.00
2006-07	46,861	233	0.50
2007-08	52,804	119	0.23

Tax audit is an important tool with the VAT administration to detect willful suppression of assessable turnover by the dealer and evasion of tax thereon and the negligible number of tax audits conducted from 2005-06 to 2007-08 evidenced lack of concerted efforts to detect evasion.

4.2.10.2 Audit assessments¹²

Section 39 of the VAT Act, provides for audit assessments in respect of the returns filed by the assessee. Audit assessment by the department is an important tool with the VAT administration to arrest tax evasion by the dealers. However, in the Act no specific percentage for audit assessments of dealers has been prescribed. Further, there is no provision to entrust the assessment of large tax paying dealers to higher ranked authorities.

Year-wise position of audit assessments made during the period from 2005-06 to 2007-08 was as under:

¹² Audit Assessments means audit of tax returns with reference to assessee's records by the Assessing Authority.

Year	Number of dealers	Number of audit assessment made	Percentage of audit assessments with respect to dealers
2005-06	36,806	3,175	9
2006-07	46,861	3,442	7
2007-08	52,804	3,541	7

The low percentage of audit assessments is fraught with the risk of a large number of dealers remaining unaudited for years together.

The Government may consider prescribing a percentage of cases to be selected for tax audits by using scientific methodologies.

Compliance deficiencies

4.2.11 Non-levy of penalty

Section 69 (b) stipulates that in case of default in filing of the return or revised return as the case may be, the defaulter shall be liable to pay a sum of Rs. 1,000 per month per return till the time such return is furnished. Section 60 (3) of the Act provides for levy of a penalty at the rate of 0.25 *per cent* of the turnover in case of the dealers who fail to submit Audit Reports¹³.

It was seen in audit that in eight circles¹⁴, 2,298 VAT dealers had either not filed the returns or had filed them late. They were liable to pay a penalty of Rs. 3.36 crore which was not levied by the department. Besides, 47 dealers had not filed Audit Reports for which they were liable to pay penalty of Rs. 1.03 crore which also was not levied by the department. This resulted in non-levy of Rs. 4.39 crore.

After this was pointed out, the assessing authority stated that a lenient view had been taken in view of the new tax regime. However, the fact remains that this action is not in consonance with the provision of the Act.

4.2.12 Input Tax Credits

Grant of incorrect input tax credits

The VAT Act is deficient in respect of Input Tax Credit as it does not stipulate furnishing of proof of payment of the tax by first seller/manufacturer. Besides, it also does not provide for enclosing of purchase statements along with quarterly returns in which ITC has been claimed/utilised, which can lead to tax leakage.

Test-check of eleven circles selected for audit indicated a number of deficiencies in the implementation of VAT resulting in availment of incorrect ITC. The registration certificates of 14 dealers were suspended in three circles (C-Jammu, L-Jammu and Kathua) but were allowed ITC for the suspension period. In five cases, ITC was allowed on items not covered by registered certificates, in four cases ITC was allowed on the basis of bill, not in prescribed form, furnished by sellers. The ITC allowed was incorrect. This resulted in incorrect grant of input tax credit of Rs. 3.37 crore.

¹³ Audit Reports are filed by those dealers whose gross turnover in a year exceeds Rs. 40 lakh.

¹⁴ Circles: A-Srinagar, Anantnag, Sopore, J-Jammu, L-Jammu, Udampur-I, Kathua, C-Jammu.

After this being pointed out, the assessing authorities assured of initiating action in 20 cases. The assessing authorities of Circle A, Srinagar and Circle L, Jammu stated (September/October 2009) that the Section 21 of the Act nowhere laid down any condition for allowing the ITC on purchase of such goods only which were covered by the registration certificates of the dealer. The reply is not in consonance with the provisions of section 27 of the Act which clearly states that the class of items/goods dealt in by a registered dealer shall be depicted in the registration certificate. Thus, the ITC was not admissible under section 21 of the Act.

4.2.13 Grant of exemption to certain class of dealers

At the time of introduction of VAT in the State, there was no provision for grant of exemption to any class of dealers. An amendment in the Act introduced section 79-A which governs grant of remission from payment of tax by industrial unit holders. Deficiencies in implementing provisions of the exemption notification resulted in grant of inadmissible/irregular remission of tax as discussed in subsequent paragraphs.

4.2.13.1 Grant of exemption

(i) Exemption from payment of tax under the Act is governed by section 79-A, whereunder industrial unit holders are granted remission of tax. This section was introduced on 06 January 2006. Notification (SRO 91), prescribing the manner in which remission was to be claimed, was introduced on 16 March 2006. Proviso to para 2 of the notification governing grant of remission to industrial unit holder was inserted by notification SRO-176 dated 31 May 2006 requiring the industrial unit holders claiming remission for 2005-06 to furnish an attested affidavit that he had made price adjustment equivalent to the amount of tax chargeable on the finished goods sold and the tax had been charged only after making the requisite price adjustment. Since the notification prescribing the manner of price adjustment to be made were issued on 16 March and 31 May 2006, the industrial unit holders were expected to have collected tax during 2005-06. It was seen in audit that remission of tax was allowed to the industrial unit holders for the accounting year 2005-06 on the basis of attested affidavits. The correctness of these affidavits was not verified.

Test-check of records indicated that 27 dealers of three commercial taxes circles¹⁵ had collected tax but had not made price adjustment as prescribed in the notification. However, they had furnished the affidavits stating that price adjustments had been done as required under notification. These affidavits were not checked by the authorities and resulted in grant of incorrect/inadmissible tax remission of Rs. 14.17 crore.

The AAs accepted the audit observation that the remission for the year 2005-06 had been allowed on the basis of attested affidavits. However, their reply was silent about reasons for not checking the correctness of the affidavits.

¹⁵ Circles: M-Jammu, Udampur-I and Kathua.

(ii) **Remission without affidavits and remission orders**

Notification (SRO 91 dated 16 March 2006) envisages grant of remission of tax for accounting year 2005-06 only on submission of attested affidavits. The SRO also provides that AA shall pass the tax remission order within three months depicting therein the amount of tax remitted in favour of the industrial unit for a particular tax period. Proviso to SRO 91 (13) provides that if the Assessing Authority concerned is unable to pass the tax remission order under the prescribed time, he shall seek extension of the time period from the Additional Commissioner Commercial Taxes of the division concerned. It was seen in audit that in violation of the above provisions, remission orders in respect of 2 dealers involving Rs. 4.51 lakh, had been passed by the CTO, Circle M Jammu without obtaining attested affidavits. Further, remission orders in respect of three other dealers, involving Rs. 9.13 lakh were not passed by the CTO M circle Jammu. The remission of Rs. 13.64 lakh claimed by the dealers was irregular.

