

## CHAPTER:II - SALES TAX/VAT

### 2.1 Tax administration

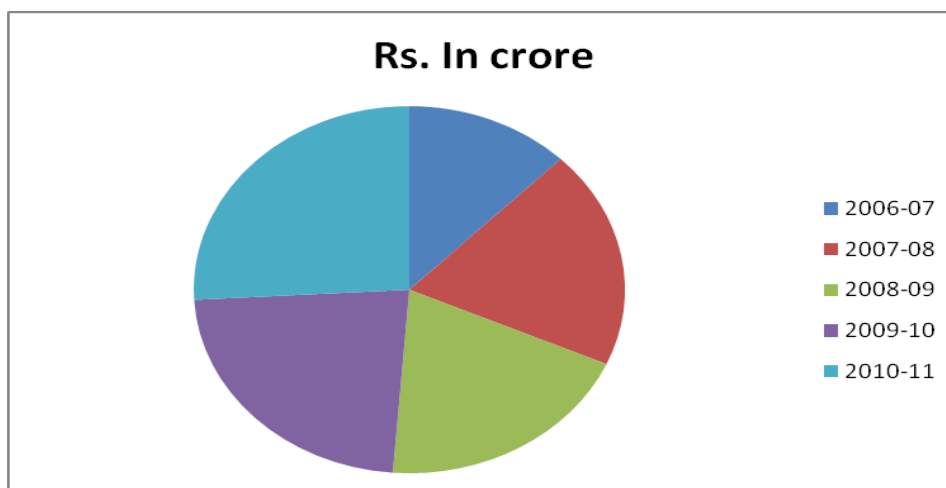
The Commercial Taxes Department is under the purview of Commissioner-cum-Secretary, Finance at the Government level. The Department is mainly responsible for collection of taxes and administration of the Jammu and Kashmir Value Added Tax (VAT) Act, the Central Sales Tax Act and the rules framed there under. The control and superintendence of the Department vests with the Commissioner Commercial Taxes (CCT), who is assisted by three Additional Commissioners of Commercial Taxes (two at Jammu and one at Srinagar) and 11 Deputy Commissioners, Commercial Taxes for carrying out various functions of the Department. The State has been divided into 45 Commercial Taxes Circles, each headed by a Commercial Taxes Officer (CTO).

### 2.2 Trend of receipts

Actual receipts from VAT during the last five years from 2006-07 to 2010-11 alongwith the total tax receipts during the same period are mentioned below:-

(₹ in crore)						
Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual VAT receipts vis-a-vis total tax receipts
2006-07	1235.00	1159.72	(-) 75.28	06	1798.97	64
2007-08	1422.31	1804.81	(+) 382.50	27	2558.18	71
2008-09	1778.00	1835.99	(+) 57.99	03	2682.96	68
2009-10	2065.70	2145.73	(+) 80.03	04	3027.32	71
2010-11	2572.69	2424.52	(-) 148.17	(-) 6	3482.58	70

As would be seen from the above, the VAT receipts of the State increased from ₹ 1159.72 crore (2006-07) to ₹ 2424.52 crore (2010-11), registering an increase of 109 *per cent* during the last five years.



The above graph shows that receipts from VAT have been increasing steadily during the last five years.

### 2.3 Analysis of collection

The break-up of the total collection at the pre-assessment stage and after regular assessment of taxes on Sales Tax/VAT and Motor spirits during the year 2010-11 and corresponding figures for the preceding four years as furnished by the Finance (Commercial Taxes) Department is mentioned in the following table.

(₹ in crore)

Head of revenue	Year	Amount collected at pre-assessment stage	Amount collected after regular assessment	Penalty delay for payment of taxes/duties	Total collection	Percentage of column 3 to 6
1	2	3	4	5	6	7
Taxes on Sales/VAT,	2006-07	887.11	1.00	-	888.11	100
	2007-08	1160.63	1.16	50.30	1212.09	96
	2008-09	1275.28	4.65	55.43	1335.36	96
	2009-10	1768.08	7.42	16.15	1791.65	99
	2010-11	2049.92	3.82	70.83	2124.57	96
Motor spirit tax.	2006-07	248.99	-	0.20	249.19	100
	2007-08	268.37	0.02	0.02	268.41	100
	2008-09	294.90	-	-	294.90	100
	2009-10	369.24	-	-	369.24	100
	2010-11	473.54	-	-	473.54	100

Source: Figures supplied by the Department.

The figures are at variance with the figures mentioned in the Finance accounts; the reasons of variance though called for, have not been received.

The foregoing table indicates that collection under the revenue heads “Sales taxes/VAT” and “Motor Spirit tax” at pre-assessment stage ranged between 96 to 100 *per cent*.

#### 2.4 Assessee profile

As per the information furnished by the Commercial Taxes Department, the number of registered VAT dealers had increased from 57722 in 2009-10 to 60679 in 2010-11.

Year	No. of assesseees on rolls	No. of assesseees required to file monthly returns	No. of returns received in 2009-10/2010-11 (12 months)	No. of returns not received during the year.
2009-10	57722	NA	NA	NA
2010-11	60679	NA	NA	NA

However, the Department did not furnish (November 2011) details such as number of Large tax Payers and status of filing of returns by the eligible dealers.

#### 2.5 Collection of VAT per assessee

The Commercial Taxes Department spent ₹ 22.17 crore on their tax administration during 2010-11 with reference to 60679 VAT dealers on their rolls, the average cost of VAT collection per assessee stood at ₹ 3654 *per annum* during 2010-11. The cost of collection of VAT per assessee had increased from the 2009-10 levels.

Year	No. of assesseees	Sales Tax/VAT (₹ in crore)	Cost of collection of VAT per assessee (in ₹)
2009-10	57,722	2,145.73	3,71,735
2010-11	60,679	2,424.52	3,99,564

Thus it would be seen from the above that with the increase in the tax base the revenue collection per assessee has also increased from ₹ 3.72 lakh to ₹ 4 lakh.

#### 2.6 Arrears in assessment

The details of assessments relating to Sales Tax/VAT and taxes on Works Contracts pending at the beginning of the year, additional cases due for assessment during the year, cases disposed during the year and cases pending at the end of each year during 2006-07 to 2010-11 as furnished by the Commercial Taxes Department were as given in the following table:

Year	Opening balance	New Cases which became due for assessment	Total	Cases disposed during the year	Cases pending at the end of the year	Percentage of disposed to total assessment
2006-07	19,769	408	20,177	11,654	8,523	58
2007-08	8,523	21,829	30,352	12,140	18,212	40
2008-09	18,279 <sup>1</sup>	10,815	29,094	9,838	19,256	34
2009-10	28,539 <sup>2</sup>	22,178	50,717	19,916	30,801	39
2010-11	30801	18647	49448	20265	29183	41

The above table indicates that the percentage of assessments completed to the total assessment ranged between 34 per cent and 58 per cent.

**We recommend that the Government may consider fixing a time limit for finalisation of the pending assessment and put in place a system for monitoring the progress of finalisation of assessment periodically, to ensure that the time limit so fixed is adhered to by the Departmental authorities.**

## 2.7 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2011 on account of taxes on Sale/VAT, Trades, etc. amounted to ₹1426.38 crore of which ₹ 351.59 crore were outstanding for more than five years. The following table depicts the position of arrears of revenue during the period 2006-07 to 2010-11.

(₹ in crore)

Year	Opening balance of arrears	Closing balance of arrears	Percentage increase/decrease over the previous year
2006-07	877.08	943.48	
2007-08	943.48	960.39	2
2008-09	960.39	735.07	-23
2009-10	735.07	1153.66	57
2010-11	1153.66	1426.38	24

Source: Figures supplied by the Department

<sup>1</sup> The variation in closing balance ending 31 March 2008 and opening balance as on 01 April 2009 has been pointed out to the Department (September 2009), the reply is awaited (October 2011).

<sup>2</sup> The variations in closing balance ending 31 March 2009 and opening balance as on 01 April 2009 has been pointed out to the Department (September 2010), the reply is awaited (October 2011).

As can be seen, the arrears of revenue on account of VAT/Sales Tax have shown steep rise in 2009-10 except in 2008-09 when the arrears decreased by 23 per cent, the overall arrears of revenue accumulated to ₹ 1426.38 crore showing quantum increase of 24 per cent over the previous year.

