

CHAPTER-III: TAXES ON SALES, TRADE, ETC.

3.1 Tax administration

The Additional Chief Secretary (Commercial Tax and Entertainment Tax), Uttar Pradesh administers the Sales Tax/Value Added Tax (VAT) laws and rules framed thereunder. The Commissioner, Commercial Tax (CCT), Uttar Pradesh is the head of the Commercial Tax Department. He/she is assisted by 100 Additional Commissioners, 157 Joint Commissioners (JCs), 494 Deputy Commissioners (DCs), 964 Assistant Commissioners (ACs) and 1,275 Commercial Tax Officers (CTOs). Since 1 July, 2017, the Department is also administering the Goods and Services Tax (GST) in the State.

Goods and Services Tax (GST)¹ is levied on intra-State supply of goods or services (except alcohol for human consumption and upon five specified petroleum products²) separately but concurrently by the Union (CGST) and the States (SGST)/Union Territories (UTGST). Further, under the provisions of the new taxation regime, Integrated GST (IGST) is being levied on inter-State supply of goods or services (including imports).

3.2 Results of Audit

During 2019-20, test-check of records³ in 105 units⁴ out of a total of 845 auditable units of the Commercial Tax Department revealed under-assessment of tax and other irregularities involving ₹ 315.03 crore in 544 cases which fall under the following categories as tabulated in **Table-3.1**.

Table-3.1

Sl. No.	Categories	Number of cases	Amount (₹ in crore)
1	Under-assessment of tax	228	266.30
2	Acceptance of defective statutory forms	2	00.02
3	Irregular/Incorrect/ Excess allowance of Input Tax Credit (ITC)	114	09.58
4	Non/short charging of interest	79	3.78
5	Other irregularities ⁵	121	35.35
	Total	544	315.03

The Department accepted (between April 2019 and June 2021) one case amounting to ₹ 0.49 lakh pointed out in the year 2019-20 and reported recovery of ₹ 0.49 lakh in that case. Further, in respect of audit observations prior to the year 2019-20 the Department accepted (between April 2019 and June 2021) 321 cases amounting to ₹ 27.21 crore and reported recovery of ₹ 4.50 crore in 238 cases.

This Chapter discusses 19 cases worth ₹ 195.62 crore. These cases pertain to assessment years for which the Uttar Pradesh Value Added Tax (UPVAT) Act, 2008 was applicable. The Department accepted 11 cases amounting to ₹ 19.01 crore, out of which in two cases the Department reported recovery of

¹ Central GST: CGST and State/Union Territory GST: SGST/UTGST.

² Petroleum Products: crude, high speed diesel, petrol, aviation turbine fuel and natural gas.

³ Of VAT cases and legacy cases of Entertainment Tax.

⁴ This consists of office of the Commissioner Commercial Tax (HOD), Member Tribunal P-1 Agra, 19 Joint Commissioners, 69 Sectors, 05 Mobile Squad Units, 4 Administrative Units and 6 Entertainment Tax Officers.

⁵ Non-forfeiture of excess money realised by dealers against provisions of the Act, non-registration of unregistered dealers, delayed deposit of realised revenue in the treasury, non-maintenance of documents/registers, etc.

₹ 47.79 lakh. Some of these irregularities continue to persist, despite similar cases having been reported repeatedly during the last five years as detailed in **Table-3.2**.

Table-3.2

Nature of observations	(₹ in crore)											
	2014-15		2015-16		2016-17		2017-18		2018-19		Total	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount
Application of incorrect rate of tax	132	7.49	35	2.72	24	2.00	58	12.36	13	1.95	262	26.52
Turnover escaping assessment	-	-	15	0.82	-	-	-	-	01	12.68	16	13.50
Not/ Short charging of Interest	30	5.31	8	2.17	30	1.53	28	2.56	-	-	96	11.57
Inadmissible ITC	21	0.87	15	0.77	20	1.18	27	1.01	18	4.52	101	8.35
Delayed deposit of tax deducted at source	25	8.75	14	2.98	28	8.05	69	26.80	25	16.29	161	62.87

The repetitive nature of irregularities makes it evident that the State Government and the Commercial Tax Department have not taken effective measures to address the persistent irregularities being pointed out year after year by the Audit.

Recommendation:

Given that assessments of legacy VAT cases are underway, the State Government may take steps to prevent recurrence of the reported irregularities before such cases become time-barred. There is a probability that undetected leakages of revenue at this stage may remain unaddressed as focus would be on GST administration.