(iii) **Grant of irregular/inadmissible tax remission in respect of wheat bran**

As per the clarification (October 2006) of the Commissioner Commercial Taxes, wheat bran, being by-product of wheat flour, does not come within the purview of a manufacturing activity and directed all the AAs to take appropriate action for levy of tax on wheat bran sold by industrial unit holders.

Test-check of records indicated that two¹⁶ assessing authorities incorrectly allowed tax remission of Rs. 1.11 crore on wheat bran, treating it as a manufacturing activity, to six dealers in two commercial taxation circles.

The AAs stated that the tax remission had been allowed as the item was not appearing in the negative list of remission notification. The reply is not in consonance with the clarification issued by the CCT.

4.2.14 Incorrect grant of an ITC

Introduction of VAT has replaced compulsory 100 *per cent* assessments under GST with self assessment and no fixed percentage has been prescribed for the audit assessments or tax audits. Besides, the VAT Act does not make it mandatory for a dealer to furnish tax invoices or purchase statements in support of the ITC claimed by him, thus, reducing the control of the VAT Administration over the dealer.

The test-check indicated that the assessing officer in Commercial Taxes, Circle A, Srinagar had called for the sales details of a dealer from CTO, Circle L, Jammu for verification of correctness of the ITC claimed by the dealer. However, no further action was taken on receipt of the information. Cross verification by audit indicated that the dealer had incorrectly availed of the ITC of Rs. 6.78 lakh on purchase bill not reflected by the selling dealer. This resulted in non-realisation of the Government revenue Rs. 26.98 lakh, including interest and penalty.

After this was pointed out, the assessing authority issued notice to the dealer. It also stated that the dealer had claimed ITC correctly and concealment seemed to have been

¹⁶ Circles: M-Jammu and Kathua.

done by the principal supplier. The reply was, however, silent about the action taken against the principal supplier.

4.2.14.1 Cross-verification of the records of work/buying department in case of works contract/suppliers

Section 91 (3) of the Act governs cross verification of records of work/buying department. It was seen in audit that not a single case was cross verified with records of works/buying departments.

4.2.14.2 Deficiencies in uploading data in TINXSYS

The empowered committee of State Finance Ministers had authorised a website TINXSYS.com to serve as a repository of inter-state trade transactions.

No data relating to 2005-06 to 2007-08 was seen uploaded on the site. Non-uploading of information in the site defeated the objective of creation of the website as even after creation of the site, the other states could not assess the database of forms issued to J&K dealers.

4.2.14.3 Suppression of turnover

Cross verification of purchase statements, “C”/“F” declaration forms, VAT 65 forms, Audit Reports with the returns filed by 12 dealers indicated that the dealers had not accounted for purchases valued at Rs. 3.55 crore in their returns. This resulted in suppression of turnover to that extent, having tax effect of Rs. 81 lakh including interest and penalty.

4.2.14.4 Non-levy of penalty for not obtaining tax clearance certificates

Under section 57 of the Act, every department shall, before entertaining a tender for supply of taxable goods or sanctioning any contract for the purpose, obtain a tax clearance certificate on the prescribed form issued by the AA concerned. If any authority entertains a tender without such certificate, he shall be liable to pay a penalty of Rs. 10,000 for each such tender.

It was seen in audit that 43 DDOs in two Circles viz. CTO Udhampur -1 and CTO –M Jammu had entertained tenders from suppliers registered in these circles without obtaining tax clearance certificates. Penalty of Rs. 4.30 lakh had, however, not been levied.

After this was pointed out, the assessing authorities assured (October 2009) of taking appropriate action.

4.2.14.5 Incorrect determination of opening stock

Section 95 of the VAT Act authorises the CCT to call for details of stock of goods held by registered dealers on the day immediately preceding the appointed day. CCT, J&K in exercise of the powers under this section, notified (Order No. 01/Camp/CCT dated 02.05.2005) registered dealers falling under the VAT to declare the closing stock lying with them as on 31 March 2005 to assessing authorities of the circles in which they were registered.

Test-check indicated grant of inadmissible ITC on opening stock in respect of 12 dealers involving four¹⁷ Commercial Taxes Circles resulting in non-realisation of tax of Rs. 48.03 lakh including interest and penalty. A few instances are mentioned in the subsequent paragraphs.

- In Circle L-Jammu, a dealer¹⁸ registered on 8 April 2005 claimed ITC of Rs. 7.48 lakh on opening stock for the period prior to the date of registration. The claim was not admissible as per CCT's circular instructions dated May 2005 issued under section 95 of the Act which stipulates that only the dealers registered under GST Act, are entitled to ITC on opening stock held by them on appointed day. In this case audit assessment was finalised and the dealer was liable to pay penalty equivalent to twice the amount of tax under section 39 (7) of the Act. Further, in three cases, the assessing authority, circle C Jammu also incorrectly allowed ITC of Rs. 5.39 lakh. The discrepancies resulted in non-realisation of tax of Rs. 33.74 lakh including interest and penalty.

The assessing authority circle C Jammu assured that he would look into the audit observation and take appropriate action. The assessing officer L-circle Jammu did not accept the audit observation stating that dealers claiming ITC on opening stock held by them on opening day were not required to be registered under the GST Act. The reply is not in consonance with CCT's instructions dated May 2005 issued under section 95 of the Act which stipulate that ITC is admissible to dealers registered under GST/CST Act.

4.2.15 Acceptance and disposal of appeal cases

A dealer objecting to any order passed by the assessing authority may, within 30 days from the date of serving of order, file an appeal with the appellate authority/CCT, subject to the condition laid down in the rules. However, no time frame for the disposal of appeals has been prescribed in the Act. During the review it was seen that 611 cases were pending as on 31 March 2008.

4.2.16 VAT fraud task force

Section 9 of the Act, provides for constitution of Special Investigation Units¹⁹ (SIU) for carrying out investigation or hold enquiries in cases of evasion of tax, of its own motion or on directions from the commissioner. As per the information made available to audit, the number of cases in which the investigation/enquiry were conducted by SIU on its own during the review period is as under:

Year	Number of investigation/enquiry conducted	
	Jammu Division	Kashmir Division
2005-06	01	Nil
2006-07	04	06
2007-08	12	Nil
Total	17	06

¹⁷ CTO circle: A-Srinagar: One case, CTO circle C-Jammu: three cases, CTO circle L-Jammu: six cases and CTO circle Udhampur-I: two cases.

¹⁸ M/s "X" Tin: 01611150607.

¹⁹ Kashmir and Jammu.

No case had been referred by the Commissioner to SIU in the Kashmir Division for carrying out investigations while three cases were referred by the Commissioner in the Jammu division.

While only six cases were enquired into/investigated in the Kashmir division, out of which two cases are still pending, 17 cases had been investigated in the Jammu division. This indicated that the provisions of the Act had not been implemented properly and the very purpose of constituting the SIUs was largely being defeated.