Appropriate steps need to be taken for recovery. The arrears outstanding for more than five years constitute 25 per cent of the total arrears and need to be recovered on priority.

**We recommend that the Government may take immediate steps for recovery of the arrears of revenue, particularly in those cases which have been pending for a long time.**

## 2.8 Cost of collection

The gross collection of VAT receipts, expenditure incurred on collection and the percentage of such expenditure to gross collection during the year 2008-09 to 2010-11 along with the relevant All India Average percentage of expenditure on collection to gross collections for the preceding years are mentioned in the following table.

(₹ in crore)

Head of revenue	Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage of the preceding year
Taxes/VAT on sales trade etc.	2008-09	1835.99	15.30	0.83	0.95
	2009-10	2145.73	23.56	1.09	0.88
	2010-11	2424.52	22.17	0.91	0.96

Source: Figures supplied by the Department.

The figures in the above table revealed that except in 2009-10, the cost of collection of VAT on Sales/Trade etc. has been lower than the all India average.

## 2.9 Evasion of tax

The details of the cases of evasion of tax detected, finalised and demands raised as on 31 March 2011, reported by the Commercial Tax Department, are mentioned in the following table:

Opening Balance	Additions	Total	Disposal		Closing balance
			No. of cases	Amount (in lakh)	
210	7918	8128	6425	273.86	1703

Source : Figures supplied by the Department.

The progress of recovery against the demand raised was not intimated (October 2011).

## 2.10 Write-off and waiver of revenue

As per the information furnished by the Department, ₹ 143.94 crore were under waiver, rectification, appeals and remissions as on 31 March 2011.

## 2.11 Refunds

The number of refund cases pending at the beginning of the year 2010-11, claims received during the year, refunds allowed during the year and cases pending at the close of the year (March 2011), as reported by the Sales Tax Department is mentioned below.

(₹ in lakh)			
S. No.	Particulars	No. of cases	Amount
1.	Claims outstanding at the beginning of the year	10	12.80
2.	Claims received during the year	-	-
3.	Refunds made during the year	01	1.60
4.	Balance outstanding at the end of the year	09	11.20

Source: Figures supplied by the Department.

Reduction in pending refund cases as compared to previous year was not encouraging.

## 2.12 Results of Audit

During 2010-11, out of 67 auditable units, 36 units were planned and 25 units audited which is 37 per cent of the total auditable units.

Test-check of the records of 25 audited units revealed underassessment/short levy/loss of revenue aggregating ₹ 18.19 crore in 167 cases, which falls under the following categories.

(₹ in crore)			
Sl.No	Category	No. of cases	Amount
1	Short levy of tax under VAT/excess ITC	101	12.51
2	Short levy of tax under works contract	3	0.60
3	Incorrect grant of exemption	24	3.60
4	Short/non levy of penalty/TOT	21	0.43
5	Application of incorrect rate of tax	1	0.02
6	Other irregularities under VAT/other irregularities	17	1.03
<b>Total</b>		<b>167</b>	<b>18.19</b>

During the course of audit, the Departments concerned accepted underassessment and other deficiencies of ₹ 1.13 crore involved in 11 cases pointed out in 2010-11 and earlier years.

## 2.13 This Chapter

A Performance Audit on “Cross Verification of Declaration Forms in Inter-State Trade or Commerce” and few illustrative audit observations involving a financial impact of ₹ 18.77 crore are mentioned in the succeeding paragraphs.

## **2.14 Performance Audit on “Cross Verification of Declaration Forms in Inter-State Trade or Commerce”**

### **Highlights:-**

The Deputy Commissioner Sales Tax Jammu had got printed 1.40 lakh forms, of which, 30000 H forms had not been lifted at all by the Department as of March 2011 even after a lapse of more than 19 years. The printing of Declaration forms was not done on a realistic basis since the Declaration forms were printed far in excess of requirement. Their prolonged storage may cause damage to the forms.

**(Paragraph No 2.14.9.2)**

We found that computerised database of registered dealers in the State carrying out Inter-State sales had not been created by the Department, in absence of which, the uploading for cross verification of the data of Declaration forms relating to the dealers on the website was not possible. Thus Commissioner Commercial Taxes Department did not take advantage of TINXSYS website for cross verification purposes.

**(Paragraph No 2.14.10)**

The Department had not maintained any database of the dealers conducting Inter-State sale/stock transfer, and hence, it was not in a position to identify the dealers who had made Inter-State sales or ascertain total concession and exemption granted to the dealers during a year. In absence of such a database, the Government could not analyse the cost-benefit trade-off properly and also could not monitor submission of Declaration forms of those dealers who had claimed exemption/concessions.

**(Paragraph No 2.14.11)**

We noticed that exemption of tax had been allowed in 36 cases where Declaration forms were issued by the purchasers of other States between March 1985 and May 2003. The genuineness of Declaration forms had not been ascertained by the AAs though these forms were very old, having been issued decades ago.

**(Paragraph No 2.14.12)**

We found on cross verification short disclosure of purchases of ₹ 2.33 crore by 22 dealers. Besides, variations were found in the names of selling dealers in Inter-State transactions valued at ₹ 7.70 crore.

**(Paragraph No 2.14.14.1 and 2.14.14.2)**

The Department did not notify loss of ‘C’ forms by a dealer resulting in misuse of one form and also did not ensure surrender of 150 Declaration forms issued to a dealer

whose registration was cancelled. There was misuse of two such cancelled 'C' forms involving loss of revenue of ₹ 49.05 lakh.

**(Paragraph No 2.14.14.4 and 2.14.14.5)**

Our cross verification of sales made by the registered dealers of the State with the dealers registered in other States revealed understatement of Inter-State sales of ₹ 67 lakh in seven cases and overstatement of sales by ₹ 4.59 crore in 12 cases. Further, dealers had actually purchased goods other than those on which exemption was claimed.

We found on cross verification that 65 'C' Declaration forms, on the basis of which exemption was granted to the dealers registered in the State were not issued to the dealers by the respective Commercial Taxes Departments of other States. Thus the exemption granted on fake forms required investigation for recovery of tax and penalty.

We found that the names mentioned in 'C' Forms on the basis of which exemption was granted to the selling dealers did not tally with the names shown by the purchasing dealers in their records. Tax involved in these fake forms was ₹ 1.27 crore which required investigation for recovery of the tax and interest/ penalty.

**(Paragraph No 2.14.15.1 to 2.14.15.4, 2.14.15.6)**

We found that exemption from payment of tax was allowed to two dealers, though they had not produced 'F' forms in support of their stock transfer of goods valued at ₹ 2.25 crore during 2005-07. This had resulted in incorrect grant of exemption having tax effect of ₹ 44.16 lakh, including interest.

**(Paragraph No 2.14.16.2)**

Exemptions/concessions were given to 74 dealers irregularly on Duplicate copies/photocopies/counterfoils and incomplete/blank Declaration forms.

**(Paragraphs No 2.14.16.3, 2.14.16.4 and 2.14.16.5)**



### **2.14.1 Introduction**

Tax on sales is a State subject under the Constitution of India. However, tax on Inter-State Sales is governed by Central Sales Tax Act 1956, administered by Government of India. The assessment of Sales Tax on Inter-State transactions is levied under the Central Sales Tax Act, 1956 (CST Act) and Rules framed there under. The dealers making Inter-State Sales are required to register themselves in the Commercial Taxes Department under the CST Act. Under the Act/Rules, registered dealers are eligible to certain concessions and exemptions from payment of tax on Inter-State transactions on submission of prescribed Declarations in forms C, E-I/E-II/ and F. These incentives are granted to dealers for furtherance of Inter-State trade and commerce.

As the State largely imports, rather than manufactures goods, the number of dealers making Inter-State sales are relatively few. Inter-State sales are mostly made by the industrial units who are assessed in separate circles.

Further, under the provisions of 8(5) of the CST Act, State Government has issued a notification vide SRO 24 dated January 2004 stipulating that no tax under the CST Act shall be payable till 31<sup>st</sup> March 2015 on Inter-State Sale made by manufacturers registered with Directorate of Industries and Commerce, operating small, medium and large scale units in the State. This exemption is subject to furnishing of quarterly and annual returns for each accounting year by the dealers claiming exemptions. The local sales of these industrial units are also VAT exempt in terms of above notification and notification dated 16 March 2006.