3.3 Application of incorrect rate of tax

The Assessing Authorities (AAs) accepted the tax rates on sale of goods worth ₹ 355.54 crore as mentioned in the tax returns without verification. Thus, tax amounting to ₹ 26.44 crore was short/not levied.

Under the Uttar Pradesh Value Added Tax (UPVAT) Act, 2008, tax-free goods are mentioned in Schedule-I and taxable goods are mentioned in Schedules II to IV according to the applicable rates of tax on such goods. Goods not mentioned in any of the above schedules are covered under Schedule V and are taxable at the rate of 12.5 *per cent*. In addition to the above tax, additional tax notified by the Government from time to time is also levied.

Audit test-checked (between August 2019 and February 2020) the assessment records of 1,575 dealers in six CTOs and noticed that in the case of seven dealers the AAs, while finalising the assessments (between December 2016 and July 2019) for the years from 2013-14 to 2016-17, accepted tax rates of zero to five *per cent* on the sale of goods worth ₹ 355.54 crore as mentioned by the dealers in their respective tax returns. The AAs failed to verify and levy the applicable rates of four to 15.5 *per cent* on such goods as per the schedules. Thus, tax amounting to ₹ 26.44 crore was short/not levied **(Appendix-III)**.

Audit reported the matter to the Department (between September 2019 and May 2020). In reply (April 2021), the Department accepted the audit

objections in six cases amounting to ₹ 2.81 crore out of which in one case recovery of ₹ 38.71 lakh was reported by them. In one case, the Department did not accept (July 2021) the audit observation. The analysis of the Department's reply in the remaining one case is listed in **Table-3.3**.

Table-3.3

Sl. No.	Audited Unit/ Observation in brief	Department's reply in brief	Rebuttal
1	DC Sec 1 CT Ambedkar Nagar: Tax on deemed sale/transfer of goods worth ₹ 31.94 crore was not imposed under Rule 9(1)/9(3) of the UPVAT Act/Rule. Thus, tax of ₹ 23.63 crore was not levied.	The Department stated that the audit observation was made on <i>ex-parte</i> assessment passed under the remand case. Under Section-32 <i>ex-parte</i> assessment was re-opened. The re-opened case was again passed as <i>ex-parte</i> with a demand of ₹ 6.25 crore.	The reply is not acceptable, as the reason why the demand of ₹ 21.84 crore passed in the assessment order dated 28 February 2019 was reduced to ₹ 6.25 crore has not been provided. Though both the assessment orders (earlier as well as revised) were <i>ex-parte</i> , the reason for reducing the taxable turnover from ₹ 293.05 crore to ₹ 80 crore was not found on the record. Further, neither had the dealer appeared for verification of receipt payment from accounting records nor submitted additional details of sale/transfer of goods.

3.4 Turnover escaping assessment

The Assessing Authorities failed to detect the concealed turnover of ₹ 1,571.43 crore and consequently tax of ₹ 155.77 crore was not levied.

Under the UPVAT Act, 2008⁶, the AA is required to finalise the assessment after examining the books, accounts and documents kept by the dealer in relation to his business and other relevant records.

Audit test-checked (between June 2019 and March 2020), the Trading and Profit/Loss Account, Annual Balance Sheet, current and previous year's assessment orders, etc., of 2,104 dealers in four CTOs and noticed that six dealers had not disclosed turnover of ₹ 1,571.43 crore in their returns submitted to the AAs for the years 2014-15 to 2015-16. The details of turnover were available in the respective assessment files of the dealers. The AAs, while finalising the assessment of these dealers (between March 2018 and March 2019), did not properly examine the books, accounts, documents and other relevant records which resulted in concealed turnover of ₹ 1,571.43 crore escaping assessment and consequently tax of ₹ 155.77 crore was not levied (**Appendix-IV**).

Audit reported the matter to the Department (between July 2019 and May 2020). In reply (April 2021), the Department accepted the audit objections in two cases amounting to ₹ 4.12 crore. In one case (April 2021), the Department did not accept the audit observation. The analysis of the Department's reply in the case is listed in **Table-3.4**.

⁶ Section 28 of the UPVAT Act, 2008.

