

Chapter II
Compliance Audit
(Revenue Sector)

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A. General

2.1 Tax administration

2.1.1 Goods and Services Tax

Sales Tax/ Value Added Tax/ Goods and Services Tax (comprehensive tax levied on supply of both goods and services) are administered by the Financial Commissioner, Finance Department of the Government of Jammu & Kashmir at the Government level. The Commissioner State Taxes is entrusted with overall control and superintendence of the State Taxes Department. He is assisted by three Additional Commissioners (one each in Jammu and Kashmir Divisions and one for Tax Planning), 19 Deputy Commissioners (Jammu: 09; Kashmir: 08 and one each for Headquarter and Judicial matters) and 10 Assistant Commissioners (Jammu: 05; Kashmir: 05). The Union Territory is divided into 61 State Taxes Circles (Jammu: 30; Kashmir: 31), each headed by one State Taxes Officer.

2.1.2 State Excise

The State Excise Department of J&K is responsible for charging of Excise Duties under J&K Excise Act 1901. The Department is headed by the Excise Commissioner who is assisted by four Deputy Excise Commissioners (Jammu: 03; Kashmir: 01) and 15 Excise and Taxation Officers (Jammu: 11; Kashmir: 04). There are 19 Distilleries/ Breweries/ Bottling Plants which fall within the jurisdiction of the Excise and Taxation Officer, Distilleries, Jammu.

2.1.3 Taxes on Vehicle

Receipts from the Transport Department are regulated under the Central and the State Motor Vehicles Acts and Rules made thereunder and are under the administrative control of the Transport Commissioner.

2.2 Results of audit

Test-check of records of 82 units out of a total of 398 units of State Taxes, State Excise, Transport and Law Departments conducted by Audit during the year 2019-20 revealed evasion of tax, under-assessment/ short levy of revenue, non/ short realisation of tax etc; aggregating ₹ 127.72 crore in 14,572 cases as detailed in *Appendix 2.1*.

During the year 2019-20, an amount of ₹ 6.15 lakh of revenue was recovered by the Departments that had been pointed out in audit. Audit observations in this Report have revenue implication of ₹ 2.14 crore. The Departments/ Government have accepted audit observations.

B. COMPLIANCE AUDIT

Finance Department

2.3 Input Tax Credit

2.3.1 Short demand due to irregular allowance of input tax credit

Failure of the Assessing Authority, State Taxes Circle Reasi Jammu (Udhampur-II) to disallow the input tax credit claimed by the dealer during the period of suspension of his registration certificate resulted in short demand of ₹ 22.36 lakh.

Section 27 (7) of the Jammu and Kashmir Value Added Tax (VAT Act), 2005 stipulates that when any dealer to whom a certificate of registration is granted, fails to furnish any return or fails to pay any tax, penalty or interest payable under the Act, the certificate of registration of such dealer may be suspended by the prescribed Authority. Section 27 (8) of the above Act provides that suspension of certificate of registration will be withdrawn and registration certificate shall be restored on an application made by the dealer on furnishing evidence of payment of all taxes and on furnishing of overdue return(s) within 90 days of suspension. During the period the certificate of registration of a dealer remains suspended, he shall not be entitled to any benefits that a dealer whose certificate of registration is in force, is entitled to. The dealer is liable to pay interest and penalty under Section 51(4) and 69(1) (m) of VAT Act 2005. Further, Section 35 of the J&K VAT Act, 2005 stipulates that each and every return in relation to any tax period furnished by a registered dealer shall be scrutinised by the Assessing Authority within a period of three months of filing of such returns to verify the correctness of calculation, application of correct rate of tax and interest and input tax credit claimed therein.

