CHAPTER II

VALUE ADDED TAX CENTRAL SALES TAX AND GOODS AND SERVICES TAX

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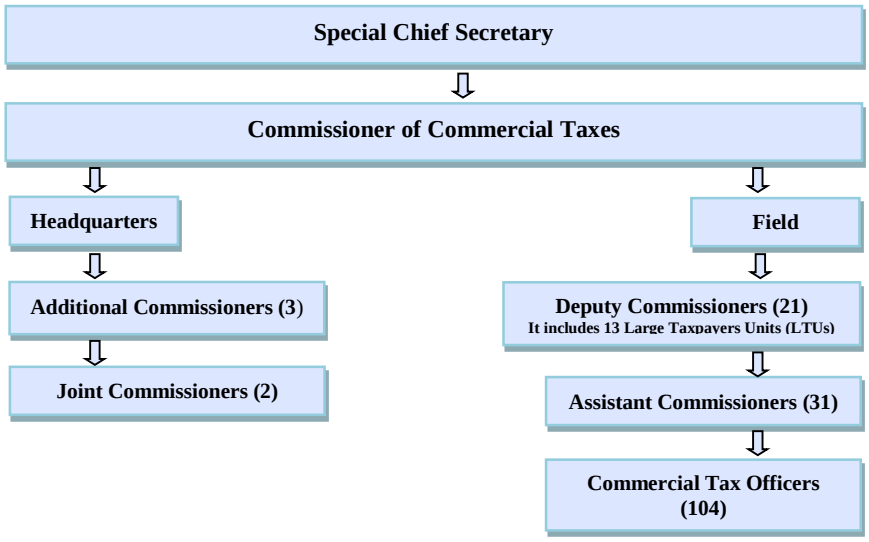
2.1 Tax Administration

Value Added Tax and Central Sales Tax Act and Rules framed thereunder are administered at the Government level by the Special Chief Secretary, Revenue Department of Andhra Pradesh. The organisational hierarchy of the Department is depicted below.

Organogram



2.2 Internal Audit

Department conducts internal Audit which is organised at Divisional Level under the supervision of Assistant Commissioner. Divisional Head (DC) authorises officials of one circle to conduct internal audit of another circle within the same Division. Internal audit team consists of five members headed either by CTOs or Deputy CTOs. Internal Audit report is submitted within 15 days from the date of audit to the DCs concerned, who would supervise rectification work giving effect to findings in such report of internal audit.

Commissioner intimated (August 2018) that 310 audit observations were included in Internal Audit Report during the year 2017-18. A total of 950 audit observations were outstanding at the end of March 2018.

2.3 Results of Audit

In 2017-18, test check of the records in 45 Audited Units (Out of 117) showed underassessment of VAT, CST and other irregularities involving ₹ 56.98 crore in 466 cases as shown in **Table 2.1**.

Table 2.1: Results of Audit

(₹ in crore)

S1. No.	Categories	No. of cases	Amount
1	Non-levy of interest on belated payment of deferred tax/non-recovery of deferred tax	13	15.72
2	Non-levy/Short levy of VAT	168	14.00
3	Non-levy/Short levy of Interest and Penalty	72	7.63
4	Non-levy/Short levy of tax on works contracts	10	6.35
5	Excess/Incorrect claim of Input Tax Credit	60	4.34
6	Non-levy/Short levy of tax under CST Act	48	3.94
7	Non-collection of Turn Over Tax	51	1.69
8	Excess authorisation of Refund	2	0.61
9	Other irregularities	42	2.70
	Total	**466**	**56.98**

During the year, the Department accepted underassessment and other deficiencies in 368 cases involving ₹ 27.84 crore. Of these, ₹ 20.86 crore involving 195 cases were pointed out by Audit during the year 2017-18 and the rest in earlier years. An amount of ₹ 1.48 crore in 87 cases was realised during the year 2017-18.

A few illustrative cases involving ₹ 81.56 crore are discussed in the succeeding paragraphs.

Audit Observations

During scrutiny of records of the offices of the Commercial Taxes Department relating to assessment and collection of VAT and CST, several cases of non-observance of provisions of Acts/ Rules were observed, which resulted in non-levy/ short levy of tax/ penalty and other cases, as discussed in the succeeding paragraphs in this Chapter. These cases are illustrative and are based on test checks carried out by Audit. Such omissions are pointed out in audit every year, but not only do the irregularities persist; these also remain undetected until an audit is conducted again. There is a need for improvement of internal controls so that repetitions of such omissions can be avoided or detected and rectified.

2.4 Value Added Tax

2.4.1.1 Under declaration of tax due to application of incorrect rate of tax

The dealers declared tax at the rate of four/ five *per cent* on the commodities taxable at the rate of 14.5 *per cent* resulting in under declaration of tax leading to short levy of VAT of ₹ 7.28 crore.

As per Section 4 (1) of APVAT Act, 2005 (VAT Act), VAT is leviable at the rates prescribed in Schedules II to IV and VI to the Act. The rate of tax for goods falling under Schedule-IV to the Act, was enhanced from four to five *per cent* from 14 September 2011. Commodities not specified in any of the Schedules fall under Schedule V and are liable to VAT at 14.5 *per cent* from 15 January 2010. As per Section 20 (3) (a) of the VAT Act, every monthly return submitted by a dealer shall be subjected to scrutiny by AC/ CTO to verify the correctness of calculation, rate of tax, Input Tax Credit (ITC) claimed and full payment of tax payable for such tax period.

The commodities, 'Chemical Storage Tanks', 'Ammonium Nitrate', 'Physical Fitness Equipment', 'Colour Coated Sheets', 'Paints & Colours', 'Explosives', 'Thermoplast' and 'Pet Preforms' are not specified in any of the Schedules to the Act and are, therefore, taxable at the rate of 14.5 *per cent* under Schedule V to the Act. Further, the commodity 'Bone Meal' is taxable at the rate of five *per cent* under Schedule IV to the VAT Act.

During the test check of VAT records of eight circles[10], it was observed[11] that 12 dealers, dealing in 'Chemical Storage Tanks', 'Ammonium Nitrate', 'Physical Fitness Equipment', 'Paints & Colours', 'Explosives', 'Thermoplast' etc., had declared tax at the rate of four/ five *per cent* instead of 14.5 *per cent*. Entire turnover of bone meal was erroneously exempted (in one case pertaining to Ibrahimpatnam) instead of levying tax at five *per cent*. This had resulted in short levy of tax of ₹ 7.28 crore on the under declared turnover of ₹ 86.74 crore in 12 cases.

Government replied (October 2018) that assessments were being revised in three cases[12]. In one case Government contended that goods sold were 'meat meal' but not 'bone meal'. It was, however, noticed that Assessment Order clearly stated that the goods sold were 'bone meal' and thus, were taxable at five *per cent*.

Assessing Authorities (AAs) replied in two cases[13] (July/ August 2018) that assessments were being revised. CTO Ananthapuramu-II stated (October 2018) that notices were issued in two cases. In remaining four cases, the AAs[14] stated that the matter would be examined and report submitted in due course.

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[10] Ananthapuramu-II (2), Aryapuram (1), Autonagar (2), Bhimavaram (1), Brodipet (1), Chinawaltair (2), Ibrahimpatnam (2) and Nandigama (1).

[11] Between March 2017 and March 2018 for the assessment period from 2011-12 to 2016-17.

[12] Brodipet, Chinawaltair and Ibrahimpatnam.

