

**Chapter-3**  
**Compliance Audit Observations**  
**Relating to Departments of**  
**Revenue Sector**



## CHAPTER-3

### COMPLIANCE AUDIT OBSERVATIONS RELATING TO DEPARTMENTS OF REVENUE SECTOR

#### DEPARTMENT OF STAMP AND REGISTRATION

### 3.1 Subject Specific Compliance Audit on Short Levy of Stamp Duty and Registration Fee due to misclassification of registered documents

#### 3.1.1 Introduction

Receipts from Stamp Duty (SD) and Registration Fee (RF) are regulated under the Indian Stamp Act 1899, (IS Act), Registration Act, 1908 and the rules framed thereunder as applicable in the State of Uttarakhand. SD and RF are leviable on the execution of the instruments at prescribed rates fixed under the above Acts. Valuation of the properties are determined as per the circle rates fixed by the Collector of the District, under the provisions of Uttarakhand Stamp Valuation of Property Rules, 2015. Correct classification of documents plays an important role in levying of appropriate SD and RF on the instruments to be registered. Improper classification may result in revenue loss to State Government.

#### 3.1.2 Tax Administration

At the apex level, Secretary, Finance heads the Department who is responsible for monitoring and control at the Government level. Responsibility for overall administration of Stamp and Registration Department is entrusted to the Inspector General of Registration (IGR). He exercises a general superintendence over all the registration offices in the territories under the State Government and has powers to make rules consistent with the Act (Section 69 of Registration Act, 1908). He is assisted by one Additional Inspector General of Registration (AIGR), one Deputy Inspector General of Registration of Kumaon Region (DIGR), five Assistant Inspectors General of Registration (AIGR), 13 District Registrars (DR) and 49 Sub-Registrars (SR).

#### 3.1.3 Trend of Revenue Receipt

The total receipt of the Stamp & Registration Department for the period 2019-20 to 2021-2022 is given in **Table-3.1.1**.

**Table-3.1.1: Year- wise Revenue Receipt**

Year	2019-20	2020-21	2021-22
SD	790.15	812.36	1120.14
RF	221.92	237.28	296.10
<b>Total</b>	<b>1,012.07</b>	<b>1,049.64</b>	<b>1,416.24</b>

(₹ in crore)

#### 3.1.4 Audit Objectives

The Subject Specific Compliance Audit (SSCA) was conducted with a view to ascertain whether:

- Documents presented for registration were properly classified as per the Act;

- The SD and RF on instruments of Release, Correction, Partition, Settlement and Mortgage were levied, collected, and accounted for in accordance with relevant acts, codes and manuals and the interest of the Government was safeguarded;
- Due procedure was being followed by SR for referring the cases to Collector, Stamp under Section 47A of IS Act 1899;
- Provision exists for linking the correction deed with its original deed in the software application being maintained in Sub Registrar Office (SRO); and
- Provision exists for verifying the Voter ID/AADHAR/PAN/Driving License details of purchaser & seller by the Stamp & Registration Department.

### **3.1.5 Audit Criteria**

Audit findings were benchmarked against criteria sourced from the following:

- Indian Stamp Act (IS Act), 1899;
- Indian Stamp Act (IS Act) Uttarakhand Amendment 2016;
- Registration Act, 1908;
- Registration Amendment Act 2011;
- Registration Rules as given in Registration Manual of Uttarakhand;
- Transfer of Property Act, 1882;
- Uttarakhand Stamp Valuation of Property Rules, 2015;
- Schedules of SD and RF ; and
- Circulars and orders of the Government of Uttarakhand issued from time to time.

### **3.1.6 Audit scope and methodology**

Registration is being carried out through a system called Core Registration System (CRS) in the Stamp and Registration Department. The SSCA was conducted during May 2022 to October 2022 to cover the activities and functioning of Stamp & Registration Department related to classification of registered documents during the period from 2019-20 to 2021-22. Audit methodology involved scrutiny and analysis of deeds & data relating to the deeds registered in the 13 Sub Registrar Offices<sup>1</sup> out of total 49 Sub-Registrar Offices, selected on the basis of Probability Proportional to Size With Replacement (PPSWR) method to gain assurance that deeds/instruments were properly classified and SD and RF were levied, collected and accounted for in accordance with relevant provisions of Indian Stamp Act, 1899, Registration Act, 1908 and circle rates of various districts & market value guidelines. Entry conference was held with the Secretary, Finance and other departmental officers on 06 May 2022, wherein the audit objectives, scope, criteria and methodology were discussed. The Exit conference was held on 09 February 2023.

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<sup>1</sup> SR I, II, III & IV Dehradun, SR I,II & III Roorkee, SR I & II Vikasnagar, SR Rudrapur, SR Bageshwar, SR Sitarganj & SR Rishikesh.

- During the period from 2019-20 to 2021-22, a total of 8,797 deeds related to Release, Correction, Settlement, Mortgage and Partition were registered in the selected 13 SROs. Out of these, 1,426 (16.21 *per cent*) were test checked to assess whether there was any short levy of SD and RF due to misclassification of deeds.

## Results of Audit

### 3.1.7 Systemic issues

- ***Provision for linking correction deed with its original deed in the software***

Article 34 A of Schedule I B of IS, Act 1899 provides for correction of purely clerical error in an instrument chargeable with duty and in respect of which proper duty has been paid. There should be linkage of correction deed with its original deed for comparing the facts and figures of both the deeds. It was observed that the provision for linking of correction deed with its original deed in the registration software was not implemented.

During the exit conference (February 2023), the Government accepted the observation and replied that provision for the same exists in the departmental software. However, once all the data gets digitized (data digitization is in process), the above issue would be resolved.

- ***No Integration of Bhulekh records with the Registration system to verify land records***

Bhulekh records need to be integrated with the registration system to ensure that seller is the true owner of the land and the land sold does not exceed the total area of particular khasra/ khatauni of land owner. Scrutiny of records and information collected from the office of the Inspector General, Registration of Stamp & Registration Department revealed that there was no integration of Bhulekh records with the registration system to verify the land records of the land sold.

Thus, the details of land record cannot be verified at the time of registration of documents to ensure the genuineness of the seller and to ensure that land sold does not exceed the area of particular khasra/khatauni of the land being sold.

During the exit conference (February 2023), the Government accepted the observation and replied that departmental data digitization is in process and data of revenue department is yet to be fully digitized.

- ***No web service link with Electoral authority, Income tax authority, Transport authority and UIDAI for verification of identity of the seller, buyer and witnesses***

There should be linkage of Voter ID /AADHAR/PAN/Driving Licence data with the Stamp and Registration Department to verify identity of the seller, buyer and witnesses at the time of registration of documents. Scrutiny of records and information collected from the office of the Inspector General, Registration of Stamps & Registration Department revealed that there was no web service link with the Electoral authority, Income tax authority, Transport authority and UIDAI for verification of identity i.e. Voter ID, PAN, Driving License, Aadhar Card produced by the seller, buyer and witnesses during registration to check possible fraud and impersonation.

During the exit conference (February 2023), the Government accepted the observation and replied that the integration of UID cannot be done without Aadhar Data Vault (ADV) and Hardware Security Module (HSM). The process of procurement and implementation for the same would be undertaken.

- ***The cases of misclassification of instruments were not referred to Collector, Stamp under appropriate sections of the Stamp Act***

Registering authorities have been empowered under section 47 A (1) (d) of the IS Act 1899 to refer cases of short levy of SD to the Collector, Stamp for determination of proper duty payable thereon prior to the registration of the documents and can impound the same under section 33 (1), while the Collector Stamp under section 47 A (3) can suo motu call for and examine cases to ascertain that proper duty has been paid on the registered documents.

Out of 13 SROs (selected), it was noticed in eleven<sup>2</sup> SROs that instruments which were not duly stamped due to misclassification of the instruments were referred to the Collector under sections 47 (A) 3 of the IS Act 1899 after registering, which is against the provision of the Act. Additional District Magistrates (Finance & Revenue)<sup>3</sup> did not furnish the details by bifurcating cases referred under section 47 A (1) and 47 A (3). Further, it was also observed that cases referred under inappropriate sections of the Act were also accepted by the Additional District Magistrates (Finance & Revenue)<sup>4</sup> thereby failing to ensure compliance of relevant provisions of the act. This may result in undue hardship to the general public.

During the exit conference (February 2023), the Government accepted the observation and replied that department would issue directions to Sub- Registrars to refer the cases of misclassification of instruments under appropriate Sections.

### **3.1.8 Compliance issues**

Test check of records of the selected 13 SROs for the period from 2019-20 to 2021-22, during May 2022 to October 2022 revealed short levy of SD and RF of ₹ 6.63 crore and other irregularities in 343 cases (24.05 per cent) out of total 1,426 cases test checked. The summary of findings related to compliance issues are categorized and depicted in **Table-3.1.2**.

**Table-3.1.2: Results of Audit**

Sl. No	Categories	Number of cases	(₹ in lakh)
			Amount
1.	Short levy of SD and RF due to misclassification as Release Deed.	106	422.39
2.	Short levy of SD and RF due to misclassification of Mortgage Deeds	61	25.86
3.	Short levy of SD and RF due to misclassification of new instruments as Correction Instruments.	125	101.28
4.	Short levy of SD and RF due to misclassification as Settlement Deeds	14	33.78

<sup>2</sup> SR, I, II, III & IV Dehradun, SR I,II & III Roorkee, SR I & II Vikasnagar, SR Rudrapur & SR Rishikesh.

<sup>3</sup> ADM(F&R) Dehradun, Haridwar, Udham Singh Nagar.

<sup>4</sup> ADM(F&R) acts as Collector Stamp as per Section 2 ( 9 ) b of IS Act 1899.

<b>Sl. No</b>	<b>Categories</b>	<b>Number of cases</b>	<b>Amount</b>
5.	Short levy of SD and RF due to misclassification as Partition Deeds.	15	39.84
6.	Short levy of RF due to misclassification of distinct shares as single share.	16	8.30
7.	Short levy of SD and RF due to misclassification as transfer cases within family	05	9.58
8.	Short levy of SD and RF due to misclassification of Power of Attorney (POA).	01	22.12
	<b>Total</b>	<b>343</b>	<b>663.15</b>

Audit findings are discussed in succeeding paragraphs. The cases pointed out are based on test- check conducted by Audit.

### **3.1.8.1 Short levy of SD and RF due to misclassification of Gift Deeds and Partition Deeds as Release Deeds**

As per Article 55 of Schedule I B of the Indian Stamp Act, 1899, Release deed is an instrument whereby a person renounces a claim upon another person or against any specified property. The essential conditions<sup>5</sup> of Release are that the Releasor and Releasee must be the co-owners of the property and co-owner should renounce a claim in favor of all the co-owners. It does not result in extinguishment of right, title or interest of the person, who has ownership right in the property and the property cannot be mutated in favor of Releasee. A claim renounced cannot add to the title of some other person. It has been upheld by the Hon'ble Supreme Court in T. Mammo v/s V.K Ramaswamy case that if the document disclosed an intention to transfer the right then it has to be treated as conveyance. A registered instrument releasing the right, title and interest of the Releasor in any property without consideration in favor of releasee may operate as transfer by way of Gift under Article 33 of Schedule I B of Indian Stamp Act, 1899. Further, when owner of a property dies intestate, the property devolves according to rules of succession as laid down in Section 15 and 16 of Hindu, Succession Act, 1956. The heir succeeding to the property are tenants in common. "Tenancy in common" means that the share of each co-owner is specified<sup>6</sup>. The share of each one of them is separate and distinct. Only one legal heir can get right or title on property if other legal heir transfers the same through sale or gift deed. Further, as per Section 27 of the IS Act 1899, SROs should ensure that facts affecting the chargeability of any instrument with duty have been fully and truly set forth therein and the duties have been levied based on the classification of documents as mentioned in Schedule I B related to Section 3 of IS Act 1899. The SR should scrutinize the recitals of the documents presented for registration thoroughly, to arrive at the correct classification of the documents for adoption of the applicable rates of SD and RF. The SD payable on Release deed is seven *per cent* on the value or amount of the claim up to ₹ 2,500 and maximum ₹ 210 thereafter and RF chargeable is ₹ 100 only.

<sup>5</sup> AIR 1986 AP 42.

<sup>6</sup> AIR 1979 Allahabad 305.

Scrutiny of 501 Release Deeds executed in 11 SROs revealed that the aforesaid provisions regarding classification of documents were not adhered to in 106 cases for levying appropriate SD and RF while registering the documents. It resulted in short levy of SD and RF of ₹ 4.22 crore. The findings are discussed in succeeding paragraphs.

***a) Transfer of Rights, Title and Ownership of property acquired through succession were misclassified as Release deeds***

It was observed in 16 cases of five offices that the owner of the property died intestate, the property devolved according to rules of succession as laid down in Section 15 and 16 of Hindu, Succession Act, 1956. Legal heirs having defined shares transferred their shares to other heir without any consideration and transferred all the rights, title and ownership in favor of the other heir in contravention of provisions of Release deed. It should have been classified as Gift deed rather than Release deed. The rate of SD to be levied on Gift Deed is five *per cent* on market value of the property while in the case of family member the rate is one *per cent*<sup>7</sup> of market value of the property and RF payable is two<sup>8</sup> *per cent* on the amount subject to maximum of ₹ 25,000. It resulted in short levy of SD and RF of ₹ 11.48 lakh (***Appendix- 3.1.1***).

During the exit conference (February 2023), the Government accepted the observations and replied that cases at Sl. no 4, 5 and 12 to 16 of ***Appendix- 3.1.1*** had been referred to Collector Stamp after being pointed out by audit while the cases at Sl no. 1, 2, 3 and 6 to 11 of ***Appendix-3.1.1*** would be referred to the Collector Stamp.

***b) Instruments misclassified as Release deeds in which share released by one of the co - owners was not in favour of all the other co-owners***

It was observed in 16 cases of four offices that one of the co-owners of the property released his share in favour of few co-owners rather than in favour of all the other co-owners without any consideration and also transferred all the rights, title and ownership of the property. This should have been classified as Gift Deed. It resulted in short levy of SD and RF of ₹ 24.04 Lakh (***Appendix-3.1.2***).

During the exit conference (February 2023), the Government accepted the observations and replied that cases at Sl. no 3 to 8 of ***Appendix-3.1.2*** had been referred to Collector Stamp after being pointed out by audit, while the cases at Sl no. 1, 2 and 9 to 16 of ***Appendix-3.1.2*** would be referred to the Collector Stamp for examination.

***c) Instruments misclassified as Release deeds in which the Releasor and Releasee were not the co-owner of the property***

It was observed in two cases<sup>9</sup> of two offices that property was released by Releasor in favour of the Releasee without any consideration. However, the Releasor and Releasee were not co-owners of the property. This should have been classified as Gift Deed. It resulted in short levy of SD and RF of ₹ 0.81 lakh.

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<sup>7</sup> Uttarakhand government Finance section-9 No. XXVII (9)/2013/stamp-20/2010 Dehradun: dated 23 July 2013.

<sup>8</sup> Uttar Pradesh government Notification No. SR 3814/11-95 dated 15 September 1995.

<sup>9</sup> Deeds no 4257/2020, ₹ 0.29 lakh, SR-I Vikasnagar & 933/2022, ₹ 0.52 lakh, SR-III Dehradun.

During the exit conference (February 2023), the Government accepted the observations and replied that both the cases would be referred to the Collector Stamp for examination.

**d) Instruments misclassified as Release deeds in which the Releasee were given the right of mutation of property in revenue records by the Releasor**

It was observed in 70 cases of seven offices that the property released by Releasor in favour of the Releasee without any consideration was either mutated or was allowed to be mutated in favour of the releasee in land records which was against the provisions of Release deed. Claim renounced cannot add to the title of some other person in land revenue records. This should have been classified as Gift Deed. It resulted in short levy of SD and RF of ₹ 3.82 crore (**Appendix-3.1.3**).

During the exit conference (February 2023), the Government accepted the observations and replied that out of 70 cases as mentioned in **Appendix-3.1.3**, two cases at Sl. no 44 and 45 had been referred to Collector Stamp after being pointed out by audit while the remaining cases would be referred to the Collector Stamp for examination.

**e) Partition deeds misclassified as Release deeds**

As per Section 2 (15) of IS Act, 1899, Instrument of Partition means any instrument, whereby co-owners of any property divide or agree to divide such property in severalty. Further, the partition is possible between the co-owners who do not have an absolute or equal rights therein. As per article 45 of Schedule IB, of IS Act 1899, SD payable on instrument of partition other than family members is seven *per cent* for a sum equal to the amount or value of the separated share or shares of the property. In the case of family members<sup>10</sup> the SD payable is one *per cent*, subject to maximum of ₹ one lakh on instrument valued up to ₹ 10 crore and ₹ three lakh on instrument valued more than ₹ 10 crore within the municipal limit and outside the municipal limit, the SD payable is 0.25 *per cent* subject to maximum of ₹ 25,000, while the RF is payable at the rate of two *per cent* of value of the property, subject to maximum of ₹ 25,000.

It was observed in two cases<sup>11</sup> of two offices that there were partitions among the co-owners of the property and the same were misclassified as Release deed. It resulted in short levy of SD and RF of ₹ 4.06 lakh.

During the exit conference (February 2023), the Government accepted the observations and replied that both the cases would be referred to the Collector Stamp for examination.

**3.1.8.2 Short levy of SD and RF due to misclassification of Mortgage deeds**

Scrutiny of 180 mortgage Deeds executed in nine SROs revealed that relevant provisions of the IS Act 1899 regarding classification of documents were not adhered to in 61 deeds. It resulted in short levy of SD and RF of ₹ 25.86 lakh.

<sup>10</sup> Notification No. 35/XXVII (9)/2011/Stamp-20/2010 dated 24 January 2011.

<sup>11</sup> Deed nos. 657/2020, ₹ 3.48 lakh SR-III Dehradun & 134/2021, ₹ 0.58 lakh SR Rishikesh.

***a) Misclassification of Mortgage without possession deeds as Mortgage with possession deeds***

Articles 40 (a) and 40 (b) of Schedule IB of Indian Stamp Act, 1899 classify the documents of Mortgage with or without possession. When possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given, the SD payable is five *per cent* on the amount secured by such deed while mortgage without possession attracts the SD of seven *per cent* and RF payable is two *per cent* on the amount secured by such deed, subject to maximum of ₹ 25,000.

It was observed in 46 cases in six SROs that there was misclassification of Mortgage without possession documents as mortgage with possession documents. It resulted in a short levy of SD of ₹ 20.35 lakh (***Appendix -3.1.4***).

During the exit conference (February 2023), the Government accepted the observations and replied that cases at Sl. no 30 to 44 of ***Appendix- 3.1.4*** had been referred to the Collector Stamp after being pointed out by audit, while the cases at Sl. no. 1 to 29 and 47 would be referred to the Collector Stamp for examination. Further, in respect of cases at Sl no. 45 and 46, Government replied that these were the cases related to deposit of title deeds as the same had been mentioned in the deeds. The reply is not acceptable as the deed was shown under Article 40 of the IS Act 1899 and the SD was levied at the rate of five *per cent* instead of seven *per cent*.

***b) Levy of stamp duty on mortgaged property in lieu of the secured amount***

When possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given, the SD is payable on the amount secured by such deed and the market value of the property is not considered for this purpose. It was observed during scrutiny of a deed<sup>12</sup> that a loan amount of ₹ 30 lakh was sanctioned but the value of mortgaged property was ₹ 8,96,000 which was less than the loan amount. Further, SD at the rate of seven *per cent* was levied on ₹ 8,96,000 instead of ₹ 30 lakh, which was secured by the deed. Thus, it resulted in short levy of SD and RF of ₹ 1.54 lakh.

During the exit conference (February 2023), the Government accepted the observation and replied that the case would be referred to the Collector Stamp for examination.

***c) Levy of stamp duty on Mortgage deed as applicable to the Bond***

As per Article 40 (b) of Schedule I B of IS Act 1899, SD payable on Mortgage without possession is the same as applicable to the Bond<sup>13</sup> for the amount secured by such deed. SD payable on bond was reduced to four *per cent* on the amount vide Notification No K.S.B. -5-3706/11-1998, dated 31 August 1998. It was specifically mentioned in the said Notification that the reduced rates would apply only to instruments covered by Article 15 and not to any other class of instruments chargeable under any other Article, even though chargeable to duty as a Bond.

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<sup>12</sup> Deed no 5488/2021, SR Rudrapur.

<sup>13</sup> 'Bond' includes any instrument whereby person obliges himself to pay money to another.

It was observed in 14 cases in three SROs that SD at the rate of four *per cent* instead of seven *per cent* was levied on the documents registered as mortgage deed by calculating the SD as applicable to the Bond. It resulted in short levy of SD of ₹ 3.97 lakh (*Appendix-3.1.5*).

During the exit conference (February 2023), the Government accepted the observations and replied that cases at sl. no 1 to 5 had been referred to Collector Stamp after being pointed out by audit, while the cases at sl no. 6 to 14 would be referred to the Collector Stamp for examination.

### **3.1.8.3 Short levy of SD and RF due to misclassification of New Instruments as Correction Instruments**

As per Article 34 A of Schedule I B of Indian Stamp Act, 1899, an error of purely clerical in nature in an instrument can be rectified by Correction/Rectification Deed. The correction deed does not result in change in the right and legal position of the parties, description of property, area of the property as compared to original deed. Further, as per Rule 350 of Registration Rules as mentioned in Registration Manual of Uttarakhand, where the deed is altered after registration by the consent of parties to correct an error of description and in furtherance of original intention, such alteration makes the document new one as different from the one already registered. The SD and RF on the altered document are to be levied afresh. SD and RF to be payable on correction deed is ₹ 100 each while the new instrument<sup>14</sup> attracts SD according to nature of transaction as mentioned in schedule I B of IS Act 1899 related to Section 3 of IS Act 1899 and the RF is payable at the rate of two *per cent* of value of the property, subject to maximum of ₹ 25,000.

Scrutiny of 655 correction instruments executed in 13 SROs revealed that in 125 cases of 13 offices there were material alterations i.e in area, dimension, boundaries, change of name of seller, purchaser, village, Khasra number, khet number, plot number, location etc. Further, new facts were found to have been incorporated in the correction deeds as compared to original deeds and despite that the same were still classified as correction deeds. However, the same should have been classified as new instruments. It resulted in short levy of SD and RF of ₹ 1.01 crore (*Appendix-3.1.6*).

During the exit conference (February 2023), the Government accepted audit observations in 95 cases out of total 125 and replied that 13 cases had been referred to the Collector Stamp after being pointed out by audit while 82 cases would be referred to the Collector Stamp for examination. In the remaining 30 cases, the Government replied that the corrections were clerical in nature and cited that supplementary deeds were executed to correct an error of description under Rule 351 of Uttarakhand Registration Manual.

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<sup>14</sup> 'Instrument' includes every document and record created or maintained by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished, or recorded.

The reply is not acceptable as there were material<sup>15</sup> alterations in these deeds also as compared to the corresponding original deeds, which were in furtherance of their original intention, thereby rendering these deeds new, as per Rule 350 of Uttarakhand Registration Manual.