The State Government has framed Central Sales Tax (Jammu and Kashmir Rules 1958) which also governs levy and collection of Central Sales Tax. It is the responsibility of the Department to ensure proper accounting of Declaration forms and take adequate safeguards against misutilisation of Declaration forms on which tax relief is allowed involving large amount of revenue to the state exchequer.

### **2.14.2 Organisational setup**

The Commissioner, Commercial Taxes (CCT) is responsible for the overall control and superintendence of Commercial Taxes Department which is under the administrative control of the State Finance Department. He is assisted by three Additional Commissioners of Commercial Taxes (one each in Jammu and Kashmir divisions and one for tax planning) and 13 Deputy Commissioners of Commercial Taxes (Jammu: 6, Kashmir: 5, one each for headquarters and judicial matters).

The State is divided into 52 Commercial Taxes assessment circles (Jammu: 25; Kashmir: 27), each headed by one Commercial Taxes Officer. Of these circles, six circles (three each in Jammu and Srinagar districts) deal exclusively with the assessment of dealers operating industrial units. Besides, three assessment circles (one in Kathua and two in Udhampur districts) in Jammu division and three assessment circles (two in Anantnag and one in Baramulla district) in Kashmir division deal with assessment of both industrial units holders and dealers engaged in trade. The Deputy Commissioner Stamps (DC) Jammu is responsible for procurement, issue and custody of Declaration forms.

### 2.14.3 Audit objectives

The Performance Audit was conducted with a view to assess whether:

- a foolproof system for custody and issue of the Declaration forms existed;
- exemption/concession granted by the assessing authorities was supported by the original Declaration forms;
- a system for uploading the particulars in TINXSYS website and monitoring the data available existed and was utilised for verifying the correctness of the forms;
- a system of cross verification for ascertaining genuineness of the forms for preventing evasion of tax existed;
- appropriate steps were taken on receipt and detection of fake, invalid and defective forms against the offending dealers and for notifying such dealers; and
- an effective and adequate internal control mechanism existed.

### 2.14.4 Audit criteria

We referred to the following Acts and Rules for the performance Audit:-

- Central Sales Tax Act, 1956 and Central Sales Tax (Registration and Turnover) Rules 1957;
- Central Sales Tax (Jammu and Kashmir) Rules 1958;
- Jammu & Kashmir VAT Act, 2005, Jammu & Kashmir VAT Rules 2005 and Notifications/SROs issued there under;
- Jammu & Kashmir GST Act, 1962 and notifications/SROs issued there under; and
- Notifications/SROs issued regarding exemption from payment of Central Sales Tax in respect of industrial units.

### 2.14.5. Scope of audit

We conducted Performance Audit of thirteen circles<sup>3</sup> selected on the basis of quantum of Inter-State sales and covered assessments that were completed during 2006-07 to 2009-10 and also where exemptions /concessions had been granted under the CST Act. The Performance Audit was conducted from January 2011 to September 2011. We selected 100 *per cent* cases in industrial circles involving gross turnover (GTO) of ₹ five crore and above; 50 *per cent* cases involving GTO between ₹ five crore and ₹ one crore, 25 *per cent* cases involving GTO between ₹ one crore and ₹ 50 lakh and 10 *per cent* cases involving GTO less than ₹ 50 lakh were test-checked. In addition to the deficiencies noticed during Performance Audit, other irregularities of similar nature noticed during audit of assessments of the selected period are also mentioned in the succeeding paragraphs.

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<sup>3</sup> Commercial Tax Circles A, B, C, D, E, G, H, I, L and Udhampur-I of Jammu province and Anantnag-II, Kupwara, Budgam of Kashmir province.

### 2.14.6 Audit Methodology

We collected data of 4521 'C' Declaration forms and 1586 'F' Declaration forms and got it cross-verified through the Offices of the Accountants General with the records of the Commercial Tax Department of the States that had issued the Declaration Forms. We received data relating to 469 'C' and 103 'F' Declaration forms of other States that were issued by the selling dealers of our State and verified the same with the assessment records of the dealers in the concerned assessment circles of the State. The errors/omissions noticed during this verification were brought to the notice of the concerned Assessing Authorities (AA) and verification reports communicated to the concerned Audit Offices for necessary action at their end. Based on these verification reports, we issued our observations to the concerned AAs, wherever mistakes/ omissions were detected.

### 2.14.7 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the Commercial Taxes Department in providing necessary information to us. The audit objectives, criteria and methodology were discussed with the Commissioner-cum-Secretary, Finance Department, Government of J&K and Special Secretary Finance and Commissioner, Commercial Taxes Department during an Entry Conference held in January 2011. The Performance Audit Report was discussed with the Commissioner-cum-Secretary, Finance Department in the Exit Conference on 12 October 2011. The replies received during the course of audit and in the Exit Conference have been appropriately commented in the relevant paragraphs. Government has accepted all the audit recommendations proposed by us.

### 2.14.8 Trend of Revenue Receipts under CST Act

Preparation of Budget estimates is an important part of financial planning. However, our scrutiny revealed that no separate targets had been prepared by the Government in respect of receipts under CST and consequently, no monitoring for receipt of the tax could be exercised by the Department.

**We recommend that the Government may consider preparing Budget estimates in respect of CST and monitor the receipts there from.**

### Audit Findings

#### System deficiencies

### 2.14.9 Deficiencies noticed in printing and custody of Declaration forms

The Deputy Commissioner (Stamps), Jammu was made responsible for printing, custody and issue of Declaration forms in the State. The Declaration forms were got printed from India Security Press, Nasik, Maharashtra on the basis of requisition received from the

Commercial Taxes Department. After receiving the Declaration forms, the same are stored in double lock custody.

**2.14.9.1** We, however, noticed that no system was put in place by the Department to assess the requirement of the forms before placing orders. Our analysis of the information received from Deputy Commissioner (Stamps), Jammu indicated that printing of the forms was in excess of the requirement. The year-wise position of printing/receipt and issuance of Declaration forms 'C' and 'F' from 2006-07 to 2009-10 is mentioned in the following table:-

Year	Nature of Forms	Opening balance of Forms	Forms Printed\ Received	Total	Forms Issued	Percentage of issued forms	Closing balance of Forms ***
2006-07	C	43075	700000	743075	288000	39	455075
	F	73213	200000	273213	44000	16	229313
2007-08	C	455075	145000	600075	115000	19	485075
	F	229313	Nil	229213	20000	9	209213
2008-09	C	485075	Nil	485075	150000	31	335075
	F	209213	Nil	209213	Nil	0	209213
2009-10	C	335075	Nil	335075	125000	37	210075
	F	209213	Nil	209213	20000	10	189213

\*\*\* Includes 75 damaged forms.

The above facts indicate that printing of Declaration forms was not got done on realistic basis, being far in excess of the requirement, and hence was vulnerable to damage due to prolonged storage. We further noticed that 75 forms included in the above details, had been shown as written off by the Department but were not destroyed and had remained part of closing stock.

After this was pointed out, the Dy. Commissioner (DC) Stamps, Jammu stated that Declaration forms were printed as per the assessed requirements projected by the Additional Commissioners concerned.

The reply was not correct in the light of the fact that the forms were got printed far in excess of the requirement as evident from the closing balance figures of the forms and no forms had been got printed thereafter. The procurement of Declaration forms should have been made after taking into account the availability of forms in stores and yearly consumption thereof to arrive at the actual requirement. However, no such exercise was done by the Department.

**2.14.9.2** Our scrutiny of records further revealed that the Deputy Commissioner, Sales Tax (Administration), Jammu had got printed 1.40 lakh forms (C, F, H, E-I and E-II), from Government Press Jammu at a cost of ₹ 85,000. The actual date of printing and

the reasons for getting the forms printed from Government Press, Jammu instead of getting them printed from India Security Press, Nasik was neither found on record nor furnished by the Department. Of these, 30,000 H forms had not been lifted at all by the Department as of March 2011. The General Manager, Government Press Jammu had requested (January 2002, February 2003) the Department for lifting of these forms so as to prevent their further deterioration. Again, in February 2004, the Press had informed the Department that, due to non-lifting of these forms for more than 12 years, the forms had been damaged.

The above facts indicate that the Department was negligent in placing orders for printing of the Declaration forms in excess of their requirements, and then not lifting the printed Declaration forms and not placing them in safe custody to prevent damage.

