

## **Chapter - II**

**Value Added Tax,  
Entry Tax and Goods  
and Services Tax *etc.***



## CHAPTER II

### VALUE ADDED TAX, ENTRY TAX AND GOODS AND SERVICES TAX, etc.

#### 2.1 Tax Administration

Assessment and collection of Value Added Tax, Entry Tax, Central Sales Tax, Professional Tax, Entertainment Tax and Goods and Services Tax (implemented from 01 July 2017) are regulated under Odisha Value Added Tax (OVAT) Act, 2004, Odisha Entry Tax (OET) Act, 1999, Central Sales Tax (CST) Act, 1956, Professional Tax Act, Entertainment Tax Act, 2006 and Odisha Goods and Services Tax (OGST) Act, 2017 and Rules framed thereunder, respectively. The organisational setup for administration of Value Added Tax, Entry Tax and Goods and Services Tax is as under:



#### 2.2 Internal Audit

The Internal Audit Wing (IAW) of the Department which is responsible for evaluating the Internal Control measures in the Department has been defunct since 2002-03. The Department had not taken steps to revive IAW despite this deficiency being pointed out in the Audit Reports (Revenue Sector) of the previous years. The Department stated (December 2020) that steps have been taken to revive them.

#### 2.3 Audit Methodology and Results of Audit

Audit was conducted in 37 units out of total 58 units (63.79 *per cent*) in Commercial Taxes wing of Finance Department during 2019-20. The total revenue receipts collected in the 37 units was ₹ 29,060.98 crore during the year 2018-19. Test check of assessment and other records showed under assessment of tax and other irregularities involving ₹68.14 crore in 126 cases. This related to Odisha Goods and Services tax (OGST), Odisha Value Added Tax (OVAT), Central Sales Tax (CST), Odisha Entry Tax (OET), Odisha Entertainment Tax and Professional Tax which fall under the categories as given in **Table 2.1**.

**Table 2.1: Category wise details of Audit observations on revenue**

(₹ in crore)			
Sl. No.	Categories	No. of cases	Amount
<b>Sales Tax/ OVAT (including CST)</b>			
1	Under-assessment of tax	35	26.11
2	Acceptance of defective statutory forms	6	0.65
3	Evasion of tax due to suppression of sales/ purchase	1	0.21
4	Irregular/ incorrect/ excess allowance of input tax credit	3	1.49
5	Other irregularities <sup>5</sup>	20	21.46
	<b>Total</b>	<b>65</b>	<b>49.92</b>
<b>Entry Tax</b>			
1	Under-assessment of tax	6	14.09
2	Evasion of tax due to suppression of sales/ purchase	1	0.17
3	Other irregularities <sup>6</sup>	18	2.39
	<b>Total</b>	<b>25</b>	<b>16.65</b>
<b>Goods and Services tax</b>			
1	Irregular/ incorrect/ excess allowance of input tax credit	16	1.56
2	Under-assessment of tax	2	0
3	Other irregularities <sup>7</sup>	10	0
	<b>Total</b>	<b>28</b>	<b>1.56</b>
<b>Professional Tax</b>			
1	Other irregularities <sup>8</sup>	8	0.01
	<b>Total</b>	<b>8</b>	<b>0.01</b>
	<b>Grand Total</b>	<b>126</b>	<b>68.14</b>

During the year 2019-20, the Department accepted under-assessment and other deficiencies of ₹32.66 crore in 70 cases pointed out in earlier years and realised ₹7.89 crore in 70 cases. The position of recovery in other cases was yet to be received.

There are five broad categories of audit observations under Sales Tax/ VAT, CST Act, three broad categories under GST Act and two broad categories under OET Act. Most of them are of a nature that may reflect similar errors/ omissions in other Commercial Taxes and GST units under the Department but not covered in the test audit.

Department may, therefore, like to internally examine all the other units with a view to ensure that the taxes are levied as per provisions of the Act and rules.

<sup>5</sup> Non-levy of mandatory interest for delay in deposit of demanded tax U/s 34, Non/Short-imposition of mandatory penalty U/s 42 of the OVAT Act *etc.*

<sup>6</sup> Non-imposition of mandatory penalty (ET) on assessed tax, Non-levy of ET on sale turnover of scheduled goods *etc.*

<sup>7</sup> Non verification of accounts of tax payers who had way bill transactions but non-filers, non-initiation of action to recover ITC availed by cancelled dealers, delay in disposal of refund cases *etc.*

<sup>8</sup> Non levy of interest for delay in deposit of Professional Tax, non-assessment and collection of PT *etc.*

## 2.4 Audit observations

Audit test checked the assessment records relating to the Odisha Value Added Tax (OVAT), Central Sales Tax (CST) and Odisha Entry Tax (OET) Act in 27 Commercial Tax Circles<sup>9</sup> and nine Commercial Tax Ranges<sup>10</sup> of the State. Audit observed several cases of non-observance of the provisions of the aforesaid Acts and Rules made thereunder. Audit also observed many cases of non-levy and short levy of tax and penalty as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on test checks carried out by Audit. Audit pointed out similar omissions by Assessing Authorities (AAs) every year. However, many of the irregularities persisted and remained undetected till next audit was conducted. This indicated that the internal control system in the Department was weak and ineffective. The Government needs to improve the internal control system including strengthening of internal audit to avoid occurrence of such cases.

## Odisha Value Added Tax

### 2.5 Non-observance/ compliance of the provisions of the Act and Rules read with Government notifications

*The OVAT Act, 2004, the Odisha Value Added Tax Rules, 2005 made there under, OET Act, 1999, CST Act, 1956 and CST Rules, 1957 provide for:*

- *completion of the audit assessments by the AAs of the department on the basis of Audit Visit Reports (AVRs);*
- *levy of tax on the correctly assessed taxable turnover of outputs after giving due credit/ adjustment of admissible Input Tax Credit (ITC);*
- *imposition of penalty at prescribed rates in addition to the tax assessed at the audit assessment stage by the AAs;*
- *demand and collection of tax/ interest/ penalty as per the prescribed procedures; and*
- *imposition of penalty for non-submission of Certified Annual Audited Accounts (CAAA) within the prescribed date.*

*The AAs, while finalising the audit assessments of the dealers did not observe some of the aforesaid provisions as mentioned in the following paragraphs:*

#### 2.5.1 Short-levy of tax due to application of lower rate of tax

**The application of lower rate of tax during assessment of the unspecified items under the OVAT Act resulted in short-levy of tax of ₹1.63 crore and penalty of ₹3.26 crore.**