4.2.17 Scrutiny and verification of the returns

As per the Section 35 of the Act, each and every return is required to be scrutinised and mistakes detected on account of the arithmetical calculations, application of the correct rate of tax and interest and input tax credit claimed therein need to be rectified and assessed accordingly.

Arithmetical mistakes were noticed by audit in the returns filed by 41 dealers which involved short payment of tax amounting to Rs. 7.87 lakh, excess remission of Rs. one lakh and excess carry forward of the ITC of Rs. 0.82 lakh in the six circles²⁰. The total short realisation amounted to Rs. 9.70 lakh.

After this was pointed out, the assessing authorities initiated (October 2009) action in all cases.

4.2.18 Internal controls

Internal controls are of paramount importance in an organisation as they serve to provide timely warning of irregularities or deficiencies in its functioning. Gaps seen in exercise of the internal control by the Commercial Taxes department are discussed in the following paragraphs.

4.2.18.1 Maintenance of registers in the unit offices

Registers/records prescribed like the return register, registration register, refund register, appeal register etc. were either not maintained or were not maintained in the prescribed form, in the three circles (A-Srinagar, L-Jammu and Kathua) out of the 11 commercial tax circles test-checked.

After this was pointed out, the assessing authorities stated that the said registers were not maintained due to non-availability of prescribed forms and the gap between dates of implementation of the Act and framing of Rules.

4.2.18.2 Lack of monitoring of returns

The VAT Act read with rules framed thereunder does not provide for submission of any progress report or any return by the field offices. Quarterly performance indicators on the working of circles are submitted to the additional CCTs at the end of each quarter. These reports/returns are submitted to the Commissioner as and when called for by him. This indicates that there is no regular system in place for monitoring by the Commissioner.

²⁰ Circles: Anantnag-I, A-Srinagar, Kathua, M-Jammu, Udhampur-I and Sopore.

4.2.19 Internal Audit

Audit noticed that though the white paper on VAT envisaged the creation of an Audit Wing completely de-linked from tax collection wing for checking a percentage of dealers' self-assessments, yet no provision for such an audit wing has been incorporated in VAT Act.

No internal audit was conducted during the years from 2005-06 to 2007-08. As per SRO 91 dated 16 March 2006 governing remission from the payment of tax by the industrial unit holders, the Commissioner Commercial Taxes department was to get at least 25 per cent of all the tax remission claims verified for each tax period by the Deputy Commissioner Commercial Tax (Audit) of the division. The number of 'remission cases' checked by Deputy commissioners commercial taxes (Audit) Jammu and Srinagar, as furnished by the department, are detailed in the following table:

Division	Number of circles	Total number of remission cases	Remission cases due for check	Remission cases Checked	Shortfall	Percentage of shortfall
Kashmir	6 ²¹	2,749	688	91	597	87
Jammu	2 ²²	9,451	2,364	195	2,169	92

The above table indicated that the Deputy Commissioners (Audit) had not checked even the minimum prescribed percentage of tax remission cases.

4.2.20 Conclusion

Transition from J&K General Sales Tax to J&K Value Added Tax was not smooth and suffered due to deficiencies like inadequate planning, non-reorganisation of the administrative machinery, non-computerisation of the department, late framing of J&K VAT Rules, shortage of the staff and engagement of the existing staff in finalisation of the pending assessments under the Act and recovery of the arrears there under. The tax audits and audit assessments being vital parts of the VAT administration were not being accorded due importance. The deficiencies in the Act and the Rules there under and absence of guidelines/manuals also contributed to the failure of the field offices in the implementation of the Act properly.

4.2.21 Summary of the recommendations

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

- taking up the computerisation of the department for smooth and efficient tax management;
- putting in place a mechanism for conducting periodic verification of books of accounts of such TOT dealers to avoid evasion of tax by dealers crossing threshold limit;
- monitoring, the identification of the dealers who have remained dormant and for canceling their registration, at higher levels;

²¹ Circles: Anantnag-I, Anantnag-II, Baramulla, Budgam, E-Srinagar and I-Srinagar.

²² Circles: G-Jammu and I-Jammu.

- devising a mechanism to monitor the restoration and cancellation of the suspended registration certificates;
- revising the format prescribed for the “returns” to include columns for indicating, nomenclature of the goods, treasury receipts, details of tax deposited, etc. and provision for submission of the accounts in support of the sale and purchase;
- making provisions for cross verification of the transactions with other states, central department or undertakings;
- selecting a percentage of cases for tax audits/audit assessments by using scientific methodologies so as to pre-empt any scope for bias and
- entrusting assessments in respect of large tax paying dealers to higher ranked authorities after fixing a certain limit of turnover.

4.3 Review on Assessment and collection of the Toll Tax

Finance Department

Highlights

- Absence of a provision for cross-verification of the toll post records of import and export of goods with Commercial Taxes Department resulted in non-levy of toll of Rs. 55.23 lakh.

(Paragraphs: 4.3.7.1 and 4.3.7.2)

- Allowing of the vehicles carrying load in excess of the permissible limit resulted in loss of the revenue of Rs. 15.14 lakh on account of the basic toll.

(Paragraph: 4.3.8.1)

- There was delay in transfer of the toll receipts to the Government account by the Jammu & Kashmir Bank Ltd. Timely deposit would have saved the Government from payment of the interest of Rs. 69.35 lakh on the overdrafts.

(Paragraph: 4.3.9)

- Due to non-functioning of weighbridges, assessment of additional toll in respect of the 17.12 lakh vehicles that crossed the toll post was made on lump sum basis and not on the actual laden weight, leaving every scope for the loss of revenue.

(Paragraph: 4.3.10)

- Lack of monitoring resulted in incorrect grant of exemption from payment of additional toll to the extent of Rs. 4.58 crore to various industrial units. The correctness of the exemption allowed on 1,27,952 metric tons of raw material and finished goods involving toll of Rs. 5.11 crore could not be verified due to non-preparation of chief article statement.

(Paragraph: 4.3.11)

4.3.1 Introduction

The toll is levied and collected in the State under the provisions of Jammu & Kashmir Levy of Toll Act Svt. 1995 (1938 AD) and the rules made thereunder called the Jammu and Kashmir Toll Rules, 1995. In early eighties, the Excise Department and the Sales Tax Department existed as “Excise and Taxations Department”. These were later segregated into two departments viz. the Excise Department and the Sales Tax Department, each headed by a Commissioner. The Excise Department was charged with the responsibility of collection of the toll at various toll posts, assistance in policy formulation of levy of toll and administration of matters relating to excise and toll. Toll is levied on men, animals, vehicles, machinery, commodities and goods in any form for using the roads, ferry and bridges lying within the State. Under the provisions of the Act, the Government may from time to time establish toll posts on roads, bridges, lanes etc. and prescribe, annul or alter rates of toll or grant exemption thereof.

A review on assessment and collection of toll tax brought to light a number of system and compliance deficiencies which have been discussed in the subsequent paragraphs.