During the Exit Conference, the Department stated that the printing of Declaration forms is now being done on realistic basis and a Committee of officers would be framed for making disposal of thirty thousand 'H' forms which were lying unattended in Government Press, Jammu.

**We recommend that the Government may strengthen the system of procurement of forms by making DC (Stamps) responsible for obtaining periodical consumption statements of the Declaration forms from Additional Commissioners and for assessing/ascertaining the correct requirement before placing any orders for printing.**

#### **2.14.10 Non-utilisation of TINXSYS website**

Tax Information Exchange System (TINXSYS) is a centralised exchange of all Inter-State dealers spread across various states. The website is designed to help the Commercial Tax Departments of various States and Union Territories to effectively monitor Inter-State trade. Apart from the dealer verification, it is also to be used for verification of Central statutory forms issued by other State Commercial Tax Departments and submitted to them by the dealers in support of claim for concessions. The States are required to upload the particulars of the dealers and the forms issued to the dealers on the website for cross verification.

We, however, observed that electronic database of registered dealers carrying out Inter-State sales had not been created by the Department. In the absence of this data, the uploading for cross-verification of the data of Declaration forms relating to the dealers on the website was not possible. Thus Commissioner Commercial Taxes Department had not taken advantage of TINXSYS website for cross verification of dealers/forms. There was nothing on record to indicate that the Department developed manpower and information technology tools, which are necessary for being a partner in the TINXSYS.

After this was pointed out (May 2011), the Department stated in the Exit Conference that computerisation was already in hand and speedy steps would be taken for computerisation of the data relating to dealers and with regard to various statutory forms issued to them. It further stated that the Department was in the process of digitisation of the legal data and also with regard to various Declaration forms.

**We recommend that the Government may consider instructing the Department to develop the manpower and information technology tools to be a partner in TINXSYS and take speedy steps for computerisation of data relating to dealers and with regard to various statutory forms issued to them.**

#### **2.14.11 Non-maintenance of database of Inter-State sales**

Under Rule 3 of CST (J&K) Rules 1958, Commissioner Commercial Taxes is required to publish in the Government Gazette, not later than the 30 April every year, a list of dealers registered under the relevant section of the Act in Form-1. Amendments made to the said list from time to time and additions to the lists are also to be published by him in the Government Gazette within 15 days after the close of quarter to which amendments or additions relate.

The Department had not maintained any database of the dealers conducting Inter-State sale/stock transfer. Thus, it was not in a position to identify the dealers who had made Inter-State sales or ascertain total concession and exemption granted to the dealers during a year. The absence of such a database meant that the Government, while framing policies relating to exemptions to be granted to industrial units, could not analyse the issues of cost-benefit trade-off properly. In the absence of this data, the Department could not also monitor submission of Declaration forms of the dealers who had claimed exemption/concessions.

The Department during the Exit Conference stated that with computerisation of the Department the database would get automatically created which would address all the issues.

**We recommend that the Government may consider instructing the Department to maintain a database of the dealers conducting Inter-State Sales in the State for analysing cost-benefit of tax exemptions given by the State.**

#### **2.14.12 Deficiencies noticed in utilising Declaration forms**

A registered dealer can make Inter-State Sales to another registered dealer of other State at concessional rate of tax provided that the transactions are supported by valid Declaration forms prescribed under the Act. The purchasing dealer has to give Declaration forms to the selling dealer so as to enable him to avail of the concession in tax rate. An AA is required to take adequate safeguards against mis-utilisation of Declaration forms and ascertain genuineness of the forms before allowing tax exemption to the dealers.

During the test-check, we noticed that exemption of tax had been allowed in 2005-06 and 2006-07 in 36 cases where Declaration forms were issued by the purchasers of other States between March 1985 and May 2003. The genuineness of Declaration forms had not been ascertained by the AAs though these forms were very old, having been issued decades ago. We further noticed that in four out of these 36 cases, exemption had been allowed as mentioned in the following table:

Sl. no.	Issuing State	C/F form No.	Date of issue of forms	Amount of sales	Assessing officer	Date of Assessment
1	UP	0025796	21.01.2006	2,89,729	Jammu I	30.06.2008
2	Punjab	PB-AA/C-3325179	NA	14000	Jammu-I	30.06.2008
3	Haryana	HR04C0847698	-	5,55,000	Jammu-G	30.06.2008
4	Haryana	HR04C0532201	-	3,75,000	Jammu-G	30.06.2008

The above facts indicate that there was no system in the Department for getting Declaration forms cross-verified by the State Government Departments concerned, particularly in doubtful cases i.e. forms with overwriting/cuttings etc.

During the Exit Conference, the Department stated that system of verification of Declaration forms would be improved upon and all doubtful Declaration forms would be got verified from the concerned Commercial Taxes Departments of the respective States.

**We recommend that the Government may consider instructing the Department for putting in place a system for sample selection of Declaration forms for further verification with the State Government Departments concerned, besides ensuring that all doubtful forms are invariably cross verified.**

### Compliance deficiencies

#### 2.14.13 Discrepancies noticed in Declaration forms used in Inter State trade

As per Rule 6 (a) of Central Sales Tax (Jammu and Kashmir) Rules, 1958, a purchasing dealer or any responsible person authorised by him shall, before furnishing the Declaration to the selling dealer, fill in all required particulars in the form and also affix his usual signature in the space provided in the form for this purpose. Thereafter the counterfoil of the form shall be retained by the purchasing dealer and the other two portions marked "Original" and "Duplicate" shall be made over by him to the selling dealer. The import of the rule is to incorporate the details of full transactions of a consignment in all the three parts of the Declaration form so as to leave no scope for any interpolation in any part which could result in mismatch and misuse. We noticed following discrepancies in violation of above provisions.

#### 2.14.14 Deficiencies noticed in purchase of Goods from other States

We received data relating to Declaration forms and cross-verified the same with the assessment records of the purchasing dealers in their concerned assessment circles. The errors/omissions noticed during this verification are mentioned in the succeeding paragraphs:



#### **2.14.14.1 Concealment due to non/short disclosure of purchases by State dealers**

As per the data of 'C' forms collected by us from 11 states<sup>4</sup>, 22 dealers registered in 12 circles<sup>5</sup> of the State had made Inter State purchases of goods during 2002-03 to 2008-09 valued at ₹ 3.26 crore. Cross verification of the data with consumption statement of 'C' forms furnished by the dealers to the Assessing Authority in the respective Circles revealed that the dealers had shown the purchase of goods valued at ₹ 93.54 lakh only. This had resulted in understatement of purchases valued at ₹ 2.33 crore made against the 'C' forms Thus the possibility of tax evasion by the purchasing dealers on such purchases needs to be investigated.

Data of 'C' forms received from four states<sup>6</sup> was cross-verified with the assessment records of the dealers and it was found that two dealers in the State had purchased goods valued at ₹ 36.96 lakh on the basis of the four 'C' forms but these purchases were not accounted for in the Accounts (purchase statements) of the dealers. Similarly, other two dealers had made purchases of ₹ 98.71 lakh on the basis of two forms but had accounted for ₹ 91.22 lakh only in their Accounts. Thus, purchases valued at ₹ 44.46 lakh had been short accounted for by these dealers in their accounts resulting in concealment of purchases and consequential sale turnover having tax effect of ₹ 7.60 lakh.

The Department stated, during the Exit Conference, that necessary investigation would be conducted and demand would be raised against the defaulting dealers wherever necessary.

#### **2.14.14.2 Variation in the names of selling dealers in Declaration forms**

As per data of Declaration forms collected by us from four states,<sup>7</sup> four dealers registered in four circles<sup>8</sup> of the State had made Inter-State purchase of goods in 2005-06 and 2007-09 valued at ₹ 7.70 crore on the basis of seven 'C' Declaration forms issued by the purchasing dealers. Our cross-verification of these Declaration forms with the consumption statements furnished by the dealers to the concerned AA revealed that the forms had been issued for ₹ 7.62 crore in the name of dealers other than those mentioned in the Declaration form. Thus the possibilities of tax evasion by the purchasing dealers on such purchases need to be investigated.

#### **2.14.14.3 Short accounting of stock received from other States**

As per the data collected by us from Uttar Pradesh, two dealers had made stock transfer of goods valued at ₹ 1.28 crore to two dealers of Udhampur and Jammu K-circle. Our cross-verification of the data with the consumption statements of the dealers furnished by

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<sup>4</sup> Assam, Delhi, Gujarat, Haryana, Jharkhand, Karnataka, Kerala, M.P., Punjab, Rajasthan, U.P.