[13] Autonagar and Bhimavaram.

[14] CTOs: Aryapuram, Autonagar, Chinawaltair and Nandigama (between October 2017 and March 2018).

2.4.1.2 Under declaration of tax on food sales

Dealers declared tax at the rate of five *per cent* instead of at the rate of 14.5 *per cent* though turnover of food sales crossed ₹ 1.50 crore resulting in under declaration of tax of ₹ 1.24 crore.

Under Section 4 (9) (c) of the VAT Act, every dealer, whose annual total turnover is ₹ 1.50 crore and above, shall pay tax at the rate of 14.5 *per cent* on the taxable turnover representing sale or supply of food or drink served in restaurants, sweet stalls, clubs or any other eating houses.

During the test check of VAT records of CTO Autonagar Circle, it was seen (March 2018) that for the assessment period 2015-16 and 2016-17, four dealers involved in food sales declared tax at the rate of five *per cent* even when their annual total turnover exceeded ₹ 1.50 crore and thus, tax was payable at 14.5 *per cent*. This had resulted in under declaration of tax of ₹ 1.24 crore on the turnover of ₹ 13.03 crore.

After this was pointed out by Audit, CTO replied (March 2018) that matter would be examined and further action taken intimated to Audit.

The matter was referred to the Government (September 2018) and their reply has not been received (February 2020).

2.4.2 Short levy of VAT due to incorrect determination of taxable turnover

Sales turnover of dealers reported in annual accounts was more than the turnover declared in VAT returns. Incorrect determination of taxable turnover by Assessing Authorities resulted in short levy of tax of ₹ 3.97 crore.

As per Section 21(3) of VAT Act, read with Rule 25 (5) of AP VAT Rules, 2005 (VAT Rules), if the Assessing Authority (AA) considers the return filed by a VAT dealer as incorrect or incomplete or not satisfactory, the AA shall assess the tax payable to the best of his judgment on form VAT 305 within four years from the due date or date of filing of the return, whichever is later. As per Section 21(4) of the Act, the authority prescribed may conduct a detailed scrutiny of the accounts of any VAT dealer based on the available information and where any assessment becomes necessary after such scrutiny, such assessment shall be made within a period of four years from the end of the period for which the assessment is to be made. As per Rule 25(10) of the VAT Rules, all the VAT dealers have to furnish the statements of manufacturing/ trading, profit and loss accounts, balance sheet and annual report for every financial year, duly certified by a Chartered Accountant, on or before 31st day of December subsequent to the financial year to which the statements relate to. As per Para 5.12 of VAT Audit Manual 2012, the audit officer is required to verify the details declared by the dealer in VAT returns and to reconcile with those reported in certified annual accounts for that period.

During the test check of the VAT audit records, it was noticed[15] in 11 cases in three divisions[16] and seven circles[17], that sales made by the dealers as per their annual accounts were more than those declared in VAT returns. The incorrect determination of taxable turnover by the AAs resulted in short levy of tax of ₹ 3.97 crore**.**

Commissioner replied (between July 2018 and October 2018) that revision had been taken up in six cases[18]. DC Visakhapatnam replied[19] that audit observation would be considered. DC Kurnool in one case contended that there was no variation in turnover. It was, however, evident from the records that there was variation. In remaining two cases AAs[20] stated that matter would be examined and reply furnished in due course.

Government replied (October 2018) that revision had been taken up in one case pertaining to DC Ananthapuramu.

2.4.3 Non-levy of tax due to incorrect exemption of taxable turnover

Assessing Authorities had incorrectly exempted sales of 'textiles and fabrics', instead levying tax at the rate of five *per cent,* resulting in short levy of tax of ₹ 1.31 crore.

Under Section 4 (3) of the VAT Act, every VAT dealer shall pay tax on sale of taxable goods at the rates specified in the Schedules to the Act. As per the Government order[21] dated 08 July 2011, the commodity 'textiles and fabrics' was added to Schedule-IV and made taxable at five *per cent*[22]. Government issued orders in Memo[23] dated 14 November 2012 waiving the VAT dues of textile and fabric dealers, as they had not collected the same from their customers during the period from 11 July 2011 to 31 March 2012. As per Ordinance No. 9 of 2012 dated 05 November 2012, however, with effect from 1 April 2012 the dealers of 'textiles and fabrics' may opt to pay tax at the rate of one *per cent* under composition[24]. Later, the Government by another order[25] included the said commodity in Schedule-I from 07 June 2013 and exempted sales thereof. Hence, the commodity was liable to tax at the rate of five *per cent* from 01 April 2012 to 06 June 2013, if the dealers had not opted for composition.

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15 Between March 2017 and February 2018 for the period from 2012-13 to 2016-17.
16 DCs: Ananthapuramu, Kurnool and Visakhapatnam.
17 CTOs: Anakapalle, Bhimavaram, Brodipet, Chinawaltair, Kakinada, Ongole-I, and Suryabagh.
18 DCs: Visakhapatnam; CTOs: Bhimavaram, Brodipet, Kakinada, Ongole-I and Suryabagh.
19 January 2018 in one case.
20 Anakapalle and Chinawaltair (between October 2017 and January 2018).
21 G.O.Ms.No.932, Revenue (CT-II) Department dated 08 July 2011.
22 four *per cent* up to 13 September 2011.
23 Government Memo No.16460/CT-II(1)/2012-5 dated 14 November 2012.
24 Option form in VAT 250 to be filed by the dealer for paying tax at one *per cent* instead of at five *per cent*.
25 G.O.Ms.No.308, Revenue (CT-II) Department dated 07 June 2013.

During the test check of records of six circles[26], it was observed[27] from VAT audit files of eight cases that the Assessing Authorities (AAs) had incorrectly exempted the sales turnover of ₹ 26.21 crore of 'textiles and fabrics'. Tax on this commodity should have been levied at the rate of five *per cent*, as none of the dealers had opted for composition. The incorrect exemption had resulted in non-levy of tax of ₹ 1.31 crore.

After Audit pointed out these cases, Assessing Authority/ Commissioner replied (December 2017 and August 2018) that in two cases[28] show cause notices were issued and in remaining six cases[29] assessment files were submitted for revision.

The matter was referred to the Government (September 2018); their reply has not been received (February 2020).

2.4.4 Non-levy of interest and penalty for belated payment of tax

Assessing Authorities did not levy interest and penalty of ₹ 2.48 crore on belated payments of tax.

As per Section 22 (2) of VAT Act, if any dealer fails to pay the tax due within prescribed time, interest at the rate of 1.25 *per cent* per month for the period of delay was liable to be paid in addition to such tax or penalty. Under Section 51(1) of the Act, if a dealer fails to pay tax due by the last day of the month in which it was due, penalty at the rate of 10 *per cent* of the amount of tax due is to be paid, in addition to such tax.

During the test check of the VAT returns and payment records of two divisions[30] and seven circles[31], it was observed[32] that in 26 cases, the dealers paid tax after the due dates with delays ranging from 1 to 692 days. The Assessing Authorities (AAs), however, did not levy any interest and penalty for belated payment of tax. This resulted in non-levy of interest of ₹ 0.77 crore and penalty of ₹ 1.71 crore totaling to ₹ 2.48 crore.

Government replied (October 2018) that Interest/ Penalty orders were issued in seven cases[33] and ₹ 26.49 lakh was collected[34]. Penalty aspect was contested by CTO Peddapuram on the ground that the dealer had paid excess tax and refund claim was pending. It was, however observed that the penalty was liable to be paid as the payments were not adjusted against refund claim. In another case (DC Visakhapatnam) notice was issued.