#### **3.1.8.4 Short levy of SD and RF due to misclassification as Settlement deeds**

Scrutiny of 46 Settlement Deeds executed in eight SROs revealed that relevant provisions of the IS Act 1899 regarding classification of deeds as settlement deeds were not adhered to in 14 deeds. It resulted in short levy of SD and RF of ₹ 33.78 lakh.

##### **a) Misclassification as Settlement deeds**

As per one of the essential conditions as mentioned in Section 2 (24) of IS Act 1899, Settlement means any non-testamentary<sup>16</sup> disposition<sup>17</sup> in writing of movable or immovable property for the purpose of distributing of property of settler among his family, or those for whom he desires to provide, or for the purpose of providing for some person dependent on him. It should be executed by a person who is the sole owner of the property, and the beneficiaries are members of his family or those for whom the settler wants to provide. It is not executed to settle the family dispute. As per Article 58, SD to be payable on an instrument of Settlement other than family members is seven *per cent* for a sum equal to the amount or value of the property settled while in the case of family member the same is 0.5 *per cent*<sup>18</sup>, maximum ₹ one lakh on instrument valued up to ₹ 10 crore and ₹ three lakh on instrument valued more than ₹ 10 crore and the RF is two *per cent* for a sum equal to the amount or value of the property settled subject to maximum of ₹ 25,000.

Audit observed that there were three cases<sup>19</sup> of partition among the co-owners of the property of which two were among non-family members and all these cases were classified as Settlement deeds and SD of ₹ 1,000 was found to have been paid in one case involving family members. Further, in the remaining two cases of non-family members SD of ₹ 1,100 each was paid. The SDs paid in these cases are applicable neither to partition nor to settlement within or outside the family. However, these deeds were classified as Settlement deeds. It resulted in short levy of SD of ₹ 10.16 lakh.

During the exit conference (February 2023), the Government accepted the observations and replied that all the cases would be referred to the Collector Stamp for examination.

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<sup>15</sup> Material alterations include change in measurement, boundaries, plot number, area etc. as detailed in *Appendix 3.1.6*.

<sup>16</sup> 'Non testamentary' means an instrument that is not meant to come into operation after the death of the executant.

<sup>17</sup> Disposition conveys the idea of transfer.

<sup>18</sup> Notification No.36/XXVII (9)/2011/Stamp-20/2010 dated 24 January 2011

<sup>19</sup> Deeds No.3221/2019 (₹ 99 lakh), 9083/2021(₹ 4.06 lakh) and 7162/2021 (₹ 5.11 lakh) of SR-I Vikasnagar

**b) Cases involving other than family members were misclassified as settlement among the family members**

Audit observed in two cases<sup>20</sup> of two offices that the Settlement deeds among other than family members were misclassified as cases among the family members. It resulted in short levy of SD of ₹ 3.01 lakh.

During the exit conference (February 2023), the Government accepted the observations and replied that the cases would be referred to the Collector Stamp for examination.

**c) Misclassification of Gift deeds as instrument of Settlement**

As per Section 122 of Transfer of Property Act 1882, Gift is the transfer of certain existing movable or immovable property made voluntarily and without consideration by donor to donee. Further, Article 33 of Schedule I B of IS, Act 1899 covers the transaction related to Gift deed. SD payable on Gift deed is five *per cent* of the market value of the property while one *per cent* in the case of family member. The RF chargeable is two *per cent* of the market value of the property subject to maximum of ₹ 25,000.

Audit observed that there were six cases of transfer of property by one of the co-owners in favour of others through settlement deeds of which five cases were among the family members. The facts of the documents revealed that these were cases of partition and also involved transfer of properties through Gift deeds. However, the facts related to Gift deeds were not taken into consideration while registering the documents which resulted in short levy of SD and RF of ₹ 4.17 lakh (*Appendix-3.1.7*).

Further, it was observed in three cases<sup>21</sup> that deeds which were executed to avoid family disputes were classified as Settlement deeds, whereas the same should have been classified as Gift deed. It resulted in short levy of SD and RF of ₹ 16.44 lakh.

During the exit conference (February 2023), the Government accepted the observations and replied that all the cases would be referred to the Collector Stamp for examination.

**3.1.8.5 Short levy of SD & RF due to misclassification as Partition deeds**

Scrutiny of 39 Partition Deeds executed in 13 SROs revealed that relevant provisions of the IS Act 1899 regarding classification of Partition deeds were not adhered to in 15 deeds. It resulted in short levy of SD and RF of ₹ 39.84 lakh.

**a) SD on Partition deed was levied as applicable to Gift deed**

As per article 45 of Schedule IB, of IS Act 1899, SD to be payable on instrument of partition other than family member is seven *per cent* for a sum equal to the amount or value of the separated share or shares of the property and the RF is two *per cent* on the largest share remaining after the property is partitioned subject to maximum of ₹ 25,000 while the SD payable on Gift deed under Article 33 is five *per cent* of the market value of the property.

<sup>20</sup> Deeds No.498/2021 (₹ 2.26 lakh) of SR III DDN & 3222/2021(₹ 0.74 lakh) of SR Rishikesh.

<sup>21</sup> Deeds No.6350/2019 (₹ 1.21 lakh) & 5674/2021(₹ 9.11 lakh) of SR Rudrapur and 5152/2020 (₹ 6.12 lakh) of SR III DDN.

Audit observed in three cases<sup>22</sup> that there was partition among the non-family members and SRO applied SD on the same treating them as Gift deeds. It resulted in short levy of SD and RF of ₹ 8.47 lakh.

During the exit conference (February 2023), the Government accepted the observations and replied that all the cases would be referred to the Collector Stamp for examination.

***b) Misclassification of Non-agricultural land as agricultural land in Partition deed***

As per the general instructions on circle rates of the property, issued by the concerned District Collector, agricultural land will be assessed at the non-agricultural rate if area of the property being transferred is 1,000 Sq. Metre or less. Besides, agricultural land situated outside an urban area will be assessed at the non-agricultural rate if area of the property being transferred is 500 Sq. Metre or less.

Audit observed in five cases of two offices that there was partition of the property among the co-owners of the property. The share of the co-owners of the property after the partition was less than 500 Sq. Metre and the same was situated outside the urban area. Agricultural rates were applied for valuation of the separated shares rather than the non-agricultural rate. Thus, it resulted in short levy of SD and RF of ₹ 5.52 lakh (*Appendix-3.1.8*).

During the exit conference (February 2023), the Government accepted the observations and replied that all the cases would be referred to the Collector Stamp for examination.

***c) Partition cases involving other than family members were misclassified as Partition among the family members***

SD payable on instrument of Partition other than family member is seven *per cent* for a sum equal to the amount or value of the separated share or shares of the property, while in the case of family members the same is one *per cent*, maximum ₹ one lakh on instrument valued up to ₹ 10 crore and ₹ three lakh on instrument valued more than ₹ 10 crore within the municipal limit & outside the municipal limit is 0.25 *per cent* and maximum of ₹ 25,000 while the RF is two *per cent* on the largest share remaining after the property is partitioned subject to maximum of ₹ 25,000.

Audit observed in three cases<sup>23</sup> that partition deed among other than family members was misclassified as among the family members. It resulted in short levy of SD and RF amounting to ₹ 23.47 lakh. Further, audit could not calculate the SD and RF in a deed<sup>24</sup> as the area of the land being partitioned was not mentioned.

During the exit conference (February 2023), the Government accepted the observations and replied that all the cases would be referred to the Collector Stamp for examination.

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<sup>22</sup> Deeds No.4229/2019, ₹ 0.56 lakh, 3866/2020, ₹ 0.61 lakh, 7204/2020, ₹ 7.3 lakh, SR Rishikesh.

<sup>23</sup> Deeds No.2807/2020, ₹ 0.82 lakh SR-I Vikasnagar,4073/2020, ₹ 4.25 lakh SR-II, Dehradun, 1996/2020, ₹ 18.40lakh,SR Sitarganj.

<sup>24</sup> Deed no. 6257/2021.

***d Instruments misclassified as Partition deed in which the owners were not the co-owners of the property***

As per Section 2 (15) of IS Act, 1899, Instrument of Partition means any instrument, whereby co-owners of any property divide or agree to divide such property in severalty. The essence of the partition is that the joint ownership must be substituted by separate ownership of the erstwhile co-owners. Further, the partition is possible between the co-owners who do not have absolute or equal rights therein.

Scrutiny of a Partition Deed<sup>25</sup> executed in the office of SR-II Dehradun revealed that three properties were purchased separately through three deeds executed by two persons each and the same were treated as joint property. Further, the property already having separate ownership was partitioned among first party and the second party comprising three persons and two persons respectively. However, they were not the co-owners of the property and the instrument should have been registered as a gift deed. Thus, it resulted in short levy of additional SD and RF of ₹ 0.45 lakh.<sup>26</sup>

During the exit conference (February 2023), the Government accepted the observation and replied that the case would be referred to the Collector Stamp for examination.

***e Property given through consent to other co-owners was misclassified as partition deed***

Scrutiny of two Partition Deeds<sup>27</sup> executed in the office of SR-II Dehradun revealed that mother and her two sons were the joint owners of the property. Mother gave her share in the property to the sons through consent and the property was partitioned among the sons. The property could have been partitioned among the sons only after mother had gifted her share to the sons. Thus, the share of mother needs to be treated as gift deed prior to partition. It resulted in short levy of additional SD and RF of ₹ 1.93 lakh<sup>28</sup>.

During the exit conference (February 2023), the Government accepted the observations and replied that both the cases would be referred to the Collector Stamp for examination.

***3.1.8.6 Short levy of RF due to misclassification of distinct shares as single shares***

As per Section 78 of Registration Act, 1908, State Government shall fix a fee for the registration of the documents. The RF payable is 2 per cent of the consideration or the market value of the property whichever is higher subject to maximum of ₹ 25,000. Any instrument executed by several persons in which their shares are distinct, or their part is specified shall be chargeable with the aggregate amount of RF with which separate instruments, each comprising or relating to one of such matter, would be chargeable under this Act.

<sup>25</sup> Deed no. 2023/2019.

<sup>26</sup> SD ₹ 4,200 + ₹ 4,200 + ₹ 6,620 = ₹ 15,020, RF ₹ 8,390 + ₹ 8,390 + ₹ 13,238 = ₹ 30,018, SD+RF ₹ 15,020+₹ 30,018=₹ 45,038.

<sup>27</sup> Deed no. 4006/2021, 1657/2022.

<sup>28</sup> SD to be paid, (₹ 1,09,08,841+₹ 33,57,667)x1 Per cent=₹ 1,42,665 say ₹ 1,42,670, RF to be paid, ₹ 25,000+₹ 25,000= ₹ 50,000.

Audit observed in 16 cases of eight offices that instruments of transfer of property were executed by several persons, each having separate shares or the part in the property. However, separate RF was not charged on such instruments. It resulted in short levy of RF of ₹ 8.30 lakh of which, ₹ 0.75 lakh had been deposited in three cases<sup>29</sup> after being pointed out by audit (*Appendix-3.1.9*).

During the exit conference (February 2023), the Government accepted the observations and replied that out of 16 cases, an amount of ₹ 0.75 lakh had been realized in three cases after being pointed out by audit, two cases had been referred to the Collector Stamp after being pointed out by audit and 10 cases would be referred to Collector Stamp for examination. Further, in one case at sl no.9, it was replied that all the seller and consenter had jointly received the consideration. Thus, separate registration fee was not leviable. The reply about consideration received is not acceptable as both had separately received the consideration.

#### **3.1.8.7 Short levy of SD and RF due to misclassification of family transfer cases**

Audit observed in five cases of three SROs that relevant provisions of the IS Act 1899 regarding classification of documents related to transfer within family were not adhered to in five deeds. It resulted in short levy of SD and RF of ₹ 9.58 lakh.

##### **a) Transfer of property to non-family members misclassified as transfer within the family**

The Government of Uttarakhand issued a Notification No. Finance Division-9/No.34/XXVII (9)/2010/Stamp-20/2010 dated 24 January 2011 related to levying of SD at the rate of 0.25 per-cent of consideration or market value of the property whichever is higher subject to maximum of ₹ 1,000 on sale deed executed among the family members who are the co-owners of the property and their parts are specified in the property. The RF payable is two *per cent* of the consideration or the market value of the property whichever is higher subject to a maximum of ₹ 25,000.

Audit observed in two cases<sup>30</sup> of one office that sale deeds were executed among non-family members but the same were treated as within the family members. Accordingly, the SD of only ₹1,000 was levied while the SD at the rate of five *per cent* was leviable on the consideration or market value whichever is higher. Further, in one case<sup>31</sup>, it was found that the sale deed was executed by the family members who were not co-owners of the property. It resulted in short levy of SD and RF of ₹ 2.14 lakh.

During the exit conference (February 2023), the Government accepted the observations and replied that all the three cases would be referred to the Collector Stamp for examination.

##### **b) Transfer of property without consideration was misclassified as sale deed among the family members**

As per Section 54 of Transfer of property Act 1882, sale is defined as transfer of ownership in exchange for price paid or promised or part paid, and part promised.

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<sup>29</sup> Deeds no. 755/2020 SR II Dehradun, 523/2021 and 4773/2021 SR III Roorkee.

<sup>30</sup> Deeds No.7263/2020, ₹1.52 lakh & 3314/2019, ₹ 0.39 lakh of SR Rishikesh.

<sup>31</sup> Deed No.1380/2021, ₹ 0.23lakh, SR I Vikasnagar.

Audit observed in two cases<sup>32</sup> of one office that there was transfer of property among the family members without any sale price and the same was categorized as sale deed. As there was no sale price, it should have been classified as gift deed on which SD is to be levied at the rate of one *per cent* on the market value of the property instead of ₹ 1,000. It resulted in short levy of SD and RF of ₹ 7.44 lakh.

During the exit conference (February 2023), the Government accepted the observations and replied that both the cases would be referred to the Collector Stamp for examination.

### **3.1.8.8 Short levy of SD & RF due to misclassification of Power of Attorney (POA) with irrevocable authority as Power of Attorney with revocable authority**

As per Article 48 (e) and (ee) of Schedule I B of IS Act 1899, when the POA is given either for consideration or through irrevocable authority to sell immovable property, the SD thereon shall be payable at the rate of conveyance i.e five *per cent* of the amount of consideration or of the market value of the property and RF is two *per cent* on the amount of consideration or on the market value of the property whichever is higher, subject to maximum of ₹ 25,000.

Scrutiny of a sale deed<sup>33</sup> revealed that Attorney sold the immovable property through POA. Further, the POA executed through deed<sup>34</sup> was found as revocable and SD and RF of ₹ 50 each were paid. However, the whole amount of the transaction was received by the Attorney, as mentioned in the affidavit. So, it should have been classified as POA with irrevocable authority on which SD at the rate of five *per cent* of the market value of the property was to be levied and RF was payable. It resulted in short levy of SD and RF of ₹ 22.12 lakh<sup>35</sup>.

During the exit conference (February 2023), the Government accepted the observation and replied that case would be referred to the Collector Stamp for examination.

### **3.1.9 Deficiency in role and responsibility of various authorities**

**As per paragraph 81 of the Uttarakhand Budget manual**, it is the duty of the controlling officer of the department to see that all sums due to the Government are regularly and promptly assessed, realized and duly credited to the Government account.

**As per paragraph 82 of appendix XIX B of Financial Handbook Volume V part I**, Government servant realizes fully and clearly that he will be held personally responsible for any loss sustained by Government through fraud or negligence on his part, and that he will also be held personally responsible for any loss arising from fraud or negligence on the part of any other Government servant to the extent to which it may be shown that he contributed to the loss by his own action or negligence.

<sup>32</sup> Deeds No. 1727/2020 & 1728/2020, both of ₹ 3.72 lakh each of SR Rudrapur.

<sup>33</sup> Deed no.3889/2019, SR, Rudrapur.

<sup>34</sup> Deed no. 108/2018 registered in Book IV.

<sup>35</sup>  $3.9770 \text{ Hectare} \times ₹ 1,10,00,000 = ₹ 4,37,47,000 \times 5 \text{ per cent} = ₹ 21,87,350-50 + ₹ 25,000-50 = ₹ 22,12,250.$

**Recovery from the Uttarakhand Government Servant-** As per point 3 (a) of Uttarakhand Government servant service Rule 2003, loss arising due to violation of orders by the government servant should be completely or partially recovered from him.

**Rules related to administration and superintendence-**The IGR has been empowered under Rule 69 of the Registration Act for the administration and superintendence of the SROs. As per Rule 285 of Uttarakhand Registration Manual, SR is to ensure that documents presented for registration are properly stamped and Rule 385 and 387 of Uttarakhand Registration Manual enables the District Registrars (DR) to examine the records and registers at SROs to ensure that registered documents were duly stamped.

These rules enable the authorities to detect and prevent the mistakes at an earlier stage to minimize loss. The lapses pointed out in paras 3.1.7 and 3.1.8 related to systemic and compliance issues respectively show that Controlling Officer did not effectively discharge his duties as envisaged in para 81 of Budget Manual and Rule 69 of the Registration Act. Further, DR and SR did not ensure that documents presented for registration were duly stamped as envisaged in Rule 385, 387 and 285 of the Uttarakhand Registration Manual respectively.

Thus, inability on the part of the authorities to effectively monitor and supervise the functioning of the SROs effectively that resulted in the occurrence of large number of mistakes in test checked documents which caused revenue loss to the government.

### **3.1.10 Conclusion**

Audit noticed a number of systemic issues i.e. no provision for linking correction deed with its original deed in the software, no Integration of Bhulekh records with the Registration system to verify the land records, no web service link with Electoral authority, Income tax authority, Transport authority and UID for verification of identity and reference of cases of misclassification of instruments to Collector, Stamp under inappropriate sections of the Stamp Act. Besides, compliance issues related to short levy of SD and RF due to misclassification of documents were noticed i.e. release, mortgage, correction, settlement and partition deeds, distinct shares, family transfer cases and power of attorney cases.

Thus, the relevant provisions of the Acts, Rules and Manuals were not strictly adhered to by the Registering Authorities for classification of the documents for levying appropriate SD and RF, which resulted in loss of revenue to the State Government of ₹ 6.63 crore.

### **3.1.11 Recommendations**

***The State Government may consider:***

- ***The registration software may be upgraded to incorporate linking correction deed with its original deed, Integration of Bhulekh records with the Registration system to verify land records and web service link with Electoral***

*authority, Income tax authority, Transport authority and UID for verification of identity;*

- *The SROs should thoroughly examine the documents prior to registration regarding applicability of stamp duty on documents rather than referring the cases to the Stamp Collector under inappropriate section of the Act after registration of the documents;*
- *The Stamp Collector should take into cognizance the cases referred under inappropriate section and IGR may issue direction to the SRs to refer the cases as per the provision of the Act;*
- *Further, IGR should fix norms for examining for each type of deed by AIG at the time of inspection to detect mistakes at the initial stage;*
- *The Government/Department may, therefore, undertake a thorough review of all units to check whether similar errors/omissions have taken place elsewhere and if so, to rectify them.*

## MINING DEPARTMENT

### 3.2 Non recovery of royalty

***Undue benefit of ₹ 10.04 crore was allowed to the brick kiln operators due to non-recovery of royalty.***

As per rule 7 (1) of Uttarakhand sub-mineral (sand, gravel, boulder, brick etc.) policy, 2015<sup>36</sup>, the production of bricks from the brick kilns will be calculated on the basis of pillars of the brick. The calculation will be done by setting the standard of 20 lakh bricks production for minimum 15 pillars and assuming an additional one lakh bricks per pillar from the brick kiln. Further, the rate of royalty on bricks was fixed at ₹ 100 per thousand bricks produced by amending Uttarakhand minor minerals (concession) (amendment), rules 2016<sup>37</sup>.

Scrutiny of records of District Mining Officers (DMOs), Haridwar (October 2020 and August 2021) and Udham Singh Nagar (September 2021) revealed that brick kiln operators did not deposit the royalty for production of bricks in accordance with the provisions of above notifications. The details are given below:

- (a) During audit of DMO, Haridwar, it was noticed that 81.86 crore bricks were produced by 148 brick kiln operators during the year 2019-20 and 2020-21 against which royalty of ₹ 8.19 crore was payable as per the prescribed rate, but no royalty was deposited by the said kiln operators (sl. no. 1 and 2 of ***Appendix-3.2.1***). Further, in DMO, U S Nagar it was also noticed that eight brick kiln operators did not deposit any royalty for the year 2020-21, though 2.24 crore bricks were produced against which ₹ 0.22 crore royalty was due to be deposited by the kiln operators (sl. no. 5 of ***Appendix-3.2.1***).

<sup>36</sup> Issued vide Office Memorandum no. 1033/VII-1/2015/146-kha/2010 dated 31 July 2015.

<sup>37</sup> By notification number 1754/VII-1/16/24-kha/07 TC dated 08 December 2016.

(b) Scrutiny of records of DMO, Udham Singh Nagar revealed that ₹ 1.20 crore<sup>38</sup> royalty was deposited by kiln operators during the year 2019-20 & 2020-21 against the royalty of ₹ 2.83 crore due for the production of 28.34 crore bricks by kiln operators<sup>39</sup> (sl. no. 3 and 4 of *Appendix-3.2.1*).

Thus, undue benefit of ₹ 10.04 crore was allowed to the brick kiln operators.

The Government (July 2023) stated that a comprehensive proposal from the Directorate of Geology and Mining had been received and is under review. A decision on this matter will be communicated to audit in due course of time.

## REVENUE DEPARTMENT

### 3.3 Irregular expenditure

#### *Irregular expenditure of ₹ 4.23 crore was incurred by the Commissioner, Kumaon Division in renovation work of the Commissioner's office*

As per Delegation of Financial Powers Rules, 2018, the Government's sanction is required to incur any expenditure on government building. Further, as per Financial Handbook Vol VI, permanent Government building may be dismantled under the order of the Government or any subordinate authority to whom power has been delegated. Still further, Uttarakhand Procurement Rules 2018, require that any original work, repair, or maintenance work should not be commenced until administrative approval is obtained from the competent authority; a properly detailed design has been approved; estimates containing the detailed specification and quantities of various items have been approved by PWD or any other specialised agency.

As per para 12 (iii) of Uttarakhand Budget Manual no authority should exercise its power of sanctioning to pass an order directly or indirectly to its own advantage.

As per Uttarakhand Budget Manual, expenditure involved on a new scheme, in the adoption of a new policy, provision of a new facility, or any substantial alteration in character or extent of an existing facility will normally be treated as constituting "New Expenditure". Volume III of the State Budget has a grant wise list of 'New Expenditure.'

As per Budget Manual, new projects/New Expenditure must undergo detailed scrutiny on parameters such as cost-benefit analysis, availability of costing norm, recurring expenditure and its composition, economic and financial viability, value for money.

Scrutiny of records (April 2022) of Commissioner, Kumaon Division, Nainital (Commissioner) revealed that the Commissioner's office was renovated at a cost of

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<sup>38</sup> Royalty of ₹ 48.50 lakh was deposited by 52 brick kiln operators during the year 2019-20 and royalty of ₹ 71.55 lakh was deposited by 53 brick kiln operators during the year 2020-21.