4.3.2 Organisational set up

There are four major and 13 minor toll posts in the entire State under the overall supervision of the Excise Commissioner. The Excise Commissioner is assisted by two Deputy Excise Commissioners and eight Excise and Taxation officers (ETOs). A Deputy Excise Commissioner and four Excise and Taxation officers are posted at Lakhanpur which is the biggest toll post in the State while other three major toll posts are under the control of three Excise and Taxation officer. A Deputy Excise Commissioner (Accounts) posted at headquarters monitors the work of accounts and internal audit. Each Excise and Taxation officer is assisted by inspectors, sub-inspectors and excise guards. The overall administrative control vests with the Finance department.

4.3.3 Audit objective

The review was conducted with a view to assess:

- the efficiency and effectiveness of the system of levy and collection of toll;
- whether an adequate internal control mechanism existed to ensure proper realisation of toll and
- the extent of compliance with the provisions of the Act and rules made there under.

4.3.4 Scope and methodology of audit

The records of three (Lakhanpur, Railway Station Jammu and Lower Munda Kashmir) out of the four main toll posts²³ and four (Hutmashka, Govindsar, Nagri Lakhanpur, Bari Brahman) out of the 13²⁴ minor toll posts were test-checked in the audit during the period from January 2009 to April 2009. The selection of toll posts was based on the maximum revenue collected by the toll posts while the selection of cases for test-check in each toll post was done on the basis of random sampling method. In addition, assessments which fell around the dates of issue of SROs²⁵ regarding revision of the rates of toll tax by the State Government were also test-checked in the audit.

4.3.5 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation of the excise department in providing necessary information and records for audit. An entry conference was held in January 2009 with the Excise commissioner in which the scope and methodology of conducting the review was explained. The draft review report was

²³ Main Toll posts: Lakhanpur (Jammu), Railway Station Jammu, Lower Munda Kashmir and Upshi Ladakh.

²⁴ Minor Toll posts: Govindsar, Satwain/Thein, Hatmashka, Pattan Barrian, Pharpur, Goond, Kote Punnu, Mandi Mandikan, Nagri (under Main Toll Post Lakhanpur Jammu), Railway Station (passenger side) Jammu, Bari Brahmana, Vijaypur (under Main Toll Post Railway Station Jammu) and Qazigund (under Main Toll post Lower Munda Kashmir).

²⁵ Sadri Riyasat Order.

forwarded to the department and the Government in July 2009. The audit findings and recommendations were discussed in the exit conference held in September 2009. The responses of the department received during the exit conference or at other times have been appropriately incorporated in this report.

4.3.6 Collection of the toll receipts

The position of the toll receipts collected vis-à-vis budget estimates during the period from 2004-05 to 2008-09 as per the Departmental records was as under:

(Rupees in crore)

Year	Budget estimates (Original)	Budget estimates (Revised)	Actual revenue collected	Excess (+)/shortfall (-) (4-2)	Excess (+)/short fall (-) (4-3)
1	2	3	4	5	6
2004-05	202.47	220.00	217.05	(+) 14.58	(-) 2.95
2005-06	231.00	235.00	237.34	(+) 6.34	(+) 2.34
2006-07	250.00	255.00	254.30	(+) 4.30	(-) 0.70
2007-08	260.00	277.00	288.54	(+) 28.54	(+) 11.54
2008-09	290.00	290.00	271.73	(-) 18.27	(-) 18.27

The above table indicates that every year there was an increase in the toll receipts over the previous year except in 2008-09 when the collection was less than even the budget estimates.

The Department attributed (March 2009) the shortfall in revenue realisation during 2008-09 to the economic recession and as a result of disturbances on account of an agitation during July and August 2008.

Audit findings

System deficiencies

4.3.7 Absence of provision of cross verification to avoid leakage

Audit noticed that no system/provision existed in the rules for obtaining wagon-wise lists/railway receipts (RRs) from the railways and cross referencing of permits with the RRs/Import General Register to verify the chargeable quantity of the goods specified in the RRs so that toll was levied on all the items entering the state boundaries. The system was essential at those posts where the weighbridges were not functional.

4.3.7.1 Test-check indicated that a number of private/government agencies/industrial units imported coal²⁶ through railway racks into the state mainly through toll post at Bari Brahmana Jammu. No register for noting down the quantity of the coal imported in the state through the railways was maintained at the toll post, Bari Brahmana, Jammu. However, information regarding the quantity of coal imported into the State was available at the commercial taxes check post Bari Brahmana. Audit cross verified the

²⁶ Slack/Steam, Brown coal.

records of coal dispatched through trucks at toll post, Bari Brahmana, Jammu with the records maintained by state commercial taxes check post, Bari Brahmana, Jammu. It indicated that one industrial unit had imported (April 2007 to March 2008) 24,430 metric tons of coal against which the toll had been levied on 20,632 metric tons of coal during the same period thereby resulting in non-levy of toll of Rs. 16.29 lakh on 3,798 metric tons.

4.3.7.2 A similar cross-verification of commercial taxes check post, railway station, Jammu with regard to import of cement and fertilizer into the State in respect of eight²⁷ dealers during 2007-08 with the railway receipt registers of toll post railway station, Jammu indicated that 9,735 metric tons of cement and fertilizer were not subjected to levy of toll by the ETO, Jammu railway station, which resulted in non-levy of toll of Rs. 38.94 lakh. The ETO stated (April 2009) that the matter would be looked into.

4.3.8 Loss on account of the basic toll

According to the instructions issued by the department, vehicles carrying load in excess of the prescribed limit are to be stopped at the toll post for unloading the weight carried in excess and the extra load is to be subjected to recovery of the toll besides referring them to the Motor Vehicles Department for imposition of the penalty/fine under the Motor Vehicles Act, 1988. Basic toll is leviable on all the vehicles whether loaded or empty. For carrying the extra load more vehicles were needed that would fetch more basic toll **Audit noticed that in case of vehicles carrying loads in excess of their permissible limits, there was no provision for levy of extra basic toll.**

4.3.8.1 Test-check of the records of minor toll post, Govindsar (Kathua), indicated that 3,430 overloaded trucks²⁸ were allowed to carry (1 April 2007 to 10 August 2007) the load prescribed for 6,878 trucks, as a result of which basic toll for 3448 vehicles could not be charged, resulting in loss of Rs. 15.14 lakh.

It was further noticed in audit that as no staff of transport department was posted at the toll post, Govindsar, the trucks which carried goods in excess of the prescribed weight could not be penalised under the provisions of the Motor Vehicles Act, 1988.