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[26] Anakapalle, Aryapuram, Brodipet, Dwarakanagar, Lalapet and Steelplant.
[27] Between October 2017 and February 2018 for the period from April 2012 to May 2013.
[28] Dwarakanagar and Lalapet (Guntur).
[29] Anakapalle (2), Aryapuram (2), Brodipet and Steelplant.
[30] DCs: Ananthapuramu, and Visakhapatnam.
[31] CTOs: Anakapalle, Ananthapuramu-II, Chinawaltair, Gajuwaka, Patamata, Peddapuram and Steelplant.
[32] Between February 2015 and March 2018 for the period from 2012-13 to 2016-17.
[33] DC Ananthapuramu (1), CTOs: Chinawaltair (1), Gajuwaka (1), Peddapuram (1), Steelplant (1) and Visakhapatnam (2).
[34] DCs: Ananthapuramu, Gajuwaka, Peddapuram and Steelplant.

Commissioner replied (September 2018) that notices were issued in 10 cases[35]. CTO Anakapalle replied (February 2018 in one case) that notice would be issued. DC Visakhapatnam stated (March 2017 in two cases) that monthly taxes for April 2012 was paid in May 2012, hence there was no delay. The reply is not correct as the delay of 28 days/ 692 days was clear from payment status report. In remaining five cases[36], AAs replied (October 2017) that matter would be examined and report submitted in due course.

2.4.5 Short payment of tax and non-levy of penalty due to non-conversion of Turnover Tax (TOT) dealer as VAT dealer

Failure of Assessing Authorities to register the TOT dealers as VAT dealers after crossing the threshold limit resulted in short payment of tax.

As per Section 17(3) of the VAT Act, every dealer, whose taxable turnover in the twelve preceding months exceeds ₹ 50 lakh, shall be registered as a VAT dealer and pay tax at applicable VAT rates from thereon, under Section 4(1) of the Act. As per Section 17(5)(h) of the Act, every dealer engaged in sale of food items including sweets etc., whose total annual turnover is more than ₹ 7.50 lakh, is liable for VAT registration and has to pay tax at the rate of five *per cent* under the provisions of Section 4 (9)(d) of the Act. As per Rule 11(1) of the AP VAT Rules, 2005 the prescribed authority may *suomotu* register a dealer, who is liable to apply for registration as VAT dealer but has failed to do so. As per Section 49 (2) of the VAT Act, any dealer who fails to apply for registration, as required under Section 17, shall be liable to pay a penalty of 25 *per cent* of the tax due prior to the date of registration.

During the test check of TOT records of nine circles[37], it was observed[38] in twenty one cases that the taxable turnover of the dealers had crossed the threshold limit, making them liable for VAT registration. The subsequent turnover liable for levy of VAT after the dealers had crossed the threshold limit amounted to ₹ 7.00 crore, on which VAT of ₹ 52.61 lakh was to be levied. The dealers, however, had paid tax of only ₹ 6.68 lakh. These TOT dealers had neither applied for VAT registration nor had Assessing Authorities (AAs) registered them as VAT dealers. This resulted in short payment of tax of ₹ 45.93 lakh and non-levy of penalty of ₹ 3.97 lakh.

Government replied (October 2018) that notices were issued in four cases[39] and in six cases[40] assessments were finalised. Commissioner replied (August 2018) that in nine cases[41] notices were issued. In remaining two cases[42], CTOs replied that matter would be examined and reply furnished in due course.

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35 CTO Patamata.
36 DC Visakhapatnam (1); CTOs: Ananthapuramu-II (1) and Chinawaltair (3).
37 Anakapalle, Ananthapuramu-II, Autonagar, Benz Circle, Dwarakanagar, Kakinada, Lalapet, Nandyal-II and Steelplant.
38 during September 2017 and March 2018 for the period from April 2014 to March 2017.
39 Anakapalle (4).
40 Dwarakanagar (1), Nandayal-II (1), Lalapet (1), Benz Circle (1) and Autonagar (2).
41 Anakapalle (2), Ananthapuramu-II (2), Dwarakanagar (1) and Kakinada (4).
42 Autonagar (1) and Steelplant (1).

2.5 Works Contracts

2.5.1 Non/ short levy of tax due to incorrect determination of taxable turnover under Works Contract

Taxable turnover was incorrectly determined on account of inadmissible deductions such as loading, unloading charges and incorrect computation of profit relatable to labour. Incorrect determination of taxable turnover resulted in non/ short levy of tax of ₹ 8.61 crore.

Under Section 4 (7) (a) of the VAT Act, tax on works contract receipts is to be paid on the value of goods at the time of their incorporation in the work, at the rates applicable under Act. To arrive at the value of goods at the time of incorporation, the deductions prescribed under Rule 17 (1) (e) of AP VAT Rules, 2005, such as expenditure towards labour charges, hire charges etc., incurred by the contractor, are to be allowed from the total consideration and on the balance turnover, tax is levied at the same rates at which purchase of goods were made and in the same proportions. As per Rule 17 (1)(d) of VAT Rules, the value of the goods at the time of incorporation, as arrived at, shall not be less than their purchase value and shall include seigniorage charges, transportation charges etc.

During test check of the VAT assessment files of seven dealers in the office of AC Visakhapatnam and five circles[43], it was observed[44] that, in seven cases, the Assessing Authorities (AAs), while finalising the assessments[45], had incorrectly determined the taxable turnover due to allowing certain inadmissible deductions such as 'establishment charges', 'loading unloading charges' etc., from the gross turnover. Besides this, expenditure and profit relatable to labour were incorrectly computed. In one case, CTO Peddapuram exempted labour charges in excess of that were reported in Profit and Loss Account. This resulted in non-levy/ short levy of tax of ₹ 8.61 crore.

After Audit pointed out, the AAs[46] stated (between September 2017 and October 2017) that show cause notice for revision was issued in three cases. In two cases, the AAs[47] stated (October 2018) that assessment files have been submitted to DC for revision. In one case pertaining to AC Visakhapatnam, it was contended (March 2017) that payments made towards technical, engineering services rendered by officials exclusively to ships were in the nature of technical labour and reported as establishment charges, hence exempted from tax payment. The fact, however, remained that the details of establishment expenses were not kept on record to prove that those expenses relate to payments made towards technical and engineering services. CTO Patamata stated (March 2018) in the remaining case that the matter would be examined and report submitted in due course.

[43] CTOs: Anakapalle, Dabagardens, Dwarakanagar, Patamata and Peddapuram.
[44] Between March 2017 and March 2018.
[45] For the period from 2011-12 to 2015-16.
[46] Dwarakanagar (2) and Peddapuram (1).
[47] Anakapalle and Dabagardens.

The matter was referred to the Government (September 2018); their reply has not been received (February 2020).

2.5.2 Short levy of tax on Works Contracts who did not maintain detailed accounts

Determination of turnover on the basis of incorrect detailed accounts, allowing deductions on incorrect turnover, simultaneous application of two provisions of works contract i.e., allowing deduction at prescribed percentage on turnover as well as allowing lower tax rate under composition scheme resulted in short levy of tax of ₹ 67.02 lakh.