<sup>5</sup> Commercial Tax Circle Jammu (A, B, C, D, G, I, J, K, P), Kathua, Srinagar (B) & Sopore

<sup>6</sup> Bihar, Delhi, Goa & Rajasthan

<sup>7</sup> Goa, Gujarat, Rajasthan & U.P

<sup>8</sup> Commercial Tax Circle Jammu (C, E, G) & Srinagar (K)

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them in the respective circles revealed that the State dealers showed stock receipts of goods valued at ₹ 40.84 lakh only. Thus the apparent concealment of inward stock transfer valued at ₹ 87.59 lakh, having tax effect of ₹ 8.40 lakh, required investigation.

Of the above, one consignee (M/S Surya Trading Company, Udhampur) had utilised four 'F' forms in favour of M/s Agarwal Oil Refinery UP, whereas the names of the consignors, as per consumption statement, were Uma Sales Allahabad, D.K. Enterprises, Kanpur, Singla Trading Co, Delhi and Kanpur twine, Kanpur. All these variations require investigation.

#### **2.14.14.4 Misuse of lost 'C' Forms**

Rule 6 of Central Sales Tax (Jammu and Kashmir) Rules, 1958 provide that if any Declaration form is lost, destroyed or stolen, the dealer shall report the fact to the AA immediately who shall from time to time publish the particulars of such Declaration forms in the Government Gazette.

We noticed that one dealer, M/s Sheth Constructions (Tin No. 01881181547), had been issued two 'C' forms <sup>9</sup>on 06 March 2006 by the AA, Circle 'O' Jammu which had been reported lost by the dealer. No action was taken by the Department to notify the loss of 'C' forms to safeguard misuse of these forms in terms of the aforesaid rules. Our verification of 'C' forms revealed that one of the two forms <sup>10</sup> had been used by M/s N.K. Engineering, Gurdaspur, Punjab for sale of machinery parts, valued at ₹ 1.01 lakh, to the dealer. The misuse of another 'C' form could not be ruled out.

#### **2.14.14.5 Non-surrender of Declaration forms on cancellation of Registration Certificate**

Rule 6 (f) of Central Sales Tax (Jammu and Kashmir) Rules, 1958 stipulate that any unused Declaration forms remaining in stock with a registered dealer, on cancellation of the registration certificate, shall be surrendered to the AA concerned.

We noticed during test-check of records of the Commercial Taxes Circle B, Srinagar that a dealer (M/s Hardev Traders CST No. 6020594 & GST No. 202618) had got issued 150 'C' forms from the AA in April 1990. The dealer had been assessed for the period from 1989-90 to 2000-01 during the years 1993-94 to 2002-03 for 'nil' tax liability. The registration of the dealer had been cancelled by the AA in January 2001 without insisting upon submission of consumption statement/surrender of unused 'C' forms to avoid chances of their misuse. During cross-verification of 'C' forms, we noticed that two dealers of Meghalaya {M/s K.M. & Co. R.C. No. GH (CST) 1400 & M/s Meghalaya Coal, R.C. No. GH (CST) 1266} had shown to have sold coal valued at ₹ 7.51 crore during 2009-10 to the dealer. The failure of the AA to obtain consumption statement/unused 'C' forms at the time of cancellation of registration of the dealer had resulted in their misuse resulting in loss of revenue of ₹ 49.05 lakh. The fate of remaining

<sup>9</sup> 03V-009169 & 03V-009170

<sup>10</sup> 03V-009169

148 'C' forms was not known and the possibility of their misuse too could not be ruled out.

After we pointed this out, the AA expressed grave concern and referred the matter to the Commissioner of Commercial Taxes for taking up the issue with the concerned State Government.

During the Exit Conference, the Department stated that the cases would be scrutinised and demands raised against the defaulting dealers, wherever necessary, and instructions for reviewing the cases, where registration of dealers had been cancelled without surrender of unused Declaration forms, would be issued to all the Assessing Authorities.

**It is recommended that the Commissioner of Commercial Taxes Department may consider issuing instructions for reviewing all the cases where Registration of dealers was cancelled without surrender of unused Declaration forms and get the unused forms surrendered or declare them invalid by issue of notifications.**

#### **2.14.14.6 Non-submission of utilisation certificates**

The Declaration forms are issued by Commercial Tax Circles to registered dealers to enable them to issue it to another registered dealer for purposes specified in their Registration Certificate. The dealers are required to submit the utilisation certificate (consumption statement) before new Declaration forms are issued to them by the Assessing Authority (AA).

We, however, noticed in two circles of Leh and Srinagar that 105 'C' forms were issued in April 2006 and March 2009 in favour of two dealers. Further 10 forms (5 each) were issued to the dealers in November 2007 & October 2010 without obtaining the consumption statement of already issued forms.

After we pointed this out, the AA stated (June 2011) that consumption statement of Declaration forms would be obtained from the dealers.

During the Exit Conference, the Department stated that instructions would be issued to all AAs that no Declaration forms be issued to dealers without obtaining consumption of previously issued Declaration forms.

#### **2.14.15 Deficiencies noticed in sale of Goods to other States**

We received verification reports in respect of data that was sent by us to Audit Offices of other States for cross-verification. The errors / omissions noticed, based on these verification reports, are mentioned in the following paragraphs.

##### **2.14.15.1 Understatement of sales**

In two circles<sup>11</sup>, seven dealers were assessed between April 2005 and March 2007 on Inter-State sales valued at ₹ 1.61 crore made by them to eight dealers of five States<sup>12</sup>. Our

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<sup>11</sup> Commercial Tax Circles Jammu (G & I)

<sup>12</sup> Chattisgarh, H.P., M.P., Maharashtra – I & U.P.

cross verification of data with the respective Commissioners of the Commercial Taxes Departments of the respective States, revealed that the dealers had actually purchased goods valued at ₹ 2.28 crore on the basis of eight 'C' forms issued by them to these selling dealers of the State. This resulted in understatement of Inter-State sales of ₹ 67 lakh by the selling dealers or excess account of purchases by the purchasing dealers to that extent. The matter may be investigated, as there is a possibility of concealment of sales of ₹ 67 lakh by the selling dealers and consequential loss of revenue to the State which needs to be recovered. Besides, penalty was leviable for misstatement/concealment.

#### **2.14.15.2 Overstatement of Sales**

In three circles<sup>13</sup>, 12 dealers had made sales valued at ₹ 10.14 crore to 19 dealers of eight states<sup>14</sup>. Our cross-verification of the data with the respective Commissioners of the Commercial Taxes Departments of the respective States revealed that the dealers had actually purchased goods valued at ₹ 5.55 crore on the basis of 22 'C' forms issued by them to the selling dealers of the States. The difference in sales, requires investigation, as there is a possibility of concealment of sales of ₹4.59 crore by the selling dealers and consequential loss of revenue which needs to be recovered. Besides penalty is also leviable for concealment.

#### **2.14.15.3 Variation in Nature of Goods sold**

In two circles<sup>15</sup>, where five dealers had made sales to seven dealers of four states<sup>16</sup>, our cross-verification of the data with the respective Commissioners of the Commercial Taxes Departments of the respective States revealed that the dealers had actually purchased goods other than those on which exemption was claimed. For example, sales shown were of 'Cold drinks' whereas the purchasing dealers had shown 'packing material' as purchases.

#### **2.14.15.4 Sales on Fake 'C' Forms**

In four circles<sup>17</sup>, 24 dealers had shown sales valued at ₹ 49.35 crore to 43 dealers of seven States<sup>18</sup> and UT Chandigarh. Cross verification of the data with the respective Commissioners of the Commercial Taxes Departments of the respective States revealed that 65 'C' forms on the basis of which exemption had been granted to the selling dealers were not issued to the purchasing dealers by their respective Departments. Thus the forms on which exemption had been claimed were not genuine and had, consequently, resulted in grant of incorrect exemption of tax of ₹ 6.43 crore. Besides, interest and penalty was also leviable.