4.3.8.2 Cross-verification by audit of computerised daily data of the toll post (Import side) with the records of the Motor Vehicles department (at Lakhanpur) for the month of December 2008 indicated that 22 vehicles weighing more than the prescribed laden weight had crossed the toll post. Allowing overloaded vehicles to ply and cross the toll post resulted in loss of revenue on account of basic toll chargeable on the vehicles. For carrying the load in excess of the permissible limits the vehicles could have been penalised²⁹ for Rs. 1.80 lakh in accordance with the provisions of the Motor Vehicles Act, 1988.

After this was brought to the notice of the department, the Excise Commissioner intimated (September 2009) that an amendment for levy of twice the basic toll has been

²⁷ Deputy Director Store Procurement, Jammu, M/S Jai Prakash Associates, M/S Shri Cements, M/S Chambal Fertilizers, M/S Indo Steel Works, Jammu, M/S United Cements, M/S R.K. Traders, RS Pura, M/S SIS Trading Co., Jammu.

²⁸ (2 Axle: 894 (Kashmir bound); 2072 (Jammu bound) and 3 Axle: 464 (Jammu bound).

²⁹ Fine of Rs. 2,000 and an additional amount of Rs. 1,000 per tonne of excess load.

proposed in respect of vehicles carrying load beyond the limit/capacity prescribed under the Motor Vehicles Act, 1988. As regards imposition of the penalty, it was stated that the matter has been referred to the Motor Vehicles Department for necessary action under the Motor Vehicles Act.

The Government may consider a provision for levy of extra basic toll in respect of the overloaded vehicles and ensure levy of the penalty under the Motor vehicles Act.

4.3.9 Delay in remittances

Toll collected at various toll posts is required to be remitted by the concerned toll posts in-charge to the designated branches of the Jammu and Kashmir Bank at the end of each day which in turn are required to transfer the collections to the main branch at the close of business on every 7th, 14th, 21st and on the last day of every month. The main branch is to credit the entire balance to the government account at the close of the business of each day. The department had, however, not evolved any monitoring mechanism for ensuring timely transfer/credit of the toll revenue to the government account. Mention of absence of the monitoring mechanism was made in the paragraph 6.2.34 of the Report of the Comptroller and Auditor General of India for the year ended 31 March 2003–Government of Jammu and Kashmir. However, audit noticed that the discrepancy has not been rectified and moneys received on account of toll continue to be deposited/remitted into the government account after considerable delays. There is no provision in the Act or any instruction for charging of the interest from the bank on belated remittances.

Test-check of the bank scrolls in the office of the Deputy Excise commissioner indicated that there were delays (ranging between 1-24 days) in transfer of money (ranging between Rs. 1.38 crore and Rs. 8.28 crore) into the government account by the main branch during 2004-08. Timely transfer of the amounts would have resulted in reduction in government overdraft to that extent and saved payment of interest of Rs. 51.39 lakh paid by the government on the overdrafts. Similarly, delay in the transfer of the toll receipts (Rs. 15.58 lakh to Rs. 2.17 crore) by the designated branch at Bari Brahmana to the main branch ranged between 3 to 176 days involving avoidable interest of Rs. 17.96 lakh on the overdrafts.

The Government may direct the Jammu & Kashmir Bank Ltd. for timely remittance of the revenue into the Government account and in case of the delays, make a provision in the Act or issue instructions for charging of the interest from the bank on belated remittances.

After this was pointed out, the Excise Commissioner informed (September 2009) that the matter had been taken up with the Finance Department for issuing directions to the Jammu & Kashmir Bank Ltd. to remit collections on account of toll into the State Government account by the prescribed dates.

Compliance deficiencies

4.3.10 Non-functioning of weighbridges

According to the Jammu and Kashmir Levy of Toll Rules 1995, where additional toll etc., is leviable on goods/animals in addition to basic toll, the vehicles loaded with goods shall be subjected to weighment at the weighbridge by the assessing officer for correct assessment of toll. Two weighbridges had been installed at Jammu railway station and at Bari Brahmana, Jammu. Audit observed that the weighbridge at Bari Brahmana did not function at all during 2004-05 to 2008-09 while the electronic weighbridges installed at the toll post, Jammu railway station, had remained intermittently functional for 158 days from March 2005 to September 2006 and were subsequently closed down. No efforts had been made by the department (March 2009) to make the weighbridges functional. Further, the assessment for the purpose of levy of additional toll on 17.12 lakh vehicles which had crossed the post were not made on actual laden weight, as required under rules but on lump sum basis leaving scope for loss of revenue.

After this was pointed out, the Excise Commissioner issued (September 2009) directions to the concerned Deputy Excise Commissioner/ETO to take steps to make the weighbridges functional.

Test-check of remittances (April 2006 to September 2006) indicated that revenue had been collected through electronic weighbridges for 42 days only out of 158 days. The collection of revenue for remaining 116 days could not be verified in audit as the records/data relating to the assessment of additional toll, collected through electronic weighbridge, was not made available to audit by the ETO, Jammu railway station.

The ETO stated (April 2009) that the records/data of electronic weighbridges was stored in computers which could not be retrieved due to non-availability of the password. It was also stated that the matter was being pursued with the concerned agency that had developed the system.

The Government needs to instal electronic weighbridges wherever needed and make the defunct weighbridges functional. Responsibility also needs to be fixed for non-functioning of electronic weigh bridges and non-availability of data in computers to the department itself.

4.3.11 Grant of inadmissible exemption due to lack of monitoring

The Jammu and Kashmir levy of Toll Rules 1995 provides that if a vehicle is carrying any load which is exempt from payment of toll, either partly or fully, the driver shall report to the Excise and Taxation officer or to the inspector incharge of the exemption and shall disclose the registration number, nature of goods and unladen weight. Thereafter, the ETO prepares the data sheets in the computers in a prescribed proforma. Based on these data sheets, a monthly statement called chief article statement (CAS) is generated by the Deputy Excise Commissioner, Lakhanpur Toll post. The Government by a notification dated 31 January 2004 exempted registered industrial units from the payment of additional toll on raw material/consumables procured from outside the state and on finished goods manufactured/exported by these units and sent outside, except for

items included in the Annexure 'A' of the notification, henceforth, called negative list, which included all kinds of oils (edible and non-edible), excluding oil seeds. Audit noticed that though the nature of goods was mentioned in the CAS, it did not indicate the name of the consignor. These deficiencies in monitoring the correctness of the exemptions allowed are mentioned in the following paragraphs:

4.3.11.1 Test-check of the CAS at the toll post Lakhanpur indicated that the assessing authorities allowed exemption from payment of additional toll on 32 items³⁰ weighing 2,72,025 quintals imported into the state, though these items were included in the negative list. Grant of incorrect exemption resulted in non-realisation of additional toll of Rs. 1.09 crore. Since the name of the industrial units that imported the material was not available in the CAS, audit could not ascertain the names of the consignors against whom the demand was required to be raised. Lack of monitoring for detection of ineligible items falling in the negative list resulted in inadmissible exemption.