As per Rule 17 (1) (g) of VAT Rules, if any works contractor did not maintain the detailed accounts to determine the correct value of the goods at the time of their incorporation, tax shall be levied at the rate of 14.5 *per cent* on the total consideration received, after allowing permissible deductions on percentage basis on the category of work executed. In such cases, the works contractor shall not be eligible to claim Input Tax Credit (ITC). However, Section 4 (7) (b) of the Act read with Rule 17 (2) (b) of VAT Rules permits the dealers to opt to pay tax at the rate of four *per cent*[48] on the gross receipts by way of composition on filing form VAT-250 before commencing the work.

During the test check of records of three circles[49], some irregularities were observed[50] in three assessments relating to works contracts. In Patamata Circle, a works contract dealer also undertook trading and job works. He should have maintained work wise detailed accounts and separate accounts for trading and job works. Assessing Authority should allow the permissible deductions on percentage basis (under Rule 17 (1) (g)) in the absence of detailed accounts. CTO Bhimavaram (in one case) assessed the turnover under composition though option for composition was filed (August 2014) after commencement (March 2014) of the work. In Anakapalle Circle (one case), works contract receipts pertaining to road works were not considered for levy of tax under Rule 17 (1) (g). Exclusion of the turnover reported in the monthly returns for assessment as well as allowing the benefit of lower rate under composition scheme was irregular. This had resulted in short levy of tax of ₹ 67.02 lakh on the works contract turnover of ₹ 5.56 crore.

CTO Anakapalle stated (September 2018 in one case) that assessment file was submitted to DC for revision. In remaining two cases, AAs[51] stated that the matter would be examined and report submitted in due course.

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48 Five *per cent* from 14 September 2011.

49 Anakapalle, Bhimavaram and Patamata (Vijayawada).

50 Between December 2017 and March 2018 for the period from 2010-11 to 2015-16.

51 CTOs: Bhimavaram (1) and Patamata (Vijayawada) (1) (between February 2018 and March 2018).

2.6 Levy of Penalty

2.6.1 Non-levy/ short levy of Penalty for under declaration of tax

Assessing Authorities did not levy penalty or levied penalty at lower rate on account of underdeclaration of tax, excess claim of Input Tax Credit (ITC) by the dealers for reasons of both willful or other than willful neglect. Non-levy/ short levy of penalty amounted to ₹ 45.38 lakh.

As per Rule 25 (8) (a) and (b) of VAT Rules, the tax underdeclared means the excess of Input Tax Credit (ITC) claimed over and above the amount entitled or the difference between output tax actually chargeable and the output tax declared in the returns. Further, as per Section 53 (1) of VAT Act, where any dealer has underdeclared tax and where it has not been established that fraud or willful neglect has been committed and where the underdeclared tax is less than 10 *per cent* of the tax, a penalty shall be imposed at 10 *per cent* of such underdeclared tax and at 25 *per cent*, if the underdeclared tax is more than 10 *per cent* of the tax due. Under Section 53 (3) of VAT Act, any dealer who has underdeclared tax and where it is established that fraud or wilful neglect has been committed, such dealer shall be liable to pay penalty equal to the tax underdeclared.

During the test check of records of Visakhapatnam Division and five circles[52], Audit observed[53] from the VAT assessment files of eight dealers[54] that the assessing authorities identified cases of underdeclaration of output tax and excess claim of ITC for reasons both willful and other than fraud or willful neglect, and passed assessment orders levying tax. However, the AAs either short levied penalty or did not levy any penalty. This resulted in non-levy/ short levy of penalty of ₹ 45.38 lakh over the under declared tax of ₹ 3.04 crore.

Government replied (October 2018 in one case of Anakapalle) that penalty show cause notice was issued. DC Visakhapatnam, contended (January 2018 in one case) levy of interest and penalty based on STAT Judgment[55]. STAT in its judgment held that the under declaration of tax within the meaning of Section 53 (1) (i) & (ii) of the Act meant under declaration of tax payable which caused prejudice to revenue interest of the state. The audit, however, is of the view that the case law quoted was not applicable to the observation as there was no further tax liability than the one declared in the returns. While delivering the said judgment, the Honorable STAT had categorically stated that wherever tax beyond the one declared in returns was payable, interest could be levied and if there was no voluntary declaration of the same before detection by any authority, penalty shall also be payable. Hence, the audit observation holds good. In remaining six cases, the AAs[56] stated (between February 2015 and

[52] Anakapalle, Gajuwaka, Nuzividu, Ongole-I and Patamata (Vijayawada).
[53] Between June 2017 and March 2018 for the period from 2011-12 to 2016-17.
[54] DC Visakhapatnam (2); CTOs: Anakapalle (1), Gajuwaka (1), Nuzividu (1), Ongole-I (1) and Patamata (Vijayawada) (2).
[55] Ray Constructions Limited, Visakhapatnam and State of AP in TA No.285 of 2008 dated 16 March 2009.
[56] DC Visakhapatnam (1), CTOs: Gajuwaka (1), Nuzividu (1), Ongole-I (1) and Patamata (2).

March 2018) that the matter would be examined and report submitted in due course.

2.6.2 Short levy of penalty for incorrect claim of ITC on false invoices

Assessing Authorities levied penalty equivalent to tax instead of at 200 *per cent* on claims of ITC based on false invoices leading to short levy of penalty of ₹ 80.95 lakh.

As per Section 16 (2) of VAT Act, where a dealer issues or produces a false bill, voucher, declaration, certificate or other document with a view to support or make any claim that a transaction of sale or purchase effected by him or any other dealer is not liable to tax or liable to be taxed at a reduced rate, or eligible for ITC, is guilty of an offence under Section 55 of the Act. As per Section 55 (2) of the Act, any VAT dealer who issues a false tax invoice or receives and uses a tax invoice, knowing it to be false, shall be liable to pay a penalty of 200 *per cent* of tax shown on the false invoice.

During the test check of records of Ibrahimpatnam circle, it was observed (March 2017) that the Assessing Authority while finalising the VAT assessment had disallowed ITC of ₹ 80.95 lakh on the ground that the purchase invoices/ vouchers submitted by the dealers were not genuine. However, AA levied penalty of ₹ 80.95 lakh instead of ₹ 1.62 crore in violation of the provisions of the Act. This resulted in short levy of penalty of ₹ 80.95 lakh.

After Audit pointed this out, AA stated (March 2017) that the matter would be examined and report submitted in due course.

The matter was referred to the Government (September 2018); their reply has not been received (February 2020).

2.7 Input Tax Credit

2.7.1 Excess/ Incorrect allowance of Input Tax Credit

Allowance of ITC on ineligible goods/ incorrectly to works contractors/ invalid invoices resulted in excess/incorrect allowance of ITC of ₹ 80.61 lakh.

Under Section 13 (1) of the VAT Act, ITC shall be allowed to the VAT dealer for the tax charged in respect of all purchases of taxable goods, made by that dealer during the tax period, if such goods are for use in the business of the VAT dealer. ITC is admissible only on purchases made from the VAT dealers within the State. As per Section 13(4) of the VAT Act, read with Rule 20(2) (b), (d), (i) and (q) of VAT Rules, a VAT dealer is not entitled for input tax credit (ITC) on the purchases of LPG, Furnace Oil, on any goods purchased and used for personal consumption and goods used in construction or maintenance of any building. Further under Section 13(7) of the Act, ITC shall be limited to 90 *per cent* up to 14 September 2011 and at 75 *per cent* thereafter in case of works contractors who pay tax under non-composition method. As per Section 4(7) (a) of the AP VAT Act, read with Rule 17(1) (g) of AP VAT Rules, if any works

contractor has not maintained detailed accounts to determine the correct value of the goods at the time of their incorporation, tax shall be levied at the rate of 14.5 *per cent* on the total consideration received, after allowing permissible deductions on percentage basis on the category of work executed. In such cases, the works contractor/ VAT dealer shall not be eligible to claim ITC.