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<sup>13</sup> Commercial Tax Circles Jammu (D, I & G)  
<sup>14</sup> Delhi, H.P., M.P., Maharashtra – I, Rajasthan, U.P., Uttrakhand, West Bengal  
<sup>15</sup> Commercial Tax Circles Jammu (G & I)  
<sup>16</sup> H.P., M.P., U.P., West Bengal  
<sup>17</sup> Commercial Tax Circles Jammu (G, H, I & L)  
<sup>18</sup> Delhi, Haryana, Madhya Pradesh, Maharashtra, Punjab, U.P. , Rajasthan

### **2.14.15.5 Sales on 'C' forms claimed to be lost**

A dealer assessed in Circle I, Jammu had shown sales of ₹ 6.96 lakh to a dealer in Assam ('C' form No. AS/96 460315) during 2006-07 and had been allowed exemption on these sales. Cross-verification of the data with the respective Commissioners of the Commercial Taxes Department, Assam revealed that the purchasing dealer had shown the said form as having been lost. Thus, the exemption allowed on these sales having a tax effect of ₹ 1.71 lakh, required investigation to check the genuineness of the sale.

### **2.14.15.6 Incorrect Utilisation of Declaration forms that were not in the name of selling dealer**

In two circles (G&I Jammu), six dealers had made sales valued at ₹ 10.23 crore to 11 dealers of one Union Territory (UT) and seven States<sup>19</sup>. Cross-verification of the data with the respective Commissioners of the Commercial Taxes Departments of the respective States, revealed that the names mentioned in 'C' forms on the basis of which exemption was granted to the selling dealers did not tally with the names shown by the purchasing dealers in their records. The grant of exemption in these 16 cases required investigation for the exemption of tax of ₹ 1.27 crore, Besides, interest and penalty of ₹ 1.23 crore was also leviable. In absence of a system of cross verification of Declaration forms, the mistake remained undetected.

### **2.14.15.7 Deficiencies noticed in stock transfer of goods**

➤ In 'L' circle, Jammu, three dealers had made stock transfer to three dealers of two states<sup>20</sup>. A cross-verification of the data with the respective Commissioners of the Commercial Taxes Departments of the respective states revealed that the consignors had shown stock transfer of ₹ 9.72 lakh (11-F forms) against which the consignee had accounted for ₹ 60.72 lakh indicating excess stock transfer of ₹ 51 lakh. The difference in transfer of goods valued at ₹ 51 lakh was without 'F' forms and needs investigation. This may result in understatement of stock transfer by the consignor.

➤ In three circles<sup>21</sup>, five dealers had made stock transfer to six dealers of six states<sup>22</sup>. Our cross-verification of the data with the respective Commissioners of the Commercial Taxes Departments of the respective states revealed that the consignor had shown stock transfer of ₹ 3.03 crore against which the consignee had accounted for ₹ 2.17 crore in his accounts. The difference in transfer of goods valued at ₹ 86 lakh needs investigation. This may result in understatement of stock transfer by the consignor.

➤ In three circles<sup>23</sup>, five dealers had made stock transfer of goods valued at ₹ 40.79 crore to five dealers of Punjab and Chandigarh. Our Cross-verification of the data with

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<sup>19</sup> Bihar, Delhi, Gujarat, H.P., M.P., U.P., Dadra & Nagar Haveli , West Bengal

<sup>20</sup> Gujarat & H.P

<sup>21</sup> Commercial Tax Circles Jammu (G, I & L)

<sup>22</sup> Gujarat, Haryana, Maharashtra, Orissa, Tamil Nadu & U.P

<sup>23</sup> Commercial Tax Circles Jammu (G, I & L)

the respective Commissioners of the Commercial Taxes Departments of the respective states revealed that 25 'F' forms on the basis of which exemption had been granted to the consignors were not issued in the name of consignees by the Department. These forms were shown to have been issued by the respective Department to other consignees. Thus, exemption from payment of tax of ₹ 1.71 crore was incorrect. Besides, interest of ₹ 1.94 crore was also leviable. This may result in understatement of stock transfer by the consignor.

#### **2.14.15.8 Incorrect exemption on F forms that were not issued to consignees**

In two circles, two dealers had shown stock transfer valued at ₹ 1.66 crore to two dealers of Punjab and Chhattisgarh. A cross-verification of the data with the respective Commissioners of the Commercial Taxes Departments of the respective States revealed that eight 'F' forms on the basis of which exemption had been granted to the consignors were not issued by their respective Departments. Thus, exemption granted on these forms was not in order and had resulted in incorrect exemption of tax of ₹ 41.20 lakh. Besides, loss of interest of ₹ 57.54 lakh which was also leviable.

During the Exit Conference, the Department stated that the observations mentioned in the above paragraphs would be looked into and demands raised against the defaulting dealers, wherever necessary.

**We recommend that Government may consider developing a mechanism for ensuring that all the three parts of Declarations forms utilised in Inter-State trade are completely/correctly filled by purchasing dealers/consignees before they are issued to the concerned dealers.**

#### **2.14.16 Discrepancies noticed in Assessment records**

The AAs were required to scrutinise the returns and the documents furnished by the dealers along with their returns while finalising the assessments.

While conducting the Performance Audit of cross verification of Declaration forms we found that provisions of the Acts and Rules relating to submission of Declaration forms had not been followed. These are discussed in the succeeding paragraphs:-

##### **2.14.16.1 Sales not supported by Declaration forms 'C'**

Section 8 (4) of the Central Sales Tax Act 1956 provides that no exemption /concession from payment of tax shall be granted to a dealer making Inter-State sales unless the dealer furnishes to the prescribed authority a Declaration in the prescribed form, duly filled and signed by the registered dealer to whom the goods are sold. Further, as per provisions of Rule 12(7) of the CST (Registration and Turnover) Rules 1957, the Declaration forms 'C' or 'F' shall be furnished to the prescribed authority within three months after the end of the period to which Declaration relates.

We noticed that in three circles,<sup>24</sup> 13 dealers were not selected for audit assessment for the periods 2005-06 and 2007-09. However, the dealers had not furnished 'C' and 'F' forms for goods valued at ₹ 33.95 crore but had availed of exemption from payment of tax. This had resulted in incorrect grant of exemption/concession having tax effect of ₹ 8.29 crore including interest. Besides, in two circles (G&I Jammu), two dealers had not submitted the Declaration forms for the sales valued at ₹ 33.40 lakh during 2005-07 assessed in 2008-10. However, exemption was claimed /allowed by the AA incorrectly resulting in non-realisation of tax of ₹ 8.84 lakh.

#### **2.14.16.2 Stock transfers not supported by Declaration forms 'F'**

Under the CST Act 1956, movement of goods on branch transfers from one State to another cannot take place unless it is covered by requisite Declaration forms.

We noticed in Commercial Tax Circles('C' and 'G') of Jammu that exemption from payment of tax had been allowed to two dealers who had not produced 'F' forms in support of their stock transfer of goods valued at ₹ 2.25 crore during 2005-07. The AA while finalising the assessment between June 2008 and March 2010 had allowed exemption without obtaining the Declaration forms. This had resulted in incorrect grant of exemption having tax effect of ₹ 44.16 lakh, including interest.

During the Exit Conference, the Department stated that the dealers who had been allowed exemption/concession from tax without production of Declaration forms would be subjected to tax as per law. They did not give reasons for allowing exemption on Duplicate forms.

#### **2.14.16.3 Incorrect acceptance of Duplicate copies of Declaration forms 'C' & 'F'**

Rule 6 (b) of the J&K CST Rules, 1958 provides that a registered dealer who claims to have made a sale to another registered dealer shall, in respect of such claim, attach to his return, to be filled in Form IV, the portion marked 'original' of the Declaration, received by him from the purchasing dealer.

We noticed in four circles<sup>25</sup> that the concessional rate/exemption of tax had been allowed to 34 dealers by the AAs between 2008- 09 and 2009-10 for the assessment years from 2005-06 to 2007-08 on duplicate 'C' & 'F' forms without insisting on production of original Declaration forms. The grant of exemption on duplicate forms was not admissible and should have been disallowed by the AAs. These cases involved Inter-State sales/stock transfers of ₹ 422.88 crore having the tax effect of ₹ 99.93 crore including interest.

During the Exit Conference, the Department stated that original Declaration forms would be obtained from the dealers and in case a dealer is not able to produce original Declaration forms they would be charged tax as per law. They did not give reasons for allowing exemptions on Duplicate forms.