After this was pointed out, the department stated that the concerned authorities had been requested to intimate the names of the units that claimed toll exemption on raw materials imported into the State from 2004 to 2009 so that the recovery could be made from the concerned unit holder.

The above facts indicated that the department should provide for inserting the name of the unit holder in the computer system so that the demands can be promptly raised.

4.3.11.2 In accordance with the notification dated 31 January 2004, all kinds of oils (edible and non-edible), excluding oil seeds are eligible to additional toll.

Test-check of the records of Deputy Excise Commissioner, toll post, Lakhanpur indicated that the department irregularly allowed exemption from the payment of additional toll on 7,20,396 quintals of '*Mentha oil*', being non-edible oil (raw material) imported into the state by various industrial units during the years from 2004-05 to 2008-09 (December 2008). The inadmissible exemption from payment of additional toll resulted in revenue loss of Rs. 2.88 crore.

After this was pointed out, the Excise Commissioner took up (September 2009) the matter relating to levy of toll on *mentha* oil with the Principal Secretary to the Industries Department.

4.3.11.3 The Small Scale Industrial Development Corporation (SICOP) is authorised to import raw material and export finished goods on behalf of the registered industrial units without payment of the additional toll. Each consignment of the raw material or the finished goods is required to be accompanied by a machine numbered certificate (toll exemption form) from the Industries department for production to the ETO at the toll post concerned. The Industries department is required to furnish quarterly verification certificates to Deputy Excise Commissioner/ETO to the effect that raw materials/finished goods exempted from the additional toll has been actually received/manufactured and sent outside the State and entered in the relevant stock registers.

³⁰ C.R.Coil, Packing material, Cement, C.R. Sheet, G.C/G.P sheets, Grams, H.R.Coils/sheets, Iodized salt, Limestone powder, LP Gas, Marble sheets/Chips/Slab, Palm Oil, Plywood, Pulses, Skimmed Milk Powder, Slack/Steam Coal, Spices, Stone and Tiles.

Test-check of the exemption registers indicated that the ETO, Jammu railway station, had allowed exemption of the additional toll of Rs. 7.47 lakh to SICOP, Jammu on import (February-April 2006) of 1,867 metric tons of wire rod (raw material) on behalf of industrial units without obtaining exemption forms and quarterly verification certificates. Audit observed that the forms/certificates were never demanded by the department for grant of exemption. Grant of exemption without these requirements was irregular and resulted in irregular exemption of Rs. 7.47 lakh.

The ETO stated (April 2009) that the annual assessment approved by the Industries department in favour of the industrial units and the material lifted by the SICOP would be taken into account and monitored in the future.

4.3.11.4 As per 'Industries and Commerce departments' norm mentioned in annual assessment orders, for allowing exemption from payment of additional toll to an industrial unit registered with DIC, Kathua; 0.47 metric tons of iodine and 14,400 metric tons were required for manufacture of 14,256 metric tons of iodised salt.

Test-check of the records of Deputy Excise Commissioner, toll post, Lakhanpur indicated that a unit imported 13,338 metric tons of common salt during the period from January 2005 to December 2007. The unit was required to purchase 435 kilograms of iodine for converting the salt into the iodised salt. The unit purchased only four kilograms of iodine during this period but was allowed exemption from payment of additional toll on the entire quantity of common salt purchased. This aspect had not been considered by the department while allowing exemption from payment of additional toll to the unit holder, resulting in inadmissible exemption of Rs. 53.35 lakh to the industrial unit on import of 13,338 metric tons of common salt.

After this was brought to the notice of the department, the Excise Commissioner stated (September 2009) that the staff at toll post has been instructed to exercise vigil to ensure that iodised salt is not imported by the salt manufacturing units in the garb of common/non-iodised salt.

4.3.11.5 Rules stipulate that each toll post shall prepare, at the end of each day, a classified statement of the commodities imported into and those exported out of the state. The entries appearing in the said statement shall be tallied at the end of the month which shall form the basis of item-wise entries in the CAS for each month.

Audit noticed that during the period from 2005-06 to 2008-09 (January 2009), 1,27,951 metric tons of raw material and finished goods involving additional toll of Rs. 5.11 crore³¹ were exempted by the ETO, Jammu railway station, from payment of additional toll in terms of industrial exemption notification of January 2004 for which complete details were not maintained with regard to item-wise CAS on which the exemption had been allowed. As a result, the correctness of the exemption allowed on items at the toll post could not be vouchsafed/checked in audit.

The ETO stated (April 2009) that the toll post had not been computerised with the result CAS could not be prepared and would be prepared as soon as the post is computerised.

³¹ Raw material: 1,20,848 metric tons; Additional Toll Rs. 4.83 crore, Finished Goods: 7,103 metric tons; Additional toll Rs. 28.42 lakh

This indicates that measures need to be taken to plug the loopholes by strengthening the internal controls of the department relating to the grant of exemption from payment of the additional toll.

4.3.12 Irregular exemptions

In accordance with the notification dated 31st January 2004 followed by instructions, exemption from payment of additional toll on imports and exports is granted to the registered industrial units subject to the limits fixed by the Director, Industries and Commerce department. The raw material imported and finished goods exported by the industrial units beyond the approved limits are eligible to the toll. Each consignment of the raw material or the finished goods is required to be accompanied by a machine numbered certificate (toll exemption form) duly sealed and signed by the authorised representative of the industrial unit concerned for production of the same to the ETO at the toll post concerned.

Records of the Deputy Excise Commissioner, toll post, Lakhanpur indicated that the department allowed exemption from toll on the raw materials and finished goods imported and exported respectively by six industrial units in excess of the approved limits during the years 2004-05 to 2007-08. This resulted in irregular exemption from toll of Rs. 31.03 lakh to the units as mentioned below:

Sl. no.	Name of the unit	Admissible Quantity (metric tons)	Quantity allowed (metric tons)	Excess quantity allowed (metric tons)	Amount levied short (Rs. in lakh)
1.	M/s X works Bari Brahmana Jammu	5,713.61	9,102.897	3,389.287	13.56
2.	M/s Y Industries Bari Brahmana Jammu	3,640.776	3,890.100	249.324	1.00
3.	M/s Z Cements Kathua	6,069.27	8,454.76	2,385.49	9.54
4.	M/s P Ltd; Samba	1,243.75	2,277.64	1,033.89	4.13
5.	M/s Q Jammu	540.00	931.604	391.604	1.91
6.	M/s R Pack Corporation Jammu	2,614.00	2,836.195	222.195	0.89
				Total	31.03

4.3.13 Internal control

Proper internal controls are essential for providing timely warning to an organisation about irregularities and deficiencies in its functioning. The Department has a separate Accounts Wing headed by a Deputy Excise Commissioner to undertake audit and inspections of various wings/units of the Department including reconciliation of the revenue receipts. Audit noticed that weak internal control mechanism of the department resulted in loss of revenue, as discussed in the paragraphs below.