During the test check of VAT records of Visakhapatnam Division and three circles[57] Audit noticed[58] that in three cases[59]ITC was not restricted to 90/ 75 *per cent* for works contractors paying tax under non-composition method. In three cases pertaining to Visakhapatnam, ITC was allowed on the purchases of LPG, Furnace Oil and on other items which were not used in trading. In two other cases (Visakhapatnam and Gajuwaka), ITC was allowed to works contractors though detailed Accounts were not maintained by them and assessment was made under Rule 17 (1) (g) of AP VAT Rules. In Dwaranakanagar Circle (one case), ITC was allowed on Inter State purchases. Total excess/ incorrect allowance of ITC in all nine cases amounted to ₹ 80.61 lakh.

The Commissioner stated (June and July 2018) in two cases that demands were raised and in three cases, rectification report would be submitted after verification of the records. CTO Dwarakanagar stated (December 2017) that revision show cause notice was issued (December 2017) to the dealer. In remaining three cases, AAs[60] stated (between November 2017 and March 2018) that the matter would be examined.

The matter was referred to the Government (September 2018); their reply has not been received (February 2020).

2.7.2 Excess claim of Input Tax Credit due to non/ incorrect restriction

ITC was not restricted/restricted incorrectly by the Assessing Authorities on sale of exempt goods and exempt transactions resulting in excess allowance of ITC of ₹ 59.01 lakh.

As per Section 13 (5) of the VAT Act, no ITC shall be allowed to any VAT dealer on sale of exempted goods (except in the course of export) and exempt sales. As per Section 13 (6) of VAT Act, ITC for transfer of taxable goods outside the State (otherwise than by way of sale) shall be allowed for the amount of tax in excess of four/ five[61] *per cent*. Further, as per sub rules (7) and (8) of Rule 20 of VAT Rules, a VAT dealer making taxable sales, exempt sales and exempt transactions of taxable goods shall restrict his ITC as per the prescribed formula[62]. As per Rule 20 (10) of VAT Rules, where a dealer also makes sale of exempt goods, (9.5 *per cent*/ 10.5 *per cent* portion of 14.5 *per cent*) ITC of

[57] CTOs: Autonagar, Dwarakanagar and Gajuwaka.
[58] Between February 2015 and April 2018 for the assessment period from 2010-11 to 2015-16.
[59] Visakhapatnam (2) and Autonagar (1).
[60] DC: Visakhapatnam, CTOs: Autonagar and Gajuwaka.
[61] four *per cent* up to 13 September 2011 and five *per cent* from 14 September 2011.
[62] A x B/C, where A is the ITC for common inputs for each tax rate, B is the taxable turnover and C is the total turnover.

which was fully claimed initially, shall be restricted at the end of March by applying prescribed formula. Exempt transactions shall be included in taxable turnover during such restriction.

During the test check of records of Visakhapatnam Division and five[63] Circles, Audit observed (between March 2017 and January 2018) from the VAT assessment files of eight dealers for the assessment period from 2011-12 to 2016-17, that the dealers had effected sale of exempted goods/ exempt transactions of taxable goods along with sale of taxable goods by utilising common inputs. However, the ITC was not restricted correctly in few cases on account of adoption of incorrect turnovers. In few other cases restriction was not made by the Assessing Authorities (AAs) as per the relevant provisions, resulting in excess claim of ITC of ₹ 59.01 lakh.

The AAs[64] replied (December 2017 and September 2018) that assessment files were submitted to DC for revision in five cases. CTO Ongole-I stated (September 2018 in one case) that effectual order was passed based on the revision order passed by the DC. In remaining three cases, AAs[65] stated (March 2017 and January 2018) that the matter would be examined and detailed report furnished in due course.

The matter was referred to the Government (September 2018); their reply has not been received (February 2020).

2.8 Tax on Interstate Sales

2.8.1 Short levy of tax due to application of incorrect rate of tax under Central Sales Tax Act

Incorrect allowance of concessional/ incorrect rates of tax on inter-state sales resulted in short levy of tax of ₹ 44.21 lakh.

As per Section 8 (2) of the Central Sales Tax (CST) Act, 1956 read with Rule 12 (1) of CST Registration and Turnover (R&T) Rules, 1957, interstate sales not supported by 'C' declaration forms are liable to tax at the rate applicable to sale of such goods inside the appropriate State. Taxes on interstate sales supported by 'C' declaration forms are liable to tax at the rate of two *per cent* as per Section 8 (1) of the Act. Under Section 4 (3) of the VAT Act, every VAT dealer shall pay tax on sale of taxable goods at the rates specified in the Schedules to the Act.

'Thermoplastics' (Road Speed Breakers) and 'Fabricated steel structure' are not specified in any of the Schedules to the VAT Act and therefore fall under Schedule-V and liable for tax at the rate of 14.5 *per cent*. 'Bone Meal' is liable to tax at the rate of four *per cent* up to 13 September 2011 and at five *per cent* from 14 September 2011 onwards under Schedule IV to the VAT Act. 'Fruit Pulp' was classifiable under Schedule IV of VAT Act from 29 January 2013 as

[63] CTOs: Brodipet, Dwarakanagar, Ibrahimpatnam, Ongole-I and Tanuku-I.
[64] Visakhapatnam Division (2); CTOs: Brodipet (1), Dwarakanagar (1) and Ongole-I (1).
[65] Ibrahimpatnam (2) and Tanuku-I (1).

per Government Order[66] dated 29 January 2013 and was liable to tax at the rate of 14.5 *per cent* for the period prior to the date of this order.

During the test check of CST records of four circles[67], it was observed[68] in six cases, that AAs either exempted or levied tax at the incorrect rate of four/ five *per cent* instead of 14.5 *per cent* under Schedule V to the Act on interstate sales turnover of ₹ 7.01 crore not supported by 'C' forms. The application of incorrect rate of tax resulted in short levy of tax of ₹ 44.21 lakh.

Government replied (November 2018 in three cases pertaining to Chittoor-I Circle) that the phrase "Fruit Juices" available in the entry 107 of Schedule IV to the Act is wide enough to include the Mango Pulp, therefore attracted tax at five per cent. It was, however seen in audit that the commodity "fruit pulp" was inserted under entry 107 (b) of Schedule IV to the Act through Government order[69] in January 2013. Hence, the tax was leviable at 14.5 *per cent* prior to 29 January 2013 and at 5 *per cent* from 29 January 2013 onwards. In remaining three cases, the AAs[70] stated (between November 2016 and March 2018) that the matter would be examined and report submitted to Audit in due course.

2.8.2 Non/ Short levy of tax due to incorrect determination of taxable turnover under CST Act

Assessing Authorities incorrectly determined taxable turnover of interstate sales resulting in short levy of tax.

