

CHAPTER IV REGISTRATION AND DATABASE OF DEALERS

4.1 Creation of database of dealers

The Department started allotting computer generated numbers to the dealers from April 2005 onwards though the system of registration was manual. The computerised registration process started from October 2006 onwards and from February 2007 onwards, the department is also effecting cancellation of registration through intranet.

As per the information furnished to us by the department, there were 1,32,039 TIN dealers, 21,774 PIN dealers and 4,074 compounded tax dealers in the State as on April 2009.

4.2 Carrying forward of the database of dealers under the KGST Act and confirmation of the securities provided by them

Dealers registered under the KGST Act whose turnover during 2004-05 was Rs. 5 lakh or above were liable to obtain registration under the KVAT Act on or before 20 April 2005, on payment of fee applicable to renewal. The Government amended the Rules to extend the period to 15 February 2006. As per the provisions, security/additional security was not payable by the KGST dealers continuing the registration under the KVAT Act. The department allowed the dealers to carry over the security, if any, furnished under the KGST Act, during the VAT period also.

The Department informed us that during introduction of VAT, they had granted either PIN or TIN to all the dealers having KGST registration. We found that the information furnished was not fully correct as there was a reduction of 12.72 *per cent* in number of dealers in the first year of implementation of the VAT system. However, scope of major dealers evading registration was less. Our study of the registration process in 15 DC offices⁶ revealed the following deficiencies.

- Details of dealers registered under the KGST Act were available in the manual register of Registered Dealers (R Register) maintained in the circles while these were not available in the database. The number of dealers under the KGST Act as on 31 March 2005 was 1,42,821 while the number of assesseees during 2004-05 as per data furnished by the CCT was 1,46,909. We found that the DCs of the circles covered in this review failed to fill the intended proforma properly in most of the cases which not only resulted in the aforesaid variations between the figures of DCs and the CCT but also made it

⁶ Alappuzha, Ernakulam, Idukki, Kannur, Kasargod, Kollam, Kottayam, Kozhikode, Malappuram, Mattanchery, Palakkad, Pathanamthitta, Thiruvananthapuram, Thrissur and Wayanad.

impossible for us to carry out a comparison of dealers who were registered under the KGST Act but not registered under the KVAT Act.

- The registration is effective from the date of filing valid application. The CCT directed in October 2006 that the RAs should permit those who had paid the prescribed fee before 15 February 2006 to file application upto 31 October 2006 and that the status of such dealers would be that of registered dealers with effect from 1 April 2005. The instruction contravened the provisions of the KVAT Act and provided undue benefit to the dealers as they were eligible for the ITC for the period during which they had no registration at all. As per data furnished to us by the DCs of the circles test checked, the benefit of this circular was granted in 7,741 cases.
- The Registering Authorities (RAs) could permit dealers to whom provisions of the Act apply to use the registration certificates issued under the KGST Act only upto 30 June 2005. The Government amended the rule in April 2007 to allow such dealers time till 15 February 2006 to submit application for registration under the KVAT Act. This amendment contravened the provisions of the Act.

After we pointed out the anomaly, the Government stated that the circular applied to those who had remitted fee on or before the cut off date prescribed in the Rules, for switching over to VAT registration. By payment of renewal fee they have substantially complied with the provisions of the Act and it is only a matter of regularisation. The reply was not relevant as our comment was that the Rule and the circular contravened the provisions of the Act. While allowing deviations from the provisions of the Act, the Government should have suitably amended the Act also.

4.3 Registration of new dealers

4.3.1 Grant of new registration without security

The KVAT Act permits, the RAs to demand from the dealers applying for registration, an amount not exceeding fifty *per cent* of the tax payable on the turnover as security. The CCT in June 2005 directed that the RAs could grant registration without security if the dealer is not likely to default in payment of tax after recording the reasons for arriving at such a conclusion and the evidences relied upon. However, in February 2006 the CCT fixed the rate of security to be realised from individual/ proprietorship, partnership firm and company at Rs. 5,000, Rs. 10,000 and Rs. 25,000 respectively. Applicants requiring CST registration should pay a security of Rs. 10,000, Rs. 25,000 and Rs. 50,000 respectively. Dealers in goods included in the first schedule only and those opted for presumptive tax need not furnish security.

We noticed that the RAs granted 4,226 fresh KVAT registrations during 2006-07 and 2007-08 without obtaining security as prescribed by the CCT. Moreover, the RAs under DCs of Kottayam and Ernakulam granted 23 and nine CST registrations respectively, without sufficient security. Amount of security involved was Rs. 5.73 crore calculated at the average rate of security fixed.

