

CHAPTER-5
Tax on Sales, Trade, Etc.
(Revenue Sector)

CHAPTER-5: TAX ON SALES, TRADE, ETC.

5.1 Tax administration

The Principal Secretary (Commercial Tax and Entertainment Tax), Uttar Pradesh administers the Sales Tax/ Value Added Tax laws and rules framed there under. The Commissioner, Commercial Tax (CCT), Uttar Pradesh is the head of the Commercial Tax Department. He is assisted by 100 Additional Commissioners, 157 Joint Commissioners (JCs), 494 Deputy Commissioners (DCs), 964 Assistant Commissioners (ACs) and 1,275 Commercial Tax Officers (CTOs).

5.2 Results of audit

During 2016-17, Audit test checked the records of 270¹ out of 1,536 auditable units (18 *per cent*) of the Commercial Tax Department. The Department collected ₹ 47,692.40 crore revenue during 2015-16 of which the audited units collected ₹ 25,329.62 crore (53 *per cent*). Audit identified irregularities amounting to ₹ 226.72 crore in 1,757 paragraphs as reported to the Department through the Audit Inspection Reports. These are as detailed in **Table - 5.1**.

Table - 5.1

Sl. No.	Categories	Number of paragraphs	Amount (₹ in crore)	Share in <i>per cent</i> to the total objected amount
1	Under-assessment of tax	481	61.61	27.17
2	Acceptance of defective statutory forms	30	1.44	0.64
3	Evasion of tax due to suppression of sales/ purchase	22	1.11	0.49
4	Irregular/ Incorrect/ Excess allowance of ITC	269	13.16	5.80
5	Other irregularities	955	149.40	65.90
Total		1,757	226.72	

(Source: Information available in the Audit office)

During the course of the year, the Department accepted under-assessment and other deficiencies of ₹ 7.76 crore in 461 cases pointed out between 2007-08 and 2016-17 and out of these, realised ₹ 1.36 crore in 204 cases.

This chapter discusses 168 cases worth ₹ 25.03 crore out of the above cases based on their significance. Some of these irregularities continue to persist, despite similar cases having been repeatedly reported during the last five years as detailed in **Table - 5.2**. Most of the observations are of a nature that may reflect similar errors/omissions in other units, but not covered in test audit. Department may therefore like to internally examine all the other units to ensure that they comply with the requirement and rules.

¹ Commissioner, CT (01), JCs (24), Addl. Commissioner (01), DCs (149), ACs (73) and CTOs (22).

Table - 5.2

(₹ in crore)

Nature of observations	2011-12		2012-13		2013-14		2014-15		2015-16		Total	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount
Application of incorrect rate of tax	79	3.32	95	2.36	75	8.49	132	7.49	35	2.72	416	24.38
Misclassification of Goods	17	0.81	-	-	-	-	24	4.23	13	0.63	54	5.67

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

Recommendation:

The State Government should initiate measures to address the irregularities to avoid their repetition year after year.

5.3 Tax short/ not levied

Scrutiny of records revealed instances where the Assessing Authorities (AAs) while finalising the assessments (between April 2012 and July 2016) failed to apply correct rate of tax mentioned in the Schedule of Rates and applied lower rate of tax due to misclassification of goods. This resulted in short/ non levy of tax amounting to ₹ 5.75 crore in 46 out of 6,007 dealers test checked in 37 Commercial Tax Offices (CTOs) for the period 2009-10² to 2013-14. A few cases are mentioned in the following paragraphs.

5.3.1 Application of incorrect rate of tax

AAs accepted the tax rate on sale of goods worth ₹ 25.26 crore as mentioned by the dealers in tax returns without verifying the rates applicable on such goods as per the schedule. Thus, tax amounting to ₹ 2.00 crore was short/ not levied.

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

The Audit Reports for the year 2011-12 to 2015-16 had highlighted failure of AAs in observing the aforesaid provisions while finalising the assessments of 416 dealers resulting in short levy of tax ₹ 24.38 crore. The Department accepted the audit observations and assured appropriate action (September 2016).

Following the assurances, Audit test checked assessment records of 21 CTOs³ (out of 270 CTOs audited) and noticed that in the case of 24 dealers (out of

² Section 29(3) of the UPVAT Act stipulates that any order of assessment shall be made within three years from the end of such assessment year.

³ Name of CTOs, rate of tax and other details are given in Appendix.

3,413 dealers test checked), the AAs, while finalising the assessments (between April 2012 and July 2016) for the years 2009-10 to 2013-14, accepted the tax rates of zero to five *per cent* on sale of goods worth ₹ 25.26 crore as mentioned by the dealers in tax returns. The AAs failed to verify and levy the applicable rates of five to 14 *per cent* on such goods as per the schedule. Thus, tax amounting to ₹ two crore was short/ not levied (**Appendix-II**).

In the exit conference (September 2017), the Department accepted the audit observations and stated that tax amounting to ₹ 25.56 lakh had been levied in three cases. In the remaining cases, the Department stated that action was in progress.