<sup>39</sup> 52 brick kiln operators during the year 2019-20 and 53 brick kiln operators during the year 2020-21.

₹ 4.23 crore. The cost of renovation was borne by the District Development Authorities of Nainital and Udham Singh Nagar<sup>40</sup> in the ratio of 50:50.



*Renovation work of office building of Commissioner Kumaon*

The said renovation had following irregularities:

- Government's approval/sanction as envisaged in para 3.12 of Delegation of Financial Powers, 2018 and para 40(1) of Uttarakhand Procurement Rules was not obtained,
- Government's approval/sanction before dismantling/demolition of a part of office building, as envisaged under para 280 of Financial Handbook vol VI, was not obtained,
- Dismantled material was disposed off without government's sanction/approval,
- There was no assurance that the said renovation was as per the technical specifications and as per the scales/ specifications applicable to government non-residential buildings, since Government's sanction/approval was not obtained.

On being pointed out, the Government forwarded the Commissioner's reply. Similarly, the Commissioner in his reply forwarded the reply of District Development Authority without offering his own comments. The DDA in its reply stated that in the 8<sup>th</sup> Board meeting<sup>41</sup> of DDA, Nainital, it was decided to renovate the office building of Chairman, DDA, Nainital (Divisional Commissioner in ex-officio capacity). Accordingly, a contract<sup>42</sup> of ₹ 63.90 lakh was entered into (October 2020) for the said

<sup>40</sup> Commissioner Kumaon has been delegated the duty of Chairman, DDA Nainital and Chairman, U.S. Nagar through Notification no 1814(2)/V-2/05(आ०) and 1814(2)/V-2/05(आ०) dated 13 November 2017 respectively.

<sup>41</sup> Held on 08 June 2020.

<sup>42</sup> Selected through E-tendering, agreement number 05/2020-21.

work. Further, the Board in its 11<sup>th</sup> meeting and 13<sup>th</sup> meeting approved the revised estimates of ₹ 3.12 crore and ₹ 4.95 crore respectively, for the said work. DDA Nainital claimed that these decisions were according to clause IV<sup>43</sup> of the “Uttarakhand Urban and Country Planning and Development Act, 1973” (Act) and hence, the approval was not obtained from any other authority.

The reply is not acceptable as financial rules relating to incurring of expenditure on government buildings were not followed. Further, clause 4 of the said Act advocates development of the notified area in terms of town planning and this cannot be interpreted to empower the District Development Authority to modify/alter/demolish any Government premises without the approval of competent authority. Further, the Commissioner violated canons of financial propriety as mentioned in para 12 (iii) of Budget Manual.

Thus, the Commissioner Kumaon Division (Ex-officio Chairman of the DDA, Nainital and Udham Singh Nagar) used funds of DDA, Nainital and US Nagar to incur an irregular expenditure of ₹ 4.23 crore on renovation works of the government office building.

### **3.4 Subject Specific Compliance Audit on establishment and utilisation of Modern Record Rooms under Digital India Land Records Modernization Programme**

Ineffective planning at the departmental level resulted in incomplete execution of work for the establishment of Modern Record Rooms (MRRs) in pilot districts. The equipment/material installed by the firm in MRRs were found to be idle resulting in expenditure incurred by way of payment of ₹ 2.75 crore to the firm against the contracted amount of ₹ 4.82 crore turning unfruitful. In violation of Uttarakhand Procurement Rules, Mobilization Advance was made available to the firm not only without interest but also without Bank Guarantee. Apart from the pilot districts, there was unnecessary delay in execution of civil work in setting up of MRRs in rest of the districts of the State. Besides, frugality was not adhered to in execution of civil work resulting into gratuitous expenditure of ₹ 1.48 crore. During centralized procurement for setting up of MRRs, unnecessary and extra material was purchased which had not been put to use for two years and expenditure of ₹ 13.80 crore incurred on the said procurement was futile.

#### **3.4.1 Introduction**

The National Land Records Modernization Programme (NLRMP), approved in 2008, was formulated by merging two schemes namely Computerization of Land Records (CLR) and Strengthening of Revenue Administration and Updating of Land Records (SRA&ULR) and has since been revamped as a Digital India Land Records Modernization Programme<sup>44</sup> (DILRMP). The Programme contains various components which in effect translated into following activities:

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<sup>43</sup> The State Government may by notification in the Gazette constitute for the purposes of this Act, an authority to be called the ‘Uttarakhand Housing and Urban Development Authority’ for all the development areas in the State with headquarter at such place as the State Government may specify and Local Development Authority for any development area.

<sup>44</sup> A Central Sector Scheme with cent *per cent* Central funding with effect from 01 April 2016.

(i) computerization of records of rights; (ii) digitization of cadastral maps; (iii) integration of records of rights and cadastral maps; (iv) Survey/resurvey; (v) modern record rooms; (vi) computer centres at tehsil, sub-division, district and data centre at state level; (vii) connectivity between revenue offices; (viii) computerization of registration and connectivity between sub-registrar offices and tehsils; (ix) integration of registration and land records.

Audit of the Chairman, Board of Revenue, Uttarakhand, Dehradun was conducted in November 2021. Besides, physical inspection was carried out in three districts (four tehsils in each district of Pauri, Tehri and Nainital). Scrutiny of records pertaining to establishment of Modern Record Rooms (MRRs), a major activity under the DILRMP, revealed that MRRs were to be set up in all the 128 Tehsil offices of the State and these were to be established/upgraded with compactors/storage devices for physical storage of records and maps, an operational area with computers/servers, storage area network (SAN), printers, etc., and a public services area for waiting/reception as prescribed in the guidelines. For the said purpose, the Board of Revenue, Uttarakhand, Dehradun fixed (November 2015) the minimum requirement of space of MRRs in each Tehsil as 700 sq. ft<sup>45</sup>.

### **3.4.2 Audit Objectives**

The audit objectives were to ascertain whether:

- Adequate care was taken to address all relevant issues in pre-implementation stage of programmes/schemes.
- The funds allocated were expended economically and effectively.
- The relevant rules, notifications, guidelines and orders have been complied with in execution of works.
- Procurement of equipment/goods was prudent, and procedures ensured transparency in selection of vendors.

### **3.4.3 Financial position of MRR Component under DILRMP as on 31 March 2022**

Financial position of MRR Component under DILRMP as on 31 March 2022 is given in **Table-3.4.1**.

**Table-3.4.1: Financial position of MRR Component under DILRMP as on 31 March 2022**

Sanctioned Amount		Funds Released			Expenditure incurred	Balance Amount
Year of sanction	Amount	Central share	State Share	Total released		
2014-15	500.00	125.00	250.00	375.00	281.11	93.89
2019-20	2,700.00	2,700.00	-	2,700.00	1,379.84	1,320.16
<b>Total</b>	<b>3,200.00</b>	<b>2,825.00</b>	<b>250.00</b>	<b>3,075.00</b>	<b>1,660.95</b>	<b>1,414.05</b>

In June 2014, ₹ 5.00 crore had been sanctioned for setting up MRRs in Pilot Districts of Pauri (Garhwal) and Almora (in 10 Tehsils of each Pilot District) and the said amount was released in three instalments w.e.f. January 2015 to March 2019. Further, an amount of ₹ 27.00 crore was sanctioned (June 2019) for setting up MRRs in rest of 108 Tehsils of the State. The said amount was released in two instalments w.e.f. January 2020 to July 2021.

<sup>45</sup> One room of 500 sq. ft. for storage and operating area and one room of 200 sq. ft. for public service area.

## Audit Findings

Audit findings are discussed in the succeeding paragraphs:

### 3.4.4 Establishment of MRRs in pilot districts

#### 3.4.4.1 Unfruitful Expenditure of ₹ 2.75 crore

As MRRs were to be set up at Tehsil offices in all districts of the State, the Chairman, Board of Revenue, Uttarakhand, Dehradun (Board) initially identified two districts as pilot districts<sup>46</sup> for this purpose. In addition, the Board decided to make centralized procurement of equipment<sup>47</sup> and other required material to be installed in all the MRRs in the State.

Scrutiny of relevant records revealed that an agreement was entered into (June 2017) with a firm<sup>48</sup> for an amount of ₹ 4.82 crore<sup>49</sup> (₹ 24.10 lakh per Tehsil) for execution of work<sup>50</sup> in 20 Tehsils of pilot districts. Work in all the Tehsils was scheduled to be completed by December 2018. Up-to March 2019, an amount of ₹ 3.75 crore<sup>51</sup> was released for the said work at various intervals<sup>52</sup>. However, audit noticed that:

- No work was taken up in eight Tehsils<sup>53</sup> due to non-availability of adequate space, which shows that the contract was awarded to the firm without ensuring availability of adequate space to set up MRRs in Tehsil offices.
- In four Tehsils<sup>54</sup> of district Pauri, where work was completed, it was noticed during joint physical inspection (January 2022) that there was delay in execution of civil/electric works, installation of equipment and scanning of land records, ranging between 11 and 23 months.
- No work related to land records was being carried out in MRRs at respective Tehsils and the equipment installed were found non-functional as depicted in the photographs below.



Figure 1: Tehsil Lansdowne

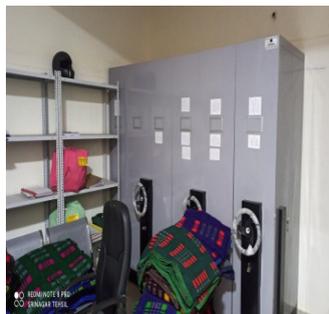


Figure 2: Tehsil Pauri



Figure 3: Tehsil Kotdwar

<sup>46</sup> 10 Tehsils in each pilot district of Pauri and Almora were selected for setting up MRRs and an amount of ₹ 5.00 crore was sanctioned (July 2014), at the rate of ₹ 25.00 lakh per Tehsil, wherein the Central and State share was fixed as 50-50 per cent.

<sup>47</sup> Computer hardware, software, compactor, air conditioner, UPS etc.

<sup>48</sup> GIS consortium India Pvt. Ltd.

<sup>49</sup> ₹ 24.10 lakh x 20.

<sup>50</sup> included civil work and electrification, installation of computer hardware, software, compactors, air conditioners, etc. in MRRs as per the agreement. After establishing the MRRs with the required equipment, the services were also to be provided by the firm with regard to scanning of land records.

<sup>51</sup> central share ₹ 1.25 crore and State share ₹ 2.50 crore.

<sup>52</sup> Released in January 2015, March 2015, and March 2019.

<sup>53</sup> Tehsil Chobattakhal and Chakisain of District Pauri; Tehsil Someshwar, Jainti, Bhanoli, Sult, Almora and syalde of District Almora.

<sup>54</sup> Pauri, Srinagar, Lansdowne, Kotdwar.

The Government accepted (July 2023) that the space for setting up of MRRs was not available in eight Tehsils and stated that after identification of alternate option in these Tehsils, the executing agency refused to start work with the plea that the agency cannot execute the work on the rates quoted/ agreed upon before four years. It was further stated that the final payment has been made to the executing agency and the tender invited by the department has been terminated after completion of work in 12 tehsils only.

The reply of the department is self-explanatory that the work was awarded without assessing the availability of space in the Tehsils. Despite identification of alternate option, no efforts were made to set up MRRs in such tehsils till the date of audit. As the equipment installed in other tehsils were also found non-functional, the entire purpose of establishing MRRs was defeated due to lack of planning at departmental level. The payment of ₹ 2.75 crore made to the firm against the contract remained unfruitful as on date.

#### **3.4.4.2 Grant of Mobilization Advance in violation of Uttarakhand Procurement Rules**

Uttarakhand Procurement Rules, 2017 (Paragraph 53 of Chapter 3) provide that advances to contractors are prohibited and payment should be made only against the work done. However, as an exception, the advances shall be subject to payment of interest, till the amount is deducted or adjusted. A bank guarantee or adjustment of advance should be taken to secure the repayment or adjustment of advance. Further, as per office memorandum<sup>55</sup> issued by Central Public Works Department (February 2007), the mobilization advance should be charged 10 *per cent* simple interest, limited to 10 *per cent* of tendered amount. However, it was found that:-

- The firm was given interest free mobilization advance of ₹ 48.20 lakh (₹ 2.41 lakh per tehsil) for Preparation of Modern record Rooms at 20 Tehsils located in District of Almora and District Pauri, in September 2017 without bank guarantee in contravention to the provisions *ibid*.
- The said advance included ₹ 19.28 lakh for setting up of MRRs in eight Tehsils wherein adequate space was not available for setting up of MRRs. This advance was recovered/adjusted in January 2022 after a lapse of more than four years. Simple interest at 10 *per cent* per annum amounting to ₹ 8.35 lakh<sup>56</sup> was required to be charged on the said irregular payment of ₹ 19.28 lakh. This clearly indicates that irregular payment of advance was made to the contractor for these Tehsils which resulted in blockade of funds to that extent for more than four years.

The Government, while accepting the facts stated (July 2023) that no condition of providing Bank Guarantee against mobilization advance was laid in the tender notice. The reply in itself proves that the Board had ignored the Procurement rules and provided undue favor to contractor by providing interest free Mobilization Advance and excluding the condition of obtaining Bank Guarantee against the same.

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<sup>55</sup> No. DGW/MAN/143 dated 05 February 2007.

<sup>56</sup> 19.28 lakh × 10 *Per cent* × (52 months ÷ 12).

### 3.4.5 Establishment of MRRs in rest of the districts

#### 3.4.5.1 Execution of work without analyzing the actual requirement

On the basis of standards set-in pilot districts, all the District Magistrates (DMs) were directed to ensure the availability of space<sup>57</sup> in tehsils so that the equipment to be procured could be installed at workplace. However, it was noticed that:

An amount of ₹ 27.00 crore<sup>58</sup> was sanctioned (June 2019) for setting up of MRRs in rest of 108 tehsils of the State. The said amount was released in two phases. ₹ 16.20 crore<sup>59</sup> were released in January 2020 and the rest of the amount was released in July 2021. However, on the basis of maximum available space<sup>60</sup>, 65 Tehsils were considered for setting up of MRRs. The rest of the Tehsils, not operating in their own buildings, were not taken up for the said purpose. For execution of civil works<sup>61</sup>, an amount of ₹ 1.48 crore<sup>62</sup> was released to all the concerned District Magistrates during the period from March 2020 to May 2020.

Civil work of MRRs in Tehsil offices had to be carried out under the supervision of DM office. During joint Physical inspection of MRRs, it was revealed that the funds released for the said purpose were utilized on undesirable items of work.

<p>Tiles were laid after removing the marble flooring in Tehsil Tehri, Dhanaulti (district Tehri), Betalghat and Koshya Kutoli (district Nainital).</p>	
<p>MRR in Tehsil Nainital was decorated with wooden false ceiling as depicted in photographs alongside. On this being pointed out, the Government, in its reply, stated (July 2023) that no prescribed standards were given for the work related to the establishment of MRRs in the guidelines of DILRMP scheme issued by the Government of India.</p>	

The reply is not justified as it defeats the fundamental principles of procurement [Uttarakhand Procurement Rules 2008 and 2017 Chapter-1, Para 3 (13)] which envisages that the authority making purchases shall pay strict regard to the ‘Standards

<sup>57</sup> In each Tehsil as 700 sq. ft.

<sup>58</sup> On the basis of ₹ 25.00 lakh per tehsil.

<sup>59</sup> 60 per cent of the sanctioned amount.

<sup>60</sup> Less than 450 sq.feet.

<sup>61</sup> Repair works of available space, partition of rooms, electrical works, painting work etc.

<sup>62</sup> ₹ 2.27 lakh per tehsil for 65 tehsils.

of Financial Propriety'. Besides, the Government money should be used judiciously and not in anticipation of future work. The Board did not carry out the analysis of requirement before commencing work in Tehsil offices and there was a lack of effective internal control monitoring at DM level. Thus, it shows that the funds were utilised without actual requirement.

#### 3.4.5.2 Improper planning in procurement of equipment

The Board also decided to make centralized procurement of equipment<sup>63</sup> and other required material at its own level.

It was noticed that:

- To establish MRRs in Tehsils with the equipment, Board started (December 2019) the process of e-tendering for centralized procurement of computer hardware, software, compactor, AC, UPS, etc. for an amount of ₹ 13.11 crore (with GST) with the below mentioned conditions in tender:

**Healthy competition leads to price reduction and prompts firms to increase quality of products.**

- Supply to the Central or State Government Departments located in Uttarakhand for the last three years.
- Establishment of office and service center in the State of Uttarakhand; and
- Having TIN registration related to Uttarakhand for more than three years.

The above conditions limited the scope of competitive tendering.

Purchase orders for procurement of equipment were issued, in two phases<sup>64</sup>, for an amount of ₹ 13.11 crore without ensuring the setting up of MRRs as per the set standards and even before the commencement of civil work in MRRs.

- The Board was informed (March 2020) that Tehsil Haldwani of Nainital district was to be reconstructed under Chief Minister's announcement and was suggested to set up MRR during the reconstruction work. This fact could not be taken into consideration as the purchase order had already been issued (March 2020) for the said Tehsil. It was found that equipment worth ₹ 20.00 lakh supplied to Tehsil Haldwani in June 2020 were lying idle in sealed boxes.



**Figure 4: Tehsil Haldwani**

- Scrutiny of records revealed that equipment were supplied directly to 65 Tehsils w.e.f. March 2020 to July 2020. Installation of equipment had been completed in only 26 Tehsils and there was an incomplete installation in rest of the Tehsils due to non-completion of civil works in MRRs. ₹ 12.32 crore had been paid to the firm up to April 2021. Audit noticed that even the installed equipment were not put to use due to shortage of staff. Since the equipment had been either dumped or not

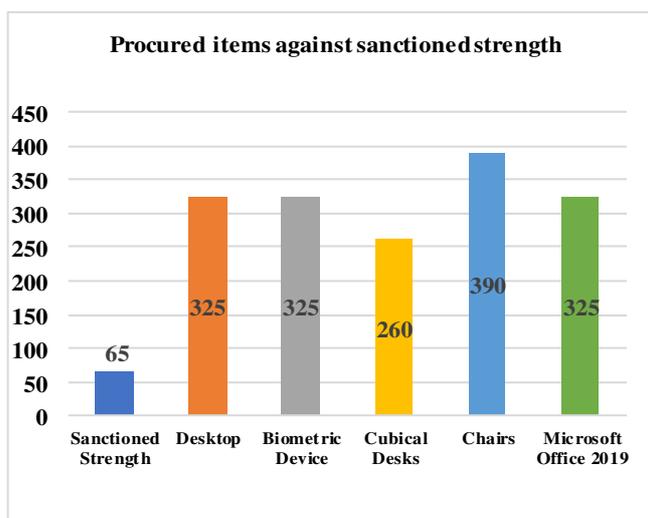
<sup>63</sup> Computer Hardware, Software, Compactor, Air Conditioner, UPS etc.

<sup>64</sup> First phase for 40 tehsils in January 2020 and second phase for 25 tehsils in March 2020.

put to use, the warranty of the equipment was bound to expire within a span of one to five years from the date of supply of the material as well.

- As per the terms of the contract, payment of 90 per cent of the amount, agreed upon, was to be made to the supplier on receipt of the equipment/material and the remaining 10 per cent of the amount due had to be paid after the installation of the same. Scrutiny of relevant records revealed that 90 per cent payment was made to the firm during March 2020 to August 2020 against the supply to all 65 tehsils without checking the required quality standards. The remaining 10 per cent amount had also been paid (April 2021) to the firm against the material supplied and without ensuring the installation of the equipment at the remaining 39 tehsils.

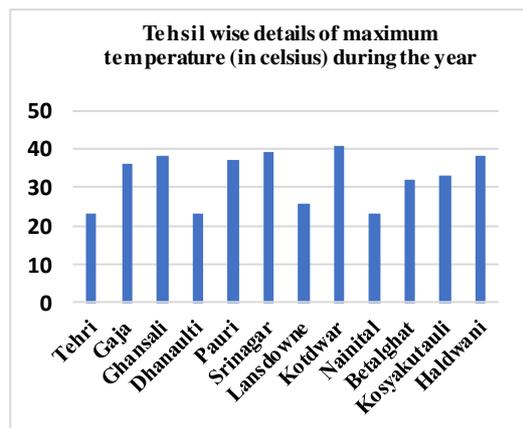
- Purchase orders<sup>65</sup> were issued for delivering equipment<sup>66</sup> at 65 tehsils to be installed in MRRs. The said equipment were delivered in the ratio of five per location against the sanctioned strength of one<sup>67</sup> operator for the required work. Procured items of equipment/material against available staff can be seen in the chart alongside. The fact clearly indicates that procurement was made without adequately



assessing the actual requirement with reference to staff strength resulting in idle as well as wasteful expenditure. Further, procurement in advance was disadvantageous to the department due to early expiry of warranty and non-procurement of equipment having latest technology.

On this being pointed out, the Government stated (July 2023) that the procurement of equipment has not been made in relation to the deployment of computer operators/data entry operators, but in view of the needs of future works and to develop the infrastructure.

The reply is not justified as it defeats the fundamental principles of procurement [Uttarakhand Procurement Rules 2008 and



<sup>65</sup> Order no. 4529/IV-41/2019-20 dated 21 January 2020 and order no. 5417/IV-41/2019-20 dated 06 March 2020.

<sup>66</sup> 390 medium back chairs and 65 four-seater back-to-back workstations (cubical desks). In addition, 325 number Desktops, Biometric devices, and Microsoft Office standard 2019 (This product is part of the Microsoft Open Licensing Program and the purchase of this product provides one perpetual software license).

<sup>67</sup> The sanctioned strength of computer operators in 128 tehsils was 126 posts, for maintaining the land records, which arrive at approximately one computer operator in each tehsil.

2017 Chapter-1, Para 3 (13)] which envisages that the authority making purchases shall pay strict attention regard to the 'Standards of Financial Propriety'. Besides, the Government money should be used judiciously and not in anticipation of future work.

- The State of Uttarakhand being a Himalayan State has 86.07 per cent mountainous area and 13.93 per cent only as plain. It was found that without analyzing the requirement of Air conditioners, in view of the geographical conditions of the State, the Board had procured 130 Air Conditioners (ACs) for MRRs of 65 tehsils (one for Server Room and one for Operational area) and supplied to each tehsil.

The above fact can be substantiated by the chart alongside, showing the maximum temperature in the selected tehsils. The chart clearly indicates that the requirement of ACs especially for Tehri, Dhanaulti, Lansdowne and Nainital was minuscule keeping in view the fact that maximum temperature observed in the areas was between 23-26 degree Celsius. Thus, the department procured ACs for areas, where it was not required due to weather condition, without assessing the requirement.

### 3.4.5.3 Monitoring and Review Mechanism

As per the guidelines of the programme, Project Sanctioning and Monitoring Committee was to be set up at national level for sanctioning of projects and to review the implementation of the programme in the country. Besides, Monitoring and Review Committee was also to be constituted in each State as well as in each District of the State.

It was observed that Monitoring and Review mechanism was ineffective due to the following reasons:

- i. District-level Monitoring and Review Committee (DLMRC) had not been constituted and no efforts were seen to be made by the State-Level Monitoring and Review Committee (SLMRC) for constituting DLMRC.