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<sup>24</sup> Commercial Tax Circles Jammu (B, I & L)

<sup>25</sup> Commercial Tax Circles Jammu (B, G, I & L)



#### 2.14.16.4 Exemption on photocopies/counterfoils of 'C' forms

According to Rule 6 (b) of the J&K CST Rules, 1958, a registered dealer who claims to have made a sale to another registered dealer shall in respect of such claim, attach to his return to be filled in Form IV the portion marked 'original' of the Declaration received by him from the purchasing dealer. The AA may under his discretion, also direct the selling dealer to produce for inspection the portion of the Declaration form marked 'Duplicate'.

We noticed in two circles<sup>26</sup> that the concessional rate/exemption of tax was allowed to 13 dealers by the AAs during 2008-10 for the assessment years from 2005-06 to 2007-08 on photocopies/counterfoils of 'C' & 'F' forms without insisting on production of original Declaration forms. The exemption was not admissible on photocopies/ counterfoils of Declaration forms on the goods valued at ₹ 54.09 crore having a tax effect of ₹ 14.77 crore including interest.

#### 2.14.16.5 Exemption on incomplete/blank Declaration forms

We noticed in two circles<sup>27</sup> that the concession/exemption of tax was allowed to eight dealers by the AAs between 2008-09 and 2009-10 for the assessment years from 2005-06 to 2006-07 on 'C' & 'F' forms that had incomplete details (like bill No, description of goods, etc.) in respect of the transactions in 92 cases. The grant of exemption on these Declaration forms of goods valued ₹ 87.41 crore was not admissible and should have been disallowed by the AA. Further, exemption from payment of tax was allowed to five dealers during 2008-09 & 2009-10 for the assessment years from 2005-06 & 2006-07 on sales of ₹ 12.07 crore involving tax of ₹ 3.04 crore on Declaration forms not mentioning the name of the dealer, goods supplied, etc. The AA had not verified the correctness of the forms but allowed the exemption.

Further, exemption from tax was allowed (between 2008-09 and 2009-10) to 11 dealers on Inter-State sales of ₹ 31.63 crore in two circles on Declaration forms that did not bear the name of the dealers to whom exemption was granted. This had resulted in inadmissible exemption from tax of ₹ 7.44 crore including interest.

The grant of exemption in these cases is fraught with the risk of misuse of Declaration forms and mis-classification of goods resulting in undue exemption to the dealers.

It was noticed in 'L' and 'B' circles of Jammu that three dealers had been allowed exemption from payment of tax on stock transfers of goods valued at ₹ 35 lakh involving tax effect of ₹ 8.72 lakh during 2008-09 and 2009-10 on 'F' forms not drawn in the name of the consignors.

**We recommend that the Government may issue instructions to the Department for complying with the provisions of the Act/Rules which forbid acceptance of duplicates/photocopies/counterfoils/incomplete Declaration forms at the time of**

<sup>26</sup> Commercial Tax Circles Jammu (G & I)

<sup>27</sup> Commercial Tax Circles Jammu (G & C)

### **assessment for the purpose of allowing exemptions concessions on this account.**

During the Exit Conference, the Department stated that instructions would be issued to the AAs that no exemption/concession on rate of tax is extended to dealers submitting photocopies/counterfoils/duplicate/incomplete/blank Declaration forms.

#### **2.14.17 Exemption allowed to industrial units without filing returns**

SRO 24 of January 2004 governing exemption of tax under the CST Act, 1956 on the sale of goods in the course of Inter-State sales made by a manufacturer/operating industrial unit in the State provides that such exemption shall be available subject to furnishing of quarterly/annual returns for each accounting year.

It was noticed in G&I Circles, Jammu that exemption had been allowed to nine dealers on Inter-State sales of ₹ 48.95 crore made during 2005-06 to 2008-09 though the dealers had not filed the requisite CST returns having a tax effect of ₹ 6.77 crore. The exemption had been granted (June 2008 to March 2010) by the AA on the basis of VAT returns submitted by the dealers under J&K VAT Act, 2005. The grant of exemption is not in accordance with the SRO 24 which stipulates the submission of separate return under CST Act.

During the Exit Conference, the Department stated that instructions would be issued to AAs that no exemption/concession be allowed to the industrial units who do not file CST returns.

#### **2.14.18 Exemption allowed to industrial units on late filing of Declaration forms**

As per provisions of Rule 12(7) of the CST (Registration and Turnover) Rules 1957, the Declaration forms 'C' or 'F' shall be furnished to the prescribed authority within three months after the end of the period to which Declaration relates.

It was noticed that six dealers had not furnished the Declaration forms within the stipulated time, i.e. within three months after the end of the period to which the Declaration relates. The AA while assessing the dealers did not take notice of this omission and allowed exemption from payment of tax to these dealers which was incorrect.

During the Exit Conference, the Department stated that instructions would be issued to Assessing Authorities for ensuring submission of Declaration forms within the stipulated time.

#### **2.14.19 Possible revenue loss due to non-obtaining of Declaration forms in respect of sales having zero per cent rate of tax**

Section 8 (1) of the CST Act, 1956 envisages that every dealer, who in the course of Inter State trade or commerce, sells to a registered dealer goods of the description referred to in Sub-section (3) shall be liable to pay tax under this Act, which shall be two per cent of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the Sales Tax Law of that State, whichever is lower.



It was noticed that the AAs (L and I Circles of Jammu) had not obtained Declaration forms ('C'/'F') on Inter-State sale of zero schedule goods, viz. walnut and rice, valued at ₹ 4.18 crore during 2005-06 from two dealers. Though there is no loss to the State Government, the possibility of concealment of purchases by purchasing dealers of other States could not be ruled out.

After we pointed this out, the Department accepted the fact (January 2011) that the possibility of concealment of purchases in the recovering States in respect of zero-scheduled goods sold to other States without obtaining 'C' forms from the purchasing dealer could not be ruled out and stated that this point would be taken care of by uniformity of tax rates following implementation of Goods and Service Tax Act. During the Exit Conference, the Department stated that this would be looked into.

#### **2.14.20 Conclusion**

The system and compliance deficiencies pointed out above had adversely impacted the revenue collections relating to Inter-State sales/ stock transfers. The printing of Declaration forms had not been done on a realistic basis after ascertaining the proper requirement. The Department had not created a computerised database of registered dealers carrying out Inter-State Sales and in its absence, the uploading of the data of Declaration forms relating to dealers to the TINXSYS website was not possible.

The selling dealers, and purchasing dealers, consignors and consignees had either understated or overstated their sales, purchases and stock transfers on Inter State transactions. Variation in the names of selling/ purchasing dealers was also noticed. In a number of cases, exemption was allowed to dealers on the basis of Declaration forms which were not drawn in the name of selling dealers and Declaration forms reported to have been lost by purchasing dealers were utilised for seeking concession/exemption. The Department allowed exemption/concessions of tax to the selling dealers/consignors without obtaining requisite Declaration forms or allowed claims based on Duplicate, photocopies, counterfoils of Declaration forms or on the Declaration forms not issued by the concerned Department to the dealers purchasing goods/consignees.

These facts indicate that the usage of forms was allowed in violation of the Rules and procedures governing the Declaration Forms and that there was no system in place for cross verification of Forms, resulting in leakage of revenue in implementation of the CST Act.

#### **2.14.21 Recommendations**

We recommend that the Government may consider:

- strengthening the system of procurement of forms by requiring that the DC (stamps) call for periodical consumption statement of the Declaration forms from the Additional Commissioners and assess/ascertain the correct requirement of Declaration forms before placing orders for printing;
- online issue of 'C' & 'F' forms like other States;

- developing a mechanism for ensuring that all the three parts of Declarations forms utilised in Inter-State trade are completely/correctly filled by purchasing dealers/consignees before issuing them to the concerned dealers;
- instructing the Department to comply with the provisions of the Act/Rules by not accepting Duplicate/photocopies, counterfoils and incomplete Declaration forms at the time of assessment before allowing exemptions/ concessions on this account;
- instructing the Department for developing the manpower and information technology tools to be a partner in TINXSYS and take speedy steps for computerisation of data relating to dealers and with regard to various statutory forms issued to them and for maintaining a database of the dealers conducting Inter-State Sale and for maintaining data in respect of exemption granted to the dealers during a year; and
- instructing the Department for putting a system in place for sample selection of Declaration forms for further verification with the State Government Department concerned and for compulsory cross verification of all doubtful forms.