Audit scrutiny (February 2019) of records of the State Taxes Circle Reasi- Jammu (Udhampur-II) revealed that due to non-furnishing of the return of 2nd quarter of accounting year 2013-14, the Certificate of Registration of a dealer was suspended during the period from 01 February 2014 to 30 March 2014. However, the dealer claimed input tax credit of ₹ 6.15 lakh during the 4th quarter of 2013-14, which included an amount of ₹ 5.32 lakh pertaining to the period during which the Certificate of Registration remained suspended. Audit observed that while scrutinising the return of the deemed assessed case (July 2014) of the dealer, the assessing authority failed to take notice of the period during which certification of registration of the dealer had remained suspended which resulted in irregular allowance of input tax credit of ₹ 5.32 lakh.

Thus, the failure to disallow the input tax credit resulted in short demand of ₹ 22.36 lakh¹.

¹ Tax: ₹ 5.32 lakh; Interest: ₹ 6.39 lakh; Penalty: ₹ 10.65 lakh.

On this being pointed out (February 2019), the Assessing Authority while rejecting the input tax credit of ₹ 5.32 lakh pertaining to the period of suspension, reassessed (March 2020) the case and raised demand of ₹ 23.43 lakh².

The matter was referred to Government/ Department in November 2020. The Assistant Commissioner, State Taxes (Technical), J&K stated (December 2020) that the Assessing Authority has referred the demand of ₹ 23.43 lakh to the Deputy Commissioner (Recovery), Jammu for realisation of taxes.

However, the reply of the Government was awaited (October 2021).

The Department should take effective measures under the provisions of the Act to realise the demand proceeds at the earliest. Reasons for lapses may be examined and responsibility for lapses may also be fixed.

2.4 Short Levy of Tax

2.4.1 Short levy of tax due to concealment of purchases

Assessing Authority State Taxes Circle-C Jammu failed to detect the concealment of Interstate Purchases, verify the genuineness of outward stock transfer during 2013-14 which resulted in short levy of tax, interest and penalty to the extent of ₹ 1.38 crore.

Section 42 (1) of the Jammu and Kashmir Value Added Tax Act 2005 provide that where after a dealer is assessed under section 37 to 40 of the Act for any year or part thereof, the Assessing Authority has reasons to believe that whole or any part of the turnover of the dealer in respect of any period has escaped assessment or has been under assessed, the Assessing Authority may serve a notice on the dealer and after giving the dealer a reasonable opportunity of being heard and making such enquiries as it considers necessary, proceed to assess to the best of its judgment, the amount of tax due from the dealer in respect of such turnover. Section 69(1) (f) of the Jammu and Kashmir Value Added Tax Act 2005, stipulates that if any person conceals his turnover or furnishes inaccurate particulars thereof, the appropriate authority shall direct that such person shall pay, in addition to the fee or tax by way of penalty, a sum equal to double the amount of the tax attempted to be evaded.

Further, as per section 6A of Central Sales Tax Act, 1956 where any dealer claims that he is not liable to pay tax under said Act in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be and not by reason of sale, he may furnish to the Assessing Authority within the prescribed time or within such further time as that authority may for sufficient cause, permit, a declaration duly filed and signed by the Principal officer of the other place of business, or his agent or principal, as the case may be containing the prescribed particulars in the prescribed form obtained from the

² Tax: ₹ 5.32 lakh; Interest: ₹ 7.46 lakh; Penalty: ₹ 10.65 lakh.

prescribed authority, along with the evidence of dispatch of such goods. If the dealer fails to furnish such declaration, then the movement of such goods shall be deemed for all purposes of the Act to have been occasioned as a result of sale.

Audit check (December 2017) of records of State Taxes Circle-C Jammu showed that a dealer³ had concealed interstate purchases worth ₹ 13.74 lakh during the accounting year 2013-14 which led to concealment of taxable turnover of ₹ 15.80 lakh⁴. Besides, the dealer had also claimed exemption on stock transfer of goods worth ₹ 5.09 crore against F-Forms in the course of interstate trade which was accepted by the Assessing Authority at the time of assessment (January 2017) under section 9(2) of the CST Act, 1956. Since the Registration Certificate of the dealer was silent about having any branch office or any clearing and forwarding agent in other states the stock transfer was irregular.