The Jammu and Kashmir levy of Toll Rules, 1995 provide that every assessing officer shall maintain an assessment note book (RT-3) and a general register (RT-5) at the toll post. The assessment note book is the basic record indicating all details of the goods, vehicles and name of the driver while the general register indicates the amount levied and

collected by the toll authorities. The Sub-inspector/Inspector posted at the toll post is required to issue a permit (RT-4) to the person/driver from whom the toll is received.

4.3.13.1 Test-check of the records of Deputy Excise Commissioner, toll post, Lakhanpur indicated that the assessment note book had not been maintained at the toll post and the position of permit books issued to various minor toll posts/other sections of the toll post was not reconciled at any stage. The requisite details, viz. permit machine numbers, names of the driver/person carrying/incharge of the goods/animals, mode of conveyance, and name of the assessing officer indicated in the permits had not been recorded in the general register for import and export of the goods at any of the test-checked minor toll posts and sections of the main toll post, Lakhanpur. As a result, misuse of these permits could not be ruled out.

4.3.13.2 Test-check of the records further indicated that 30 permit books containing 3,000 machine numbered permit forms issued to the minor toll post, *Govindsar* (Kathua) during May-October 2008 and 222 permit books containing 22,200 permit forms issued to the minor toll post, Nagri (Kathua) during July-November 2007 by the Deputy Excise Commissioner, toll post, Lakhanpur were not accounted for by these minor toll posts and, as such, their misuse and subsequent misappropriation of the toll could not be ruled out.

The Deputy Excise Commissioner, toll post, Lakhanpur stated (March 2009) that instructions for reconciliation of permits had been issued.

4.3.13.3 The Jammu and Kashmir Levy of Toll Rules, 1995, provide for the cross-check of number of vehicles crossing toll stations with that of the accounts maintained at sales tax check posts once a year by the internal audit wing of the department.

Test-check of the records of minor toll post, Nagri (Kathua) indicated that no such cross-check had been carried out with the records of commercial taxes check post, Nagri. Audit carried out a cross-check of the import records of toll post, Nagri with the records of commercial taxes check post, Nagri (Kathua) for the month of October 2008 and found that 15 vehicles carrying taxable goods imported into the state through toll post, Nagri had not been subjected to assessment and levy of basic as well as additional toll resulting in loss of revenue of Rs. 57,000³² during the month of October 2008 only. The Deputy Excise Commissioner, toll post, Lakhanpur has sought (May 2009) compliance report from the ETO, toll post, Nagri.

The above indicates that the measures need to be taken to plug the loopholes by undertaking an overall review of the system for identification of such areas.

4.3.14 Conclusion

There were several systemic deficiencies that affected the efficiency and effectiveness of the assessment and collection of toll. These included absence of reliable database of exemptions and for ascertaining genuineness and correctness of exemption certificates submitted by the units. Besides, non-compliance of existing rules and instructions led to leakage of considerable amount of revenue. Monitoring of transfer of the receipts to the Government account was poor and internal controls were not satisfactory.

³² Basic Toll: (Rs. 0.03 lakh); Additional Toll: (Rs. 0.54 lakh).

4.3.15 Summary of recommendations

The Government may consider implementation of the following recommendations:

- installing electronic weighbridges wherever needed and make the defunct weighbridges functional;
- making a provision for levy of extra basic toll in respect of the overloaded vehicles and ensure levy of penalty under Motor vehicles Act;
- directing the Jammu & Kashmir Bank Ltd. for timely remittance of revenue into the Government account and in case of delays, charging of interest from the bank on belated remittances;
- making a provision for indicating the names of the consignees in the CAS and strengthen the internal controls by constant monitoring of the system relating to exemptions and computerisation and exercise greater vigil at the check post to prevent evasion of tax and
- ensuring compliance to the provisions of the Act and rules made there under.

Audit Paragraphs

Finance Department

Sales Tax

4.4 Non-levy of tax and interest

Undue exemption from payment of sales tax resulted in short realisation of Rs. 17.25 lakh including interest.

In exercise of the powers conferred by section 5 of the Jammu and Kashmir General Sales Tax Act, 1962, Government vide notification number 246 dated 20 August 1998 directed that the goods manufactured by existing small scale industrial units registered with the Department of Industries and Commerce, Handicrafts/Handloom Development Corporation, shall be exempted from payment of general sales tax on sale of finished goods manufactured by them.

Test-check of the records (November 2007) of sales tax circle 'M', Jammu indicated that an Industrial Unit³³ had not undertaken any manufacturing activity on sale of goods valued at Rs. 42.70 lakh during the assessment years 2002-03 and 2003-04. This was evident from the fact that the dealer had not incurred any expenditure such as wages, electricity and other miscellaneous charges necessary for manufacturing of these goods. However, the assessing authority while finalising the assessment for these years in June 2006, treated the goods to have been manufactured by the dealer and incorrectly allowed exemption of tax of Rs. 5.38 lakh. This resulted in short realisation of Rs. 17.25 lakh including the interest of Rs. 11.87 lakh.

After this was pointed out in November 2007, the department reassessed the dealer and raised (January 2009) the demand for the entire amount.

After the case was reported to the Government (April 2009) it was stated (May 2009) that the matter had been referred to the Collector for recovery of the amount under the Land Revenue Act. Further report on recovery has not been received (October 2009).

4.5 Short levy of tax and the interest

Failure of the assessing authority to apply correct rates of tax and detecting concealment of turnover of a dealer, resulted in short levy of tax aggregating Rs. 7.16 lakh including interest and penalty.

The Jammu and Kashmir General Sales Tax (J&K GST), Act 1962 and rules made there under provide that every dealer shall submit a true and correct return of his turn over. Further, a person (dealer), who fails to furnish correct return of his turn over or has concealed particulars of the turnover, the Assessing Authority (AA) shall direct him to pay in addition to tax and interest payable by him, an amount by way of penalty not less than the amount of tax evaded but not exceeding twice the amount of tax. The Act also provides concessional rate of tax on sales made by the registered dealers to the

³³ Registered for cutting/polishing of Granite, Marble, Kota stone.

Central/State Government departments. This concessional rate of tax is not applicable to the autonomous bodies/undertakings.

Test-check of the records (June 2007) of sales tax circle 'A' Srinagar indicated that a dealer sold vehicles valued at Rs. 23.10 lakh to three autonomous bodies during the assessment years 2001-02 and 2002-03. He was liable to pay a tax of 12 *per cent* against which he claimed concessional tax at the rate of four *per cent*. This resulted in short levy of tax of Rs. 5.07 lakh including the interest and surcharge. In addition cross verification of 'C' form consumption statement with the inter state purchase statement filed by the dealer indicated that the dealer had made interstate purchase of a vehicle valued at Rs. 4.46 lakh in 2002-03 on "declaration form-C". This purchase was neither found recorded in his accounts nor was it depicted in the return filed by him. This resulted in evasion of the tax of Rs. 2.09 lakh including the interest, surcharge and penalty.