Table-3.4

Sl. No.	Audited Unit/ Observation in brief	Department's reply in brief	Rebuttal
1	<p>JC (CC)-I CT Kanpur: Tax deducted at Source (TDS) certificate (Form 31) issued by Purvanchal Vidyut Vitran Nigam Ltd. (PVVNL), Varanasi for deduction of ₹ 3.53 crore was disallowed by the AA. It is evident from the certificate of tax deducted at source that the dealer has made a supply of ₹ 88.31 crore (25 times of the amount of TDS) of electrical goods. Thus by disallowing the TDS certificate, supply of goods should also be taxed at the rate of 14 per cent.</p>	<p>The Department stated that on the gross sale of ₹ 600.42 crore, total tax of ₹ 72.53 crore was imposed at the rate of five per cent, 14 per cent and 14.5 per cent respectively on the total turnover of the dealer. It is also clear from the invoices and Annexure-B that all the supply/sale made against the TDS certificate was taxed at the rate 14/14.5 per cent respectively.</p>	<p>The reply of the Department is not acceptable on the following grounds:</p> <p>(i) The AA while finalising the assessment in March 2019, issued a notice to the dealer for providing the copy of contract regarding sales made to Executive Engineer, Purvanchal Vidyut Vitran Nigam Limited (PVVNL) Varanasi and verification of TDS certificates submitted by the dealer. In reply, the dealer stated that he had made supply/sale in pursuance of the contract to Power Grid Corporation. As per Section 34 of UPVAT Act, a person making the payment to the supplier is liable to deduct TDS. Through the TDS certificate submitted by the dealer it is clear that only PVVNL had made payment for the supply/sale made to them.</p> <p>(ii) The AA had mentioned in the assessment order dated 15 March 2019 that the TDS certificates submitted by the dealer shall be verified and proceedings under section 29 (7) shall be started against the dealer, if anything adverse is found. But the reply of the Department is silent on this issue despite the lapse of around two years' time.</p> <p>(iii) The AA, while finalising the assessment order, clearly stated that the turnover disclosed by the dealer was not worthy of credence and enhanced the admitted turnover merely by ₹ five crore (which was barely one per cent of his gross turnover), whereas the reply of the Department (April 2021) stated that the dealer had not indulged in any evasion and had shown all his turnover in his returns, which is contrary to the assessment order passed by the AA.</p> <p>(iv) The Department stated that all the supply/sale made against the TDS certificate was taxed but no supporting documents were made available to Audit.</p>

In the remaining three cases amounting to ₹ 139.29 crore, the Department stated that action was under process (July 2021).

3.5 Interest not charged on delayed deposit of tax deducted at source

The dealer had deposited the tax deducted at source (TDS) of ₹ 5.26 crore with delay, on which interest of ₹ 1.18 crore was chargeable, but was not charged at the time of assessment.

Under the UPVAT Act, 2008⁷, a person responsible for making payment to a contractor for the use of goods in pursuance of a works contract, shall deduct tax equal to four *per cent* of such sum, payable under the Act, on account of such works contract. In case of failure to deposit the amount so deducted, he shall be liable to pay simple interest at the rate of 15 *per cent per annum* on the amount not so deposited from the date on which such amount was deducted to the date on which such amount is actually deposited.

Audit test-checked (September 2019) the assessment records in the office of Sector 6 CT Varanasi and noticed that a dealer had deducted tax at source of ₹ 5.26 crore for the year 2013-14 and deposited the same with a delay of 545 days without paying the interest due on account of the delay. The belated payment of admitted tax attracted interest of ₹ 1.18 crore up to the date of deposit of tax. The AA, while finalising the assessment in March 2018, did not charge interest of ₹ 1.18 crore.

Audit reported the matter to the Department (November 2019). In reply (April 2021) the Department accepted the audit observation and stated that interest of ₹ 1.18 crore has since been levied.

3.6 Inadmissible ITC allowed to dealers

The dealers wrongly claimed Input Tax Credit (ITC) amount of ₹ 99.46 lakh which was irregularly allowed by the Assessing Authorities. This resulted in non-reversal of ITC along with interest totalling ₹ 1.60 crore.

Under the UPVAT Act, 2008⁸, for tax paid on purchases of goods from registered dealers against tax invoices within the State or cash deposited on purchase of goods from an unregistered dealer, ITC to the extent provided under the relevant clauses of the said Act is allowed to the dealers subject to certain conditions and restrictions for resale or use in manufacture of goods intended for sale. Further⁹, if any dealer has wrongly claimed ITC in respect of any goods, benefit of ITC to the extent it is not admissible, shall stand reversed along with simple interest at the rate of 15 *per cent per annum*.

Audit test-checked (between October 2019 and January 2020) the assessment records of 367 dealers in four CTOs and noticed that four dealers had wrongly claimed ITC of ₹ 99.46 lakh during the years 2015-16 and 2016-17 which was not admissible to them. The AAs, while finalising the assessment (between May 2018 and January 2019), were required to reverse the inadmissible ITC and direct the dealers to pay such amount of ITC along with simple interest. Failure to do so resulted in non-reversal of ITC along with interest totalling ₹ 1.60 crore (ITC ₹ 99.46 lakh and interest ₹ 60.33 lakh) (**Appendix-V**).