After we pointed out the mistake, the Government stated that the Act requires the RAs to demand security only if they have reason to believe that the dealer is likely to default payment of tax and hence demand of security was not mandatory. Besides, the amount can be deposited in securities and is liable to be returned and hence, it is not a short levy. However, the fact remains that the CCT issued the circular to curb unfettered discretion of RAs in this regard and the Apex Court had held⁷ that the circular directions issued by the Commissioner is binding on the departmental officers.

4.3.2 Incorrect grant of PIN

A dealer would not be eligible to opt for presumptive tax if aggregate sales turnover under KVAT Act or KGST Act exceeded Rs. 50 lakh during the preceding year to which the option related. Turnover of sale of medicine purchased from the dealers who have opted for payment of tax on maximum retail price (MRP) was the only exception. The CCT, however, directed in February 2006 that RAs could permit petroleum dealers to opt for payment of presumptive tax, if the turnover in respect of sale of goods to which the provisions of KVAT applies was below Rs. 50 lakh. The Government also suitably amended the KVAT Rules with effect from 31 December 2007.

We found that the RAs allowed 278 dealers of petroleum products to pay presumptive tax. The amendment to the rule was void as it was against the provisions contained in the Act and can be implemented only through an amendment to the Act.

After we pointed out the mistake, the Government stated that the decision to allow petroleum dealers to opt for compounded tax on VAT items was only for easy administration of tax and does not have a revenue impact. The reply did not touch upon the issues raised by us which was about inconsistency with provisions of the Act.

4.4 Detection of unregistered dealers

The KVAT Act empowers any officer not below the rank of assessing authority (AA) to enter any place of business and inspect any accounts or documents relating to the business to ascertain the liability for registration.

⁷ Padinjarekkara Agencies Ltd. Vs State of Kerala (SC) 18(KTR) 21

We feel that there is a need to improve the inspection activities of the department as we found deficiencies in the process of detecting unregistered dealers as discussed below.

4.4.1 Non-registration of those liable for registration

4.4.1.1 A dealer in CTO, Second Circle, Thrissur purchased packing cases for Rs. 71.42 lakh during 2006-07 from five unregistered dealers whose total turnover exceeded Rs. 5 lakh. The RA, however, failed to get them registered and collect tax of Rs. 2.86 lakh and twice the amount as penalty. This resulted in non-levy of Rs. 8.57 lakh.

After we pointed out the deficiency, the Government stated that the department had verified the accounts of the dealer and it revealed that all five persons involved had not exceeded the minimum turnover prescribed for registration. The reply furnished is not acceptable as we have copies of the purchase lists which show that those five dealers had turnover exceeding Rs. 5 lakh each and were thus, liable for registration and payment of tax and penalty.

4.4.1.2 Every casual trader shall, within 24 hours of his arrival in the State, intimate the RA his name, address, nature of the goods he intends to deal with and the period within which he intends to leave the jurisdiction of such authority. He shall also submit an application for registration as per the provisions of the Act.

Our analysis of the data received from DCs except DC, Alappuzha and Pathanamthitta revealed that during 2005-06 to 2007-08, only 487 casual dealers had applied for registration in the State, of which 251 were at Ernakulam. This showed that the number of registrations granted in remaining 12 districts were only 236.

After this was pointed out by us, the Government stated that the statistics is available only in respect of the registration granted to the casual dealers by the AAs of the circles. However, Intelligence Squad as well as check post personnel had collected registration fee alongwith security deposit from casual traders, while disposing the cases detected at their level. The reply confirms that the number of dealers registered was less. Also, the fact remains that the security deposit obtained from these dealers is only a token money without any consideration of the volume of business which can only be ascertained by proper assessment at the circles.

4.4.1.3 As per the KVAT Act, registration is compulsory for any State/ Central Government/Union Territory or any department thereof or any local authority or any autonomous body, irrespective of the quantum of total turnover. For this purpose, the authorised officer is required to submit an application in form 1E. However, only autonomous bodies need to pay fee for registration/renewal. Minimum fee for the registration

is Rs. 500 and fee for renewal of registration by a dealer who is not an importer is Rs. 500.

We have analysed the list of registrations granted in the State on the basis of form IE applications and noticed the following deficiencies.

- Atleast 202 and 127 autonomous bodies of the Central Government and the State Government respectively liable to obtain registration from 2005-06 were not registered. This resulted in loss of fees for registration as well as fee for subsequent three renewals, which amounted to Rs. 6.58 lakh.
- 1,082 (88.47 *per cent*) out of 1,223 local bodies in the State were not registered though all of them were awarders of works contract. In four districts⁸, no local body was registered while in another four⁹ districts, only one local body each was registered.
- Only two out of 13 Central Public Works Department offices (one each at Ernakulam and Thrissur) and 13 out of about 63 State public works offices (eight at Kollam and five at Thrissur) and few offices of the Irrigation Department and the Kerala Water Authority were registered, even though most of them were awarders of works contract.
- Apart from the above two CPWD offices and CSD canteen, no Central Government offices were registered under the KVAT Act.