Section 8(2) of the CST Act, 1956, provides that the tax payable by any dealer on his turnover relates to the sale of goods in the course of inter-State trade or

<sup>9</sup> In 27 Circles - Keonjhar, Kendrapada, Jajpur, Phulbani, Jatni, Angul, BBSR-I, II & III, Balasore, Bargarh, Balangir, Koraput, Barbil, Cuttack-I(West) & (City), Cuttack-II, Rourkela-I & II, Jagatsinghapur, Ganjam-I & II, Jharsuguda, Puri, Sambalpur-I, Kantabanjhi and Kalahandi Circle

<sup>10</sup> 09 Ranges - Jajpur, Angul, Puri, BBSR, Cuttack-I & II, Balangir, Koraput and Sambalpur

commerce not falling within sub-section (1) shall be at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of the State. Further, Rule 12(3) (g) of CST (O) Rules, 1957 provides that without prejudice to any interest or penalty that may have been levied under any provision of the Act, an amount equal to twice the amount of tax assessed under clause (e) or (f) shall be imposed by way of penalty in respect of any assessment completed under the said clause.

Audit scrutinised the CST assessment records and observed that the Assessing Authority (AA) assessed (December 2015) one dealer<sup>11</sup> under Ganjam-II Circle U/r 12(3) of the CST (O) Rules for the tax period from April 2012 to March 2014. The dealer in the instant case was a manufacturer of Chlorinated Paraffin Wax (CPW) and Hydrochloric Acid (HCL). Purchases/ receipts were made from within the State of Odisha as well as from outside India and sales were effected both within and outside the State of Odisha. While assessing, the AA determined the Gross Turnover (GTO) at ₹56.78 crore<sup>12</sup> and the Taxable Turnover (TTO) at ₹35.03 crore<sup>13</sup> after allowing deduction of ₹21.75 crore<sup>14</sup> towards production of 'F' forms, export documents and CST collected.

However, the AA disallowed exemption on sales worth ₹19.20 crore<sup>15</sup> due to non-production of statutory forms and levied tax of ₹96 lakh on those sales at a rate of five *per cent* as per Schedule B (Part-II) of OVAT Act and penalty of ₹1.09 crore.

Audit found that Chlorinated Paraffin Wax (CPW) is a non-poisonous, non-inflammable low volatility, and high insulativity complex chemical substance used in multiple applications across diverse industries. Similarly, Hydrochloric acid (HCL) is also an important laboratory reagent and industrial chemical. As far as their usage is concerned, both the CPW and HCL are nothing but "Chemical" and are liable to be taxed ₹2.59 crore<sup>16</sup>, at the rate of 13.5 *per cent* on the disallowed sales amount of ₹19.20 crore, as per Schedule B (Part-III) of the OVAT Act.

Thus, the AA applied lower rate of tax in assessment for the above unspecified items under the OVAT Act which resulted in short-levy of tax amounting to ₹1.63 crore. Besides, the dealer was also liable to pay penalty twice the tax amounting to ₹3.26 crore.

The DCCT & GST had not furnished any specific compliance (January 2020). The matter was intimated to the Government (July 2021). The reply is also awaited (September 2021).

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<sup>11</sup> M/s United Chloro Paraffins (P) Ltd, TIN-21261908767

<sup>12</sup> CST sale - ₹17.26 crore + CST sale without 'C' form condition - ₹1 lakh + Branch Transfer - ₹17.69 crore + Export - ₹21.47 crore + CST collected - ₹35 lakh

<sup>13</sup> CST sale - ₹17.26 crore + CST sale without 'C' form condition - ₹1 lakh + Non-production of 'F' forms - ₹6.86 crore + Export sale without supporting documents - ₹10.90 crore

<sup>14</sup> Production of 'F' forms - ₹10.83 crore + export documents - ₹10.57 crore + CST collected - ₹35 lakh

<sup>15</sup> Export - ₹10.90 crore (*i.e.* ₹6.69 crore for 2012-13 and ₹4.21 crore for 2013-14) + Branch transfer - ₹6.86 crore (*i.e.* ₹63 lakh for 2012-13 and ₹6.23 crore for 2013-14) + CST sale - ₹1.44 crore (*i.e.* ₹49 lakh for 2012-13 and ₹95 lakh for 2013-14)

<sup>16</sup> (₹19.20 crore x 13.5) / 100 = ₹2.59 crore

## 2.5.2 Short levy of tax and penalty due to irregular acceptance of credit notes

**The Assessing Authority irregularly allowed credit notes issued to individual customers which led to short levy of tax and penalty of ₹1.35 crore.**

As per sub-section 1 of Section 23 of OVAT Act, 2004, where a tax invoice has been issued in respect of any sale and the amount shown as tax charged in the tax invoice is found to be in excess of the tax payable under this Act in respect of that sale, the registered dealer making the sale shall provide the purchaser with a credit note containing the requisite particulars as may be prescribed. Further as per Section 42(A)(6), without prejudice to any penalty or interest that may have been levied under any provisions of the OVAT Act, penalty not exceeding twenty-five *per centum* of the tax so arrived under sub-section 4 or sub-section 5 may be imposed in respect of any assessment completed under the said sub-sections. As per Rule 68 and 71 of OVAT Rules, 2005, a Tax Invoice contains Tax Identification Number (TIN) of both the purchaser and seller but Retail invoice contains the TIN of the seller only. When goods are sold with the purpose of “resale” tax invoice is issued, whereas the goods are sold to the final consumer retail invoice is issued.

Audit scrutinised the OVAT assessment records and noticed that one dealer<sup>17</sup> in Keonjhar Circle had been assessed U/s 42 A of the OVAT Act for the tax periods from 1 October 2015 to 31 March 2016 (27 July 2018) and from 1 April 2016 to 30 June 2017 (09 August 2018). The Assessing Authority (AA) determined the taxable turnover (TTO) of the said dealer at ₹576.02 crore<sup>18</sup> and assessed output tax at ₹81.52 crore<sup>19</sup>. The AA allowed deduction of ₹1.08 crore<sup>20</sup> from the assessed output tax towards credit notes issued.

On scrutiny of credit notes and statements submitted by the dealer, Audit noticed that these credit notes were issued to individual customers/ buyers of vehicles instead of registered OVAT dealers as required under the OVAT Act. As individual customers were issued with retail invoice and not tax invoice, the claim for deduction of output tax involved in the credit notes issued to individual customers from the calculated output tax was irregular. Thus, the AA consented deduction of output tax in lieu of credit notes issued to individual customers irregularly which led to short levy of tax and penalty of ₹1.35 crore<sup>21</sup> during the assessed tax periods.

