

CHAPTER – 3
COMMERCIAL TAX

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3.1 Tax Administration

The Principal Secretary, Commercial Tax Department (CTD) is the administrative head of the Department at the apex level. The Department functions under the overall control of the Commissioner of Commercial Tax (CCT), assisted by a Director and Additional Commissioner. The Department is divided in five zones, each headed by a Zonal Additional Commissioner. These zones comprise 16 Divisional Offices headed by Divisional Deputy Commissioners (DCs). Under these divisions, there are 84 Circle Offices and 19 Regional Assistant Commissioner Offices headed by the Commercial Tax Officers/Assistant Commissioners (CTOs/ACs). Since 01 July 2017 Goods and Services Tax (GST) was introduced and taxes are administered under the provisions of:

- Madhya Pradesh Goods and Services Tax Act, 2017; and
- Madhya Pradesh Goods and Services Tax Rules, 2017

3.2 Trend of Receipts

The trend of revenue receipts against budget estimates of Commercial Tax Department from revenue heads taxes on sales, trade, etc. and taxes on goods and passengers is mentioned in **Table 3.1**:

Table 3.1
Trend of receipts

Year	Budget estimates	Actual receipts	Percentage of variation
2013-14	19,140.00	19,228.59	(+) 0.46
2014-15	22,400.00	20,822.35	(+) 7.04
2015-16	24,500.00	22,890.91	(-) 6.57
2016-17	26,200.00	26,366.16	(+) 0.63
2017-18	26,107.00 ²⁴	24,839.46 ²⁵	(-) 4.86

(₹ in crore)

(Source: Finance Accounts and Budget Estimates of Government of Madhya Pradesh)

It can be seen from the above Table that Actual Receipts during 2017-18 decreased by 4.86 *per cent* over revised budget estimate prepared by the Department. Audit noticed that actual receipt in real terms increased by 4.76 *per cent* due to inclusion of compensation of GST ₹ 2,511 crore as received from GoI during 2017-18.

²⁴ Figure of revised budget estimate has been adopted due to implementation of Goods and Services Tax (GST) from 01 July 2017.

²⁵ Actual receipts of ₹ 24,839.46 crore during 2017-18 involve ₹ 16,143.34 crore of VAT and ₹ 8,696.12 crore of GST from July 2017 to March 2018. In addition to the above, compensation on GST ₹ 2,511 crore as grants-in-aid was also received from GoI during the year 2017-18.

3.3 Internal Audit

The Public Accounts Committee (PAC) in its 65th Report directed (December 2015) the Department to establish an Internal Audit Wing (IAW) and make it function effectively.

The Department intimated (April 2019) that Internal Audit Wing could not be established due to limited resources. However, the roster inspection of circle offices by Divisional Deputy Commissioners/Assistant Commissioners are carried out annually. The inspection of Divisional Deputy Commissioner offices are done by Additional Commissioners. During inspection the cases of tax assessment are also checked. Hence, there is no necessity of IAW.

During the Exit Conference (April 2019), the Department intimated that Finance Department GoMP was the sole internal auditor of the all government Departments. However, a proposal for strengthening the internal audit would be sent to the Finance Department.

However, the Department is yet (May 2019) to comply with the PAC orders.

Recommendation:

To improve its internal control environment, the Department should ensure compliance with the recommendations of the Public Accounts Committee and establish a fully functional Internal Audit Wing.

3.4 Results of Audit

There are 132 auditable units in the Commercial Tax Department. Out of these, audit selected 94 units²⁶ for test-check. Revenue generated by the Department during the year 2016-17 aggregated to ₹ 26,366.16 crore, of which the audited units collected ₹ 20,590.54 crore (78.09 per cent). In the selected units, 76,797 assessments were finalised. Out of these, audit test-checked 76,233 assessments (approx. 99 per cent) during the year 2017-18 and noticed 1,170 cases (approx. 1.5 per cent of audited sample) of non/short levy of tax/interest, irregular allowance of Input Tax Credit, application of incorrect rate of tax and non-observation of provisions of Act/Rules involving an amount of ₹ 220.46 crore. These cases are illustrative only as these are based on test-check of records. Audit had pointed out some similar omissions in earlier years also. But not only do these irregularities persist, they remained undetected till audit pointed them out. The irregularities noticed broadly fall under the following categories, as mentioned in **Table 3.2**:

Table 3.2
Results of Audit

(₹ in crore)			
Sl. No.	Categories	No. of cases	Amount
1.	Tax short levied/not levied	232	29.77
2.	Application of incorrect rate of tax	148	43.17
3.	Incorrect determination of tax	326	77.42
4.	Incorrect grant of exemption/deduction	177	39.21
5.	Others	287	30.89
Total		1,170	220.46

²⁶ Office of the Principle Secretary, Commercial Tax, 22 Divisional Offices, 30 Regional Offices and 41 Circle Offices.

These observations were communicated between June 2017 to May 2018 to the Government and Department. Out of these, the Department accepted to review the under-assessment of tax and other irregularities of ₹ 169.48 crore in 734 cases. Further progress in this regard, including recoveries, would be watched in audit.

During 2017-18, the Department intimated revenue realisation of ₹ 0.52 lakh in one case (September 2019).

3.5 Follow-up of previous Audit Reports

In the Audit Reports for the period from 2012-13 to 2016-17, Audit had pointed out various observations amounting to ₹ 1,181.30 crore in 123 paragraphs, against which recovery of ₹ 0.88 crore only has been effected by the Department till date.

The PAC had already given its recommendations and directions (384th Report, 2016-17) on similar paragraphs of ARs for the years 2007-08. Some of the directions were as follows: (i) the Department should take penal action against delinquent official responsible for serious irregularities; (ii) the Committee may be informed of legal action regarding recovery of Entry Tax and penalty from dealers concerned; (iii) the Department should recover outstanding tax at the earliest from dealer concerned and inform the Finance Department and Accountant General; issue necessary direction/order so as to not have such occurrences in future.

The Department intimated (April 2019) that appropriate action had been taken in compliance with PAC directions, necessary detailed instructions issued, and recovery effected in objected cases. As for penal action against delinquent official, the Department stated that some officials had retired and the remaining officials were not found guilty of revenue loss as no tax demand was outstanding against assessment orders passed by these officials.

The Department has, however, failed to prevent the persistence of this same type of irregularities.

A few illustrative cases involving loss of Government revenue of ₹ 20.46 crore are mentioned in the following paragraphs:

3.6 Incorrect determination of Turnover

The Assessing Authorities under-assessed the taxable turnover by ₹ 37.83 crore. As a result, tax of ₹ 2.91 crore and penalty of ₹ 3.25 crore could not be levied.

The MPVAT Act stipulates that if under-assessment of tax is attributable to the assessee, penalty is to be imposed at between 3 to 3.5 times the amount of assessed tax.

Audit test-check (between February 2017 and January 2018) of records of five Divisional Offices²⁷, 10 Regional Offices²⁸ and 24 Circle Offices²⁹ revealed

²⁷ **DCCT** Bhopal (TAW), Chhindwara, Gwalior II, Indore (TAW - I) and Satna.

²⁸ **ACCT** Bhopal II, Gwalior II, Gwalior III, Indore XI, Jabalpur I, Khandwa II, Morena, Neemuch, Pithampur (Dhar) and Ujjain I.

²⁹ **CTO** Anuppur, Ashoknagar, Balaghat, Bhopal (A and L), Burhanpur, Chhindwara I, Chhindwara II, Dhar, Guna II, Guna, Hoshangabad, Indore I, Indore II, Indore IV, Indore XIII, Indore XIV, Indore XV, Itarsi, Mandla, Rajgarh, Satna II, Shajapur, Ujjain II and Ujjain III.

that in 76 cases, assessed between July 2014 and January 2017, for the period between 2011-12 and 2015-16, the AAs determined less turnover amounting to ₹ 37.83 crore. Out of these 76 cases, in 55 cases, AAs determined less turnover due to non/short account of sale value, profit and other receipts. In six cases, figures of audited accounts were not adopted while determining turnover. Further, In 11 cases, lower rates of VAT and excise duty were applied while in another four cases, excess/incorrect deductions were given. As such, AAs concerned failed to determine the correct taxable turnover at the time of assessment. As a result, tax of ₹ 2.91 crore and penalty of ₹ 3.25 crore could not be levied. The details along with reply of the AAs and our comments thereon are given in **Appendix III**.