As per Section 9 (2) of CST Act, the authorities empowered to assess tax under the general sales tax law of the State, shall also assess tax under the CST Act. As per Para 5.12 of VAT Audit Manual 2012, the audit officer is required to verify the details given by the dealer in VAT/ CST returns and to reconcile with those reported in certified annual accounts for that period. According to Sub Rules (8), (9) and (10) of Rule 14-A of CST (AP) Rules 1957, if the whole or any part of the turnover of business of a dealer has escaped assessment or has been under-assessed in any year, the Assessing Authority (AA) may to the best of his judgment, assess the correct tax payable by the dealer, within the prescribed time period. As per Sections 5, 6, 6A and 8 of the CST Act read with Rule 12 of CST (R&T) Rules, if any dealer fails to submit necessary statutory forms in support of exports, branch transfers, transit sales etc., the relevant transactions have to be treated as interstate sales not covered by 'C' forms and tax shall be levied at the rates applicable to the sale of goods inside the appropriate State.

The commodities listed under Schedule-IV to the VAT Act are taxable at the rate of five *per cent*[71] and those which are not listed in Schedules-II to IV and VI, fall under Schedule-V and are taxable at the rate of 14.5 *per cent*.

66 G.O.Ms.No.43 Revenue (CT) II Department, dated 29 January 2013.
67 Autonagar, Chittoor-II (3), Ibrahimpatnam and Patamata.
68 Between November 2016 and March 2018 for the period 2011-12 and 2012-13.
69 G.O.Ms.No.43 dated 29 January 2013 with effect from 31 January 2013.
70 Autonagar, Ibrahimpatnam and Patamata.
71 Four *per cent* up to 13 September 2011.

During the test check of CST assessment files and VAT records of four circles[72], it was observed[73] that in four cases, the taxable turnover under the CST Act was not determined correctly due to non-reconciliation with the VAT and CST returns, ledgers, VAT and CST assessment orders, CST way bill utilisation reports and Profit & Loss accounts. This resulted in non/ short levy of tax of ₹ 18.76 lakh on the under-assessed turnover of ₹ 2.57 crore.

The CTO Kurnool-III stated (June 2018 in one case) that assessment file was submitted to DC for revision. CTO Ananthapuramu-II stated (September 2018) that the turnover assessed under CST was more than the turnover reported in Annual Report. It was, however seen in audit that the turnover as per CST sales register was more than the turnover reported both in Annual report as well as turnover assessed under CST Assessment. Hence the variation in the turnover needs to be taxed. In remaining two cases, the AAs[74] stated that the matter would be examined and report submitted in due course.

The matter was referred to the Government (September 2018); their reply has not been received (February 2020).

2.8.3 Non-levy of interest and penalty for belated payment of tax under CST Act

Interest and penalty was not levied on belated tax payments of inter-state sales.

As per Section 9 (2) of CST Act, the authorities empowered to assess tax under the general sales tax law of the State, shall also assess tax and levy interest and penalty under the CST Act. As per Rule 24 (1) of VAT Rules, the tax declared as due on Form VAT- 200, shall be paid not later than fifteen days after the end of the tax period if the payment is by way of cheque and not later than twenty days after the end of the tax period if the payment is by way of demand draft or banker's cheque or by way of remittance into the Treasury. In terms of Section 22 (2) of VAT Act, if any dealer fails to pay the tax due under the Act within the time prescribed, interest is liable to be paid in addition to such tax or penalty or any other amount, calculated at the rate of 1.25 *per cent* per month for the period of delay. Under Section 51 (1) of the Act, if a dealer fails to pay tax due by him by the last day of the month in which it was due, he shall be liable to pay a penalty of 10 *per cent* of the amount of tax due, in addition to such tax.

During the test check of the CST assessments, returns and payment records of Ananthapuramu-II Circle, it was observed (October 2017) in four cases (for the period 2013-14 and 2014-15) that the dealers had paid tax after the due dates with delays ranging from 1 to 449 days. However, the Assessing Authority (AA) did not levy any interest and penalty for belated payment of tax. This had resulted in non-levy of interest of ₹ 1.75 lakh and penalty of ₹ 4.90 lakh totaling to ₹ 6.65 lakh.

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[72] Ananthapuramu-II, Autonagar, Dwarakanagar and Kurnool-III.
[73] Between October 2017 and March 2018 for the period from 2011-12 to 2014-15.
[74] CTOs: Autonagar and Dwarakanagar (October 2017 and March 2018).

The Government replied (October 2018) that notices were issued for levy of penalty and interest.

2.9 Authorisation of Excess Refund

Assessing Authority authorised excess refund by overlooking bogus sales reported by CTOs at the other end.

As per Section 38 (1) (a) of VAT Act, a VAT dealer effecting sales under Section 5 (1) or 5 (3) and 8 (6) of the CST Act, in any tax period shall be eligible for refund of tax, if the ITC exceeds the amount of tax payable subject to the condition that the exports have been made outside the territory of India. The excess tax shall be refunded within a period of ninety days of making a claim on a VAT return to the prescribed authority. Further, as per Section 40 (1) of the Act, Commissioner or the authority prescribed shall have the power to adjust any amount due to be refunded against any amount outstanding against a VAT dealer.

During the test check of records of CTO, Peddapuram, it was observed[75] from the VAT refund file that the AA granted refund without considering the cross verification reports[76]. It was noticed from cross verification reports that purchase transactions of a dealer were not traced in the returns of the selling dealers. This resulted in excess authorisation of refund of ₹ 25.69 lakh.

CTO Peddapuram replied (September 2018) that as per the Commissioner's instructions, ITC could be allowed on receipt of 75 *per cent* of cross verification reports. Hence, the refund was processed. The reply is not relevant as in the verification reports received, the sale transactions were not accounted for. The refund should not have been authorised.

The matter was referred to the Government (September 2018); their reply has not been received (February 2020).

2.10 Transition from Value Added Tax to Goods and Services Tax

2.10.1 Introduction

Goods and Services Tax (GST) was implemented with effect from 1 July 2017. GST[77] is being levied on intra-State supply of goods or services *(except alcohol for human consumption and five specified petroleum products*[78]*)* separately but concurrently by the Union (CGST) and the States (SGST)/Union territories (UTGST). Further, Integrated GST (IGST) is being levied on inter-State supply of goods or services (including imports) and the Parliament has exclusive power to levy IGST. Prior to implementation of GST,

[75] September 2017 for the period 2013-14.

[76] Cross verification reports received from the other end CTOs in form VAT 311 after verifying the sales turnovers declared by the selling dealers.

[77] Central GST: CGST and State/Union Territory GST: SGST /UTGST.

[78] Petroleum products: crude oil, high speed diesel, petrol, aviation turbine fuel and natural gas.

VAT was leviable on intra-State sale of goods as per VAT Act and CST on sale of goods in the course of inter-State trade or commerce as per CST Act.

The State Government was empowered to regulate the provisions of VAT Act whereas provisions relating to GST were being regulated by Centre and State on the recommendation of Goods and Services Tax Council (GSTC) which was constituted with representation from Centre and all the States. The State Government notified (June 2017) the Andhra Pradesh State Goods and Services Tax (APSGST) Act, 2017 and the Andhra Pradesh State Goods and Services Tax (APSGST) Rules, 2017.

Goods and Services Tax Network (GSTN) was set up by the Government of India as a private company to provide IT services. It provides *Front-end IT services* to taxpayers namely registration, payment of tax and filing of returns. The State Government prepared its own platform for *Back-end IT services i.e.* registration approval, taxpayer detail viewer, refund processing, MIS reports *etc*., as the state has opted for Model-I[79].

2.10.2 Audit Objectives

A study was conducted to seek an assurance on

- the compliance with regard to migration of dealers from earlier tax laws and registration under GST;
- the effectiveness of the measures taken for verifying the tax credits carried forward from the earlier laws; and
- timely processing of refunds under GST.