In reply, the Government stated (September 2020) that the output tax calculated earlier towards the issue of credit notes to the individual customers was unjust and improper. The reassessment of the dealer was completed

<sup>17</sup> M/s Samal Auto (India) Pvt. Ltd. TIN 21961404758

<sup>18</sup> ₹167,93,25,796 during 01.10.2015 to 31.03.2016 + ₹408,08,67,141 during 01.04.2016 to 30.06.2017

<sup>19</sup> ₹58,65,24,748 during 01.04.2016 to 30.06.2017 + ₹22,86,53,259 during 01.10.2015 to 31.03.2016

<sup>20</sup> ₹56,06,355 for the tax period 01.10.2015 to 31.03.2016 and ₹52,00,987 for the tax period 01.04.2016 to 30.06.2017

<sup>21</sup> ₹1,08,07,342 (56,06,355 + 52,00,987) + penalty 25 *per cent* (27,01,836)

(August 2020) raising demand of ₹2.16 crore including penalty of ₹1.08 crore U/s 43 of OVAT Act.

### **2.5.3 Short-levy of tax due to wrong consideration of sales as inter-State sale instead of intra-State sale**

**The Assessing Authorities wrongly accepted ‘C’ forms of Odisha State considering those as inter-State sale and levied tax at concessional rate under the Central Sales Tax Act resulting in short-levy of tax of ₹1.26 crore.**

As per Section 3 of the Central Sales Tax (CST) Act, 1956, as amended from time to time, a sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase (a) occasions the movement of goods from one State to another; or (b) is effected by a transfer of documents of title to the goods during their movement from one State to another. Further, Section 8(4) of the CST Act read with Rule 12(1) of the CST (Registration and Turnover) Rules, 1957 provides that for claiming concessional rate of tax under the CST Rules, the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration in Form ‘C’ duly filled in and signed by the registered dealer of the outside State to whom the goods are sold containing the prescribed particulars obtained from the prescribed authority.

As per the provision of Section 8(2) of the CST Act, 1956, the tax payable by any dealer on his turnover shall be at the rate applicable to the sale or purchase of such goods inside the State with effect from 2008. As per Entry No. 68 of Schedule-B (Part-II) of the Odisha Value Added Tax (OVAT) Act, ‘sponge iron’ is taxable at the rate of five *per cent*.

Audit scrutinised the CST assessment records and observed that the Assessing Authority (AA) assessed two dealers<sup>22</sup> in Rourkela – II Circle during September 2018, who were engaged in manufacturing and sale of sponge iron. The AA determined the CST sales of the two dealers at ₹409.46 crore<sup>23</sup> and accepted the ‘C’ forms worth ₹414.28 crore<sup>24</sup> including CST as furnished by the two dealers against their CST sales. Based on the ‘C’ Forms, the AA assessed the said turnover at a concessional rate of two *per cent* on CST sales worth ₹409.46 crore under the CST Act and levied the tax of ₹8.19 crore.

On verification of the ‘C’ forms furnished by the dealers, Audit noticed that out of ₹414.28 crore, ‘C’ forms worth ₹41.98 crore<sup>25</sup> were issued by the dealers of Odisha State to whom the said turnover of goods were sold. As the sales were made within the State of Odisha and the ‘C’ forms submitted were of Odisha State, these sales should have been treated as intra-State sale and the AA should have levied tax of ₹9.45 crore *i.e.*, at the prevailing rate of five *per*

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<sup>22</sup> (a) M/s Shree Ganesh Metaliks Ltd, TIN-21022000079 (b) M/s Adhunik Metaliks Ltd, TIN-21472000074

<sup>23</sup> ₹247.65 Crore+ ₹161.81 Crore

<sup>24</sup> ₹252.47 Crore + ₹161.81 Crore

<sup>25</sup> ₹41.30 Crore + ₹68 lakh

cent for sponge iron under the OVAT Act for ₹41.98 crore and concessional rate of two per cent for balance ₹367.48 crore.

Thus, wrong acceptance of 'C' forms by AA by treating those as inter-State sales instead of intra-State sales resulted in short levy of tax of ₹1.26 crore which was a loss to the Government exchequer.

In reply, accepting the observation of Audit, the Commissioner of Commercial Taxes (CT) & Goods & Service Taxes (GST), Odisha Stated (January 2021) that on receipt of the audit objections, the AAs had re-examined the cases and assessments were completed (November 2020) under Rule 12 (4) of the CST (O) Rules, 1957 imposing total demand of ₹1.27 crore<sup>26</sup> and issued the demand notices. Although, on being pointed out by Audit, the Department took action in these two cases which were noticed during the test check of records by Audit, the Department needs to install a system to avoid such omissions and due diligence is followed while assessing the cases.

#### 2.5.4 Irregular allowance of credit notes led to excess refund

**The Assessing Authority irregularly allowed credit notes issued beyond the period of three months resulting in excess refund of ₹55.39 lakh.**

As per Sub-rule (1) of Rule 7 of the OVAT Rules, 2005 read with Sub-section 3 under Section 23 of the Odisha Value Added Tax (OVAT) Act, 2004, where there is requirement for adjustment of the sale price or tax in relation to a taxable sale, the dealer making such adjustment may issue a credit note or debit note, as the case may be. Further, Sub-rule 2 of Rule 7 provides that Credit Note or Debit Note as referred to in Sub-rule (1) shall be issued within three months following the tax period, during which the original sale had taken place.

Audit scrutinised the refund records along with the assessment records and noticed that out of 32 records in Jharsuguda Circle, one dealer<sup>27</sup> had been refunded (March 2019) ₹1.67 crore in respect of assessment U/s 42 A of the OVAT Act for the tax period 01 April 2016 to 30 June 2017. The instant dealer excavated coal from different coal mines and effected sales within and outside the State of Odisha. Coal is taxable at the rate of five per cent as per entry No. 31 of Part-II of Schedule B.

While assessing, the Assessing Authority (AA) assessed the tax liability of dealer at ₹287.97 crore<sup>28</sup> and after adjustment of tax payment of ₹289.64 crore, allowed a refund of ₹1.67 crore in lieu of excess payments determining the Gross Turnover (GTO) at ₹6,047.42 crore and the Taxable Turnover (TTO) at ₹5,759.45 crore<sup>29</sup>. The Additional commissioner of CT & GST (Revenue) verified assessment records and noticed (May 2019) that the AA allowed deduction of ₹56.19 lakh from the output tax towards credit notes worth ₹11.08 crore<sup>30</sup> issued by the dealer during January to March 2017.