In the Exit Conference (April 2019), the Department intimated that detailed reply would be submitted after re-assessment of the cases.

Similar observations were pointed out in Audit Report 2016-17. Though such omissions of AAs were pointed out in audit, these irregularities not only persisted but also remained undetected till audit was conducted.

Final action and recovery will be watched in audit.

Audit reported (between November 2017 and July 2018) the matter to the Government, but no reply has yet been received (September 2019).

3.7 Allowance of inadmissible Input Tax Rebate

The Assessing Authorities allowed input tax rebate of ₹ 48.07 crore against the admissible input tax rebate of ₹ 45.17 crore resulting in short realisation of tax of ₹ 2.90 crore. Penalty of ₹ 2.20 crore was also not imposed.

The MPVAT Act (2002) stipulates that input tax rebate (ITR) is allowed only in respect of specific goods purchased by a registered dealer from another registered dealer who has paid input tax. Further, the input tax rebate shall not exceed the input tax actually paid. If rebate of input tax has incorrectly been allowed, and is attributable to the dealer, penalty shall be imposed.

Further, the Act provides that no input tax rebate shall be claimed, or be allowed, if the bills, invoice, or cash memorandum does not indicate separately the amount of tax collected by the selling registered dealer.

Audit test-checked (between May 2017 and April 2018) records such as assessment orders, audited accounts, returns, purchase list, etc. in four Divisional Offices³⁰, eight Regional Offices³¹ and 22 Circle Offices³² and found that in 70 cases, assessed between April 2015 and April 2017 for the period between 2011-12 and 2014-15, the assessing authorities allowed higher ITR on the basis of returns submitted by the dealers, without taking into consideration the purchase list and audited accounts.

³⁰ **DCCT** Bhopal II, Indore III, Indore (TAW - I) and Satna.

³¹ **ACCT** Bhopal III, Bhopal II, Gwalior II, Indore II, Indore XI, Jabalpur I, Neemuch, and Ujjain I.

³² **CTO** Anuppur, Ashoknagar, Balaghat, Bhopal II, Bhopal V, Bhopal IV, Burhanpur, Chhindwara I, Chhindwara II, Dewas, Guna, Hoshangabad, Indore I, Indore IV, Indore XIII, Indore XIV, Indore XV, Mandla, Raigarh, Satna I, Sehore and Shahdol.

In 28 cases, the input tax paid by the dealer was less than what they had claimed in their returns for rebate, and in 21 cases ITR was granted though it was inadmissible. In other cases, either the ITR was given on tax-free goods or double ITR was given. The AAs failed to determine correct ITR, resulting in inadmissible ITR of ₹ 2.90 crore and consequent penalty of ₹ 2.20 crore. Replies of the AAs and our comments thereon are given in the **Appendix IV**.

In the Exit Conference (April 2019), the Department accepted the observation and intimated that detailed reply would be submitted after re-assessment of the cases, which remains un-assessed till date (May 2019).

Similar observations were pointed out in Audit Report 2016-17. Though such omissions of AAs were pointed out in audit, these irregularities not only persisted but also remained undetected till audit was conducted.

Audit reported the matter to the Government (between August 2017 and July 2018), but reply has not been received yet (September 2019).

3.8 Entry Tax was not levied/short levied

Entry Tax on goods like machinery, stones, motor car auto parts, cement, iron and steel, oils, explosive, soyabean, HDPE woven bags, coal, etc. was either not levied or was levied at incorrect rates on their entry into local area. As a result, Entry Tax amounting to ₹ 1.94 crore could not be realised and consequent penalty of ₹ 2.52 crore remained un-imposed.