2.10.3 Audit Criteria

The audit criteria were derived from the provisions of the following Acts, Rules and Notifications/ Circulars issued thereunder

- APSGST Act, 2017;
- APSGST Rules, 2017;
- GST (Compensation to States) Act, 2017.

2.10.4 Scope of Audit

The activities of the Chief Commissioner of State Taxes (CCST) Andhra Pradesh relating to implementation of GST were reviewed. Detailed information regarding 'Registration, Transitional Credit and Refunds' available in the database of GST was sought for from CCST for conducting audit. The required information was however not provided by the CCST. In the absence of the detailed database, the audit was conducted mainly on the basis of MIS reports as provided by the CCST, Andhra Pradesh and records related to Registration, Transitional Credits and Refunds of five Circle offices out of 104 available under the CCST.

Draft paragraphs were sent to the CCST and the Government in January 2019.

[79] Model-I States: only front-end services provided by GSTN.
Model -II States: both Front-end and Back-end services provided by GSTN.

2.10.5 Trend of Revenue

GST was implemented in July 2017 and total receipts under GST regime including non-subsumed[80]/ subsumed taxes from July 2017 to March 2018 were ₹ 27,326 crore (including IGST Advance of ₹ 589 crore) against ₹ 25,516 crore under pre-GST during the same period of previous year of 2016-17 i.e. an increase of 7.09 *per cent*. Actual receipts under pre-GST taxes and GST are given below:

Table 2.2
Trend of revenue

(₹ in crore)

Year	Budget Estimates	Receipts under pre GST taxes	Receipts under GST		Total receipts under pre GST taxes and GST	Increase/ decrease in percentage	Compen-sation received	Total receipts
			SGST	IGST Apportionment				
2014-15	28,749	30,524[81]	-		30,524	-	-	30,524
2015-16	32,840	29,104	-		29,104	(-) 5	-	29,104
2016-17	37,435	32,484	-		32,484	(+) 12	-	32,484
2017-18	39,321	8,890*	-		8,890	(+) 11	382	36,598
2017-18		2,121#	10,128	692	27,326			
		14,385$						

* Includes State VAT, Central Sales Tax, Purchase Tax, Entertainments Tax, Taxes on goods and passengers, Luxury Tax, Betting tax from April 2017 to June 2017.

\# Includes arrears of receipts from subsumed Taxes from July 2017 to March 2018.

$ Includes receipts from non-subsumed Taxes from July 2017 to March 2018.

Source: Budget Estimates and Finance Accounts of Government of Andhra Pradesh and Figures of Ministry of Finance (Office Memorandum No. S-31011/03/2014-SO (ST)-Pt-1

The above table indicates that there was an increasing trend in receipts during the last two years.

2.10.6 Legal/ statutory preparedness

APSGST Act and Rules were notified in June 2017. E-way bill system was implemented in the State with effect from 01 April 2018 on inter-State transactions and with effect from 15 April 2018 on intra-State transactions. Further, necessary notifications were issued by the State Government from time to time for facilitating implementation of GST in the State. The State Government/ Commercial Taxes Department had issued 203 notifications/ circulars/ orders regarding GST from June 2017 to December 2018.

[80] Non-subsumed goods: Alcohol for human consumption and five specified petroleum products i.e crude oil, high speed diesel, petrol, aviation turbine fuel and natural gas.

[81] Includes receipts of composite state of Andhra Pradesh from 01 April 2014 to 01 June 2017 and receipts of residuary state of Andhra Pradesh from 02 June 2014 to 31 March 2015.

2.10.7 IT preparedness

As Andhra Pradesh opted to be a Model-I State, GSTN only provides *Front-end* IT services of the GST IT eco-system to the taxpayers namely registration, payment of tax and filing of returns. The State has developed its own dedicated *Back-end* IT services for performance of statutory functions such as assessment, audit, enforcement, refunds, adjudication and appeals etc. by the departmental officers which are yet to be deployed. However, software tools were developed for generating various Analytical/ Business Intelligence/ MIS reports which are functional.

2.10.7.1 Status of Data sharing

With automation of the collection of GST having taken place, it is essential for Audit to have access to GST data to transition from sample checks to a comprehensive check of all transactions. Principal Accountant General (PAG) (Audit) has written to the Chief Commissioner of State Taxes and Principal Secretary (Revenue) to provide access to the GST data (January 2019, April 2019, May 2019, and November 2019). However, access to data is yet to be provided. A stand was taken by the State that a clarification had been sought from GST Council regarding guidelines and procedures to be followed in providing access to the data to maintain uniformity with other states.

The reply is not acceptable as Section 18 of the Comptroller and Auditor General's (CAG's) Duties Powers and Conditions of service (DPC) Act, 1971 provides CAG with the mandate to access any record, accounts and other documents that are relevant to his inquiry. Further, as per Section 16 of the Act, it shall be the duty of the CAG to audit all receipts which are payable into the Consolidated Fund of India and each State. Thus, not having access to the data pertaining to all GST transactions is violation of the provisions of CAG's DPC Act and has come in way of comprehensively auditing the GST receipts.

2.10.8 Implementation of GST

It was noticed that major issues faced by the department in implementation of GST were in registration, migration, filing of returns, transitional credit, refund etc. These issues have been analysed in Audit and are briefly discussed as follows.

2.10.8.1 Registration of Taxpayers

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

2.10.8.2 Migration of existing taxpayers of Commercial Taxes Department

As per Rule 24 of AP SGST Rules, 2017, every person registered under any existing law and having a PAN shall enroll on common portal by validating his e-mail address and mobile number and such person shall be granted registration on a provisional basis. Every person who has been granted a Provisional Registration (PR) shall submit an application along with the information and documents specified in the application on common portal. A certificate of registration shall be made available to the registered person electronically if the information and the particulars furnished in the application are found to be correct and complete. The position of provisional and final registration of registered dealers in the Commercial Taxes Department is in **Table 2.3.**

Table 2.3: Migration Status

Total no. of taxpayers as on 30 June 2017 under pre-GST laws	Provisional/ Final Registration	No. of dealers not enrolled / No. of dealers enrolled but not granted PR	Percentage of Migration
2,42,516	2,13,966*	28,419/131	88.23

Source: Information furnished by Department/web portal of Commercial Taxes Department.
* These taxpayers either belong to State or Centre.

It would be seen that 88.23 *per cent* of taxpayers have migrated to GST. In respect of dealers not enrolled, final action taken by the authorities concerned has not been furnished by the Department.

2.10.8.3 Allocation of taxpayers between Centre and State

(a) **Existing registered taxpayers of Commercial Taxes Department and Central Excise Department:** As per recommendation of GST Council, 90 *per cent* of existing registered taxpayers with turnover up to ₹ 1.5 crore and 50 *per cent* of existing registered taxpayers with turnover of more than ₹ 1.5 crore were allotted to the State. Accordingly, 2,08,982 registered taxpayers were allotted (November 2017) to the State (**Table 2.4**).

Table 2.4: Number of Registered Taxpayers

Existing registered taxpayers			
	Turnover above ₹ 1.5 crore	**Turnover below ₹ 1.5 crore**	**Total**
State	18,290	1,90,692	2,08,982
Centre	18,291	21,188	39,479
Total	36,581	2,11,880	2,48,461

Source: Information furnished by Commercial Taxes Department.