<sup>26</sup> ₹1.24 Crore + ₹3 lakh

<sup>27</sup> M/s MCL IB Valley Coalfields, TIN-21211700002

<sup>28</sup> ₹230.29 crore during 2016-17 + ₹57.68 crore during 2017-18

<sup>29</sup> Sale - ₹4,605.85 crore during 2016-17 + sale - ₹1,153.60 crore during 2017-18 (up to June 2017)

<sup>30</sup> ₹2.26 crore during Jan 2017 + ₹4.41 crore each during February & March 2017

However, the AA did not take any action on the instructions of the Additional Commissioner till the date of Audit (January 2020).

Audit further noticed from the review comments of the Additional Commissioner of CT & GST (Revenue) that these credit notes were not issued by the dealer within a period of three months of the tax period to which they were related. The dealer also admitted in his statement that he had issued the credit notes beyond the stipulated period of three months. However, the AA deducted the tax effect from the output tax without mentioning the tax period for which the credit notes were issued and the date on which these credit notes were issued by the dealer. Thus, the AA had irregularly allowed such credit notes beyond the period of three months and decreased output tax to that extent, though the AA had no discretion under the statute to condone such delay. This resulted in excess refund of ₹55.39 lakh<sup>31</sup>.

The observation was issued to the audited entity (January 2020) and in reply the Additional Commissioner of CT & GST, Sambalpur stated (December 2020) that the re-assessment proceeding had been initiated.

The matter was intimated (July 2021) to the Government. The reply is awaited (September 2021).

### **2.5.5 Short levy of tax due to irregular allowance of concessional rate**

**The Assessing Authority irregularly accepted the sales turnover of ₹17.57 crore under Odisha State E-I, 'C' forms and allowed concessional rate of tax resulting in short levy of tax worth ₹52.71 lakh at the differential rate of three per cent.**

As per Section 3 of the Central Sales Tax (CST) Act, 1956, as amended from time to time, a sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce, if the sale or purchase (a) occasions the movement of goods from one State to another; or (b) is effected by a transfer of documents of title to the goods during their movement from one State to another. Under Section 6(2) of the CST Act, where a sale of any goods in the course of inter-State trade or commerce, if the goods are of the description referred to in sub-section (3) of Section 8, shall be exempted from tax under this Act, provided the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time a certificate (Form E-I & E-II) duly filled in and signed by the registered dealer from whom the goods purchased containing the particulars in a prescribed form.

Further, Section 8(4) of the CST Act read with Rule 12(1) of the CST (R&T) Rules, 1957 provides that for claiming concessional rate of tax under the CST Rules, the dealer selling the goods should furnish to the prescribed authority a declaration in Form 'C' duly filled in and signed by the registered dealer of the outside State to whom the goods are sold. As per the provision of Section 8(2)

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<sup>31</sup> Five per cent of ₹11.08 crore.

of the CST Act, 1956, the tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sales in the course of inter-State trade or commerce shall be at the rate applicable to the sale or purchase of such goods within the State under the sales tax law of that State. As per Entry No. 68 of Schedule-B (Part-II) of the Odisha Value Added Tax (OVAT) Act, 'iron ore' is taxable at the rate of five *per cent*.

Audit scrutinised the CST assessment records and found that one dealer<sup>32</sup> under Barbil Circle had been engaged in mining and trading activities of iron ore and manganese ore. The Assessing Authority (AA) assessed (September 2018) the dealer for the tax period from October 2015 to March 2016 and determined the Gross Turnover (GTO) and Taxable Turnover (TTO) as ₹471.11 crore and ₹461.88 crore respectively. On verification of 'C' forms furnished by the dealer, the AA assessed the turnover of ₹453.13 crore of CST sale at the rate of two *per cent*.

On scrutiny of those 'C' forms, Audit found that three numbers of 'C' forms amounting to ₹17.57 crore were submitted by two purchasing dealers<sup>33</sup> of Odisha State. Hence, concessional rate of tax against 'C' forms of Odisha State dealers should have been disallowed with imposition of tax of ₹52.71 lakh *i.e.* at differential rate of three *per cent*.

After this was pointed out (December 2019) by Audit, the AA stated that it was a transit sale and produced (November 2020) copies of E-I forms submitted by the dealers against those 'C' forms. The reply is not tenable since the instant dealer himself issued those E-I forms to the above two purchasing dealers who belonged to State of Odisha and the E-I as well as 'C' forms produced to the AA were also Odisha forms. As such, the transaction of ₹17.57 crore was neither inter-State sale under Section 3 nor transit sale under Section 6(2) of the CST Act. Thus, irregular acceptance of the sales turnover of ₹17.57 crore under Odisha State E-I, 'C' forms and allowance of concessional rate of tax by the AA resulted in short levy of tax worth ₹52.71 lakh.

The matter was intimated to the Government (July 2021). The reply is awaited (September 2021).

### **2.5.6 Short levy of tax and penalty due to excess allowance of labour and service charges**

**Assessing Authority allowed excess deduction towards labour and service charges which resulted in short levy of tax and penalty worth ₹14.79 lakh.**

Under Rule 6(e) of OVAT Rules, 2005, the expenditure *inter-alia* incurred towards (1) labour charges for execution of works (2) amount paid to a sub-

<sup>32</sup> M/s Serajuddin & Co having TIN-21111400036

<sup>33</sup> (i) M/s Mangalam Metal Ores Ltd., TIN-21411402490 of Barbil Circle and (ii) M/s Kalinga Enterprises Pvt. Ltd. TIN- 21455400323 of Rourkela – II Circle

contractor for labour and services in case of works contract shall be deducted from Gross Turnover (GTO) to determine Taxable Turnover (TTO). Under proviso to the above rules, where the dealer executing works contract fails to produce evidence in support of expenses mentioned above or such expenses are not ascertainable from the terms and conditions of the contract or the books of accounts maintained for the purpose, a lump sum amount on account of labour, service and like charges in lieu of such expenses shall be determined at the rate specified in the Appendix appended to the Rule 6(e) of the OVAT Rules. As per Sl. No. 23 of the Appendix, the charges towards labour and services shall be determined at 20 *per cent* of the GTO. Further, as per Section 42A (6), penalty not exceeding twenty-five *per centum* of the tax so arrived may be imposed in respect of any assessment completed under this section.