- ii. Due to non-existence of DLMRC, the following irregularities and shortcomings were noticed:

- ❖ The implementation of the programme could not be efficiently monitored at the district level and the Progress Report of the Program, which was supposed to be submitted quarterly to SLMRC, could not be submitted.
- ❖ The civil work remained incomplete in many tehsils and the procured equipment could not be installed in time.

**Revenue Board was required to constitute a DLMRC in each district under the chairpersonship of the District Collector/ Deputy commissioner and District Magistrate. The committee would include ADMs/SDMs dealing with land revenue matters, CEO/ Executive Officer of Zilla Parishad, Sub district Registrar, representative of state forest department and District Informatics officer of NIC as members. Besides, representatives from other technical agencies were also to be involved as per requirement. The Committee was required to review the progress of implementation of the Programme at least once in a quarter and submit report to State-level Monitoring and review Committee.**

- ❖ Inspection was not carried out, as stipulated in the terms and conditions of the contract for procurement of equipment, at bidder's premises before dispatch of the goods to ensure that the material conforms to the prescribed standards.
- ❖ The equipment were to be supplied directly to the tehsils and after taking possession of the equipment at respective tehsils, it was the responsibility of District Heads to acknowledge to the Revenue Board that the equipment conforms to the requirements and purchase specifications. However, the quality and specifications of the material/equipment were not checked at tehsil level.

On this being pointed out, the Government, in its reply, stated that DLMRC has been constituted, as per DILRMP guidelines-2018-19, vide Government's office memorandum dated 22 November 2021 and instructions are being issued from time to time to all the District Magistrates for compliance.

During joint physical inspection of selected districts, conducted during December 2021 to February 2022, it was noticed that no such committee was in existence, which is indicative of lack of planning and weak internal control system at the departmental level. This can be attributed to the Board as well as to concerned DMs due to their inefficient monitoring of the programme for timely execution and for achieving performance parameters.

#### **3.4.6 Audit conclusion**

The availability of adequate space for establishing MRRs in Tehsil offices was not ensured by the department before the execution of the work related to setting up of MRRs. Civil work was executed in MRRs without assessing the actual requirement resulting into expenditure incurred on unnecessary items of work. Equipment/material were procured by the Board before setting up of MRRs in respective tehsils due to which the said equipment remained unutilized/dumped in many tehsils. The equipment could not be put to use, due to shortage of staff, even in those tehsil offices where it had been installed.

#### **3.5 Non-imposition of penalty amounting to ₹ 2.84 crore**

The Uttarakhand Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2005 (Amended Rules, October 2015), provide that the authorised officer in charge of an area (under jurisdiction) will impose applicable penalties on the vehicles, transporting the mineral illegally and the cost of mineral transported illegally, should be recovered from the responsible transporters at prescribed rates.

Further, the said Rules provide that the District Collector shall check illegal mining, transportation and storage, wherever required, and is authorised to seize the vehicle carrying illegally mined mineral and impose fine on it. Besides, the District Collector controls Sub Divisional Magistrate (SDM), who gives permission for picking construction material for construction of private building in hilly areas.

Scrutiny of records of Sub-Divisional Magistrate (SDM), Laksar, Haridwar (October/November 2020), revealed that, SDM Laksar caught 334 vehicles of various categories for illegal transportation and mining of mineral during the period from

April 2016 to October 2016. Penalty was imposed by the SDM, Laksar on the above vehicles for illegal transportation and mining of minerals under powers conferred under the Uttarakhand Minerals Rules.

On review of records, Audit noticed that there was a short imposition of penalty against 334 vehicles amounting to ₹ 2.84 crore as the rates applied were below the prescribed rate as detailed in *Appendix-3.5.1*.

The Government informed (November 2023) that the issue of taking a final decision in this regard is under consideration.

### **3.6 Non-imposition of penalty amounting to ₹ 252.26 crore on account of using illegally mined/transported minor minerals**

Financial Rules<sup>68</sup> and Government Orders<sup>69</sup> envisage that the financial loss caused to the Government by reason of negligence or contravention of orders should be recovered wholly or partly from the Government servant.

The Uttarakhand Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2005, read with Uttarakhand Mining Policy 2020, empower the District Magistrate (DM) *inter alia* to: check illegal mining, transportation and storage; give license to contractors engaged in government sponsored construction works to use the muck obtained during construction of road; give license to retailers of minor mineral, seize the vehicle carrying illegally mined material and impose penalty/fine on it.

Further, the National Green Tribunal has directed that District Magistrates have to impose exemplary penalty in case of illegal mining.

It was reported<sup>70</sup> by Audit (August 2018) that responsible authorities did not take due cognizance of use of illegal minor mineral by contractors in government's projects and thus failed to levy penalty of ₹ 237.10 crore. In response, the Mining Department intimated (August 2019) that executing agencies may forward cases of transportation of minerals without form MM-11 to the District Magistrate/Sub-Divisional Magistrate/District Mining Officer for further penal action. Again, it was further reported<sup>71</sup> by Audit (February 2022) that there was non-levy of penalty on contractors by Government Agencies to the tune of ₹ 104.08 crore.

During Integrated Financial Management System (IFMS) based data driven audit (July-August 2022), it was observed that at the time of making payments to the contractors by Government Departments (PWD, RWD, Irrigation etc.) during

<sup>68</sup> As per paragraph 81 of the Uttarakhand Budget Manual, Government dues be assessed and realised regularly and promptly: Subject to any special arrangement that may be authorised by Government with respect to any particular class of receipts, it is the duty of the departmental Controlling Officers to see that all sums due to Government are regularly and promptly assessed, realised and duly credited into the Government account. Also, Appendix 25 of Part-2 of Financial Handbook Volume-5 read with GO NO. 28015/39-4-95-57/95 dated 04 September 1995 provides that all officers are personally liable if any loss is caused due to their negligence.

<sup>69</sup> The Government Order GO No 466/xxx(2)2005 dated 05 March 2005 states that if the government suffers financial loss due to irregular acts by any employee, then it should be recovered from the personnel.

<sup>70</sup> Paragraph 2.2 of the Report of the Comptroller and Auditor General of India for the year ended March 2019.

<sup>71</sup> Paragraph 3.1.7 of Report no. 3 of the year 2022.

2021-22, royalties amounting to ₹ 63.06 crore were deducted from the contractors' bills for using minor minerals brought to the construction sites without Form MM-11 or Form J (*Appendix-3.6.1*). The District Magistrates and other responsible authorities in all the 13 districts of the state had jointly failed to impose the prescribed penalty i.e five times of royalty for use of illegal minor minerals by the contractors in government projects. As only one time royalty was deducted from the contractors' bills, there was loss of revenue of minimum of ₹ 252.26 crore<sup>72</sup>.

The Government informed (November 2023) that the issue of taking a final decision in this regard is under consideration.

Thus, due to negligence of the DMs/other authorities to act according to the roles and responsibilities envisaged in the Mining Rules and Regulations, Budget Manual, Financial Handbook and Government Orders, penalty amounting to ₹ 252.26 crore could not be collected, for which responsibility should be fixed on the concerned officials.

## **STATE TAX DEPARTMENT**

### **3.7 Subject Specific Compliance Audit on Department's Oversight on GST Payments and Return Filing**

#### **3.7.1 Introduction**

Introduction of Goods and Services Tax (GST) has replaced multiple taxes levied and collected by the Centre and States. GST, which came into effect from 01 July 2017, is a destination-based consumption tax on the supply of goods or services or both levied on every value addition. The Centre and States simultaneously levy GST on a common tax base. Central GST (CGST) and State GST (SGST)/ Union Territory GST (UTGST) are levied on intra state supplies, and Integrated GST (IGST) is levied on inter-state supplies.

Section 59 of the Uttarakhand Goods and Services Tax (UGST) Act 2017 stipulates GST as a self-assessment-based tax, whereby the responsibility for calculating tax liability, discharging the computed tax liability and filing returns is vested on the taxpayer. The GST returns must be filed online regularly on the common GST portal, failing which late fee will be payable. Even if the business has had no tax liability during a particular tax period, it must file a nil return mandatorily. Further, Section 61 of the Act read with rule 99 of UGST Rules 2017 stipulates that the proper officer may scrutinize the return and related particulars furnished by taxpayers, communicate discrepancies to the taxpayers and seek an explanation.

This Subject Specific Compliance Audit (SSCA) was taken up considering the significance of the control mechanism envisaged for tax compliance and the oversight mechanism of the State Tax Department, Uttarakhand in this new tax regime.

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<sup>72</sup> ₹ 3,15,31,90,630 - ₹ 63,06,38,126 = ₹ 2,52,25,52,504.

### **3.7.2 Organizational setup**

The Commissioner, State Tax is overall in-charge of the Department of State Tax in Uttarakhand. The Department Administers Goods and Services Tax as well as Uttarakhand Value Added Tax/Central Sales Tax Act in the State, subject to overall control and superintendence of the Commissioner of State Tax with the help of Additional Commissioner of State Tax at divisional level and Headquarters, Joint Commissioner at Zone Level, Deputy Commissioner of State Tax, Assistant Commissioner of State Tax and State Tax officers and other allied Staff at the Sector level.

### **3.7.3 Audit objectives**

This audit was oriented towards providing assurance on the adequacy and effectiveness of systems and procedures adopted by the Department with respect to tax compliance under GST regime. Audit of ‘Department’s oversight on GST Payments and Return filing’ was taken up with the following audit objectives to seek an assurance on:

- i. Whether the rules and procedures were designed to secure an effective check on tax compliance and were being duly observed by taxpayers; and
- ii. Whether the scrutiny procedures, internal audit and other compliance functions of the Circles were adequate and effective.

### **3.7.4 Audit methodology and scope**

This SSCA was predominantly conducted based on data analysis, which highlighted risk areas and red flags pertaining to the period July 2017 to March 2018. Through data analysis, a set of 14 deviations were identified across the domains of Input Tax Credit (ITC), Discharge of tax liability, Registration and Return filing. Such deviations were followed up through a limited audit<sup>73</sup>, whereby these deviations were communicated to the relevant State Departmental field formations (Sectors) and action taken by the jurisdictional formations on the identified deviations was ascertained without involving field visits. The limited audit (centralised audit) was supplemented by a detailed audit involving field visits for verification of records available with the jurisdictional field formations. Returns and related attachments and information were accessed through the GSTN Portal application - the back-end system of the State Tax Department (boweb) as much as feasible to examine data/documents relating to taxpayers (viz. registration, tax payment, returns and other Departmental functions). The detailed audit also involved accessing relevant granular records from the taxpayers such as invoices through the respective field formations. This apart, compliance functions of the Departmental formations such as scrutiny of returns, were also reviewed in selected Sectors.

The review of the scrutiny of returns by the Department and verification of taxpayers’ records covered the period from July 2017 to March 2018, while the audit of the functions of selected Sectors covered the period 2017-18 to 2020-21.

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<sup>73</sup> Limited audit did not involve seeking taxpayer’s granular records such as financial statements related ledger accounts, invoices, agreements etc.

Entry conference of this SSCA was held on 13 January 2022 with Additional Commissioner, State Tax Department, Uttarakhand in which the audit objectives, sample selection, audit scope and methodology were discussed. The Exit Conference was held on 16 June 2023 with the Additional Commissioner, State Tax Department, Uttarakhand in which the audit findings were discussed. The views expressed by the Department during the Exit Conference and the written replies to the draft report have been suitably incorporated in the relevant paragraphs.

### **3.7.5 Audit sample**

A data-driven approach was adopted for planning, as also to determine the nature and extent of substantive audit. The sample for this SSCA comprised a set of deviations identified through data analysis for limited audit that did not involve field visits; a sample of taxpayers for detailed audit that involved field visits and scrutiny of taxpayer's records at Departmental premises; and a sample of Sectors for evaluating the compliance functions of the Sectors.

There were three distinct parts of this SSCA as under:

#### **(i) Part I- Audit of Sectors**

Ten Sectors with jurisdiction over more than one selected sample of cases for Detailed Audit were considered as the sample of Sectors for evaluation of their oversight functions.

#### **(ii) Part II –Limited Audit**

The sample for Limited audit was selected by identification of high-value or high-risk deviations from rules and inconsistencies between returns through data analysis for evaluation of the adequacy and effectiveness of the scrutiny procedure of the Department. Accordingly, 376 taxpayers were selected for Limited audit under this SSCA.

#### **(iii) Part III-Detailed audit**

It was conducted by accessing taxpayers' records through Sectors for evaluation of the extent of tax compliance by taxpayers. The sample of taxpayers for Detailed Audit was selected on the basis of risk parameters such as Excess ITC, Tax Liability mismatch, Disproportionate exempted turnover to total turnover and Irregular ITC reversal. The 99 taxpayers pertaining to 36 Sectors<sup>74</sup> selected for 'Detailed Audit' comprised large, medium and small strata<sup>75</sup> taxpayers.

The details of sample for Audit of Sectors, limited audit and detailed audit of Sectors selected for this SSCA are brought out in *Appendix-3.7.1*.

### **3.7.6 Audit criteria**

The source of audit criteria comprised the provisions contained in the UGST Act, IGST Act, and Rules made thereunder. The significant provisions are given in **Table-3.7.1**:

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<sup>74</sup> Sector-1 Almora, Sector-1,2,3,4,6,7 & 8 Dehradun, Sector-2 Haldwani, Sector-1,2,3,4,5 & 6 Haridwar, Sector-1 & 2 Kashipur, Sector-1 & 2 Khatima, Kichha, Sector-1 Kotdwar, Sector-1 Pithoragarh, Ramnagar, Sector-1,2&3 Rishikesh, Sector-1,2,3&4 Roorkee, Sector-1,2&3 Rudrapur, Tanakpur, Sector-1&2 Vikasgarh.

<sup>75</sup> Large taxpayers-60, Medium taxpayers-30 and Small Taxpayers-09.

**Table-3.7.1: Source of criteria**

SI No	Subject	Act and Rules
1	Levy and collection	Section 9 of UGST Act 2017
2	Reverse Charge Mechanism	Section 9(3) of UGST Act and Section 5 (3) of IGST Act 2017
3	Availing and utilizing ITC	Sections 16 to 21 of UGST Act; Rules 36 to 45 of UGST Rules 2017
4	Registrations	Section 22 to 30 of UGST Act; Rules 8 to 26 of UGST Rules
5	Supplies	Section 7 and 8 UGST Act. Schedule I, II and III of the UGST Act.
6	Place of Supply	Sections 10 to 13 of IGST Act
7	Time of Supply	Section 12 to 14 of UGST Act
8	Value of Supply	Section 15 of UGST Act; Rules 27 to 34 of UGST Rules
9	Payment of Tax	Sections 49 to 53 under Chapter X of UGST Act; Rules 85 to 88A under Chapter IX of UGST Rules
10	Filing of Returns	Sections 37 to 47 of UGST Act; Rules 59 to 68 and 80 to 81 of UGST Rules. Part B of UGST Rules prescribes format of returns
11	Zero-rated supplies	Section 16 of IGST Act
12	Assessment and Audit functions	Sections 61, 62, 65 and 66 of UGST Act; Rules 99 to 102 of UGST Rules

In addition, the Notifications and Circulars issued by CBIC<sup>76</sup>/State Tax Department relating to filing of returns, notifying the effective dates of filing of various returns, extending due dates for filing returns, rates of tax on goods and services, payment of tax, availing and utilizing ITC, scrutiny of returns and oversight of tax compliance and Standard Operating Procedures (SOP) containing instructions to Departmental officers on various aspects related to filing returns, scrutiny of returns, cancellation of registrations and verification of Directorate General of Analytics and Risk Management (DGARM) and other tax authorities reports etc. also formed part of the audit criteria.

### **Audit findings**

The audit findings have been categorized into the following three categories:

- Oversight on returns filing- Audit of Sectors
- Limited Audit
- Detailed Audit

#### **3.7.7 Oversight on returns filing- Audit of Sectors**

As per Rule 59(1) of UGST Rules, every registered person, other than a person referred to in section 14 of the IGST Act, 2017, required to furnish the details of outward supplies of goods or services or both under section 37, shall furnish such details in Form GSTR-1 electronically through the common portal, either directly or through a Facilitation Center notified by the Commissioner.

As per rule 61(1) of UGST Rules, every registered person other than a person referred to in section 14 of the IGST, Act 2017 or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return specified under sub-section (1) of

<sup>76</sup> Central Board of Indirect Taxes and Customs.

section 39 in Form GSTR-3 electronically through the common portal either directly or through a Facilitation Center notified by the Commissioner.

As per rule 61(5) of UGST Rules, where the time for furnishing of details in Form GSTR-1 under Section 37 and in Form GSTR-2 under section 38 has been extended and the circumstances so warrant, the Commissioner may, by notification, specify the manner and conditions subject to which the return shall be furnished in Form GSTR-3B electronically through the common portal, either directly or through a Facilitation Center notified by the Commissioner.

#### **3.7.7.1 Slow pace of scrutiny of returns**

As per Section 61 of the UGST Act, various returns filed by taxpayers have to be scrutinized by the Proper Officer to verify the correctness of the returns, and suitable action has to be taken on any discrepancies or inconsistencies reflected in the returns. The Proper Officer designated for this purpose is the Sector Officer. Further, Rule 99 of the UGST Rules, 2017 mandates that the discrepancies, if any noticed shall be communicated to the taxpayer to seek his explanation.

Department vide Circular letter no. 925/ Commissioner State Tax Uttarakhand/ Headquarter/ GST Section/2022-23 (May 2022) issued detailed guidelines/ Standard Operating Procedure (SOP) on scrutiny of returns with a view to ensure uniformity and to standardize the procedure for the scrutiny proceeding as per section 61 of the Act. As per SOP, the Joint Commissioner (Executive) will forward the cases identified by the Risk Management and Tax Analysis to the concerned Proper Officers for Scrutiny.

Audit observed that considering total number of cases (79,057) pertaining to 2017-18 to 2020-21, falling in the selected 10 sectors, the Department could scrutinise only 364 (0.46 *per cent*) cases during the said period. (**Appendix-3.7.2**). Audit further noticed that the list of cases for the said scrutiny was not made available to Proper Officer even after lapse of six months from the date of issue of SOP. Due to this, scrutiny of the cases for the financial year 2017-18 had not been done despite the fact that the Annual Returns for the financial year 2017-18 were filed by the taxpayers up to 07 February 2020 and these cases will be time barred in September 2023. Further, cases of 2018-19 will be time barred by December 2023. This indicated negligence of the Department in ensuring scrutiny of returns.

On this being pointed out in audit (August-December 2022), the reply of the Department was not received (March 2024).

#### **3.7.7.2 Delay in internal audit by tax authorities/ internal audit not initiated**

As per Section 65 of the UGST Act, 2017, the Commissioner or any officer authorized by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed. Section 2 (13) of the UGST Act, 2017, defines "Audit" as the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund

claimed and ITC availed, and to assess his compliance with the provisions of this Act or the rules made thereunder.

Department vide Circular letter no. 925/ Commissioner State Tax Uttarakhand/ Headquarter/GST Section/2022-23 dated 20 May 2022 issued detailed guidelines/SOP on audit of returns with a view to ensure uniformity and to standardize the procedure for the Audit proceeding as per section 65 and section 66 of the Act.

The details of internal audit undertaken by the Department during the period 2017-18 to 2020-21 for GST are given in **Table-3.7.2**.

**Table-3.7.2: Details of internal audit during 2017-18 to 2020-21**

*(₹ in crore)*

Financial Year	Audit conducted during the year	Total number of taxpayers	No. of taxpayer selected for audit (in per cent)	Actual number of audits completed (as of December 2022)	No. of cases in which deficiencies were found	Total amount involved in deficiencies	Total Recovery
2017-18	NIL	NIL	NIL	NIL	NIL	NIL	NIL
2018-19	NIL	NIL	NIL	NIL	NIL	NIL	NIL
2019-20	NIL	NIL	NIL	NIL	NIL	NIL	NIL
2020-21	312	1,02,280	0.31	272	272	340.02	20.46

*Source: Information provided by State Tax Department.*

Above facts indicate that due to delay in issuing the SOP, the Department conducted internal audit of the financial year 2017-18 in the financial year 2020-21. It is observed that the Department conducted internal audit of 312 (0.31 per cent) cases out of 1,02,280 cases of the financial year 2017-18 in 2020-21. Department found deficiencies in all the 272 audited cases, which shows high probability of deficiencies to be noticed in other cases too, if selected for internal audit. Despite this, the Department did not enhance its audit selection which indicates negligence on the part of the Department.

The Department needs to take prompt steps to undertake remaining audits so that timely action could be initiated against the defaulters and recoveries could be effected so as to plug revenue leakage as in the era of self-assessed tax regime, Internal Audit is one of the main tools for ensuring correctness of compliance by taxpayers.

On this being pointed out in audit (March 2023), the reply of the Department was not received (March 2024).

### **3.7.7.3 Lack of action on Reports received from other GST taxation authorities**

The CBIC (Board) formed Directorate General of Analytics and Risk Management (DGARM) vide OM F.No. A-11013/19/2017-Ad. IV dated 11 July 2017 with the aim of studying, interpreting, and analysing GST data and sharing the results with various stakeholders under the Board. Audit called for information regarding cases received from DGARM and other Tax Authorities.

During audit of the selected 10 sectors, three sectors informed that no cases were received during 2017-18 to 2020-21, while Audit noticed that nine cases were received during the said period from other GST taxation authorities in these sectors. One sector had informed one case received during the said period, but Audit noticed

that sector had received six cases. In the remaining six sectors, no discrepancy was noticed. (*Appendix-3.7.3*).

On this being pointed out in audit (August-December 2022), the reply of the Department was not received (March 2024).

#### ***3.7.7.4 Non conducting of best judgement assessment to assess the tax liability of non-filers of returns***

Section 46 of the UGST Act read with Rule 68 of the UGST Rules, stipulates issue of a notice in FORM GSTR-3A requiring filing of Return within fifteen days if the taxpayer had failed to file the Return within the due date. In case the taxpayer fails to file the Returns even after such notice, the Proper Officers may proceed to assess the tax liability of the said person to the best of their judgment, taking into account all the relevant material which is available or gathered and issue an assessment order in Form ASMT-13 as per section 62 of the UGST Act read with rule 100 of UGST Rules.

In the selected 10 sectors, there were 12,804 non-filers during 2017-18 to 2020-21, out of which only in 2,192 (17.12 *per cent*) cases, the Department issued GSTR-3A notice. In response to the GSTR-3A notice, 855 (39.01 *per cent*) non-filers filed their returns. The Department did not carry out the assessment in any of the remaining 1337 cases where the non-filers had not responded to GSTR-3A notice. (*Appendix-3.7.4*).

On this being pointed out in audit (August-December 2022), the Department replied in exit conference (June 2023) that penalty notice under section 125 of UGST Act is more effective against the non-filers. Hence, the Department is sending notice under section 125 for the same but did not provide any details of the same.

The Department's reply is not acceptable because, firstly, the audit observation was related to inaction of the Department in not issuing of GSTR 3A notices to 83 *per cent* of non-filers. Further, the Department also had not carried out best judgment assessment in 61 *per cent* of cases where the taxpayers did not respond to GSTR-3A notices as required under Section 62 of the UGST Act.