## 2.15 Compliance Audit Observations

Our scrutiny of assessment records of Sales Tax/Value Added Tax (VAT) revealed several cases of non-observance of provisions of Acts, rules, non-levy/short levy of tax/interest/penalty, concealment of purchases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on test check carried out by us. Such omissions on the part of assessing authority are pointed out by us each year, but not only do the irregularities persist, these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system including strengthening of internal control.

### Short levy of tax and interest

The Jammu and Kashmir General Sales Tax (J&K GST) Act, 1962 and rules made there under provide that where a contractee supplies material to a contractor for use in the works contract for a fixed price to be recovered or adjusted in the bills of contractor in order to ensure quality of material, such supply is sales.

**2.15.1** Our test-check (December 2008) of the records of Commercial Tax Circle 'O' Jammu revealed that a dealer registered as contractor had executed work through other registered contractors and supplied cement valued at ₹ 2.72 crore during 2002-04 to them on fixed price which included storage, supervision and handling charges, etc. The issuance of cement to the contractors was, as such, to be classified as 'sale'. The dealer, however, had

classified the issue of cement as works contract in his returns for 2002-03 and 2003-04 and paid tax of ₹ 11.42 lakh only. This fact was, however, not detected by the Assessing Authority while assessing (March 2007/March 2008) the dealer and instead of applying a tax rate of 12.6 *per cent* assessed the dealer at the rate of 4.2 *per cent* resulting in short levy of tax of ₹ 22.83 lakh.

After the case was pointed out (December 2008), the AA reassessed the dealer (March 2011) for both the years and raised additional demand of ₹ 73.94 lakh (tax: ₹ 24.87 lakh; interest: ₹ 49.07 lakh) against the dealer. Further, the Department stated (August 2011) that the proceedings have already been initiated by the Deputy Commissioner Commercial Taxes (Recovery) Jammu to recover the outstanding arrears from the defaulting dealer. Reply from Government was awaited (October 2011).

Section 6-A (I) of Central Sales Tax Act, 1956 provides that where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods on the ground that the movement of such goods from one state to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a Declaration, duly filled and signed by the principal officer of the other place of business or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, alongwith the evidence of despatch of such goods.

**2.15.2** Our test-check of records (September 2007) of CTO Circle 'O' Srinagar revealed that the Assessing Authority (AA) while finalising assessment (November 2005) of the dealer, exempted the Inter State stock transfer of ₹ 1.20 crore during the year 2002-03 to 2004-05 even though the prescribed Declaration certificate in form 'F' had not been furnished by the assessee, resulting in short levy of tax and interest amounting to ₹ 27.60 lakh.

After this was pointed out (September 2007) by us, the AA re-assessed (December 2010) the dealer under relevant provisions of the Act for the year 2002-03 and raised a demand of ₹ 16.23 lakh including interest. For the years 2003-04 and 2004-05, the case was stated to be under process. Further, the Department stated (October 2011) that the additional

demand raised against the dealer had been referred to the Collector for recovery under Jammu and Kashmir Land Revenue Act. Reply from the Government was awaited (October 2011).

**2.15.3** Our test-check (October 2007) of records of Commercial Taxes Officer 'N' Circle Jammu revealed that a dealer had not disclosed stock transfer made by him on 11 'F' Forms valued at ₹ 96.32 lakh during the accounting year 2002-03. The Assessing Authority did not detect the mistake while finalising the assessment in March 2007. This resulted in short levy of tax of ₹ 45.57 lakh

After we pointed this out, the AA intimated (May 2011) that the dealer had been re-assessed (February 2011) and short accounting of stock valued at ₹ 12.27 lakh was noticed and an additional demand of tax of ₹ 1.55 lakh and ₹ 6.31 lakh on account of interest and penalty had been raised against the dealer. The reasons for not levying the tax on the remaining amount of ₹ 83.95 lakh have not been received.

After the matter was referred to Government/Department (May 2011) by us, the Department stated that the additional demand raised against the dealer has been referred

to the Collector for recovery under Jammu and Kashmir Land Revenue Act. Reply from the Government was awaited (October 2011).

#### **2.15.4 Short accounting of Inter-State purchases in best judgment assessments**

The J&K State GST Act, 1962 provides that if a dealer has not filed his return before the date prescribed or specified in this behalf, the Assessing Authority (AA) shall proceed to assess to the best of his judgement the amount of tax, if any, due from the dealer. For non-payment of tax, interest at prescribed rates is also chargeable on the unpaid tax.

Our test check (September 2007) of the Commercial Tax Circle 'O', Srinagar revealed that a dealer, in view of non-filing of the return, was assessed (January 2006) by the AA to tax on his best-judgement basis for the accounting year 2001-02 on the taxable turnover of ₹ 10 lakh at the rate of 8.4 *per cent*. A scrutiny of the consolidated purchase statement showed that the dealer had made an Inter-State purchase of ₹

19.28 lakh during the year and the items involved, as such, attracted tax at the rate of 12 *per cent*. This aspect was not taken into cognisance by the AA even subsequent to the assessment.

After we pointed this out, the AA reassessed (March 2010) the dealer and issued notices to him. As the dealer did not present his point of view on the issue, an additional demand of ₹ 6.54 lakh was raised against the dealer. On further enquiry (September 2011), the Deputy Commissioner Commercial Taxes Recovery informed (September 2011) that the dealer has started depositing the demand amount and an amount of ₹ 1000 had been deposited up to September 2011.

The matter was referred to Government/Department in September 2011.

#### **2.15.5 Short levy of tax , interest and penalty on concealment of sales**

The Jammu and Kashmir General Sales Tax (J&K GST) Act, 1962 and the Rules made thereunder provide that every dealer shall submit a true and correct return of his turnover in such a manner as may be prescribed under the Act. Further, if a person (dealer) who has, without any cause, failed to furnish correct return of turnover or has concealed any particulars of his turnover, the Assessing Authority (AA) shall direct that person to pay in addition to tax and interest payable by him, an amount by way of penalty not less than the amount of tax evaded, but not exceeding twice the amount of tax.

Our test-check of records of three Commercial Tax Circles revealed that against a taxable turnover of ₹ 1.03 crore, the dealers had declared taxable turnover of ₹ 82.63 lakh in their annual returns leading to concealment of ₹ 20.05 lakh. The Assessing Authorities while assessing the three dealers did not detect the omission, resulting in short levy of tax of ₹ 9.13

lakh including interest and penalty as mentioned in the following table:

(₹ in lakh)

Name of the circle	Asst year Date of assessment	Taxable turn over	Declared turn over	Concealment of turn over	Tax leviable	Penalty interest leviable	Total amount leviable
Jammu 'O'	2002-03 September 2003	13.64	8.24	5.40	0.73	2.89	3.72
After we pointed this out (December 2008), the AA reassessed (March 2011) the dealer and raised an additional demand of ₹ 3.72 lakh <sup>28</sup> on the concealed turnover of ₹ 5.80 lakh (Concealed: ₹ 5.40 lakh; Incidental charges: ₹ 0.39 lakh). Further progress of recovery was awaited (October 2011).							
Jammu 'K'	2004-05 March 2009	71.46	62.91	8.55	--	--	2.89
After this being pointed out (June 2009) by us, the AA reassessed the dealer (November 2010) and raised an additional demand of ₹ 2.89 lakh. Further progress in regard to recovery was awaited (July 2011).							
Jammu 'N'	2004-05 November 2007	17.58 <sup>29</sup>	11.48	6.10	--	--	2.52
After this being pointed out (March 2009), the AA reassessed the dealer (February 2010) and raised demand of ₹ 3.73 lakh <sup>30</sup> .							
Total		102.68	82.63	20.05	--	--	9.13

The matter was referred to Government/Department in (July 2011). In reply, the Department stated (August 2011) that the additional demand raised against the dealer has been referred to the Collector for recovery under Jammu and Kashmir Land Revenue Act. However, reply from the Government has not been received. (October 2011).

<sup>28</sup> Tax: ₹ 0.73 lakh, Interest: ₹ 1.46 lakh and Penalty: ₹ 1.53 lakh

<sup>29</sup> Attracting tax at the rate of eight *per cent*.

<sup>30</sup> Includes ₹ 1.21 lakh on misclassified taxable purchase of ₹ 2.44 lakh.