(b) **New taxpayers** - Jurisdiction of newly registered taxpayers is being allotted to the State and Centre by GST portal electronically during submission of application for registration by the taxpayers. Status of new registrations under the jurisdiction of State as on 27 December 2018 is given below:

Table 2.5: Status of New Registrations

Applications received upto 27 December 2018	Number of applications rejected	Number of applications approved	Number of applications pending
99,537	13,840	84,314	1,203

Source: Information furnished by the Commercial Taxes Department.

2.10.8.4 Transitional credit

Transitional credit of ₹ 1.41 crore was erroneously allowed to dealers though assessments were not finalised and statutory declaration forms were not filed for claiming concession / exemption.

As per Rule 117 of AP SGST Rules read with section 140 of AP SGST Act, the registered taxpayers were entitled to carry forward and claim unavailed amount of ITC of the pre-GST regime (as per VAT returns) in the GST regime. The taxpayers were also entitled to take credit of VAT in respect of inputs held in stocks and inputs contained in semi-finished or finished goods held in stock on which credit was not claimed earlier and is eligible for ITC on such inputs under AP SGST Act.

Section 140(1) prescribes that in order to claim the transitional credit, the following prerequisites should be met.

- Returns for six months prior to GST i.e. for January-June 2017 must be submitted.
- All declaration forms required to substantiate concessional rate of tax on the inter-state transactions under earlier tax law i.e.; CST Act, must be filed.
- The transitional credit to be claimed by the dealer in Form TRAN-1 should not be more than the closing balance of ITC available at the end of June 2017.

The transitional claims preferred were to be examined by the respective authorities (existing laws) irrespective of taxpayer being allotted to State or Centre under GST. The Department furnished (January 2019) information on 14,345 cases, involving transitional credit of ₹ 406.08 crore.

- In test check of five circles, it was noticed (January/ February 2019) that an excess claim of ₹ 14.57 crore was made by the dealers in 113 cases out of 546. The details are in **Table no: 2.6.**

Table 2.6: Tran-1 Data Analysis

TRAN-1 Data Analysis of five circles							
Sl. No	**Circle**	**Number of cases**	**Total TRAN-1 claim**	**Number of cases where TRAN-1 claim is more than VAT ITC**	**Total amount claimed in mismatch cases**	**ITC available in VAT as per June 2017 return**	**Excess claim**
1	Autonagar	87	3,76,03,951	14	7,41,488	4,44,911	2,96,577
2	Ibrahimpatnam	90	1,13,68,205	21	47,99,250	24,93,247	23,06,003
3	Patamata	115	16,14,11,319	28	14,24,71,925	17,21,470	14,07,50,455
4	Puttur	154	3,48,93,023	31	1,08,40,404	93,69,237	14,71,167
5	Seethaarampuram	100	1,46,80,312	19	37,56,539	29,01,024	8,55,515
	Total	**546**	**25,99,56,810**	**113**	**16,26,09,606**	**1,69,29,889**	**14,56,79,717**

When the excess claim was pointed out, ACs (ST)[82] replied (February 2019) that notices were issued. Reply is awaited from remaining two[83] offices.

- In three cases[84], CST assessments of the dealers were not completed from April 2014 to June 2017. The dealers also did not file Forms 'C', 'H' and 'F' for concessional claim/ exemption. The transitional credit, however, was claimed in full as per the closing balance of ITC as of June 2017. This resulted in erroneous claim of transitional credit of ₹ 1.41 crore.

  Reply from the Department has not been received (February 2020).

  The department needs to verify the claims against actual ITC available and ensure compliance to the rules/ provisions by the dealers before allowing transitional credit claims.

2.10.8.5 Refund under GST

As per Section 54(1) of the AP SGST Act 2017, a registered person may claim refund of any balance in the electronic cash ledger before the expiry of two years from the relevant date. Section 54(7) stipulated that refund claims shall be processed within sixty days from the date of receipt of application complete in all respects.

Refund module under GSTN is not yet operational. Hence, the refunds are being processed through manual system. Specific procedures were prescribed for refund of the balance amount in the electronic cash ledger or unutilised input tax credit at the end of particular tax period. Refund of unutilised Input Tax Credit was allowed in case of zero-rated supplies such as exports, SEZ sales which are made without payment of tax or when the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies.

[82] Ibrahimpatnam, Patamata and Puttur.
[83] Autonagar and Seetharampuram.
[84] AC(ST) Puttur.

2.10.8.6 Pendency in authorisation of refunds

As per the figures furnished by the department, 2,718 applications amounting to ₹ 492.81 crore were received claiming refunds by December 2018. Out of these, 2,679 cases amounting to ₹ 487.35 crore were processed within time by the Department.

Table-2.7: Authorisation of refunds

(₹ in crore)

Particulars	No. of cases	Amount
Refund claimed	2,718	492.81
LESS: Refunds processed	2,679	487.35
Refunds to be processed	39	5.46

Source: Information furnished by Department

2.10.8.7 Non-levy of penalty on refund claim

Department did not levy penalty of ₹ 50.49 crore equivalent to tax deliberately claimed by the dealer on refund claim which was irregular.

Scrutiny of 78 refund cases in two offices[85] revealed irregularities as detailed below.

In the office of AC (ST) Puttur, it was noticed (February 2019) in one case, that after adjusting output tax liability, balance ITC for the month of August 2017 was carried forward by the dealer to September 2017. This was adjusted against the output tax liability for the same month (September 2017). However, based on the refund guidelines, issued in May 2018, the dealer again claimed (May 2018) a refund of ₹ 50.49 crore for the month of August 2017 and the same was granted (June 2018) by the department without noticing the fact that no excess ITC was available with the dealer, as the same was adjusted against the output tax liability of September 2017. Subsequently, department noticed (November 2018) the double utilisation of ITC by the dealer (i.e. carrying forward of credit to September 2017 and claim of refund for August 2017) and adjusted the erroneously refunded amount of ₹ 50.49 crore. But, penalty of ₹ 50.49 crore equivalent to erroneous refund as prescribed under Section 74[86] read with Section 122 (vii and viii) of the Act was not levied.

The matter was referred to the Department.

Reply of the Department has not been received (February 2020).

[85] Ibrahimpatnam and Puttur.

[86] Determination of the tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by the reason of fraud or any willful misstatement or suppression of facts.

2.10.9 Legacy issues

While these are initial years of GST, it is necessary that steps are taken to clear the pending issues of the legacy system. Prior to implementation of GST, dealers were registered under VAT Act, CST Act, Luxury Tax Act, Entertainments Tax Act etc. Assessments under AP VAT and CST Acts were to be completed within 4 years from the date of completion of a particular financial year.

- In respect of cases where assessments had been completed, tax to the extent of ₹ 5,746.24 crore was yet to be collected. Of this, ₹ 2,137.66 crore was outstanding for more than five years. (**Table 1.4** Sl. No. 1 of this report).
- Information furnished by the Department disclosed that only 53 *per cent* of the assessments could be completed. (**Table 1.5** of this report).
- VAT refund claims of ₹ 113.21 crore in 530 cases were pending to the end of March 2018 (**Table 1.7** of this report).

The Department did not furnish the reasons for pendency in arrears outstanding for more than five years.

2.10.10 Conclusion

The Department completed migration of 88.23 *per cent* of the existing tax payers into GST. Action on erroneous transitional claims was lacking. The Department needs to sort out the legacy issues expeditiously so as to have a smooth transition to GST. The information to be provided through Web service is yet to commence (February 2020).

The matter was referred to the Department and to the Government (January/ February 2019); their reply has not been received (February 2020).