#### ***3.7.7.5 Non-submission of final return (GSTR-10) in case of cancellation of registration***

Section 29 of UGST Act stipulates conditions for cancellation of registration, including *suo-moto* cancellation of registrations of taxpayers who have not filed Returns for six consecutive months (three consecutive tax periods for composition taxpayers). Section 45 of the UGST Act read with Rule 81 of the UGST Rules specify that any person whose registration was cancelled should file final Return in FORM GSTR-10 within three months of the date of cancellation or date of order of cancellation, whichever is later.

During audit of the selected 10 Sectors, it was informed that during the period 2017-21, Proper Officers had taken *Suo-moto* action to cancel registration in 7,143 cases of non-filers as per the above provision, while 1,994 registrations had

been cancelled on request of the taxpayers. It was observed that only 194 (2.12 *per cent*) taxpayers, out of the total 9,137 cases of cancelled registration, had filed GSTR-10 (*Appendix-3.7.5*).

Non-filing of GSTR-10 translates to non-assessment of the closing stock, plant and machinery etc. on which tax is leviable.

On this being pointed out in audit (August-December 2022), the Department replied (June 2023) that action would be taken against such non-filers of GSTR-10.

### **3.7.8 Inconsistencies in GST returns -Limited Audit**

Audit analyzed GST returns data pertaining to July 2017 to March 2018 as made available by GSTN. Rule-based deviations, and logical inconsistencies between GST returns filed by taxpayers were identified on a set of 14 parameters, which can be broadly categorized into two domains - ITC and Tax payments.

Out of the 13 prescribed GST returns,<sup>77</sup> the following basic returns that apply to normal taxpayers were considered for the purpose of identifying deviations, inconsistencies and mismatches between GST returns/data:

- **GSTR-1:** Monthly return furnished by all normal and casual registered taxpayers making outward supplies of goods and services or both and contains details of outward supplies of goods and services.
- **GSTR-3B:** Monthly summary return of outward supplies and ITC claimed, along with payment of tax by the taxpayer to be filed by all taxpayers except those specified under Section 39(1) of the Act. This is the return that populates the credit and debits in the Electronic Credit Ledger and debits in Electronic Cash Ledger.
- **GSTR-6:** Monthly return for Input Service Distributors providing the details of their distributed ITC and inward supplies.
- **GSTR-8:** Monthly return to be filed by the e-commerce operators who are required to deduct TCS (Tax collected at source) under GST, introduced in October 2018.
- **GSTR-9:** Annual return to be filed by all registered persons other than an Input Service Distributor (ISD), Tax Deductor at Source/Tax Collector at Source, Casual Taxable Person and Non-Resident taxpayer. This document contains the details of all supplies made and received under various tax heads (CGST, SGST and IGST) during the entire year along with turnover and audit details for the same.

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<sup>77</sup> GSTR-1, GSTR-3B, GSTR-4 (taxpayers under the Composition scheme), GSTR-5 (non-resident taxable person), GSTR-5A (Non-resident OIDAR service providers), GSTR-6 (Input service distributor), GSTR-7 (taxpayers deducting TDS), GSTR-8 (E-commerce operator), GSTR-9 (Annual Return), GSTR-10 (Final return), GSTR-11 (person having UIN and claiming a refund), CMP-08, and ITC-04 (Statement to be filed by a principal/job-worker about details of goods sent to/received from a job-worker).

- **GSTR-9C:** Annual audit form for all taxpayers having a turnover above ₹ two crores in a particular financial year. It is basically a reconciliation statement between the annual returns filed in GSTR-9 and the taxpayer's audited annual financial statements.
- **GSTR-2A:** A system-generated statement of inward supplies for a recipient. It contains the details of all B2B transactions of suppliers declared in their Form GSTR-1/5, ISD details from GSTR-6, details from GSTR-7 and GSTR-8 respectively by the counterparty and import of goods from overseas on bill of entry, as received from ICEGATE Portal of Indian Customs.

The data analysis pertaining to state of Uttarakhand for the period 2017-18 on the 14 identified parameters and extent of deviations/inconsistencies (sample for limited audit) observed are summarized in **Table-3.7.3:**

**Table-3.7.3: Summary of Uttarakhand State data analysis**

(₹ in crore)				
Sl. No.	Parameter	Algorithm used	Number of deviations	Amount
1	ITC mismatch between GSTR 2A and GSTR 3B	ITC available as per GSTR-2A with all its amendments was compared with the ITC availed in GSTR-3B {Table 4A (5)} (accrued on domestic supplies) considering the reversal in Table 4(B)(2) but including the ITC availed in subsequent year 2018-19 from Table 8(C) of GSTR 9.	50	99.80
2	ITC availed under RCM vs payment of tax in GSTR 3B/ GSTR 9	RCM liability declared in GSTR9 Table 4G was compared with ITC availed in GSTR-9 Table (6C+6D+6F). In cases where GSTR 9 was not available, RCM liability in GSTR-3B Table 3.1(d) was compared with GSTR-3B Table {4(A)(2) + 4(A) (3)}.	19	1.55
3	Short payment of tax under RCM vs ITC availed in GSTR 3B/ GSTR 9	RCM payments in GSTR3B Table 6.1 (B) were compared with ITC availed in GSTR-9 Table (6C+ 6D+6F). In cases where GSTR-9 was not available, check was restricted within GSTR 3B, RCM payments in Table 6.1 (B) vis-a-vis ITC availed in Table {4A(2) + 4A(3)}.	18	7.47
4	Incorrect availment of ISD credit	ISD received in GSTR-9 Table 6G or GSTR 3B Table 4(A)(4) of the recipients was compared with ITC transferred in GSTR 6 of the distributor.	25	15.50
5	Incorrect ISD credit reversal	GSTR9 Table 7B should be less than Sum Total of GSTR6 Table 8B+Table 9B of ISD for the respective GSTINs.	2	0.0014
6	Reconciliation between ITC availed in Annual returns with expenses in financial statements	Positive figure in GSTR 9C Table 14T.	25	466.73
7	Mismatch of ITC availed between	Positive figure in GSTR 9C Table 12F.	25	20.97

Sl. No.	Parameter	Algorithm used	Number of deviations	Amount
	Annual returns and Books of accounts			
8	Mismatch in turnover declared in GSTR 9C Table 5R*	Negative figure in GSTR 9C Table 5R.	42	87.01
9	Mismatch in taxable turnover declared in GSTR 9C Table 7G*	Negative figure in GSTR 9C Table 7G.	42	31.84
10	Mismatch in taxpaid between books of accounts and returns	Negative figure in GSTR 9C Table 9R.	50	31.56
11	Unsettled liabilities	Greater of tax liability between GSTR-1 (Table 4 to 11) and GSTR-9 (Table 4N, 10 & 11) was compared with tax paid details in GSTR 3B Table {3.1 (a) + 3.1 (b)}. In cases where GSTR-9 was not available, tax paid in GSTR-3B was compared with GSTR-1 liability. The amendments and advance adjustments declared in GSTR-1 and GSTR-9 were duly considered.	25	57.04
12	Composition taxpayer also availing e-commerce facility	E-commerce GSTR-8 became effective from 01.01.2018 when TCS provisions became effective. GSTINs declared in GSTR-8 who are also filing GSTR-4 under composition scheme.	4	0
13	GSTR 3B was not filed but GSTR 1 is available	Taxpayers who had not filed GSTR-3B but filed GSTR-1 or where GSTR-2A available, indicating taxpayers had carried the business without discharging tax.	24	0.49
14	Short payment of interest	Interest calculated at the rate of 18 per cent on cash portion of tax payment on delayed filing of GSTR 3B vis-a-vis Interest declared in GSTR-3B Table 6.1.	25	5.76
<b>Total</b>			<b>376</b>	<b>825.72</b>

*\*The amount shown is derived tax liability on mismatch of turnover.*

### **3.7.8.1 Non-submission of reply by the Department**

The audit queries, based on 376 sample, were issued to the respective offices of the Sectors in May 2022 without further scrutiny of taxpayer's records. The audit check in these cases was limited to verifying the Department's action on the identified deviations/mismatches.

Initial responses, even after issuing of reminders to the Commissionerate<sup>78</sup>, the Government<sup>79</sup> of Uttarakhand and after persuasion made in the exit conference with the Department (16 June 2023), were yet to be (as of March 2024) received in 146 cases communicated to the Department (May 2022).

<sup>78</sup> Vide letters no. AMG IV/SSCA>Returns Filings/2022-23/3424 dated 30 May 2022, AMG IV/SSCA>Returns Filings/2022-23/3702 dated 04 July 2022, PAG(UK)SSCA on GST PAYMENTS/LIMITED AUDIT/202-23/5840 dated 20 January 2023.

<sup>79</sup> Vide DO. letter no. AMG IV/SSCA>Returns Filings/2022-23/4580 dated 02 September 2022, AMG IV/SSCA>Returns Filings/2022-23/5512 dated 13 December 2022.

It represents a mismatch of ₹ 238.39 crore in tax liability/ITC/short payment of interest (on delayed payment of tax) in 146 cases as detailed in **Table-3.7.4 (Appendix-3.7.6)**.

**Table-3.7.4: Reply not received**

(₹ in crore)

Audit Dimension	Sample		Department Reply not received		Percentage	
	Number	Amount of mismatch	Number	Amount	Number	Amount
1	2	3	4	5	6	7
ITC mismatch between GSTR 2A and GSTR 3B	50	99.80	24	31.79	48	31.85
ITC availed under RCM vs payment of tax in GSTR 3B/ GSTR 9	19	1.55	1	0.07	5.26	4.52
Short payment of tax under RCM vs ITC availed in GSTR 3B/ GSTR 9. (RCM without Payment of tax)	18	7.47	4	1.13	22.22	15.13
Incorrect availment of ISD credit	25	15.50	10	1.04	40	6.71
Incorrect ISD credit reversal	2	0.0014	1	0.00139	50	100
Reconciliation between ITC availed in Annual returns with expenses in financial statements	25	466.73	6	81.29	24	17.42
Mismatch of ITC availed between Annual returns and Books of accounts	25	20.97	12	13.35	48	63.66
Mismatch in turnover declared in GSTR 9C Table 5R	42	87.01	18	37.57	42.86	43.18
Mismatch in taxable turnover declared in GSTR 9C Table 7G	42	31.84	20	13.80	47.62	43.34
Mismatch in tax paid between books of accounts and returns	50	31.56	24	23.85	48	75.57
Unsettled liabilities	25	57.04	10	32.143	40	56.35
Composition taxpayer also availing e-commerce facility	4	0	0	0	0	0
GSTR 3B was not filed but GSTR 1 is available	24	0.49	5	0.1108	44	38.77
Short payment of interest	25	5.76	11	2.24	44	38.89
<b>Total</b>	<b>376</b>	<b>825.72</b>	<b>146</b>	<b>238.39</b>	<b>38.82</b>	<b>28.86</b>

Considering the amount involved in the above-mentioned inconsistencies and its likely conversion into compliance deviations, the reply of the Department is of paramount importance. Hence, the Department is required to expedite verification of these cases as a priority.

### 3.7.8.2 Results of Centralized Audit

Based on responses received from the Department to the Audit Queries, the extent to which each of the 14 parameters translated into compliance deviations is summarized in **Table-3.7.5 (Appendix-3.7.7)**:

Table-3.7.5: Summary of deficiencies

(₹ in crore)

		Audit Dimensions														Total	
		ITC mismatch between GSTR 2A and GSTR 3B	ITC availed under RCM vs payment of tax in GSTR 3B/GSTR 9	Short payment of tax under RCM vs ITC availed in GSTR 3B/GSTR 9	Incorrect availment of ISD credit	Incorrect ISD credit reversal	Reconciliation between ITC availed in Annual returns with expenses in financial statements	Mismatch of ITC availed between Annual returns and Books of accounts	Mismatch in turnover declared in GSTR 9C Table 5R	Mismatch in taxable turnover declared in GSTR 9C Table 7G	Mismatch in taxpaid between books of accounts and returns	Unsettled liabilities	Composition taxpayer also availing e-commerce facility	GSTR 3B was not filed but GSTR 1 is available	Short payment of interest		
		1	2	3	4	5	6	7	8	9	10	11	12	13	14		
Cases where reply received		No.	26	18	14	15	1	19	13	24	22	26	15	4	19	14	230
		Amt	72.47	1.75	5.78	15.94	0	385.44	8.48	50.57	20.21	8.27	40.71	0	0.78	4.76	615.16
Department reply accepted by Audit	Data Entry errors	No.	4	6	5	8	0	2	0	2	0	0	0	0	0	0	27
		Amt	18.17	0.32	1.79	1.98	0	21.39	0	2.01	0	0	0	0	0	0	45.66
	Action taken before query	No.	4	1	1	0	0	0	3	1	0	4	1	0	0	6	21
		Amt	10.8	0.39	0.57	0	0	0	2.99	0.51	0	1.33	0.84	0	0	1.2	18.63
	Other valid explanation	No.	4	3	0	0	1	16	5	2	7	7	1	4	1	0	51
		Amt	2.73	0.16	0	0	0	356.15	2.19	0.46	5.88	2.39	5.62	0	0.002	0	375.58
Compliance Deviations	Accepted by Department including cases, where action is yet to be initiated.	Recovered	No.	1	3	1	1	0	0	0	0	7	2	0	1	4	20
			Amt	0.01	0.39	0.01	0.21	0	0	0	0	0	2.67	1.32	0	0.01	0.84
	SCN issued	No.	4	3	0	3	0	0	3	2	5	5	7	0	16	2	50
		Amt	13.77	0.25	0	12.91	0	0	2.26	8.53	4.77	1.39	27.91	0	0.632	1.78	74.20
	ASMT-10	No.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
		Amt	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Under correspondence with taxpayers	No.	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1
		Amt	0	0	0	0	0	0	0	0	0	0	0	0	0.14	0	0.14
	Department's reply not acceptable to Audit (Rebuttal)	No.	3	0	0	0	0	0	0	0	0	0	0	0	0	1	4
		Amt	8.26	0	0	0	0	0	0	0	0	0	0	0	0	0.83	9.09
Total	No.	8	6	1	4	0	0	3	2	5	12	9	0	18	7	75	
	Amt	22.04	0.64	0.01	13.12	0	0	2.26	8.53	4.77	4.06	29.23	0	0.78	3.45	88.89	
Department's reply not furnished with appropriate documentary evidence	No.	6	2	6	3	0	1	2	17	10	3	4	0	0	0	54	
	Amt	18.73	0.24	3.16	0.84	0	7.90	1.04	39.06	9.56	0.49	5.02	0	0	0	86.04	
Department stated that they are examining the audit query	No.	0	0	1	0	0	0	0	0	0	0	0	0	0	1	2	
	Amt	0	0	0.25	0	0	0	0	0	0	0	0	0	0	0.11	0.36	

The words 'AR' and 'FS' used in title of above table, mean 'Annual Return' and 'Financial Statement' respectively.

The amount in above table under 'Recovered' and 'SCN issued' category is as per recoveries made and amount of SCN issued by the Department irrespective of the amount pointed by Audit.

### 3.7.8.3 Summary of Centralized Audit

Out of deviations/inconsistencies in 376 cases, the Department furnished replies of 230 cases constituting 61.17 per cent of the total sample. Out of these 230 replies received (March 2024), 27 cases pertain to data entry errors having money value of ₹ 45.66 crore, 21 cases pertain to the action taken by the Department before issuance of the audit queries involving money value of ₹ 18.63 crore, 51 cases pertain to other valid explanations involving money value of ₹ 375.58 crore. In cases where the Department accepted the audit observation, 20 cases pertained to recovery of objected amount of ₹ 5.46 crore and 50 cases pertained to SCN issued involving money value of ₹ 74.20 crore. Further, the Department stated that one case was under correspondence. In 4 cases, the Department's reply was not acceptable to the Audit.

The Department furnished no documentary evidence in support of its reply in 54 cases and in two cases, it stated that these cases were under examination.

In all these cases, higher rates of mismatches were noticed in risk areas such as ITC and tax liability mismatches, incorrect turnover declarations, and short payment of tax.

High value cases for each audit dimension of Centralized Audit (for compliance deviation pertaining to different action taken by the Department including no reply from the Department) are detailed below in **Table-3.7.6**.

**Table-3.7.6: High Value Cases for Audit Dimensions**

(₹ in crore)

Sl. No.	Audit dimension	GSTIN	Sector	Amount	Action taken
1.	Cases where GSTR-3B not filed but GSTR-1 available	05XXXXXXXXXX1ZK	Rudrapur - Sector 1	0.14	Demand Raised
2.	Mismatch in turnover between Annual Return and Financial Statements (Table 5R of Form 9C)	05XXXXXXXXXX1ZX	Dehradun - Sector 6	11.36	No Reply
3.	Mismatch in taxable turnover between Annual return and Financial Statements (Table 7G of Form 9C)	05XXXXXXXXXX1Z4	Rishikesh - Sector 1	2.40	Department reply not acceptable
4.	Mismatch in tax paid between books of accounts and Annual return (Table 9R of Form 9C)	05XXXXXXXXXX1ZD	Kashipur - Sector-2	10.37	No Reply
5.	Mismatch in ITC availed between Annual Return and Financial Statements (Table-12F of Form 9C)	05XXXXXXXXXX1ZX	Haridwar - Sector-1	5.49	No Reply
6.	Reconciliation between ITC declared in Annual Return with expenses in Financial Statement (Table-14T of Form 9C)	05XXXXXXXXXX1Z3	Haridwar - Sector-4	26.60	No Reply
7.	Excess availing of ITC under Reverse Charge Mechanism	05XXXXXXXXXX1Z0	Haridwar - Sector 4	0.19	Department reply not acceptable
8.	Availing of ITC under RCM without payment	05XXXXXXXXXX1ZU	Roorkee Sector 1	1.55	Department reply not acceptable
9.	Excess availing of ITC	05XXXXXXXXXX1Z6	Kichha	10.34	Show Cause Notice
10.	Short payment of interest on delayed payments	05XXXXXXXXXX2ZY	Rudrapur - Sector 1	1.63	Show Cause Notice
11.	ISD credit incorrectly availed by the recipients	05XXXXXXXXXX1Z0	Haldwani - Sector 4	12.58	SCN issued
12.	ISD credit reversals incorrectly adopted by the recipients	05XXXXXXXXXX1ZP	Dehradun - Sector-9	0.0013911	No Reply
13.	Undischarged tax liability	05XXXXXXXXXX1Z9	Dehradun - Sector 5	10.41	No Reply

Illustrative cases are discussed below:

### **1. Non filing of GSTR-3B**

Under the UGST Act 2017, every registered person (other than specified persons) is required to furnish the details of inward and outward supplies of goods or services or both, ITC availed, tax payable, tax paid, etc. during the tax period electronically over the GSTN portal. These details are required to be furnished periodically (monthly or quarterly) in a return referred to as Form-3B. This is to be furnished for each month/part of the month on or before 20<sup>th</sup> day of the month succeeding to the relevant month. The tax due shall be paid to the Government on the same date.

Audit noticed (May 2022), in case of taxpayer having GSTIN 05XXXXXXXXXX1ZK, under the jurisdiction of Rudrapur Sector 1, that the taxpayer had not filed even a single GSTR-3B for the financial year 2017-18. As per GSTR-1, the tax liability of ₹ 0.08 crore was to be deposited by the taxpayer but non-filing of GSTR-3B indicates that the taxpayer had not discharged its tax liability.

On this being pointed out in audit (May 2022), the Department raised the tax demand of ₹ 0.12 crore along with the Interest of ₹ 0.02 crore (June 2023).

### **2. Mismatch in total turnover declared in Table 5R of GSTR-9C**

Table 5 of GSTR-9C attempts to reconcile the turnover declared in audited annual financial statement with turnover declared in annual return GSTR-9. Column 5R of this table captures the unreconciled turnover between the annual return GSTR-9, and that declared in the Financial Statement.

The certified reconciliation statement submitted by the taxpayer as required under Rule 80(3) of the UGST Rules 2017 in form GSTR-9C for the year 2017-18 was analyzed at data level to review the extent of identified mismatch in turnover reported in the Annual Return *vis-à-vis* the Financial Statement. The unreconciled amount in cases, where the turnover declared in GSTR-9 was less than that declared in financial statement, carried the risk of non-reporting, under-reporting, short-reporting, omission, and error in reporting of supplies that could lead to evasion or short payment of tax. It could also be a case of non-reporting of both taxable and exempted supplies.

Audit noticed (May 2022), in case of taxpayer having GSTIN 05XXXXXXXXXX1ZX, under the jurisdiction of Dehradun - Sector 6, that there was unreconciled turnover of ₹ 63.11 crore in table 5R of GSTR-9C leading to tax impact of ₹ 11.36 crore.

On this being pointed out in audit (May 2022), the reply of the Department was not received (March 2024).

### **3. Mismatch in total turnover declared in Table 7G of GSTR-9C**

Table 7 of GSTR-9C attempts to reconcile the turnover declared in audited annual financial statement with turnover declared in annual return GSTR-9. Column 7G of this table captures the unreconciled turnover between the annual return GSTR-9, and that declared in the Financial Statement.

The certified reconciliation statement submitted by the taxpayer as required under Rule 80(3) of UGST Rules 2017 in form GSTR-9C for the year 2017-18 was analysed at data level to review the extent of identified mismatch in turnover reported in the Annual Return *vis-à-vis* the Financial Statement. The unreconciled amount in cases, where the turnover declared in GSTR-9 was less than that declared in financial statement, carried the risk of non-reporting, under-reporting, short-reporting, omission, and error in reporting of supplies that could lead to evasion or short payment of tax. It could also be a case of non-reporting of both taxable and exempted supplies.

Audit noticed (May 2022) in case of taxpayer having GSTIN 05XXXXXXXXXX1Z4, under the jurisdiction of Rishikesh - Sector 1, that there was unreconciled turnover of ₹ 13.34 crore in table 7G of GSTR-9C leading to tax impact of ₹ 2.40 crore.

On this being pointed out in audit (May 2022), the Department did not furnish relevant documents necessary for verification of reconciliation of turnover (March 2024).

**4. Mismatch in tax paid between Annual Returns and Financial Statements (Table 9R of GSTR-9C)**

Table 9R of GSTR-9C attempts to reconcile the tax paid by segregating the turnover rate-wise and comparing it with the tax discharged as per annual return GSTR-9. The unreconciled amounts could potentially indicate tax levied at incorrect rates, incorrect depiction of taxable turnover as exempt or *vice versa* or incorrect levy of CGST/SGST/IGST. There can also be situations wherein supplies/tax declared are reduced through amendments (net of debit notes/credit notes) in respect of the 2017-18 transactions carried out in the subsequent year from April to September 2018.

The certified reconciliation statement submitted by the taxpayer as required under Rule 80(3) of UGST Rules 2017 in form GSTR-9C for the year 2017-18 was analysed at data level to review the extent of identified mismatch in tax paid between the Annual Return and the Financial Statement.