⁷ Section 34(1) and 34(9).

⁸ Section 13 of UPVAT Act, 2008.

⁹ Under Section 14 (2) of UPVAT Act, 2008.

Audit reported the matter to the Department (between November 2019 and March 2020). In reply (April 2021), the Department accepted the audit observation in one case amounting to ₹ 26.47 lakh out of which recovery of ₹ 9.08 lakh was reported. In two cases (April 2021), the Department did not accept the audit observation. The analysis of the Department's reply in these two cases are listed in **Table-3.5**.

Table-3.5

Sl. No.	Audited Unit/Observation in brief	Department's reply in brief	Rebuttal
1	JC (CC) CT Bareilly: Excess ITC of ₹ 1,74,23,828 was claimed by the dealer against the admissible amount of ITC of ₹ 1,55,11,355 on the total purchase of goods valued at ₹ 29,94,70,724.	The Department stated the amount of UP (registered) purchase of ₹ 29,94,70,724 does not include the amount of CENVAT. The amount shown in Balance Sheet also does not include the amount of CENVAT. Including the CENVAT UP (registered) purchase is ₹ 33,64,45,089 and thus ITC amounting to ₹ 1,74,23,828 was made admissible.	The reply is not acceptable, as in the annual returns and in the Trading Account submitted by the dealer at the time of assessment the purchase within UP from the registered dealers is ₹ 29,94,70,724 which is shown in the assessment order as well. Further, the bifurcation of the purchase shown in the balance sheet also establishes that UP purchase from registered dealers was of ₹ 29,94,70,724 and thus ITC of ₹ 1,55,11,355 was admissible. Thus, RITC along with interest ₹ 31,50,342 is recoverable as per UPVAT Act.
2	JC (CC) CT Range A Noida: ITC on Rail Engine and Coach parts were claimed at the rate of 14/14.5 <i>per cent</i> whereas ITC on Rail Engine and Coach parts are admissible at the rate of five <i>per cent</i> , as it is classified under Schedule-II, Part-A, Sl. No. 105. Therefore, ITC should be reversed along with interest.	The Department stated that the finished product related to Rail Engine and Coach parts were sold to the Railway at the rate of five <i>per cent</i> as per Schedule-II. But spare parts and raw material which were purchased from different dealers are unclassified and therefore, they are purchased as unclassified item at the rate of 14 <i>per cent</i> . Further, VAT was charged at the rate of 14 <i>per cent</i> on the above item which are sold to other dealers other than the Railway Department.	The reply is not acceptable, as the annual returns submitted by the dealer (Form-LII Annexure 4) clearly states ¹⁰ that the goods purchased are the parts of Rail Engine and Coaches. Further, the Department stated that if these (parts of Rail Engine and coaches) item are sold to dealers other than the Railways, VAT was charged at rate of 14 <i>per cent</i> . As per the VAT Act once the goods are sold it should be taxable as per the Schedule of the VAT irrespective of the dealers. No supporting documents were made available to the audit to establish the claim of the Department. As such, ITC should be reversed along with interest.

In the remaining one case amounting to ₹ 35.67 lakh the Department stated that action was under process (July 2021).

3.7 Short deduction of TDS at source

Assessing Authority, while finalising the assessments could not detect short deduction of tax deducted at source amounting to ₹ 10.64 crore by a dealer.

Under the UPVAT Act, 2008¹¹ where a person responsible for making deduction in respect of sale under a works contract is unable to ascertain the amount of deduction and the contractor or the sub-contractor, as the case may be, does not produce direction referred in the Act from its assessing authority,

¹⁰ Sl. No. 26 and 35 (₹ 2,94,50,280 and ₹ 1,51,07,252).

¹¹ Section 34 of the UPVAT Act, 2008.

the person responsible for making deduction shall deduct an amount which shall be four *per cent* of the gross amount of payment.

Audit test-checked (February 2020) the assessment records in the office of Sector 14 CT Noida and noticed that a dealer had deducted TDS of ₹ 18.84 crore during the year 2015-16 while making payment to contractors on turnover of ₹ 736.99 crore, instead of deducting TDS of ₹ 29.48 crore at the rate of four *per cent*. The AA, while finalising the assessment in November 2018, did not properly examine the facts which resulted in short deduction of tax at source of ₹ 10.64 crore.

Audit reported the matter to the Department (May 2020). In reply (April 2021), the Department accepted the case and imposed penalty of ₹ 21.27 crore for short deduction of TDS of ₹ 10.64 crore.