The unregistered institutions among the above would not file mandatory returns showing works awarded, tax deducted at source from contractors, details of purchase and sale effected etc. Consequently, there is no mechanism to cross verify the records of the Works Divisions and buying Departments in the case of works/supply contractors to confirm whether the dealers have actually included the turnover in corresponding returns and paid tax.

After we pointed out the deficiency in registration process, the Government stated that the audit objection was not correct as only departments/institutions having turnover of sale need to be registered, irrespective of total turnover and that it is the responsibility of the awarder to deduct tax at source from every payment made to contractors including advance payment. The fact remains that most of the departments/institutions may have sales turnover atleast on sale of unusable items for which they may collect tax also. Registered dealers liable to tax only can collect tax under the Act. Registration and filing of return by them serve as a mechanism to ascertain, whether the dealers are including in the return atleast major sales and work contracts receipts from such institutions and whether they are deducting tax at source on works contract payment.

⁸ Alapuzha, Pathanamthitta, Thiruvananthapuram and Wayanad.

⁹ Idukki, Kannur, Kasargod and Kottayam.

The Government may ensure that all Central/State Government departments, local authorities and autonomous bodies comply with the statutory requirement of registration and filing of return.

4.4.1.4 Every clearing or forwarding agency, transporting agency, shipping agency, railway authorities etc., should submit to the AA by 10th of the subsequent month, a monthly return of all goods, they cleared, forwarded, transported or shipped. The CCT directed in October 2006 and July 2007, that the parcel/courier clearing and transporting agencies would be categorised as dealer and every such agency operating in Kerala should take registration in the circles, where their headquarters function.

We found that though there are many courier agencies in Kerala, only four agencies under DC Ernakulam, had taken registration so far. Even railway authorities had not obtained registration. Due to non-registration of these agencies, the purpose of the provision to keep a watch on the purchases/sales of the dealers by monitoring the returns of these agencies got defeated.

4.4.2 Deficiency in detecting unregistered dealers

Our analysis of the data furnished by the DCs of the circles test checked revealed the following deficiencies in the process of detecting unregistered dealers.

4.4.2.1 During the years 2005-06 to 2007-08, the department has granted 1,053 registrations on the basis of special drives. This shows that on an average, each day only one unregistered dealer was detected throughout the State. The department stated that they conducted a special drive to identify dealers liable for registration during October and December 2005, but the results were not made available to us.

4.4.2.2 The KVAT Act (1 July 2006) provides for detection of the dealers who have evaded registration through survey, inspection or enquiry and their compulsory registration, issuing a separate set of district-wise registration number. However, they shall not be entitled to any benefits accruing from such registration unless they obtain normal registration. Details furnished by the DCs revealed that the department granted compulsory registration under the above provision in 170 cases in eight districts¹⁰, of which, 96 dealers obtained normal registration. No such registration took place in the remaining seven districts.

We found that though the provision for registering the unregistered dealers existed in the KVAT Act and an Intelligence Wing existed, the department did not issue any further directions prescribing a system for monitoring the surveys/raids.

¹⁰ Alappuzha, Kollam, Kottayam, Kozhikode, Malappuram, Mattanchery, Palakkad and Thrissur.

After we pointed out the deficiency, the Government stated that there was good response from trading community to the special registration drive introduced through Finance Act 2006.

We feel that there is a need for the department to streamline the process of detection of unregistered dealers by issuing directives prescribing a system for monitoring the surveys/raids.

4.5 Cancellation/suspension of registration of dealers

4.5.1 Cancellation of registration by the dealers

A dealer discontinuing the business should file annual return within fifteen days, covering the period upto the date of discontinuance. He should also surrender any unused declaration(s) remaining in stock with him and ITC availed of on goods remaining unsold on closure of the business should be assessed as reverse tax.

From the records of CTO, Special Circle, Thiruvananthapuram, we found that 55 dealers had cancelled registration during the period of this review. In the absence of any monthly return, cancellation orders etc., in any of the cases, we could not ascertain whether the AAs followed the conditions prescribed for cancellation.

4.5.2 Cancellation of registration by the department

The registering authority can cancel or modify the registration of a dealer, if he has committed the offence of evasion of tax more than once during a year or obtained registration by fraud or misrepresentation of facts or have claimed ITC or refund of input tax on the strength of forged or bogus documents or has not been paying tax collected consecutively for a period of 3 months etc. The AA cancelling the certificate of registration should publish the details in atleast two leading dailies in the State and also in the website of the Commercial Taxes Department.