Audit noticed (May 2022) in case of taxpayer having GSTIN 05XXXXXXXXXX1ZD, under the jurisdiction of Kashipur, Sector-2, that there was unreconciled payment of tax of ₹ 10.37 crore in table 9R of GSTR-9C.

On this being pointed out in audit (May 2022), the reply of the Department was not received (March 2024).

**5. Mismatch in ITC availed between Annual Returns and Financial Statements (Table 12F of GSTR-9C)**

Table 12 of GSTR-9C reconciles the ITC declared in Annual Return GSTR-9 with the ITC availed as per audited Annual Financial Statement or Books of Accounts.

Audit noticed (February 2022) in case of taxpayer having GSTIN 05XXXXXXXXXX1ZX, under the jurisdiction of Haridwar, Sector-1, that there was unreconciled ITC of ₹ 5.49 crore in table 12F of GSTR-9C.

On this being pointed out in audit (May 2022), the reply of the Department was not received (March 2024).

**6. Reconciliation between ITC declared in Annual return with expenses in financial statement (Table 14T of Form 9C)**

As per Section 122 (1)(vii), where a taxable person who takes or utilizes ITC without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder; shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or ITC availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

The certified reconciliation statement submitted by the taxpayer as required under rule 80(3) of UGST Rules in form GSTR-9C for the year 2017-18 was analyzed at data level to review the extent of identified mismatch in ITC declared in the Annual Return with the expenses reported in the Financial Statements.

Audit noticed that, in case of taxpayer having GSTIN 05XXXXXXXXXX1Z3, under jurisdiction of Haridwar, Sector-4, as per Table 14 (S) of GSTR-9C, total ITC amounting to ₹ 178.48 crore was claimed but as per Table 14 (R) of GSTR-9C, ITC of ₹ 151.88 crore was available. Thus, there was a mismatch of ITC of ₹ 26.60 crore.

On this being pointed out in audit (May 2022), the reply of the Department was not received (March 2024).

#### **7. *Availing of ITC under Reverse Charge Mechanism***

The extent of availing of ITC under Reverse Charge Mechanism (RCM) for the year 2017-18 without discharging equivalent tax liability or, in other words, short payment of tax under RCM was analyzed by comparing the datasets pertaining to GSTR-3B and annual return GSTR-9 to check whether the tax has been discharged fully on the activities/transactions under RCM. In cases where GSTR-9 was filed, the RCM payments in table 4G were compared with ITC availed in table 6C, 6D and 6F. In cases where GSTR-9 was not available, RCM payments in table 3.1(d) of GSTR-3B were compared with table 4 (A) (2) and 4 (A) (3).

Audit noticed, in case of a taxpayer having GSTIN 05XXXXXXXXXX1Z0 under jurisdiction of Haridwar, Sector-4, that as per GSTR 3B (3.1.d) the GST paid on inward supplies liable to reverse charge was ₹ nil while as per Table 6C, 6D and 6F of GSTR 9, ITC (ITC) of ₹ 0.19 crore was availed. Thus, there was a mismatch of ITC of ₹ 0.19 crore.

On this being pointed out in audit (May 2022), the Department stated that the ITC availed did not pertain to RCM supply. But the Department did not furnish relevant document like copies of the bills for verification. (March 2024).

#### **8. *Excess availing of ITC on Reverse Charge Mechanism than corresponding tax paid***

As per provisions under Section 9(3), Section 9(4) of the UGST Act 2017 and Section 5(3), Section 5(4) of the Integrated GST Act 2017, the liability to pay tax lies with the recipient of goods or services instead of the supplier or provider under certain categories of goods or services or both. One of the conditions is that supplier of goods or services or both is not registered under GST.

GSTR-9 is an annual return to be filed once for each financial year, by the registered taxpayers who were regular taxpayers, including SEZ units and SEZ developers. The taxpayers are required to furnish details of purchases, sales, ITC or refund claimed, or demand created etc.

To analyse the veracity of ITC availed on tax paid under reverse charge mechanism for the year 2017-18, the datasets pertaining to GSTR-3B and annual return GSTR-9 were compared to check whether the ITC availed under reverse charge mechanism was restricted to the extent of tax paid. The methodology adopted was to compare the

tax discharged in table 6.1(B) of GSTR-3B with ITC availed in table 6C<sup>80</sup>, 6D<sup>81</sup> and 6F<sup>82</sup> of GSTR-9. In cases where GSTR-9 was not available, the check was restricted within GSTR-3B and the tax discharged in table 6.1(B) of GSTR-3B was compared with the ITC availed under table 4A (2)<sup>83</sup> and 4A (3)<sup>84</sup>.

Audit noticed, in case of a taxpayer having GSTIN 05XXXXXXXXXX1ZU under jurisdiction of Roorkee, Sector-1, that inward supplies made during the financial year on which tax was to be paid on reverse charge basis was ₹ 0.02 crore as per GSTR-9 (4G), while ITC (ITC) of ₹ 1.57 crore was availed as shown in GSTR 9 Table 6C, 6D and 6F. Thus, there was a mismatch of ITC of ₹ 1.55 crore.

On this being pointed out in audit (May 2022), the Department did not provide documentary evidence like Tran-I for verification (March 2024).

### **9. Excess availing of ITC**

GSTR-2A is a purchase related dynamic tax return that is automatically generated for each business by the GST portal, whereas GSTR-3B is a monthly return in which summary of outward supplies along with ITC declared and payment of tax are self-declared by the taxpayer.

To analyze the veracity of ITC utilization, the relevant data sets were extracted from GSTR-3B and GSTR-2A for the year 2017-18, and the ITC paid as per suppliers' details was matched with the ITC availed by the recipient taxpayers. The methodology adopted was to compare the ITC available as per GSTR-2A with all its amendments and the ITC availed in GSTR-3B in table 4A (5)<sup>85</sup> considering the reversals in table 4B (2)<sup>86</sup> but including the ITC availed in the subsequent year 2018-19 in table 8C of GSTR-9.

Audit noticed (May 2022), in case of a taxpayer having GSTIN 05XXXXXXXXXX1Z6 under jurisdiction of Sector-Kichha, that ITC available, as per Table 4A (5) of GSTR-3B, was ₹ 18.37 crore. The B2B of GSTR-2A was ₹ 13.35 crore. The B2BA of GSTR-2A was ₹ 0.40 crore. Further, as per Table 8C of GSTR-9, the ITC on inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs) received during the financial year but availed in the next financial year up to specified period was ₹ nil. As per GSTR-2A, the value of net credit notes (CDNR) was ₹ 0.06 crore. The ITC reversal as per Table 4B (2) GSTR-3B is ₹ nil. Thus, there was a mismatch of ITC of ₹ 4.69 crore.

On this being pointed out in audit (May 2022), the Department issued notice and raised the demand for ₹ 10.34 crore. (March 2024).

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<sup>80</sup> Inward supplies receive from unregistered persons liable to reverse charge.

<sup>81</sup> Inward supplies received from registered persons liable to reverse charge.

<sup>82</sup> Import of services.

<sup>83</sup> Import of services.

<sup>84</sup> Inward supplies (liable to reverse charge).

<sup>85</sup> All other eligible ITC.

<sup>86</sup> Other ITC reversed.

### **10. Short payment of interest on delayed payment of tax**

Section 50 of the UGST Act 2017 stipulates that every person liable to pay tax in accordance with the provisions of this Act or the rules made thereunder but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay interest at the rate notified.

The extent of short payment of interest on account of delayed remittance of tax during 2017-18 was identified using the tax paid details in GSTR-3B and the date of filing of this return. Only the net tax liability (cash component) was considered to work out the interest payable.

Audit noticed, in case of a taxpayer having GSTIN 05XXXXXXXXXX2ZY under jurisdiction of Rudrapur Sector-1, that as per GSTR-3B (month wise) of 2017-18, the total tax payment was ₹ 51.38 crore (cash component). The delay in tax remittance ranged from 18 days to 110 days. Therefore, the total interest due on the delayed tax payment was ₹ 1.58 crore but no interest was paid by the taxpayer. Thus, total interest of ₹ 1.58 crore was payable.

On this being pointed out in audit (May 2022), the Department issued notice and raised the demand through DRC-7, for ₹ 1.63 crore (March 2024).

### **11. Incorrect availing of ISD credit**

Rule 39(1)(a) of UGST Rules 2017 provides that an Input Service Distributor shall distribute ITC available with him and provide details thereof in GSTR-6<sup>87</sup> return.

The extent of excess ITC availed during 2017-18 was identified by comparing GSTR-9 Table 6G or GSTR-3B Table 4(A)(4) with the sum of Table 5(A), Table 8(A), and Table (9A) of GSTR-6 of the respective GSTINs.

Audit noticed (May 2022), in case of the taxpayer having GSTIN 05XXXXXXXXXX1Z0 under the jurisdiction of Haldwani Sector-4, that as per Table 6(G) of GSTR-9-Annual Return, the claimed ITC on account of Input Service Distributor (ISD) was amounting to ₹ 44.27 crore (IGST) for year 2017-18. Same amount was reflected in Table-4(A)(4) of GSTR-3B Further, ISD credit included in GSTR-2A returns was ₹ 32.82 crore for year 2017-18. However, as per centralized data available in GSTN, the total value of Table 5A, 8A and 9A of the GSTR-6 of the ISD was ₹ 32.82 crore. Thus, there was a mismatch of ₹ 11.43 crore.

On this being pointed out in audit (May 2022), the Department issued notice and raised the demand for ₹ 12.58 crore (March 2024).

### **12. Undischarged tax liability**

GSTR-1 depicts the monthly details of outward supplies of Goods or Services. This detail is also assessed by the taxpayer and declared in annual return GSTR-9 in the relevant columns. Further, taxable value and tax paid thereof is also shown in the monthly return GSTR-3B.

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<sup>87</sup> GSTR-6: Monthly return for Input Service Distributors providing the details of their distributed ITC and inward supplies.

To analyse the undischarged tax liability, relevant data sets were extracted from GSTR-1 and GSTR-9 for the year 2017-18 and the tax payable in these returns was compared with the tax paid as declared in GSTR-9. Where GSTR-9 was not available, a comparison of tax payable between GSTR-1 and GSTR-3B was resorted to. The amendments and advance adjustments declared in GSTR-1 and GSTR-9 were also considered for this purpose.

For the algorithm, Tables 4 to 11 of GSTR-1 and Tables 4N, 10 and 11 of GSTR-9 were considered. The greater of the tax liability between GSTR-1 and GSTR-9 was compared with the tax paid as reflected in Tables 9 and 14 of GSTR-9 to identify the short payment of tax. In case of GSTR-3B, Tables 3.1(a)<sup>88</sup> and 3.1(b)<sup>89</sup> were taken into account.

Audit noticed (May 2022), in case of taxpayer having GSTIN 05XXXXXXXXXX1Z9, under the jurisdiction of Dehradun - Sector 5 that tax payable in GSTR-1 was ₹ 23.21 crore and the tax paid as per GSTR-9 (table 4N, 10 and 11) was ₹ 12.80 crore. Thus, there was mismatch of tax liability of ₹ 10.41 crore between GSTR-1 and GSTR-9.

On this being pointed out in audit (May 2022), the reply of the Department was not received (March 2024).

#### **3.7.8.4 Analysis of causative factors**

Considering the Department's response to deviations/inconsistencies in 230 cases, the factors that caused the data deviations/inconsistencies are discussed below:

##### **A- An illustrative case where the Department had issued SCN after accepting the audit observation:**

Out of 230 replies received, in 20 cases (8.7 per cent of total reply) the Department made recoveries and in 50 cases (21.7 per cent of total reply), the Department accepted the audit observations and issued SCNs/confirmed demands. One case is illustrated below.

##### **Undischarged liability:**

Audit noticed, in case of taxpayer GSTIN 05XXXXXXXXXX1ZW, that liability of taxpayer as per GSTR-01 was amounting to ₹ 2.45 crore but nil tax was paid by taxpayer. Hence total Undischarged tax liability was amounting to ₹ 2.45 crore.

On this being pointed out in audit (May 2022), the Department had confirmed (June 2023) the tax liability with equal penalty by issuing order for tax demand of ₹ 4.91 crore in DRC-07.

##### **B. An illustrative case, in which Department's reply was not acceptable:**

Out of 230 replies received, in four cases (1.7 per cent of total reply) amounting to ₹ 9.09 crore, the Department's reply was not accepted. One case is illustrated below.

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<sup>88</sup> Outward taxable supplies (Other than zero rated, nil rated and exempted).

<sup>89</sup> Outward taxable supplies (Zero rated).

***Excess availing of ITC (GSTR 3B vs GSTR 2A):***

Audit noticed, in case of GSTIN 05XXXXXXXXXX1ZO, that ITC available as per Table 4A (5) of GSTR-3B was ₹ 7.84 crore. Table B2B of GSTR-2A was ₹ 1.34 crore. Further, as per Table (8C) of GSTR-9, the ITC on inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs) received during the financial year but availed in the next financial year up to specified period was ₹ 0.09 crore. As per GSTR-2A, the value of net credit notes (CDNR) was nil. The ITC reversal as per Table 4B (2) of GSTR-3B, was nil. Further, net Table B2BA of GSTR-2A was nil. Thus, there was a mismatch of ITC of ₹ 6.60 crore.

On this being pointed out in audit (May 2022), the Department in its reply did not explain the mismatch of ITC and therefore was not acceptable to audit. (June 2023)

***C. An illustrative case, where mismatches was due to data entry errors:***

Out of 230 replies received, 27 cases (11.7 per cent) amounting to ₹ 45.66 crore pertained to data entry errors committed by the taxpayers. All the cases pertain to incorrect availing of ITC pertaining to **Excess availing of ITC (GSTR 3B vs GSTR 2A)** which did not have any revenue implication. For illustration, one case is detailed below:

***Excess availing of ITC (GSTR 3B vs GSTR 2A):***

Audit noticed, in case of taxpayer having GSTIN 05XXXXXXXXXX1ZS, under jurisdiction of Rudrapur Sector-3, that ITC available, as per Table 4A(5) of GSTR 3B, was ₹ 1,351.98 crore. The B2B of GSTR 2A was ₹ 1,416.95 crore. The B2BA of GSTR 2A was ₹ 1.29 crore. Further, as per Table 8C of GSTR 9, the ITC on inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs) received during the financial year but availed in the next financial year upto specified period was ₹ 77.60 crore. As per GSTR 2A, the value of net credit notes (CDNR) was ₹ 3.93 crore. The ITC reversal as per Table 4B (2) of GSTR 3B was nil. Thus, there was a mismatch of ITC of ₹ 15.27 crore.

On this being pointed out in audit (May 2022), the Department replied (March 2024) that the mismatch was due to incorrect posting of ITC on account of import and ISD, by the taxpayer.

***D. An illustrative case, where action had been taken before issue of audit query:***

Department's reply was accepted in 21 cases (9.1 per cent of total 230 replies) amounting to ₹ 18.63 crore where action was taken by the Department before issuance of audit query. For illustration, one case is given below:

***Excess availing of ITC:***

Audit noticed, in case of GSTIN 05XXXXXXXXXX1ZN, that ITC as per Table 4A (5) of GSTR-3B was ₹ 6.48 crore and as per Table of B2B GSTR-2A, was ₹ 0.102 crore. The net credit as per GSTR 2A was nil. The taxpayer has also credited the same amount ₹ 6.48 crore in its Electronic Credit Ledger and utilized it. Thus, there was a mismatch of ITC of ₹ 6.38 crore.

On this being pointed out in audit (May 2022), the Department replied (June 2023) that the excess ITC of ₹ 6.38 crore was reversed by the taxpayer in June 2019.

### **3.7.9 Detailed audit of GST returns**

In a self-assessment regime, the onus of compliance with the law is on the taxpayer. The role of the Department is to establish and maintain an efficient tax administration mechanism to provide oversight. With a finite level of resources, for an effective tax administration, to ensure compliance with law and collection of revenue, an efficient governance mechanism is essential. An IT driven compliance model enables maintaining a non-discretionary regime of governance on scale and facilitates a targeted approach to enforce compliance.

From an external audit perspective, Audit also focused on a data-driven risk-based approach. Thus, apart from identifying inconsistencies/deviations in GST returns through pan-state data analysis, a detailed audit of GST returns was also conducted as a part of this review. A risk-based sample of 99 taxpayers was selected for this part of the review. The methodology adopted was to initially conduct a desk review of GST returns and financial statements filed by the taxpayers as part of the GSTR 9C and other records available in the back-end system to identify potential risk areas, inconsistencies/ deviations and red flags. Desk review was carried out in the office of the Accountant General (Audit), Uttarakhand. Based on desk review results, detailed audit was conducted in State field formations by requisitioning corresponding granular records of taxpayers such as financial ledgers, invoices etc. to identify causative factors of the identified risks and to evaluate compliance by taxpayers.

As brought out in the previous paragraphs detailed audit involved a desk review of GST returns and other basic records to identify risks and red flags, which were followed up by field audit to identify the extent of non-compliance by taxpayers and action taken by the State field formations. Non-compliance by taxpayers at various stages ultimately impacts the veracity of returns filed, utilization of ITC and discharge of tax payments. The audit findings are therefore categorized under a) Returns b) Utilization of ITC and c) Discharge of tax liability.

#### **3.7.9.1 Scope limitation (non-production of records)**

There was scope limitation of audit due to non-production of granular record by the Department. During the desk review of taxpayers' returns available in the back-end system, Audit identified the risks related to excess ITC and tax liability mismatches for detailed examination. On the ITC dimension, the mismatches were identified by comparing GSTR 3B with GSTR 2A and GSTR 9, and the declarations made in Table 12 and 14 of GSTR 9C. On the tax liability dimension, the mismatches were identified by comparing GSTR 3B with GSTR 1 and GSTR 9 and the declarations in Table 5, Table 7, and Table 9 of GSTR 9C. However, in none of the selected cases, the Department had provided the corresponding granular records such as supplementary financial ledgers, invoices, agreement copies etc. required for examining the causative factors for mismatches of ITC and tax liability. Audit requisitioned these granular records of the taxpayers through the respective sectors.

As in none of the cases were requisitioned records produced by the department, due to which the identified risks, relating to mismatch of ITC, mismatch in tax liabilities and mismatch of turnover could not be examined in detail by Audit.

### 3.7.9.2 Returns

Section 50 (1) of UGST Act, 2017, provides that Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding 18 *per cent*, as may be notified by the Government on the recommendations of the Council.

The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding to the day on which such tax was due to be paid.

The extent of short payment of interest on account of delayed remittance of tax during 2017-18 was identified using the tax paid details in GSTR 3B and the date of filing of GSTR 3B. Only the net tax liability (cash component) was considered to work out the interest payable. In this regard, the discrepancies noticed were as below: -

#### a) *Non-payment of interest by taxpayers*

Audit observed that the taxpayer had either filed their GSTR-3B returns belatedly or had paid the net tax liability (cash component) belatedly but the interest amounting to ₹ 1.00 crore was not discharged in 37 cases.

On this being pointed out in audit (December 2022 to February 2023), Interest amount of ₹ 20.77 lakh was deposited in seven cases and ₹ 5.47 lakh demand has been raised in two cases by the department. In respect of 28 cases, no reply was given by the Department (*Appendix-3.7.8*).

One case is illustrated below.

The taxpayer, M/s Shiv Construction Company (GSTIN 05XXXXXXXXXXXX1ZC) under jurisdiction of Deputy Commissioner (Assessment), State Tax, Sector 5, Haridwar wherein the returns (GSTR 3B) pertaining to the months of July 2017 to March 2018 involved total tax liability amounting to ₹ 1.59 crore which was paid belatedly. The total interest due on the delayed tax payment was ₹ 29.19 lakh which was not paid by the taxpayer. On this being pointed out in audit (December 2022), the reply of the Department was not received (March 2024).

### 3.7.9.3 Utilisation of Input Tax Credit

ITC means the Goods and Services Tax (GST) paid by a taxable person on purchase of goods and/or services that are used in the course or furtherance of business. To avoid cascading effect of taxes, credit of taxes paid on input supplies can be used to set-off for payment of taxes on outward supplies.

As per Section 2(61) of the Uttarakhand GST Act, 2017, Input Service Distributor (ISD) means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 of the UGST Act, 2017 towards receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax (CGST), State tax (UGST)/Union territory tax (UTGST) or integrated tax (IGST) paid on the said services to a supplier of taxable goods or services or both having same PAN as that of the ISD.

a) **Mismatches in ITC**

Audit analysed the dataset of GSTR-2A in respect of selected taxpayers along with datasets of GSTR-3B, GSTR-9 and GSTR-9C filed by the taxpayers and noticed mismatches of ITC and Reverse Charge Mechanism (RCM) among returns. Audit could not examine mismatches in detail since relevant granular records were not produced by the Department. The details of mismatches in ITC noticed by Audit are given in **Table-3.7.7**.

**Table-3.7.7: Mismatch in ITC claimed by taxpayers**

(₹ in crore)

Sl. No	Parameter	No. of cases	No. of Sectors	Amount of mismatch	Remarks
1.	<b>Mismatch in ITC availed under RCM with payment of tax:</b> Data of table 3.1 (d) of GSTR-3B, which contains the details of inward supplies that are liable to reverse charge, was compared with RCM ITC availed in GSTR-9 table 6C+6D+ 6F. <i>(Appendix-3.7.9.i)</i>	2	2	7.48	On this being pointed out in audit (December 2022 to February 2023), in one case the Department stated that there is no mismatch but did not provide documentary evidence in its reply. Further, no reply was given in other case (March 2024).
2.	<b>Mismatch in ITC availed under RCM:</b> Data of table 3.1 (d) of GSTR-3B, which contains the details of inward supplies that are liable to reverse charge, was compared with RCM tax liability in GSTR-9 table 4G. <i>(Appendix-3.7.9.ii)</i>	3	3	0.13	On this being pointed out in audit (December 2022 to February 2023), tax of ₹ 2.96 lakh has been deposited in one case. Further, no reply was given in remaining two cases (March 2024).
3.	<b>Non/short reversal of ITC availed for nil/exempt and non-GST and on capital goods supplies:</b> As per Section 17(2) of Uttarakhand GST Act 2017, read with Rules 42 and 43 of UGST Rules 2017, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies. <i>(Appendix-3.7.9.iii and Appendix-3.7.9.iv)</i>	18	9	13.17	On this being pointed out in audit (December 2022 to February 2023), Tax and interest of ₹ 10.88 lakh has been deposited in four cases and demand of ₹ 0.48 lakh has been raised in one case and in four cases reply of Department was not supported with evidence. Further, no reply was given in remaining nine cases (March 2024).
4.	<b>Mismatch in availing of ITC under Input Service Distribution credit:</b> As per Section 20(2) of Uttarakhand GST Act 2017, ISD may distribute the credit available for distribution in the same month in which it is availed. Table 4A (4) of GSTR 3B which contains the details of ISD credit availed shall tally with the Table 6G of GSTR 9. <i>(Appendix-3.7.9.v)</i>	2	2	7.10	On this being pointed out in audit (December 2022 to February 2023), reply of the Department was not received (March 2024).
5.	<b>ITC mismatch between GSTR-2A and GSTR-9:</b> The ITC available as per GSTR-2A was compared with the ITC availed under GSTR-9 return. <i>(Appendix-3.7.9.vi)</i>	46	26	35.19	On this being pointed out in audit (December 2022 to February 2023), tax and interest of ₹ 14.49 lakh has been deposited in four cases and demand of ₹ 1,667.46 lakh has been raised in eight cases. In five cases reply has been given by the Department which is not acceptable. Further, no reply was given in remaining 29 cases (March 2024).