The above mistakes escaped the notice of the assessing authority while finalising the assessment of the dealer for these years in February 2006 and March 2007 resulting in short realisation of revenue of Rs. 7.16 lakh³⁴.

After this was pointed out in June 2007, the department reassessed the dealer in September 2007 and raised a demand of Rs. 8.04 lakh³⁵ for the two years.

After the case was reported to the Government, it was stated that Rs. 0.82 lakh had been adjusted against the tax deposited by the dealer during 2002-03 and the balance amount was being recovered as arrears under land revenue Act. Further report on recovery is awaited (October 2009).

4.6 Short levy of tax, interest and penalty

Failure of the Assessing Authority to detect the concealment of purchase resulted in short levy of tax of Rs. 4.30 lakh.

The Jammu and Kashmir General Sales Tax (J&K GST) Act 1962 and the rules made thereunder provide that every dealer shall submit a true and correct return of his turnover in such a manner as may be prescribed under the Act. Further, if a person (dealer) who has, without any cause, failed to furnish correct return of turnover or has concealed any particulars of his turnover, the assessing authority (AA) shall direct that person to pay in addition to tax and interest payable him, an amount by way of penalty not less than the amount of tax evaded, but not exceeding twice the amount of tax.

Test-check (November 2007) of the records of Commercial Tax Circle-I, Anantnag indicated that a dealer registered with the circle in February 2003 was assessed to tax on the sales turnover of Rs. 44.61 lakh, comprising sales made from 28 February 2003 to 31 March 2003 as depicted in his trading account for 2002-03. In addition the dealer had made sales to a Government department valued at 12.49 lakh in August, 2002 i.e., prior to his registration. This sale had not been included by the dealer in his disclosed turnover, thus, concealing his turnover to the extent of Rs. 12.49 lakh which attracted tax at

³⁴ 2001-02: Tax and surcharge: 0.36 lakh; Interest: 0.69 lakh; 2002-03: Tax and surcharge: Rs. 2.17 lakh; Interest: Rs. 3.35 lakh; Penalty: Rs. 0.59 lakh.

³⁵ 2001-02: Tax and surcharge: Rs. 0.36 lakh; Interest: Rs. 0.69 lakh; 2002-03: Tax and surcharge: Rs. 3.05 lakh; Interest: Rs. 3.35 lakh; Penalty: 0.59 lakh.

8 per cent plus surcharge. The assessing authority while assessing the dealer to tax in February 2007 failed to detect the mistake which resulted in short levy of tax of Rs. 4.30 lakh.

After the case was pointed out, the assessing authority reassessed the dealer in September 2008 and raised an additional demand of Rs. 4.30 lakh³⁶ against the dealer.

The case was reported to the Government/Department in June 2009. The Commissioner Commercial Taxes stated (July 2009) that the additional demand of Rs. 4.30 lakh stand referred to Deputy Commissioner Commercial Taxes (Recovery) Srinagar for recovery. The dealer has deposited an amount of Rs. 14,930 in March 2009. Further report on the recovery of Rs. 4.15 lakh is awaited (October 2009).

4.7 Short levy of tax, interest and penalty

Failure of the assessing authority to detect non-accounting of opening stock in the trading account by a dealer resulted in short levy of tax amounting to Rs. 5.98 lakh including interest and penalty.

Test-check (August 2007) of the records of Commercial Tax circle-F, Jammu indicated that a dealer did not take into account the closing stock valued Rs. 7.24 lakh, of the previous year while working out sales turnover, in the trading account for 2004-05. After adding the proportionate profit element the taxable turnover that escaped depiction in accounts worked out to Rs. 12.13 lakh. The assessing authority, while finalising the assessment of the dealer in January 2006, did not detect this mistake. This resulted in short levy of tax aggregating Rs. 5.98 lakh including the interest and penalty.

After the case was pointed out the department reassessed the dealer in February 2008 and raised an additional demand of Rs. 5.98 lakh³⁷ against the dealer.

The matter was reported to the Government/Department in April 2009. In reply it was stated (May 2009) that the arrears of Rs. 5.98 lakh stand referred to the collector for effecting the recovery under the Land Revenue Act. The dealer has preferred an appeal against the order of AA which is pending before the appellate authority. Further report on the recovery is awaited (October 2009).

4.8 Irregular exemption from payment of the sales tax

Grant of irregular exemption of Rs. 59.10 lakh.

The Government (August 1998) provided exemption to manufacturing small scale industrial units registered with the Government, from payment of general sales tax on sale of finished goods subject to certain conditions. If a dealer (industrial unit holder) is found guilty of an offence like concealment of turnover etc. during the accounting year in which exemption is available, he would not be entitled to any exemption for that year or for subsequent years. In case an industrial unit holder is found guilty of an offence of suppression of sales etc. the assessing authority shall withdraw the exemption and levy tax at the applicable rate on the entire turnover. The conditions *inter-alia* provide for

³⁶ Tax: Rs. 1.05 lakh; Interest: Rs. 2.20 lakh; Penalty: Rs. 1.05 lakh.

³⁷ Tax: Rs. 1.40 lakh; Interest: Rs. 1.77 lakh; Penalty: Rs. 2.81 lakh.

maintenance and furnishing of correct and regular account of purchases, manufacturing and sale of goods.

Test-check of the records (May 2007) of sales tax circle Baramulla indicated that an industrial unit registered for the manufacture of sheet metal items, water tanks, roof trusses etc. was allowed exemption by the department from payment of sales tax for the year 2002-03. It was seen that against 39 bills of interstate purchases valued at Rs. 8.06 lakh, for which the dealer had issued Form-C the dealer had reflected the only one bill of Rs. 1.79 lakh in his annual purchase statement during the accounting year 2002-03, thereby concealing the amount of purchases of 38 bills. The dealer thus concealed the particulars of purchases and was not eligible for grant of exemption from payment of tax. The assessing authority, while assessing the dealer to tax (October 2005), did not notice this mistake resulting in grant of irregular exemption of Rs. 59.10 lakh including the interest and penalty.

After this was pointed out (May 2007), the AA reassessed the dealer (July 2007), withdrew the benefit of exemption after establishing a concealment of Rs. 6.27 lakh and levied tax on the determined turnover of Rs. 4.09 crore by raising demand of Rs. 59.10 lakh³⁸ including the interest and penalty.

The matter was reported to Government (April 2009). In reply, it was stated that the dealer had deposited Rs. 0.34 lakh on the concealed purchases (June 2009) and had applied for amnesty under SRO-172 of May 2007. Further progress in the case was awaited (October 2009).

³⁸ Sales Tax Surcharge: Rs. 17.18 lakh; Interest: Rs. 24.74 lakh; Penalty: Rs. 17.18 lakh.