The Entry Tax Act stipulates that if under-assessment of Entry Tax is attributable to the dealer, penalty at not less than three times of the assessed tax shall be imposed.

Audit test-checked records such as assessment orders, audited accounts, purchase list, etc. (between May 2017 and May 2018) of seven Divisional Offices³³, 11 Regional Offices³⁴ and 17 Circle Offices³⁵ and found that in 52 assessed/reassessed cases between December 2014 and October 2017 for the period 2012-13 to 2014-15, Entry Tax on goods like machinery, stones, motor car auto parts, cement, iron and steel, oils, explosive, soyabean, HDPE woven bags, coal, etc. was either not levied or was levied at incorrect rates on their entry into local area.

Of these 52 cases, in 22 cases the Entry Tax was applied at rates lower than the applicable rates. In 24 cases, the leviable Entry Tax was not levied, in five cases Entry Tax was allowed on less purchase and in one case, goods leviable to Entry Tax were not taken in the gross taxable turnover. The Assessing Authorities concerned failed to assess correct tax payable. As a result of this, Entry Tax amounting to ₹ 1.94 crore could not be realised and penalty of ₹ 2.52 crore was not imposed.

³³ **DCCT** Bhopal I, Bhopal II, Chhindwara, Gwalior (TAW), Gwalior II, Satna and Ujjain.

³⁴ **ACCT** Bhopal II, Chhindwara I, Gwalior II, Indore I, Indore II, Jabalpur I, Jabalpur II, Khandwa II, Morena, Pithampur (Dhar) and Ujjain I.

³⁵ **CTO** Ashoknagar, Anuppur, Balaghat, Bhopal V, Chhindwara I, Dhar, Guna, Guna II, Indore I, Indore II, Indore XIV, Itarsi, Mandla, Satna I, Sehore, Shahdol and Ujjain III.

After this was pointed out (between May 2017 and May 2018), the reply of the AAs and our comments thereon are given in the **Appendix V**.

During the Exit Conference (April 2019), the Department intimated that detailed reply along with copies of re-assessment orders and demand notices would be furnished.

Similar observations were pointed out in Audit Report 2016-17. Though such omissions of AAs were pointed out in audit, these irregularities not only persisted but also remained undetected till audit was conducted.

Final action and recovery will be watched in audit.

Audit reported the matter to the Government (between December 2017 and July 2018), but reply has not been received yet (September 2019).

3.9 Application of incorrect rate of tax

Failure of the Assessing Authorities to apply the correct rate of tax resulted in short levy of tax amounting to ₹ 1.32 crore excluding penalty of ₹ 1.73 crore.

As per the MPVAT Act (2002), tax shall be levied on goods specified in Schedule-II, at the rate mentioned in the corresponding entry in column (3) thereof and such tax shall be levied on the taxable turnover of the dealer liable to pay tax under this Act.

Audit test-check of records in two Divisional Offices³⁶, nine Regional Offices³⁷ and 13 Circle Offices³⁸ revealed that in 43 cases of 44 dealers assessed between December 2014 and January 2017 for the period between 2012-13 and 2015-16, the AAs applied incorrect rate of tax on sale of tractor accessories, cement pole, auto parts, Kota stone, petrol, diesel and oil lubricants, packing material, plant and machinery, etc. which were taxable at higher rates as shown in **Table 3.3** below:

Table 3.3

Application of incorrect rate of tax

Sl. No.	No. of times incorrect rate applied	Rate of Tax leviable (per cent)	Rate of Tax levied (per cent)
1.	36	13	3 or 5
2.	5	5 or 13	Nil
3.	4	31	23 or 27
4.	3	27	23
5.	1	5	4
6.	3	13	@ ₹ 1 per square feet
7.	1	14	5

³⁶ **DCCT** Gwalior (TAW) and Chhindwara.

³⁷ **ACCT** Gwalior II, Gwalior III, Indore II, Khandwa II, Morena, Neemuch, Pithampur, Sagar and Ujjain I.