During the period of review, dealers cancelled 13,221 registrations and the department cancelled 2,023 registrations *suo motu*. The department did not publish the cancellation of registration in any of the cases either in dailies or in the departmental website.

After we pointed out the mistake, the department stated that the official website of the department provides TIN search facility and while searching, the word 'active' will appear in status column if the dealer is live and 'cancelled' will appear if the dealer had cancelled registration. The reply of the department overrides the statutory requirement. Publishing the cancellation of dealers in the website will not only enable any viewer to know about the dealers whose registrations are cancelled but also alarms the various branches of the department like the check gates, intelligence

wings, while in the present system being followed by the department, specific search has to be made to find out the dealers whose registrations are cancelled. Besides, in this system the date of cancellation of registration which is of paramount importance in confirming ITC claim, will not be displayed.

4.5.3 Suspension of registration

The KVAT Act empowers the DCs to suspend registration of any dealer for a period not exceeding six months for violation of conditions of the registration certificate or the provisions of the Act or Rules made thereunder. Similarly, DCs can resort to suspension of registration for a period of six months to one year if the dealer had evaded tax exceeding Rs. 1 lakh during a year.

We found that suspension of registration has been resorted to only in one case during the period 2005-06, though there had been a number of cases of violation of the provisions of the Act or evasion of tax. Besides, the details of the suspended case were also not published as required.

As tax paid on purchase from dealers whose registration is suspended or cancelled is not eligible for ITC, we recommend that the department may strictly enforce the provisions in the Act for publishing the details of cancelled and suspended registration in departmental website.

We also recommend that the department may take up the matter with the Ministry of Finance, Government of India for making sufficient provisions in the TINXSYS website for uploading such information which will help in alarming the other States about the cancellation of the registration of the dealers.

4.6 Periodic analysis of registration certificates to detect dormant registrations

The KVAT Rules, empowers the DCs to cancel registration of a dealer if he continues the registration without any transaction for a continuous period of two years.

We noticed that though more than 3,700 dealers on an average did not file any return every year, there is no mechanism in the department to check whether such dealers were actually continuing business or not. If the above dealers were conducting any business and collecting tax, the collected tax would be retained by them and the subsequent dealers can claim ITC which would be an additional burden on the Government. This proves that while switching over the entire lot of dealers from the KGST Act to KVAT Act, the department did not properly analyse the profile of the dealers remaining dormant, leaving scope for evasion of tax.

Consequent to the introduction of e-filing, detection of dormant dealers has become easy. We recommend that the department install a mechanism of periodic review of the TINs to detect dormant registrations and cancel such registration to avoid misuse of registration certificates and to reduce the scope of claims for inadmissible ITCs.

4.7 Determination of opening stock under the KVAT Act

Under the KVAT Act, dealers claiming ITC on opening stock as on 1 April 2005 were required to declare their opening stock. Further, in the case of dealers whose total turnover exceeded Rs. 40 lakh and who were required to file P & L account for 2005-06 along with annual return, it was possible to verify whether opening stock of the year tallied with that of closing stock for 2004-05 under the KGST Act. However, in the case of those who had not filed the accounts, such a cross checking was not possible. During the period of review, more than 35 *per cent* of the dealers did not submit either P&L account or closing stock inventory thus hindering effective scrutiny of the returns. **We found that apart from the above cases, the KVATIS software do not have provision for uploading the stock position of the dealers for future reference. Such a provision would have served as a tool to ascertain without reference to previous assessment records, the purchase price of goods sold and possible suppression of sales turnover, excess claim of ITC etc.**

Conceding of closing stock less than that disclosed in the P&L account, points to suppression of sales turnover or deficit stock. We noticed that, actual stock of vehicle and spare parts as per stock inventory for 2006-07 of a dealer in motor vehicles in CTO, Nedumangad, was for Rs. 9.03 lakh as against Rs. 18.89 lakh disclosed in the P&L account. Output tax at 12.5 *per cent* on the differential value of Rs. 9.86 lakh alone worked out to Rs. 1.23 lakh. Total short levy including interest and penal interest worked out to Rs. 2.19 lakh.

While confirming rectification being done by the department, the Government stated that the issue of major revenue consequence during transition period was ITC on opening stock, which was more or less effectively monitored. We are of the opinion that availability of such a database in KVATIS would enable the department to match the stock position mentioned in the return without referring to the previous return or assessment and would also be an impetus for effective monitoring on the dealers.

We recommend that the department may insert a provision for uploading the stock position in the KVATIS software or consider amending the software so that the opening stock declared in a return can be mapped with the closing stock shown in the previous return.