Audit scrutinised the assessment records and observed that the Assessing Authority (AA) assessed (September 2018) one dealer<sup>34</sup> in Puri Circle, who was engaged in execution of works contract, under Section 42A of OVAT Act for the period from 1 October 2015 to 31 March 2016. The AA determined gross receipts of ₹17.58 crore and assessed the GTO of ₹8.69 crore after deducting the payments made to the sub-contractor worth ₹8.89 crore. Similarly, the AA allowed deduction towards labour and service charges worth ₹3.29 crore from GTO which constituted 37.88 *per cent* and determined the TTO at ₹5.40 crore.

The dealer had not maintained proper books of accounts as per aforesaid rule and failed to produce the details of payment particulars in respect of works contract for which the AA rejected the periodical books of accounts. As such, the AA should have allowed deductions at 20 *per cent* labour and service charges from the GTO as per Sl. No.23 of Appendix appended to the OVAT Rules. The AA allowed deductions of 37.88 *per cent* irregularly, which resulted in short levy of tax and penalty amounting to ₹14.79 lakh (₹11.83 lakh tax and ₹2.96 lakh penalty) as detailed in the *Appendix I*.

The matter was brought to the notice of the Deputy Commissioner, CT & GST, Puri Circle (January 2020), no specific compliance has been reported. The matter was intimated to the Government of Odisha (July 2021). Their reply is awaited (September 2021).

## Entry Tax

### 2.6 Non-observance/ compliance of the provisions of Odisha Entry Tax Act/ Rules read with Government notifications

The Odisha Entry Tax (OET) Act, 1999 and Rules made there under read with Government notifications issued from time to time provide for levy of tax Under Section 3 of the Act at the prescribed rates under Rule 3 of the OET Rules, 1999 on the entry of scheduled goods into a local area for consumption, use or sale therein and imposition of penalty under Section 9 C of the Act in audit assessment.

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<sup>34</sup> M/s VA TECH WABAG Ltd. TIN 21711117048

Audit observed that while finalising the assessments, the AAs did not observe the above provisions in some cases as mentioned in the following paragraphs.

### 2.6.1 Short-levy of Entry Tax on sales turnover

**The Assessing Authority did not levy entry tax on sales of scheduled goods resulting in short-levy of ET worth ₹19 lakh along with penalty worth ₹38 lakh on the tax assessed.**

Section 3 of Odisha Entry Tax (OET) Act, 1999 provides that there shall be levied and collected a tax on entry of the Scheduled goods into a local area<sup>35</sup> for consumption, use or sale therein at such rate not exceeding twelve *per centum* of the purchase value of such goods from such date as may be specified by the State Government and different dates and different rates may be specified for different goods and local areas subject to such conditions as may be prescribed. Rule 19(1) of the OET Rules, 1999 envisages that every manufacturer of scheduled goods who is registered under Value Added Tax (VAT) Act shall, in respect of the finished products which are scheduled goods and are sold by it to a dealer or person, as the case may be, either directly or through an intermediary, collect tax payable under Section 3 of the Act from the buying dealer or person, as the case may be. As per Entry No. 73 of Part-I of the ET Schedule, “Chemicals used for any purpose” is eligible to be taxed at the rate of one *per cent*. Further, under Section 9 C (5) of the OET Act, an amount equal to twice the amount of tax assessed shall be imposed by way of penalty in respect of any assessment completed under the Sub-section 3 and 4 of this section.

Audit scrutinised the Central Sales Tax (CST) and OET assessment records along with corresponding Audit Visit Reports (AVR) and noticed that out of 18 dealers in Ganjam-II Circle, one dealer<sup>36</sup> was assessed (December 2015) U/s 9(C) of the OET Act for the tax period 01 April 2012 to 31 March 2014. The dealer in the instant case was a manufacturer of Chlorinated Paraffin Wax (CPW) which is non-poisonous, non-inflammable, low volatility and high insulativity complex chemical substance and Hydrochloric Acid (HCL). Purchases/ receipts were made from inside the State of Odisha as well as from outside India and sales were effected both inside and outside the State of Odisha.

While finalising the assessment of the dealer under the OET Act, the Assessing Authority (AA) determined the Taxable Turnover (TTO) as ₹70.40 crore<sup>37</sup> and calculated ET of ₹40 lakh<sup>38</sup>. However, the AA did not levy entry

<sup>35</sup> Local Area means the areas within the limits of any (i) Municipality constituted under the Odisha Municipal Act, 1950; (ii) Gram Panchayat constituted under the Odisha Gram Panchayat Act, 1964; and (iii) other local authority by whatever name called, constituted or continued in any law for the time being in force, and includes the area within an industrial township constituted under Section 4 of the Odisha Municipal Act, 1950

<sup>36</sup> M/s United Chloro Paraffins (P) Ltd, TIN-21261908767

<sup>37</sup> Purchase value of (raw materials ₹61.65 crore + drums ₹5.78 crore + machinery ₹33 lakh) + finished product sold outside the local area within the State ₹ 2.64 crore

<sup>38</sup> One *per cent* on drums - ₹5.78 crore + 0.5 *per cent* on raw materials - ₹61.65 crore + two *per cent* on machinery - ₹33 lakh + one *per cent* on finished product sold outside the local area within the State - ₹2.64 crore

tax on sales worth ₹19.20 crore<sup>39</sup> of CPW and HCL relating to disallowance of interstate/ export/ branch transfer sale in the CST assessment order due to non-production of statutory forms. As the AA did not levy entry tax on sales of CPW and HCL, there was short-levy of ET worth ₹19 lakh<sup>40</sup>. Besides, the dealer was liable to pay penalty of twice the tax worth ₹38 lakh. Thus, the total tax and penalty has been assessed as ₹57 lakh.

The matter was intimated (July 2021) to the Government. The reply is awaited (September 2021).

## 2.6.2 Less demand of Entry Tax

### Excess adjustment of payments of tax resulted in short demand of entry tax worth ₹33 lakh.

Section 3 (1) of the OET Act, 1999 provides that, there shall be levied and collected a tax on entry of the scheduled goods into a local area for consumption, use or sale therein at such rate not exceeding twelve *per centum* of the purchase value of such goods from such dates as may be specified by the State Government and different dates and different rates may be specified for different goods and local areas subject to such conditions as may be prescribed.