Thus, the failure of the Assessing Authority to detect the concealment of interstate purchases along with verifying the genuineness of stock transfer resulted in short levy of tax of ₹ 70.88 lakh on the taxable turnover of ₹ 5.25 crore (₹ 5.09 crore + ₹ 15.80 lakh). Besides, interest of ₹ 63.06 lakh and penalty of ₹ 4.27 lakh was also leviable.

On this being pointed out (December 2017), the Assessing Authority re-assessed (March 2019) the dealer and raised a demand of ₹ 1.67 crore⁵ on the taxable turnover of ₹ 5.25 crore.

The matter was referred to Government/ Department in March 2021. The Commissioner State Taxes, J&K, Srinagar stated (May 2021) that proceedings were initiated against the dealer by issuance of statutory notice in VAT-19 dated 30 January 2018 for concealment of interstate purchases and claim of tax-free sales in the course of interstate trade and commerce while not having any branch office outside Jammu & Kashmir in the registration certificate. It was also stated that since the dealer failed to produce any documentary evidence in response to the notice issued, the Assessing Authority re-assessed the dealer and referred the demand of ₹ 1.67 crore against the dealer to Deputy Commissioner for realisation of taxes under Land Revenue Act. However, the reply of the Government was awaited (October 2021).

The Department may ensure recovery and fix the responsibility of the Assessing Authority for not implementing the prescribed provisions of the Act.

³ Dealing in trade of dry fruits, cosmetics, confectionery, jams, juices and pickles.

⁴ Concealed purchases of ₹ 13.74 lakh plus ₹ 2.06 lakh on account of 15 per cent incidentals.

⁵ Tax: ₹ 70.88 lakh; Interest: ₹ 92.17 lakh and Penalty: ₹ 4.27 lakh.

2.4.2 Short levy of tax due to non-verification of credit claim of returned goods

Assessing Authority, State Taxes Circle-L Jammu accepted the credit claims against the returned goods without verification of actual credit notes at the time of assessment of a dealer which resulted in short demand of ₹ 53.69 lakh.

Section 26(3) read with Rule 10 of the Jammu and Kashmir (J&K), Value Added Tax (VAT) Act, 2005 and Rules made thereunder, provides that in case of goods returned or rejected by the purchaser, a credit note shall be issued by the selling dealer to the purchaser and a debit note will be issued by the purchaser to the selling dealer in a prescribed manner.

Audit scrutiny (September 2018) of records of State Taxes Circle-L, Jammu revealed that a dealer dealing in sale and purchase of Machinery Parts was assessed (March 2018) for the accounting year 2014-15 at a taxable turnover of ₹ 34.83 lakh. The dealer had shown returned goods worth ₹ 2.19 crore in his Trading Account for the year 2014-15 but the credit and debit notes in support of goods returned have not been issued by both the purchasing and selling dealers. The digital records of Lakhanpur Toll Plaza had not made any mention about return of goods to the dealer. Assessing Authority accepted the credit claim of dealer against returned goods without obtaining credit notes at the time of assessment (March 2018). Acceptance of credit claims against the returned goods without verification of actual credit notes, led to under assessment of turnover of ₹ 2.19 crore and consequent short demand of ₹ 53.69 lakh⁶.

On this being pointed out (September 2018), the Assessing Authority re-assessed (March 2020) the dealer under section 42 of J&K VAT Act, 2005 and raised a demand of ₹ 64.31 lakh⁷.

The matter was referred to Government/ Department in November 2020. The Assistant Commissioner State Taxes (Technical), J&K stated (December 2020) that the Assessing Authority has referred the demand of ₹ 64.31 lakh to the Deputy Commissioner (Recovery), Jammu for realisation of taxes. However, the reply of the Government was awaited (July 2021).

The Department should take effective measures under the provisions of the Act to realise the demand raised against the dealer at the earliest. Reasons for lapses may also be examined.

⁶ Tax: ₹ 29.50 lakh; Interest: ₹ 24.19 lakh.

⁷ Tax: ₹ 29.50 lakh; Interest: ₹ 34.81 lakh.