³⁸ **CTO** Balaghat, Bhopal II, Bhopal V, Bhopal (A and L), Dhar, Guna, Hoshangabad, Indore I, Indore IV, Indore XIII, Indore XIV, Sehore and Shahdol.

As such, the AAs failed in implementing the provision of the Acts, Rules and Departmental circulars in order to classify the commodities correctly and apply the appropriate rate of tax. This resulted in short levy of VAT of ₹ 1.32 crore and penalty of ₹ 1.73 crore thereon.

The details of short realisation of revenue, audit observations, replies of the AAs and our comments thereon are given in the **Appendix VI**.

In the Exit Conference (April 2019), the Department intimated that these cases would be re-opened and re-assessed.

Similar observations were pointed out in Audit Report 2016-17. Though such omissions of AAs were pointed out in audit, these irregularities not only persisted but also remained undetected till audit was conducted.

Final action and recovery will be watched in audit.

Audit reported the matter to the Government (between April 2017 and April 2018), but reply has not been received yet (September 2019).

3.10 Short levy of tax/grant of irregular concession under Central Sales Tax Act

Failure of Assessing Authorities (AAs) to apply provision relating to inter-State sales resulted in short realisation of tax of ₹ 1.43 crore and non-levy of penalty of ₹ 26.30 lakh.

The Central Sales Tax (CST) Act (1956) stipulates that if a dealer claiming tax on inter-State sales (entitling him to pay tax at two *per cent* of turnover) fails to furnish the required declaration in Form 'C' signed by the purchasing dealer, he shall be liable to pay tax at the rate applicable to the sale or purchase of such goods inside the appropriate State, and in addition, pay penalty at three times of the tax so assessed.

Audit test-check (between May 2017 and November 2017) of records of two Divisional Offices³⁹, three Assistant Commissioner Offices⁴⁰ and five Circle Offices⁴¹ revealed that in 10 cases of 10 dealers assessed between April 2016 and January 2017 for the assessment year 2014-15, the AAs allowed incorrect concession under CST Act.

Audit observed that in six cases, the AAs incorrectly allowed concessional rate of tax on inter-State sales not supported by declaration in Form 'C'. Similarly, in one case, the AA allowed deduction of sale without having E-I form. The AA allowed in one case deduction on 'C' form without having signature. In one case, the AA incorrectly allowed deduction of E-I and 'C' form supported interstate sale despite E-I supported sale related to the assessment year 2013-14. In another case, AA incorrectly allowed deduction on 'C' form supported sale of same nature. Further, in two cases, AA allowed deduction of sale without verifying 'C' form from TINXSYS. The AAs applied two *per cent* tax in four cases where five *per cent* tax was applicable and two *per cent* tax in three cases where 13 *per cent* tax was applicable.

³⁹ **DCCT** Gwalior II and Indore II.

⁴⁰ **ACCT** Indore I, Khandwa and Waidhan.

⁴¹ **CTO** Bhopal I, Gwalior III, Indore X, Satna II and Ujjain II.

The AAs concerned committed errors in assessments ignoring clear provisions in the Act regarding applicability of the appropriate rate of tax. This resulted in short realisation of tax of ₹ 1.43 crore and non-levy of penalty of ₹ 26.30 lakh (**Appendix VII**).

During the Exit Conference (April 2019), the Department intimated that 'C' forms would be verified and if required, the cases would be re-opened and re-assessed.

Similar observations were pointed out in Audit Report 2016-17. Though such omissions of AAs were pointed out in audit, these irregularities not only persisted but also remained undetected till audit was conducted.

Final action and recovery will be watched in audit.

Audit reported the matter to the Government (between July 2017 and January 2018), but reply has not been received yet (September 2019).

Most of the audit observations are of a nature that may reflect similar errors/omissions in other units of the concerned State Government Department, but were not covered in the test check conducted during the year. The Department/Government may therefore like to internally examine all other units with a view to ensuring that they are functioning as per requirement and rules.