Sl. No	Parameter	No. of cases	No. of Sectors	Amount of mismatch	Remarks
6	<b>Unreconciled ITC in GSTR 9 after adjustments-</b> Table 8D of GSTR 9 captures the difference between ITC available as per GSTR 2A and that of availed as per GSTR 3B with subsequent period's adjustments. The negative figure in table 8D of GSTR 9 indicates that ITC is availed in excess over eligible. <i>(Appendix-3.7.9.vii)</i>	51	25	53.26	On this being pointed out in audit (December 2022 to February 2023), demand of ₹ 74.05 lakh has been raised in five cases. In 16 cases reply has been given by the Department which is not acceptable. Further, no reply was given in 30 cases (March 2024).
7	<b>Mismatches pertaining to ITC noticed in GSTR-9C (Table-14 T)</b> Table 14T of GSTR-9C compares expenses incurred by the registered persons on inputs, capital goods or services with the ITC availed and highlights any excess availing of ITC on account of ineligibility, blocked credits in the Table 14T. <i>(Appendix-3.7.9.viii)</i>	18	12	112.09	On this being pointed out in audit (December 2022 to February 2023), Tax and interest of ₹ 2.44 lakh deposited in one case and demand of tax and interest of ₹ 5.54 lakh has been raised in one case. In five cases reply has been given by the Department which is not acceptable. Further, no reply was given in remaining 11 cases (March 2024).
8	<b>Mismatch in availing of ITC:</b> ITC through FORM GSTR-3B (sum of Table 4A of FORM GSTR-3B), as declared in GSTR 9 table 6(A) while value of GSTR 9 Table 6(I) there is difference of ₹ (-) between the ITC availed in GSTR 3B and declared in GSTR-9 serial no.6(I), adjustment in the ITC of GSTR 9. negative. <i>(Appendix-3.7.9.ix)</i>	26	16	104.26	On this being pointed out in audit (December 2022 to February 2023), Demand of ₹ 106.58 lakh has been raised in three cases and ₹ 3.00 lakh had been recovered. In six cases reply has been given by the Department which is not acceptable. Further, no reply was given in remaining 17 cases (March 2024).
9	<b>Mismatch between Debits of Tax Liabilities and ITC comparison statement and Electronic Cash/Credit ledger-</b> GSTR 3B debits should match with Liability ledger debits and actual Electronic Credit/Cash ledger debits for the month. Mismatch may be the indication of alteration in the amounts of Liability register by the taxpayers even after debiting GSTR 3B Table 6.1 to materialize lower debits in the Electronic Credit/Cash ledger. <i>(Appendix-3.7.9.x)</i>	4	4	5.46	On this being pointed out in audit (December 2022 to February 2023), In two cases reply has been given by the Department which is not acceptable. Further, no reply was given in remaining two cases (March 2024).
10	<b>Mismatch in ITC claim on Import of goods and ITC in 2A-</b> allowing excess ITC claim on Import of Goods against GSTR-2A <i>(Appendix-3.7.9.xi)</i>	5	5	1.66	On this being pointed out in audit (December 2022 to February 2023), tax and interest of ₹ 5.48 lakh has been deposited in one case. Further, no reply was given in remaining four cases (March 2024).
11	<b>Mismatch in ITC claim on GSTR-9C and ITC in 2A-</b> Mismatch ITC claim in GSTR-9C and GSTR-2A <i>(Appendix-3.7.9.xii)</i>	2	2	1.05	On this being pointed out in audit (December 2022 to February 2023) Demand has been raised in one case. Further, no reply was given in other case

Sl. No	Parameter	No. of cases	No. of Sectors	Amount of mismatch	Remarks
					(March 2024).
12	<b>Availing of ITC without producing supporting documents:</b> Section 16(2) of the Act prescribes the conditions for availing ITC. Audit could not check availing of ITC as supporting documents for ITC availed on items i.e. Employee Cost, Salaries, wages, Any other expenses etc., were not produced. <i>(Appendix-3.7.9.xiii)</i>	14	12	27.00	On this being pointed out in audit (December 2022 to February 2023), tax and interest of ₹ 0.21 lakh has been deposited in one case and demand of ₹ 103.55 lakh has been raised in one case. In three cases reply has been given by the Department which is not acceptable. Further, no reply was given in remaining nine cases (March 2024).

**b) Availing of excess transitional credit**

Section 140(1) of UGST Act 2017 allows a registered person, other than composition taxpayer, to take in his electronic credit ledger, credit of the amount of VAT, if any, carried forward in the return relating to period ending with the day immediately preceding the appointed day by filing a TRAN-1 and TRAN-2.

Audit observed (December 2022 to February 2023) in three cases pertaining to three sectors that the taxpayers had claimed excess transitional credit of ₹ 32.91 crore. The excess claiming was due to non-filing of TRAN-1 in one case, filing of TRAN-1 with nil amount in one case and filing of TRAN-1 of less amount than that of amount claimed in GSTR-9 return of 2017-18 in one case *(Appendix-3.7.9.xiv)*.

On this being pointed out in audit (December 2022 to February 2023), reply of the Department was not received in any case. March 2024).

An illustrative case is featured below: -

One taxpayer having GSTIN 05XXXXXXXXXX1ZB has claimed transitional credit ₹ 31.12 crore in GSTR-9, despite not filing TRAN-1. This had resulted in excess claims of ITC of ₹ 31.12 crore.

On this being pointed out in audit (January 2023), reply of the Department was not received (March 2024).

**3.7.9.4 Discharge of tax liability**

The taxable event in the case of GST is supply of goods and/or services. Section 9 of the Uttarakhand/Central GST Act 2017 is the charging section authorizing levy and collection of tax called State/Centre Goods and Services Tax on all intra-State supplies of goods or services or both, except on supply of alcoholic liquor for human consumption, on value determined under Section 15 of the Act *ibid* and at such rates not exceeding 20 *per cent* under each Act, i.e., CGST Act and UGST Act. Section 5 of the IGST vests levy and collection of Integrated GST on interstate supply of goods and services with Central Government with maximum rate of 40 *per cent*.

Under Section 8 of the Goods and Services Tax (Compensation to States) Act 2017, a cess is levied on all inter-state and intra-state supply of such goods or services or both which are listed in the schedule of the said Act such as tobacco products, aerated drinks, cigarettes, vehicles etc. Section 9(3) and 9(4) of the Uttarakhand GST

Act 2017 and Sections 5(3) and 5(4) of the Integrated GST Act 2017 provide for reverse charge levy of tax on certain goods or services, wherein the recipient instead of supplier becomes liable to pay tax.

Audit findings and mismatches noticed related to discharge of tax liabilities are discussed below.

**a) Mismatches relating to discharge of tax liability**

Audit scrutinised GSTR-1, GSTR-3B and GSTR-9 returns filed by the taxpayers for the year 2017-18 and noticed mismatch in discharge of tax liability by comparing the tax liability furnished in the returns. Audit could not examine these mismatches in detail since relevant granular records were not produced by the Department. The details of mismatches are given in **Table-3.7.8**.

**Table-3.7.8: Mismatch related to discharge of tax liability**

*(₹ in crore)*

Sl. No.	Parameter	No. of cases	No. of Sectors	Amount of mismatch	Remarks
1.	<b>Mismatch of tax payable between GSTR-1 and GSTR-3B</b> -Tax liability of GSTR-1 was not matching with the tax liability declared in GSTR-3B. <i>(Appendix-3.7.10.i)</i>	15	12	6.16	On this being pointed out in audit (December 2022 to February 2023), tax and interest of ₹ 35.27 lakh has been deposited in three cases and demand of ₹ 0.58 lakh has been raised in one case. In four cases reply has been given by the Department which is not acceptable. Further, no reply was given in remaining seven cases (March 2024).
2.	<b>Un-discharged tax liability on comparing greater of the tax liability of GSTR 1, GSTR 9 with reference to Tax payment in GSTR-9-</b> GSTR 1 and GSTR 9 for the year 2017-18 and the tax payable in these returns was compared with the tax paid and declared in GSTR 9. <i>(Appendix-3.7.10.ii)</i>	27	19	24.98	On this being pointed out in audit (December 2022 to February 2023), tax and interest of ₹ 54.99 lakh has been deposited in seven cases and demand of ₹ 264.64 lakh has been raised in four cases. In three cases reply has been given by the Department which is not acceptable. Further, no reply was given in remaining 14 cases (March 2024).
3.	<b>Mismatch between tax payment of GSTR9 and, debits of Electronic Credit and Cash ledgers-</b> Tax payment difference with Electronic Credit ledger (ECL) and Cash ledger. <i>(Appendix-3.7.10.iii)</i>	03	03	5.42	On this being pointed out in audit (December 2022 to February 2023), no reply was given in all cases (March 2024).

Sl. No.	Parameter	No. of cases	No. of Sectors	Amount of mismatch	Remarks
4.	<b>Unreconciled in taxable turnover declared in GSTR 9C:</b> Table 5R and Table 7G of GSTR-9 captures reconciliation between gross turnover declared in annual return GSTR-9 and audited Annual Financial Statements. (Appendix-3.7.10.iv)	10	08	80.71	On this being pointed out in audit (December 2022 to February 2023), tax of ₹ 8.02 lakh has been deposited in one case and demand of ₹ 0.97 lakh has been raised in one case. In one case reply has been given by the Department which is not acceptable. Further, no reply was given in remaining seven cases (March 2024).
5.	<b>Unreconciled Tax payment declared in GSTR 9C:</b> Table 9R of GSTR-9 captures reconciliation between tax payment declared in annual return GSTR-9 and audited Annual Financial Statements. (Appendix-3.7.10.v)	10	07	1.61	On this being pointed out in audit (December 2022 to February 2023), in one case Department had issued demand. In two cases reply has been given by the Department which is not acceptable. Further, no reply was given in remaining seven cases (March 2024).
6.	<b>Mismatch between books of accounts and Annual Returns regarding tax payment:</b> Mismatch between Turnover declared in GSTR-9 as included in GSTR-9C table 5Q and total turnover (including advances) as declared in GSTR-9 table 5N. (Appendix-3.7.10.vi)	4	3	3.10	On this being pointed out in audit (December 2022 to February 2023), tax of ₹ 11.41 lakh has been deposited in one case. In one case reply has been given by the Department which is not acceptable. Further, no reply was given in remaining two cases (March 2024).
7.	<b>Mismatch between books of accounts and Annual Returns regarding tax payment:</b> Mismatch between tax paid in GSTR9 as declared in GSTR 9C table 9Q and Tax paid as per GSTR9 table 9 (cash+ITC) (Appendix-3.7.10.vii)	6	5	67.63	On this being pointed out in audit (December 2022 to February 2023), In five cases replies have been given by the Department which is not acceptable. Further, no reply was given in remaining one case (March 2024).
8.	<b>Non-payment of tax due to mismatch in taxable turnover:</b> Sl. No. O of Table 5 of GSTR-9C i.e. Adjustments in turnover due to reasons not listed above, comprises 16 heads of adjustments. Out of which, 12	3	3	30.41	On this being pointed out in audit (December 2022 to February 2023), In one case reply has been given by the Department which is not acceptable. Further, no reply was given in

Sl. No.	Parameter	No. of cases	No. of Sectors	Amount of mismatch	Remarks
	entries shall be added, and four entries shall be deducted <sup>90</sup> from the turnover. Taxpayer had adjusted the turnover in the GSTR-9C, table 5 (O) which resulted in mismatch in taxable turnover on which tax was not paid. ( <i>Appendix-3.7.10.viii</i> )				remaining two cases (March 2024).

**(b) Short imposition of tax on turnover of VAT period of 2017-18 (1<sup>st</sup> Quarter)**

As per sub section (1) of section 9 of Uttarakhand Goods and services tax act, 2017, subject to the provisions of sub-section (2), there shall be levied a tax called the State goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty *per cent*, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

On scrutiny of GSTR-9C (reconciliation statement) furnished by the 10 taxpayers out of 99 taxpayers pertain to eight sectors for the year 2017-18, it was noticed that as per tax assessment order of the VAT period (from April 2017 to June 2017) turnover of the VAT was ₹ 134.79 crore, whereas in GSTR-9C the VAT turn over (from April 2017 to June 2017) was mentioned as ₹ 170.58 crore. Thus, there was a difference of ₹ 35.79 crore in VAT turnover on which tax was not paid. This had resulted in non-payment of tax of ₹ 5.26 crore which was recoverable with interest and penalty.

Also, two cases were noticed in which tax of ₹ 5.04 crore was not levied on escaped turnover of ₹ 42.04 crore (**sl. no. 11 and 12 of Appendix-3.7.10.ix**).

On this being pointed out in audit (July 2022 to November 2022), tax and interest of ₹ 4.08 lakh has been deposited in two cases and demand of ₹ 144.21 lakh has been raised in two cases. In one case reply has been given by the Department which is not acceptable. Further, no reply was given in seven cases (March 2024) (*Appendix-3.7.10.ix*).

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Sl. No.	Particulars	Action
1	Physician sample distributed by the pharmaceutical company to physician for free	(+)
2	Notice pay recovered from employees	(+)
3	Gifts given to customers/vendors/distributors	(+)
4	Stocks issued to discharge CSR obligation	(+)
5	Sales promotion / advertisement reimbursement received and considered as supply	(+)
6	Out of pocket expenses considered in the value of supply	(+)
7	Value of Capital Goods on which GST paid on sale	(+)
8	Profit on sale of Capital goods disclosed in audited Annual Financial Statements	(-)
9	Loss on sale of Capital goods disclosed in audited Annual Financial Statements	(+)
10	Income in Profit and Loss account recognized based on special circumstances	(-)
11	Value on which GST is liable to be paid in respect of transactions where income is recognized based on special circumstances	(+)
12	Discounts which are not to be excluded from the value of supply as per Section 15	(+)
13	Sale reversals in financials as risk & rewards not transferred.	(+)
14	Provision for doubtful debts written back	(+)
15	Interest income	(-)
16	Miscellaneous income or Any other amount	(-)

An illustrative case is featured below:

One taxpayer (GSTIN 05XXXXXXXXXX1Z2) has declared ₹ 43.48 crore as VAT period turnover in GSTR 9C table 5G. However, it was ₹ 25.42 crore as per VAT assessment order for April to June 2017. Out of this turnover, there was mismatch in VAT turnover amounting to ₹ 18.06 crore on which tax of ₹ 2.17 crore was payable with interest and penalty.

On this being pointed out in audit (September 2022), reply of the Department was not received (March 2024).

**(c) Payment of tax**

As per sub section (1) of section 9 of Uttarakhand Goods and services tax act, 2017, subject to the provisions of sub-section (2), there shall be levied a tax called the State goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty *per cent.*, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

As per sub section (1) of section 50 of Uttarakhand Goods and services tax act, 2017, Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen *per cent.*, as may be notified by the Government on the recommendations of the Council.

As per sub section (1) of section 122 of Uttarakhand Goods and services tax act, 2017, Where a taxable person who- (iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due; he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or ITC availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

**(i) Short payment of Tax**

During scrutiny of the records pertaining to 2017-18 it was noticed that five taxpayers pertaining to five sectors had not paid the full tax amount as declared in their GSTR-9 returns. Against payable tax of ₹ 115.73 crore, only ₹ 96.58 crore was paid by the taxpayers which resulted in short payment of tax of ₹ 19.16 crore on which taxpayers were also liable to pay interest and penalty (*Appendix-3.7.10.x*).

On this being pointed out in audit (September-October 2022), tax and interest of ₹ 18.25 lakh has been deposited in one case. In one case DRC-01 was issued by the Department. Further, no reply was given in remaining three cases (March 2024).

An illustrative case is featured below:

In case of one taxpayer (GSTIN 05XXXXXXXXXXOZG), as per Annual Return (GSTR 9) total tax payable was ₹ 110.98 crore. However, ₹ 92.60 crore had only been paid. Therefore, ₹ 18.37 crore tax had been short paid.

On this being pointed out in audit (October 2022), the Department stated that show cause notice (GST DRC-1) of ₹ 18.46 crore was issued. (March 2024).

**(ii) Non-Payment of tax**

During scrutiny of records pertaining to 2017-18 it was noticed that two taxpayers pertaining to two sectors have declared total ₹ 26.92 crore as Value of Exempted, Nil Rated, Non-GST supplies on which tax was not paid by the taxpayers. In two cases, the taxpayers had cleared goods in packing containing brand name on which tax was leviable. Total ₹ 1.35 crore tax was payable with interest and penalty on the same. (*Appendix-3.7.10.xi*).

On this being pointed out in audit (September-October 2022), no reply was given in all cases (March 2024)

An illustrative case is featured below:-

One case (05XXXXXXXXXX1ZX), the taxpayer had cleared wheat flour in a unit container and declared the same as exempted supply in GSTR 9 of ₹ 14.08 crore on which tax had not been paid. As per notification no 837/2017/9(120)/XXVII (8)/2017 dated 25 October 2017 of Uttarakhand tax is leviable if goods are cleared in unit container under a brand name, GST is payable on the same. Hence, in this case tax was leviable on this turnover which had not been paid by the taxpayer. The same was recoverable with interest and penalty.

On this being pointed out in audit (September 2022), reply of the Department was not received (March 2024).

**(iii) Non-payment of tax due to finished goods not received back from Job workers within prescribed time**

As per sub section (1) of section 143 of UGST Act, 2017, A registered person (hereafter in this section referred to as the “principal”) may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a job worker for job work and from there subsequently send to another job worker and likewise, and shall-

As per sub section 1 (a) of section 143 of UGST Act, 2017, bring back inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax.

As per sub section 1(b) of section 143 of UGST Act,2017, supply such inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out from the place of business of a job worker on payment of tax within India, or with or without payment of tax for export, as the case may be.

As per sub section (3) of section 143 of UGST Act, 2017 Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out.

Audit noticed that two taxpayers pertaining to two sectors sent goods worth ₹ 5.40 crore for job work against GST ITC-04 during July 2017 to March 2018. As per the *Ibid* Act taxpayers were required to furnish details of the return of goods from the job worker in GST ITC-04. However, no such detail of return of the goods was mentioned in the GST ITC-04 of the concerned taxpayers which indicates that the goods sent to the job workers had not been returned within the prescribed time limit. Therefore, the taxpayers are liable to pay tax of ₹ 0.97 crore on ₹ 5.40 crore along with interest and penalty thereon. (*Appendix-3.7.10.xii*).

On this being pointed out in audit (September- October 2022), the Department has issued demand of ₹ 40.60 lakh in one case. In other case reply was not received (March 2024).

An illustrative case is featured below:-

One taxpayer (05XXXXXXXXXX1ZL) had sent goods to the job worker during 2017-18 worth ₹ 1.66 crore which was not received back from the job worker till September 2022. Hence, ₹ 29.87 lakh tax is payable along with interest and penalty thereon the goods sent to the job worker.

On this being pointed out in audit (September 2022), the Department stated that the demand has been raised of tax and penalty of amount ₹ 40.60 lakh. (March 2024).

#### **3.7.9.5 Excess Refund allowed**

As per sub section (1) of section 54 of UGST Act, 2017, Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

Further as per sub section (2) of section 54 of UGST Act, 2017, A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received.

As per section 55 of UGST Act, 2017, the Government may, on the recommendations of the Council, by notification, specify any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under

the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other person or class of persons as may be specified in this behalf, who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them.

Notification no 06/2017 dated 28 June 2017 and Notification no 520/2017/9(120)/XXVII(8) dated 29 June 2017 entitled a taxpayer i.e. CSD canteen to a refund of tax paid by it on inward supplies of goods or services or both. The taxpayer had to make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received.

During scrutiny of records of financial year 2017-18, it was noticed that four taxpayers pertaining to four sectors had claimed refund of ₹ 38.61 crore which was sanctioned by the Proper Officer against the admissible refund of ₹1.49 crore. It resulted in excess claim of refund of ₹ 37.13 crore. Out of the excess claim of refund of ₹ 37.13 crore, refund of ₹ 35.09 crore was inadmissible due to late filing of refund claim in one case, excess refund of ₹ 1.85 crore was inadmissible due to refund claim on service input in inverted duty refund in two cases and remaining excess claim of refund of ₹ 0.18 crore was inadmissible due to difference between adjusted turnover and ITC in one case. Hence, ₹ 37.13 crore is payable by the taxpayers along with interest and penalty on it. (*Appendix-3.7.10.xiii*).

On this being pointed out in audit (August-November 2022), Department has issued demand of ₹ 1.00 crore in one case and in one case reply has been given by the Department which is not acceptable. Further, the reply of the Department was not received in two cases. (March 2024).

An illustrative case is featured below:-

One taxpayer (05XXXXXXXXXX1ZO) had filed three refund applications for the three quarters of 2017-18 in December 2018 after the last date of filing the refund claim as stated in section 54 (2) above. The Department had sanctioned refund of ₹ 35.09 crore despite the applications being filed after due date.

On this being pointed out in audit (November 2022), the Department stated that as per notification no. 18/2022-CT dated 28 September 2022, the time limit has been increased from six months to two years. Hence, the objection is not suitable. The reply of the Department is not acceptable as the notification mentioned is effective from 01 October 2022 and not from retrospective date. Hence not applicable on the case mentioned above. (March 2024).

### **3.7.10 Inadequate Capacity building efforts**

Capacity building is necessary for effectiveness of officers and staff of the Department at all levels. The Department organized various training programmes on GST to their officers and staff in order to enhance their skill so as to upgrade their knowledge in new tax regime and for revenue augmentation. Details of training on

GST imparted by the Department during the years 2017-18 to 2020-21 are in **Table-3.7.9** below:

**Table-3.7.9: Details of trainings on GST**

Year	Name of Post	Actual Strength	Required mandays for training (Column 3*5)	Actual mandays of training	Shortfall
1	2	3	4	5	6
2017-18	Adjudication Authority	240	1,200	274	926
	Supporting Staff	441	2,205	517	1,688
2018-19	Adjudication Authority	239	1,195	278	917
	Supporting Staff	433	2,165	492	1,673
2019-20	Adjudication Authority	237	1,185	278	907
	Supporting Staff	400	2,000	479	1,521
2020-21	Adjudication Authority	219	1,095	252	843
	Supporting Staff	389	1,945	28	1,917

*Source: Information provided by the State Taxes Department.*

If training is given to a person even for five days, the above table shows that the persons trained were actually very low compared to the available man-power. Thus, the number of officers/officials trained after the issue of SOP for the start of the audit of taxpayers under section 65 of the Act are very low compared to the officers/officials engaged in these tasks and as such the Department needs to enhance capacity building in these areas on priority.

### 3.7.11 Inadequacy of manpower

For efficient functioning of the Department, proper manpower planning to meet its objectives and its proper deployment are necessary.

The sanction and working strength of State Tax Department in respect of adjudicating authority (Dy. Commissioner/Assistant Commissioner, Commercial Taxes Officer) and other supporting staff during the years 2017-18 to 2020-21 are given in **Table-3.7.10**.