Recommendation:

CTD should consider instituting a system of periodic reviews of assessment orders passed by AAs at appropriately higher levels on a sample basis.

5.3.2 Misclassification of goods

AAs accepted the classification of goods valued at ₹ 43.56 crore declared by the dealers without verifying correct class of goods as mentioned in the Schedule which resulted in application of incorrect rate of tax on sale of goods leading to short levy of tax amounting to ₹ 3.75 crore.

The Audit Reports for the year 2011-12 and 2014-15 to 2015-16 had highlighted failure of AAs in observing the aforesaid provisions (mentioned in para 5.3.1 above) while finalising the assessments of 54 dealers resulting in short/ non levy of tax of ₹ 5.67 crore. The Department accepted the audit observations and assured appropriate action (September 2016).

Following the assurances, Audit test checked assessment records of 21 CTOs⁴ (out of 270 CTOs audited) and noticed that in respect of 22 dealers (out of 2,594 dealers test checked), the AAs while finalising the assessments (between March 2014 and March 2016) for the year 2010-11 to 2013-14, accepted the classification of goods valued at ₹ 43.56 crore declared by the dealers without verifying correct class of goods as mentioned in the Schedule. This resulted in application of incorrect rates of tax of one to five *per cent* instead of correct rates of tax of 13.5 to 14 *per cent* leading to short levy of tax amounting to ₹ 3.75 crore (**Appendix-III**).

In the exit conference (September 2017), the Department accepted the audit observations in 21 cases and stated that tax amounting to ₹ 1.56 crore had been levied in nine cases, out of which tax amounting to ₹ 5.31 lakh had been recovered in one case. In the remaining cases, the Department stated that action was in progress. The Department did not accept the audit contention in one case and stated that the Aluminium Composite Panel (ACP) falls under

⁴ Name of CTOs, rate of tax and other details are given in Appendix.

the category of aluminium extrusions⁵. The reply of the Department was not tenable as ACP is a finished decorative product which is used for the decoration of external/ internal walls of the building, rooms, etc. Therefore, it falls under the category of unclassified goods and not under the category of aluminium extrusion. This contention had also been decided in judicial pronouncements⁶.

Recommendation:

CTD should ensure correct classification of taxable commodities as per the schedules appended to the Act.

5.4 Repetitive nature of irregularities

Despite being pointed out by Audit in previous Audit Reports, the AAs did not perform due diligence in assessment of Value Added Tax (VAT) cases which led to recurrence of similar nature of irregularities amounting to ₹ 19.28 crore.

The Audit Reports for the year 2011-12 to 2015-16 had highlighted failure of AAs in observing the provisions of Acts/ Rules while finalising the assessments of 326 dealers resulting in short levy of tax and composition money, non imposition of penalty and non charging of interest amounting to ₹ 63.15 crore. The Department accepted the audit observation and assured appropriate action (September 2016).

Following the assurances, Audit test checked assessment records of 91 CTOs (out of 270 CTOs audited) and noticed that in respect of 122 dealers (out of 13,565 dealers test checked), despite being pointed out by audit year after year, the AAs while finalising the assessment (between June 2012 and March 2016) for the year 2008-09 to 2013-14 did not perform due diligence which led to recurrence of similar nature of irregularities pointed out by Audit in previous Audit Reports amounting to ₹ 19.28 crore (**Appendix-IV**).

In this connection Audit would like to point out that with the implementation of the Goods and Service Tax (GST) with effect from July 2017, assessment of all legacy cases relating to VAT is to be completed by March 2020. There is therefore a real risk that the State would permanently lose the opportunity to recover shortfalls in revenue unless all assessments are completed/ reviewed by that date.

In the exit conference (September 2017), the Department accepted the audit observations and stated that tax/ penalty/ interest had been levied/ imposed/ charged and ITC along with interest had been reversed amounting to ₹ 4.62 crore in 30 cases out of which interest amounting to ₹ 54.43 lakh had been recovered in eight cases. In the remaining cases, the Department stated that action was in progress.

⁵ Aluminium Composite Panel: a type of flat panel that consists of two thin aluminium sheets bonded to a non- aluminium core. ACPs are frequently used for external cladding or facades of building and interior decoration. It is not classified in Schedule I to IV of the UPVAT Act. Aluminium extrusions: Aluminium section of different shapes and sizes are aluminium extrusions. This is classified in Schedule II of the UPVAT Act.

⁶ For example order no. 94/CDVAT/2006 dated 8 June 2006 of Commissioner VAT, Delhi in the case of M/s Swati Enterprises.

Recommendation:

The Commercial Tax Department should review all cases of VAT where observations similar to what Audit has pointed out have arisen/ are likely to arise and complete all assessments by March 2020.

Impact of Audit

The Department has reported (September 2017) recovery of ₹ 59.74 lakh out of ₹ 25.03 crore illustrated in this chapter.