Audit scrutinised the assessment records and noticed that the Assessing Authority (AA) assessed (15 March 2016) one<sup>41</sup> dealer under Territorial Range, Angul, for the tax period from 2012-13 to 2013-14. The AA determined taxable turnover (TTO) at ₹7,932.11 crore<sup>42</sup> and tax worth ₹96.02 crore<sup>43</sup>. The AA raised demand of ₹37.02 crore after adjustment of ET set-off of ₹2.83 crore and tax payments of the dealer worth ₹56.17 crore. However, Audit observed that the actual ET payments was ₹55.84 crore which should have been adjusted. Thus, the AA irregularly adjusted ET payments of ₹56.17 crore against the actual payment of ₹55.84 crore which resulted in excess adjustment and short demand of tax of ₹33 lakh (₹56.17 crore - ₹55.84 crore).

In reply, the Additional Commissioner of CT & GST (Revenue) stated (November 2020) that a revised demand of ₹37.35 crore had been made.

The matter was intimated (July 2021) to the Government of Odisha. The reply is awaited (September 2021).

<sup>39</sup> Export - ₹10.90 crore (*i.e.* ₹6.69 crore for 2012-13 and ₹4.21 crore for 2013-14) + Branch transfer - ₹6.86 crore (*i.e.* ₹63 lakh for 2012-13 and ₹6.23 crore for 2013-14) + CST sale - ₹1.44 crore (*i.e.* ₹49 lakh for 2012-13 and ₹95 lakh for 2013-14)

<sup>40</sup> One *per cent* on ₹19.20 crore

<sup>41</sup> M/s Jindal Steel & Power Ltd. TIN 21172000530

<sup>42</sup> Purchase turnover ₹ 6490,66,99,789+ Sales turnover ₹1441,44,25,111=₹7932,11,24,900

<sup>43</sup> @ 0.5 *per cent* on ₹2733,05,87,732 = 1366,52,939, @ 1 *per cent* on ₹2163,08,01,117 = ₹21,63,08,011 @ 2 *per cent* on ₹30,35,97,36,080 = ₹60,71,94,722. Total tax determined = ₹96,01,55,672

### 2.6.3 Short-levy of Entry Tax on sales turnover of scheduled goods

**Non-levy of entry tax on sales turnover of scheduled goods resulted in short levy of tax and penalty worth ₹13.39 lakh.**

Rule 19(1) of the OET Rules, 1999 says that every manufacturer of scheduled goods who is registered under Value Added Tax (VAT) Act, 2004 shall, in respect of the finished products which are scheduled goods and are sold by it to a dealer or person, as the case may be, either directly or through an intermediary, collect tax payable under Section 3 of the Act from the buying dealer or person, as the case may be. Further under Section 9 C (5) of the OET Act, an amount equal to twice the amount of tax assessed shall be imposed by way of penalty in respect of any assessment completed under the Sub-section 3 and 4 of this section.

Audit scrutinised the Odisha Value Added Tax (OVAT) and OET assessment records along with corresponding Audit Visit Reports (AVRs) and noticed that out of 18 dealers in Ganjam-II Circle, departmental tax audit of one dealer<sup>44</sup> was conducted (July 2018) under Rule 11(5) of the OET Rules, 1999 for the tax period 01 October 2015 to 30 June 2017. The dealer in the instant case was a manufacturer of “Agricultural, Horticultural machineries and implements” and the goods were taxable at one *per cent* as per Entry No.37 of the Part-I of the Entry Tax Schedule. Purchases were effected within the State as well as from outside the State of Odisha and sales were effected only within the State of Odisha.

The tax audit team determined the Gross Turnover (GTO) at ₹3.32 crore<sup>45</sup> and the Taxable Turnover (TTO) at one crore<sup>46</sup> rupees and calculated the ET of one lakh<sup>47</sup> rupees. Further, it was noticed that during tax audit, ET was calculated only on purchase of raw materials but was not levied on sale of finished goods. The AA had not also issued any assessment order under the ET Act as there was no tax due to the dealer as per the AVR.

Verification of the AVR under the OVAT Act revealed that the dealer had effected VAT sale of his finished goods amounting to ₹4.46 crore including VAT. However, neither the tax audit team nor the AA levied entry tax on sales of those finished goods without mentioning any justification. The dealer, being a manufacturer of scheduled goods, was liable to pay ET on the sales turnover of its manufactured scheduled goods like “Agricultural, Horticultural machineries and implements” which was taxable at one *per cent* as per Entry No.37 of the Part-I of the Entry Tax Schedule. This resulted in short-levy of ET worth ₹4.46 lakh<sup>48</sup>. Besides, the dealer was liable to pay penalty at twice

<sup>44</sup> M/s Sheet Profile Company, TIN-21091900858

<sup>45</sup> Purchase from registered dealers - ₹1.38 crore + un-registered - ₹99 lakh + outside State - ₹95 lakh

<sup>46</sup> Outside Purchase value - ₹95 lakh + Transportation charges - ₹5 lakh

<sup>47</sup> One *per cent* on one crore rupees

<sup>48</sup> One *per cent* on ₹4,46,47,807

the tax amounting ₹8.92 lakh. Thus, the total tax and penalty calculated to ₹13.39 lakh<sup>49</sup>.

Accepting the observation of Audit, the Special Commissioner of CT & GST (Revenue & IT) stated that assessment U/s 10 of the OET Act was completed (January 2021) and a demand was raised against the dealer for payment of ₹13.39 lakh towards tax and penalty.

The matter was intimated (July 2021) to the Government of Odisha. The reply is awaited (September 2021).

## Goods and Services Tax

### 2.7 Introduction

Goods and Services Tax (GST) was implemented with effect from 01 July 2017. GST<sup>50</sup> is being levied on intra-State supply of goods and services (except alcohol for human consumption and five petroleum products<sup>51</sup>), separately but concurrently by the Union (CGST) and the States (SGST)/ Union Territories (UTGST). Further, Integrated GST (IGST) is being levied on inter-State supply of goods or services (including imports) and the Central Government has exclusive powers to levy IGST. Prior to the implementation of GST, Value Added Tax (VAT) was being levied on intra-State sale of goods in the series of sales by successive dealers as per Odisha VAT Act, 2004 and Central Sales Tax (CST) was being levied on sale of goods in course of inter-State trade or commerce as per CST Act, 1956.

The State Government was empowered to regulate the provisions of OVAT Act whereas provisions relating to GST are being regulated by Centre and State on the recommendation of Goods and Services Tax Council (GSTC) which was constituted with representation from Centre and all the States to recommend on the matters related to GST. The State Government notified (June 2017) the Odisha Goods and Services Tax (OGST) Act, 2017 and the Odisha Goods and Services Tax Rules, 2017 in lieu of various taxes<sup>52</sup> which were subsumed.