**Table-3.7.10: Sanction and working strength of State Tax Department**

Year	Name of the posts	Number of sanctioned posts	Actual strength	Number of vacant posts	Percentage of vacant posts
2017-18	Adjudicating authority	305	240	65	21.31
	Supporting staff	1051	441	610	58.04
2018-19	Adjudicating authority	305	239	66	21.64
	Supporting staff	1051	433	618	58.80
2019-20	Adjudicating authority	306	237	69	22.55
	Supporting staff	1050	400	650	61.90
2020-21	Adjudicating authority	267	219	50	17.98
	Supporting staff	925	389	536	57.95

*Source: Information provided by the State Taxes Department.*

The table above shows that during 2017-18 to 2020-21 the vacant posts in respect of Adjudicating authority ranged between 17.98 per cent to 22.55 per cent. Further, the vacant posts in respect of supporting staff ranged between 57.95 to 61.90 per cent. Absence of adequate manpower has adversely impacted the working efficiency of the Department which is evident in the slow pace of scrutiny or returns, lack of action in cases of cancellation of registrations, etc.

### **3.7.12 Conclusion**

The Subject Specific Compliance Audit (SSCA) on Department Oversight on GST Payments and Return Filing was undertaken in the context of varying trend of return filing and continued data inconsistencies with an objective of assessing the adequacy of the system in monitoring return filing and tax payments, extent of compliance and other Departmental oversight functions.

This SSCA was predominantly based on analysis of returns submitted by the taxpayers, which highlighted risk areas, red flags and in some cases, rule-based deviations and logical inconsistencies in GST returns filed for 2017-18. The SSCA entailed assessing the oversight functions of Uttarakhand State Tax Department jurisdictional formations (Sectors)/State Jurisdictional formation at two levels – at the data level through global data queries and at the functional level with a deeper detailed audit of Sectors, GST returns and internal audit which involved accessing taxpayer records.

The Department, after formulating a Standard Operating Procedure (May 2022) for scrutiny of returns, has recently commenced scrutiny of returns for the year 2017-18 and 2018-19 in financial year 2022-23. The Department needs to increase its efforts in the area of scrutiny of return and internal audit to verify the correctness of self-assessment of tax liability by the taxpayers.

The Department did not provide the additional records of taxpayers sought by Audit due to which the Audit could not establish the mismatches noticed in the returns filed by the taxpayers into logical conclusions. The Department needs to provide assistance to the Audit so that audit process reaches its logical conclusion through detailed examination of records of taxpayers.

The Department also needs to respond expeditiously to audit observations so that mismatches pointed out by audit through Limited and Detailed Audit are resolved quickly and recovery of dues to the Government is ensured.

Considering the significant rate of compliance deficiencies, the Department must initiate remedial measures before they get time barred. From a systemic perspective, the Department needs to strengthen the scrutiny of returns and internal audit and reinforce the institutional mechanism in the Sectors to establish and maintain effective oversight on return filing, taxpayer compliance, tax payments, follow up of other tax authorities reports, cancellation of registrations and recovery of dues from defaulters.

### **3.7.13 Recommendations**

*The State Government may consider:*

- *The Department may prescribe the timelines for scrutiny of returns for the years 2017-18 and 2018-19;*
- *Year wise targets under Section 65 of Uttarakhand GST Act, 2017, may be increased by the Department in view of additional tax demand created as a result of internal audit;*

- *The Department may also instruct its field formations to ensure the scrutiny of returns and internal audit along with recovery of pointed out amounts of dues before the time barring of cases;*
- *The Department may urgently pursue the 146 inconsistencies pointed out by the Audit, for which responses have not been provided and intimate the results to Audit;*
- *The Department may initiate remedial action for all the compliance deviations brought out in this report before they get time barred.*

### **3.8 Undue Benefit of Input Tax Credit of ₹ 5.37 Lakh**

As per section 6(1) of the Uttarakhand Value Added Tax Act, 2005, the benefit of ITC shall be allowed only to a registered dealer, and for the purpose of calculating the net tax payable by a registered dealer for any tax period after being registered, an ITC as determined under the provision of this act shall be allowed to such registered dealer for the tax paid or payable in respect of all taxable sales other than sale of goods, specified in Schedule III, or any other sales, as may be prescribed. As per section 34(4) of the Act, interest at the rate of 15 *per cent* per annum shall become due and be payable on the unpaid amount with effect from the date immediately following the last date prescribed till the date of payment of such amount.

Scrutiny of records (March 2021) of Deputy Commissioner (Assessment)-III, State Tax, Haridwar revealed that as per the Assessment Order dated 30 September 2019, benefit of ITC of ₹ 44.81 lakh was allowed to the dealer<sup>91</sup> as against the admissible/verified/due ITC of ₹ 39.44 lakh. This led to short levy of tax by ₹ 5.37 lakh with consequential liabilities towards penalty and interest at the rate of 15 *per cent* per annum w.e.f. 01 October 2015 to the date of depositing.

On this being pointed out by Audit, the Government accepted (August 2022) the lapse as human error and stated that revised Assessment Order was issued on 26 July 2021. The Government's reply is not acceptable due to provisions of Financial Handbook, Uttarakhand Budget Manual and GO dated 05 March 2005 which require recovery of revenue loss from the concerned officer.

The Government has also not taken any prevention & detection measures for future.

### **3.9 Non levy of tax**

***Non levy of tax on fixed assets after transfer of business resulted in revenue loss of ₹ 45.38 lakh on which interest of ₹ 37.44 lakh is also payable.***

As per Section 9(4)(a) of the Uttarakhand Value Added Tax Act, 2005, where a dealer is a firm or association of persons or a Joint Hindu Family, and such firm, association or Family has discontinued business, tax including penalty, if any, payable under this Act by such firm, association or family up to the date of such discontinuance may be assessed and determined as if no such discontinuance had taken place. Also, Section 18(5) stipulates that every person whose registration is cancelled under this section shall pay in respect of every taxable goods held as stock or as capital goods on

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<sup>91</sup> M/s Balaji Sales Corporation (TIN 05011836353).

the date of cancellation an amount equal to the tax that would be payable in respect of those goods if the goods were sold at fair market price on that date or the total tax credit previously claimed in respect of those goods, whichever is higher.

Further, Section 4(2)(b)(i)(d) of the Act provides that a dealer shall be liable to pay tax at the rate of 13.5 *per cent* in respect of goods other than those included in any of the Schedules and one *per cent* additional tax was also leviable with effect from 04 October 2016.

Scrutiny of records (February-March 2020) of Deputy Commissioner (Assessment)-1, State Tax, Roorkee revealed that the firm M/s B.A. International<sup>92</sup> was closed<sup>93</sup> and the said firm was taken over by M/s Birla Aircon Industries<sup>94</sup>. The firm M/s B.A. International transferred goods of ₹ 8.11 crore<sup>95</sup> to M/s Birla Aircon Industries on which tax was not imposed due to business takeover. Audit noticed that fixed assets (other than land and building) worth ₹ 3.13 crore<sup>96</sup> were not transferred by M/s B.A. International to M/s Birla Aircon Industries because M/s Birla Aircon Industries accepted only raw material, packing material, finished goods and semi-finished goods and also the firm, M/s Birla Aircon Industries had shown opening balance of fixed assets of only ₹ 12.03 lakh<sup>97</sup> in its balance sheet as on 01 April 2017. It is clear from the above that tax was leviable on fixed assets worth ₹ 3.13 crore as per Section 18(5) of the Act, but the tax was not levied by the Assessing Officer. This led to non-levy of tax by ₹ 45.38 lakh<sup>98</sup> with consequential liabilities towards interest<sup>99</sup>.

On this being pointed out, the Government intimated (October 2021) that necessary action on audit observation has been initiated and accordingly a tax of ₹ 45.38 lakh has been imposed on the concerned dealer vide revised Assessment Order dated 06 July 2020. Meanwhile the dealer has filed an appeal before Joint Commissioner (Appeal) in 2021 against the imposition of the additional tax. The appeal is yet to be decided<sup>100</sup>.

### 3.10 Non levy of tax

***The Department did not levy tax on closing stock resulting into revenue loss of ₹ 21.44 lakh.***

As per Section 3 (2) of the Uttarakhand Value Added Tax Act, 2005, every person who is registered under the provisions of this Act shall be a taxable person and liable to pay tax in the manner provided in the Act. Section 4 of the Act stipulates that a

<sup>92</sup> TIN 05005757654.

<sup>93</sup> The firm was closed on 14 February 2017 as per the assessment order for the year 2016-17.

<sup>94</sup> TIN 05018537889.

<sup>95</sup> Raw material of ₹ 7,66,39,160 and packing material of ₹ 45,03,300.

<sup>96</sup> As on 31 March 2017.

<sup>97</sup> As on 01 April 2017.

<sup>98</sup> ₹ 3,12,99,024 × 14.5 per cent = ₹ 45,38,358.

<sup>99</sup> Interest for the period 01 October 2016 to 31 March 2022 is ₹ 37.44 lakh (₹ 45,38,358 × *per cent* × 66 months / 12).

<sup>100</sup> The Joint Commissioner (Appeal) ordered that 90 *per cent* of the imposed tax amount would remain suspended till the decision of the appeal and also order to deposit the security for suspended amount as per the satisfaction of the Assessing Officer. As per order, the dealer deposited 10 *per cent* (₹ 5.00 lakh) of disputed tax and for the 90 *per cent* amount of tax, Indemnity Bond against Stay of Demand has been submitted. But this bond was denied by the Department and recovery certificate was issued (May 2022) against remaining amount.

dealer shall be liable to pay tax on his taxable turnover at the rate specified in Schedules.

Scrutiny of records (March 2022) of Assistant Commissioner (Assessment), Sector-2, State Tax, Rishikesh, revealed that the dealer<sup>101</sup> had shown the closing stock of goods as ₹ 4.29 crore<sup>102</sup> under VAT. There was no evidence available on the records to carry forward the closing stock from VAT to GST and scrutiny of the GSTIN<sup>103</sup> pertaining to the dealer<sup>104</sup> also revealed that the tax was not paid on the closing stock under GST. Therefore, the tax was leviable on the said closing stock under VAT but the tax was not levied by the Assessing Officer as seen in the assessment order<sup>105</sup>. This led to non-levy of tax by ₹ 21.44 lakh<sup>106</sup> at the minimum rate of tax<sup>107</sup> with consequential liabilities towards interest and penalty.

On this being pointed out, the Government stated (December 2022) that the said closing stock is not an item or raw material, but the balance payment of the contract work of VAT period and this amount has not yet been received by the contractor. Since, the outstanding payment is to be referred to be shown in the income tax return by the contractor, therefore, the said amount was shown by the dealer in his return. This is a pending payment of VAT period.

Reply is not justified because as per the annual return<sup>108</sup> of the dealer, the said amount pertained to the closing stock. Besides, no evidence was made available as to which department was liable to pay the outstanding amount. Further, it was the responsibility of the Assessing Officer to levy tax on the closing stock, but the tax was not levied by the Assessing Officer.

### **3.11 Lack of due diligence by Assessing Officer led to tax evasion of ₹ 18.81 lakh on turnover of ₹ 4.40 crore**

***The dealer was unilaterally declared tax free for want of filing of statutory returns and lack of cross verification with GST returns resulting in tax evasion of ₹ 18.81 lakh on turnover of ₹ 4.40 crore.***

Section 3 (2) of the Uttarakhand VAT Act, 2005 provides that every person who is registered under the provisions of this Act shall be liable to pay tax in the manner as provided in the Act. Also, Section 23 of the Act prescribes the duty of every dealer who is liable to pay tax under this Act regarding submission of periodical returns and payment of tax.

Moreover, Section 39 and Section 44 of the Uttarakhand GST Act, 2017 also prescribes the duty of every registered person to submit periodical returns and annual return respectively.

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<sup>101</sup> M/s Nabh Construction and Developers Pvt. Ltd. (TIN 05011216523).

<sup>102</sup> As per Annexure-004 of Form IV(B) (annual return for work contractors) for the Assessment year 2017-18 (April to June 2017).

<sup>103</sup> GSTIN 05AADCN7045A1ZX.

<sup>104</sup> For the period July 2017 to March 2021.

<sup>105</sup> Under Section 7(2) of VAT Act.

<sup>106</sup> ₹ 4,28,84,004 × 05 per cent = ₹ 21,44,200.

<sup>107</sup> As per Section 4(2)(b)(i)(b) of the VAT Act, the rate of tax is 05 per cent in respect of goods specified in Schedule II (B).

<sup>108</sup> Annexure-004 of Form IV (B) (Amended-1) (annual return for work contractors).

Further, Section 45 (1) of the Uttarakhand VAT Act stipulates that any officer under this Act, not being an officer below the rank of an officer appointed and posted by the Commissioner, may for any purpose related to the administration or enforcement of the provisions of this Act by notice, require any dealer or other person to furnish any information or any document including electronic records which may be in his knowledge or possession. Whenever so required, the dealer or such person shall furnish correct, complete and true information.

Scrutiny of records (March 2022) of Assistant Commissioner (Assessment), Sector-2, State Tax, Rishikesh revealed that the Assessing Officer unilaterally declared (August 2021) a dealer<sup>109</sup> tax free for the period April to June 2017 on the ground that no records relating to business by the said dealer were available. This was, however, subject to reopening of the assessment on receipt of any information regarding conduct of business in future. On further scrutiny, Audit observed that the said dealer had shown turnover of ₹ 4.40 crore<sup>110</sup> for the period April to June 2017 in his GST return and thus liable for the tax under VAT<sup>111</sup>. Since the dealer was declared tax free by the Assessing Officer, this resulted into non-levy of tax on the turnover of ₹ 4.40 crore with consequential liabilities towards interest and penalty.

On this being pointed out, the Government replied (December 2022) that after taking cognizance of declarations by the Assessee in GST returns<sup>112</sup> the reassessment order has been passed (October 2022) and the demand of ₹ 7.04 lakh<sup>113</sup> has been raised, after adjusting ₹ 11.78 lakh of advance Tax Deposit at Source (TDS), under the relevant provisions<sup>114</sup> of the VAT on turnover of ₹ 4.40 crore for the first quarter of 2017-18. The dealer is also liable to pay interest w.e.f 01 July 2017 to the date of depositing. As of April 2023, Joint Commissioner (Appeal) has sent the case back to Assessing Officer for reassessment.

On review of whole events, Audit is of the view that there was lack of due diligence on the part of Assessing Officer as he: (i) failed to enforce submission of statutory quarterly and annual return under VAT by the dealer/assessee; (ii) did not cull out turnover for the assessing period (April-June 2017) from GST returns of the dealer/ assessee despite the fact that works contractors were one of the high risk category under VAT/GST regime for tax evasion. Further, had this omission been not detected in Audit, the Government would have been deprived of the said revenue.

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<sup>109</sup> M/s Global Construction (TIN 05007907368).

<sup>110</sup> As per GSTR-9C (Reconciliation of turnover declared in audited Annual Financial Statement with turnover declared in Annual Return) relating to the GSTIN 05AAHFG7312C2ZV.

<sup>111</sup> GST was introduced w.e.f. 01 July 2017.

<sup>112</sup> GSTR-9C relating to the GSTIN-05AAHFG7312C2ZV of M/s Global Construction (TIN 05007907368).

<sup>113</sup> As per Section 7(2)/29(4), the Assessing officer fixed the composition money of ₹ 7.20 lakh at the rate of two *per cent* on the payment of ₹ 3.60 crore received by the dealer and as per Section 25/29(4), the Assessing Officer imposed the tax of ₹ 11.61 lakh at the rate of 14.5 *per cent* on the turnover of ₹ 0.80 crore. Thus, the total composition money/tax imposed by the Assessing Officer was ₹ 18.81 lakh which was adjusted by TDS deposited by the dealer and the amount of ₹ 7.04 lakh has been raised.

<sup>114</sup> Section 7(2)/29(4) and 25/29(4).

### 3.12 Irregular tax rebate on use of false form-C

***False forms-C were used by a dealer for availing concessional rate of tax which resulted in short levy of tax ₹ 14.70 lakh. In addition, penalty of ₹ 47.63 lakh and interest on unpaid amount of tax till the date of deposit was also leviable.***

As per Section 4 (2) (b) (i) (d) of Uttarakhand Value Added Tax Act, 2005, goods not included in any Schedule would be taxable at 13.5 *per cent*. Section-8 (4) of the Central Sales Tax Act, 1956, stipulates that inter-State sales to registered dealers are taxable at concessional rate when such sales are supported by declaration in form-C. If a dealer issues or furnishes a false certificate or declaration, he shall be liable to penalty of a sum not exceeding forty *per cent* of the value of the goods involved or three times the tax leviable on such goods, whichever is higher, under Section-58 (1) (xxxii) of the Uttarakhand VAT Act, 2005.

Scrutiny of records (October-November 2020) of Deputy Commissioner (Assessment)-II, State Tax, Roorkee revealed that during the year 2014-15, a dealer<sup>115</sup> made central sale of auto parts of ₹ 17.86 crore at concessional rate<sup>116</sup> against form-C. As per Assessment Order dated 12 April 2019, tax on the sale of ₹ 17.86 crore was levied at the concessional rate of one *per cent*. However, on test check, Audit selected two<sup>117</sup> form-C related to the said dealer for verification. On cross verification of the form-C, the issuing authority<sup>118</sup> of the respective State stated (December 2020 and January 2021) that these two form-C amounting to ₹ 1.18 crore<sup>119</sup> had not been issued to the dealer by the concerned State. Therefore, the tax was leviable at the rate of 13.5 *per cent* on the sale of auto parts of ₹ 1.18 crore instead of one *per cent*. This resulted in short levy of tax by ₹ 14.70 lakh<sup>120</sup>. In addition, the dealer was also liable to pay a penalty of ₹ 47.63 lakh<sup>121</sup> along with interest on the unpaid amount of tax till the date of payment as per rule.

On this being pointed out, Commissioner, State Tax replied (April 2023) that tax of ₹ 14.56 lakh had been imposed on the dealer as per Section 9(2)/ read with Section 31/Section 29(4) of the Act. After which a penalty of ₹ 47.16 lakh has also been imposed under Section 58(1) (xxix).

On examination of the reply, Audit observed that the Department took the sale value of ₹ 1.16 crore of these two form-C and tax and penalty have been calculated accordingly, while the total sale value mentioned in these two forms is ₹ 1.18 crore. Also, no reason was given by the Department for this difference.

<sup>115</sup> M/s Jack Hardware Pvt. Ltd TIN 05007250387.

<sup>116</sup> At the rate of one *per cent*.

<sup>117</sup> Form-C no. 14P 448278 and 14P 448279.

<sup>118</sup> Department of Trade & Taxes, Government of NCT of Delhi.

<sup>119</sup> Form-C no. 14P 448278 (amount ₹ 54,77,554) and form-C no. 14P 448279 (amount ₹ 62,83,452).

<sup>120</sup> ₹ 1,17,61,006 × 12.5 (13.5-1) *per cent* = ₹ 14,70,126.

<sup>121</sup> ₹ 1,17,61,006 × 13.5 *per cent* × 3 times = ₹ 47,63,207 or ₹ 1,17,61,006 × 40 *per cent* = ₹ 47,04,402, whichever is higher.

The matter was referred to the Government (April 2022); and despite pointing it out repeatedly (May, August & September 2022) the Government failed to give its reply (March 2024).

### 3.13 Short Levy of Tax

***Application of incorrect rate of tax and showing short purchases of imported goods (diesel/petrol) by the dealer, resulted in revenue loss of ₹ 32.71 lakh.***

Section 3 (1) of Uttarakhand Value Added Tax Act, 2005 stipulates that tax shall be levied and charged in accordance with the provisions of this Act on every sale made within the State by a dealer or a person. As per the notification dated 16 September 2015<sup>122</sup> of the Government of Uttarakhand, the tax will be leviable on Motor Spirit and Diesel in the following manner:

Sl. No.	Description of goods	Rate of tax	Taxation point
1.	Motor Spirit (petrol)	25 per cent or ₹ 17 per litre, whichever is greater	Manufacturer or Importer
2.	Diesel	21 per cent	

Scrutiny of records (March 2022) of Deputy Commissioner (Assessment)-III, State Tax, Haridwar revealed that the dealer<sup>123</sup> had imported Diesel and Petrol amounting to ₹ 3.08 crore<sup>124</sup> and declared the sale of these goods for an amount of ₹ 3.25 crore (Diesel ₹ 22.67 lakh and Petrol ₹ 3.03 crore) during the year 2016-17. As per the assessment order dated 06 November 2020, the tax on the sale of Petrol was levied as ₹ 75.66 lakh (at the rate of 25 per cent on ₹ 3.03 crore) which should have been levied as ₹ 99.96 lakh<sup>125</sup> (at the rate of ₹ 17 per litre on 5,88,000 litre) as per the notification dated 16 September 2015. This led to a short levy of tax of ₹ 24.30 lakh<sup>126</sup> with a consequential liability towards interest.

Further, scrutiny of form-16 (online) revealed that the dealer had actually imported goods (Diesel/Petrol) of ₹ 3.33 crore against the declared amount of ₹ 3.08 crore. Thus, no tax could be levied on concealed purchase of goods of ₹ 25.02 lakh.

In April 2023, the Commissioner of State Tax reported a reassessment in September 2022 under Section 29(4) of the Act, resulting in a demand of ₹ 36.49 lakh and an additional cess demand of ₹ 0.31 lakh. Furthermore, the Joint Commissioner (Appeal) had invalidated the assessment order, returning the case for re-hearing. Subsequently, after a re-hearing, the Commissioner of State Tax confirmed<sup>127</sup> the adjusted taxation, setting the sale value of imported diesel at ₹ 34.14 lakh but applicable tax leviable was not communicated. After accepting the audit observation, the Department imposed an additional tax of ₹ 32.71 lakh<sup>128</sup> on the dealer.

<sup>122</sup> No. 809/146(120)/2015/XXVII(8)/2008 of Government of Uttarakhand, Finance Section-08.

<sup>123</sup> M/s Chandan Filling Station (TIN 05015313027).

<sup>124</sup> 30,000 litre of Diesel amounting to ₹ 12,85,036 and 5,88,000 litre of Petrol amounting to ₹ 2,95,11,253.

<sup>125</sup> ₹ 3,02,63,278 × 25 per cent = ₹ 75,65,819 or 5,88,000 litre × ₹ 17 per litre = ₹ 99,96,000, whichever is higher.

<sup>126</sup> Difference of ₹ 75,65,819 and ₹ 99,96,000.

<sup>127</sup> In September 2023.

<sup>128</sup> ₹ 1,13,13,176 - ₹ 80,41,896 (the difference of tax imposed in the original assessment order and reassessment order).

The Department's reply was, however, silent on re-examining similar cases of short levy of tax in case of other dealers under same/different assessing officer and also putting in place any preventive mechanism to avoid recurrence of similar lapses.

The matter was referred to the Government (May 2022); it informed (September 2024) that the trader had deposited tax amounting to ₹ 29.79 lakh through various challans and all interest on the outstanding amount had been waived off.