Goods and Services Tax Network (GSTN) was set up by the Government of India as a private company to provide IT services. It provides Front-end IT services to taxpayers namely registration, payment of tax and filing of returns. Back-end IT services, *i.e.*, registration, approval, taxpayer detail viewer, refund processing, MIS reports, *etc.*, are also being provided by GSTN to Model-II<sup>53</sup> States. Odisha has opted for Model-II.

Since Odisha had opted Model-II for implementation of GST, Back-end applications like registration, return scrutiny, audit, assessment, appeal,

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<sup>49</sup> One per cent of ₹4,46,47,807 = ₹4,46,478 + penalty twice the tax – ₹8,92,956 = ₹13,39,434

<sup>50</sup> Central GST: CGST and State/ Union Territory GST: SGST/ UTGST

<sup>51</sup> Petroleum products : petrol, high speed diesel, crude oil, natural gas and aviation turbine fuel

<sup>52</sup> Value Added Tax, Central Sales Tax, Entry Tax, Luxury Tax and Entertainment Tax

<sup>53</sup> Model-I States: only front-end services provided by GSTN, Model-II States: both Front-end and Back-end services provided by GSTN

enforcement, MIS reports, etc., for GST administration were developed by GSTN. As per information provided (March 2019) by the Department, all these modules have been developed by GSTN. For access to the Back-end applications, leased line connectivity has been provided by GSTN from their Data Centre to Odisha State Data Centre. All the field offices are connected to the Odisha State Data Centre through State-wide Multi-Protocol Level Switching (MPLS) Network.

### 2.7.1 Trend of Revenue

The total receipts under GST for the period 2019-20 were ₹26,967.18 crore, which includes SGST of ₹13,203.52 crore, share of net proceeds assigned to State from CGST worth ₹8,641.66 crore and compensation received worth ₹5,122 crore. Against the target of ₹22,898.51 crore, the State could achieve ₹21,845.18 crore only.

The actual receipts during 2018-19 and 2019-20 were as given in **Table 2.2:**

**Table 2.2: Actual receipts under GST**

(₹ in crore)					
Year	Budget Estimate	Receipts under GST	Share of net proceeds assigned to State (CGST)	Compensation received	Total Receipts under GST
2018-19	21,901.83	11,942.59	8,725.35	4,241.08	24,909.02
2019-20	22,898.51	13,203.52	8,641.66	5,122.00	26,967.18

### 2.7.2 Goods and Services Tax Registration

#### 2.7.2.1 Pan-India GST Registrations

The category-wise registrations under GST as on 31 March 2020 have been given in **Table 2.3.**

**Table 2.3: Details of registrations**

Category of Registrant	No. of Registrations	Percentage of total
Normal Taxpayers	1,77,659	90.21
Composition Tax payers	15,427	7.83
Tax Deductors at Source	3,357	1.70
Tax Collectors at Source	124	0.06
Input Service Distributors	155	0.08
<b>Others</b> (Casual, Non-resident taxable person (NRTP)/ Online Information database Access and Retrieval Access (OIDAR))	218	0.11
<b>Total Registrants</b>	<b>1,96,940</b>	

{Source: Information furnished by the Commissioner of CT&GST (O)}

The total registrations under GST as on 31 March 2020 were 1.97 lakh, of which normal taxpayers accounted for 90.21 per cent and composition

taxpayers were around 7.83 *per cent*. Out of the total registrations, 1,34,183 were migrated from pre-GST regime, accounting for 68.13 *per cent*, while the balance were new registrations.

### 2.7.3 GST Return Filing Pattern

As per Central Goods and Services Tax Act, 2017, GSTR – 1 is to file details of outward supplies of taxable goods and/ or services effected by the supplier. GSTR – 3B is a consolidated summary return of inward and outward supplies, required to be furnished by the registered person on a monthly basis. GSTR – 4 is to file quarterly statement and annual return by the composition supplier. GSTR – 5 is to file monthly return by non-resident taxable person. Similarly, GSTR- 6 is to file monthly return by input service distributor.

As per information furnished by the Commissioner of CT & GST (O), the information on return filing position of GSTR-1, GSTR-4, GSTR-5 and GSTR-6 were not readily available with them since the data dumps shared by GSTN with Model II States (based on which return filing position is extracted) only related to information on GSTR-3B. Accordingly, the details of GSTR-3B are discussed in the following para.

#### 2.7.3.1 Filing Pattern of GSTR-3B

The trend of filing of GSTR-3B for the period from April 2019 to March 2020, as compiled from the summary reports shared by GSTN, have been depicted in **Table 2.4**.

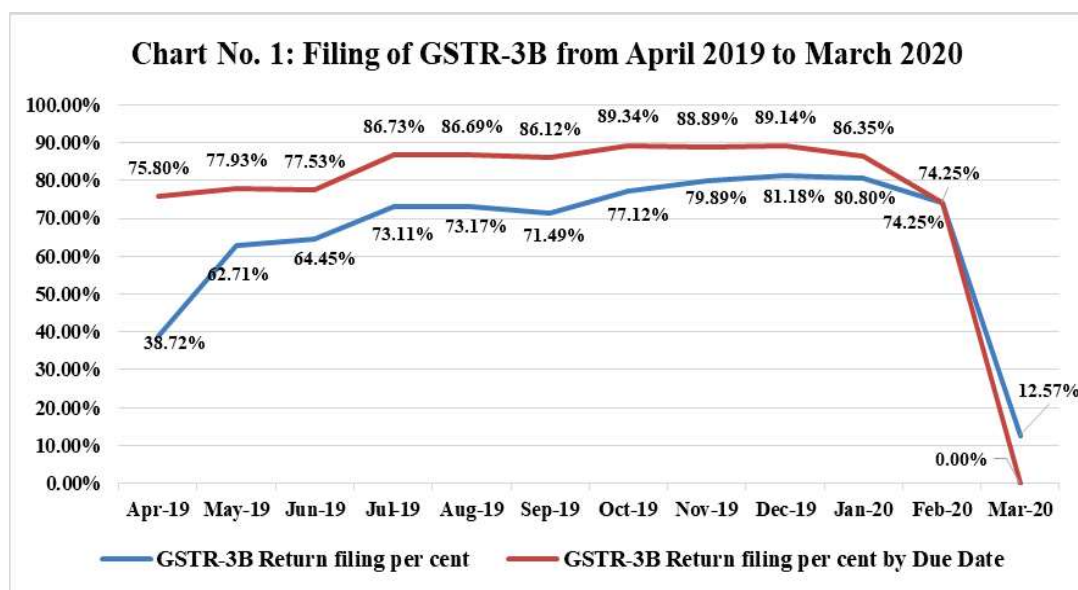
**Table 2.4: Filing pattern of GSTR-3B**

Return Type Month	GSTR-3B				
	Due for filing	Returns filed in the month	Returns filing percent	Returns filed by due date	Percent filed by due date
April 2019	236523	179287	75.80	91570	38.72
May 2019	238939	186214	77.93	149837	62.71
June 2019	240763	186662	77.53	155179	64.45
July 2019	216984	188197	86.73	158629	73.11
August 2019	218749	189623	86.69	160058	73.17
September 2019	221961	191147	86.12	158674	71.49
October 2019	213374	190618	89.34	164555	77.12
November 2019	218195	193947	88.89	174319	79.89
December 2019	218677	194932	89.14	177521	81.18
January 2020	221409	191187	86.35	178905	80.80
February 2020	223513	165953	74.25	165953	74.25
March 2020	225717	0	0	28381	12.57

*(Source: Information furnished by the Commissioner of CT&GST (O) as per 3B data dumps provided by GSTN)*

The filing of GSTR-3B for April 2019 was 75.80 *per cent* and increased to 89.34 *per cent* during October 2019 and again came down to only 74.25 *per cent* during February 2020. It was noticed that GSTR-3B returns were being filed within the due date on an average of 65.78 *per cent*. GSTR - 3B returns filed by the due date remained low ranging from 12.57 *per cent* to 81.18 *per cent* during April 2019 to March 2020. Thus, while it was expected that compliance would improve as the system would stabilise with passage of time,

it was seen that though there was significant improvement up to January 2020, it deteriorated further from February 2020 in filing of GSTR-3B by due date.



#### 2.7.4 Assessments pending under the subsumed Acts

As per the provisions of the OVAT Act, 2005, every dealer shall be deemed to have been assessed to tax based on the returns filed by him if no assessment is made within a period of seven years from the date of filing the return. Assessment under the Central Sales Tax (CST) Act are to be completed within five years.

As per the information furnished (December 2020) by the Commissioner of Commercial Tax and GST, 2,259 assessments under the subsumed Acts were pending at the end of the year 2019-20 as shown in the Table 2.5.

**Table 2.5: Assessments pending under the subsumed Acts**

Head of revenue	Opening balance	Addition during 2019-20	Total number of Assessments due	Assessments finalised during 2019-20	Balance at the end of the year	Percentage of disposal
0005- Central Goods and Services Tax, 0006- State Goods and Services Tax and 0008- Integrated Goods and Services Tax	0	1,764	1,764	1,128	636	63.95
0040- Taxes on Sales, Trade, etc., (which includes OVAT, CST).	2,130	474	2,604	1,020	1,584	39.17
0042- Taxes on Goods and Passengers (which includes OET).	306	143	449	410	39	91.31
<b>Total</b>	<b>2,436</b>	<b>2,381</b>	<b>4,817</b>	<b>2,558</b>	<b>2,259</b>	<b>53.10</b>

(Source: Commissioner of Commercial Taxes and GST)

It can be seen from the **Table 2.5** that the disposal of assessments under the GST, OVAT/ CST and OET Acts was 63.95 per cent, 39.17 per cent and 91.31 per cent respectively of the total cases pending for assessment.

This indicated that the Department did not take effective steps to dispose the cases as per the targets set<sup>54</sup> for completion of all assessments by 31 October 2018.

### 2.7.5 Pendency of Refund cases

As per Section 54 of the OGST 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.

As per Section 142 (3) of the GST Act, 2017, every claim for refund filed by any person before, on or after the appointed day for refund of any amount of input tax credit, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be refunded to him in cash in accordance with the provisions of the said law.

As per information furnished (October 2020) by the Commissioner of CT and GST (O), 3,122 claims for refunds worth ₹653.68 crore were received as of March 2020. Out of these cases, refunds were allowed in 1,835 cases involving ₹304.58 crore. The details are given in the **Table 2.6**.

**Table 2.6: Pendency of refund cases**

(₹ in crore)

Sl. No.	Particulars	GST/ Sales tax/ VAT		Entry Tax	
		No. of cases	Amount	No. of cases	Amount
1	Claims outstanding at the beginning of the year	308	58.91	56	14.20
2	Claims received during the year	2,663	570.51	95	10.06
	<b>Total (1+2)</b>	<b>2,971</b>	<b>629.42</b>	<b>151</b>	<b>24.26</b>
3	Refunds made during the year				
	(a) Refunds granted	1,744	289.03	91	15.55
	(b) Refunds rejected/ adjusted	1030	249.05	48	2.27
	<b>Total (a+b)</b>	<b>2,774</b>	<b>538.08</b>	<b>139</b>	<b>17.82</b>
4	Balance outstanding at the end of the year	197	91.34	12	6.44

(Source: Information furnished by the Commissioner of CT and GST)

It could be seen from the above table that 58.78 per cent of cases were disposed of and 34.53 per cent claims were rejected, leaving an outstanding balance of 209 claims involving ₹97.78 crore.

<sup>54</sup> Circular No 45831 CT/ Dt.20.03.2018

### 2.7.6 Status of data sharing to Audit

Odisha is a Model-II State and the access to data is received only through GSTN. All Range/ Circle offices of the Commissioner of CT&GST (O) are connected to Odisha State Data Centre through State-wide MPLS Network. Audit scrutiny *i.e.*, return scrutiny, details of dealers regarding composite levy scheme, tax payment details and ITC claims by the dealers requires data analysis. In order to facilitate audit, the GST Council has decided to create User IDs and assign roles in the GST Back Office Application in favour of the Auditors from Accountant General's office. For this, the required process in the GST Back office has already been developed by the GSTN. Accordingly, specific roles, namely 'CAG Auditors' have been assigned to the auditors by which they would be able to view all records in the GST Back office. Such creation of User IDs and assignment of the roles to Auditors of Accountant General have already been created by the State Administrator at the Commissionerate of CT & GST (O).

***Recommendation: As the GSTR-3B return is a consolidated summary return of inward and outward supplies, non-availability of GSTR-1 data implied that the department did not have complete invoice level details as filed by the suppliers, which could be used to verify the details given in GSTR-3B or to arrive at aggregate turnover. Since filing of GSTR-1 is mandatory, non-availability of data on that is an area of concern and needs to be addressed.***

