

# Chapter II

---

## **Value Added Tax, Central Sales Tax and Goods & Services Tax**

---



## 2.1 Tax Administration

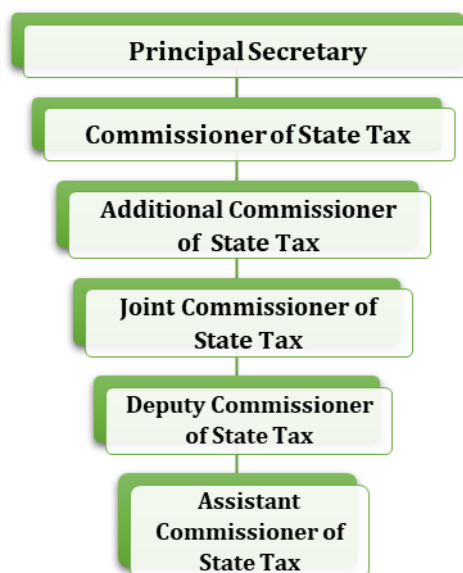
Commercial Taxes Department is one of the key revenue earning departments in the Government of Telangana. The Department administers and collects revenue on goods and services under the Telangana Value Added Tax Act, 2005 (VAT Act), The Central Sales Tax Act, 1956 (CST Act), The Telangana Entertainment Tax Act, 1939, The Telangana Tax on Professions, Trades, Callings and Employment Act, 1987 apart from other minor Acts. After introduction of Goods and Services Tax with effect from 1 July, 2017, the Commercial Taxes Department has been administering and collecting revenue on goods and services under the Telangana Goods and Services Tax Act, 2017 (GST Act).

The Department is headed by the Principal Secretary of Revenue at Government level. The organisational set-up is depicted in the organogram given below:

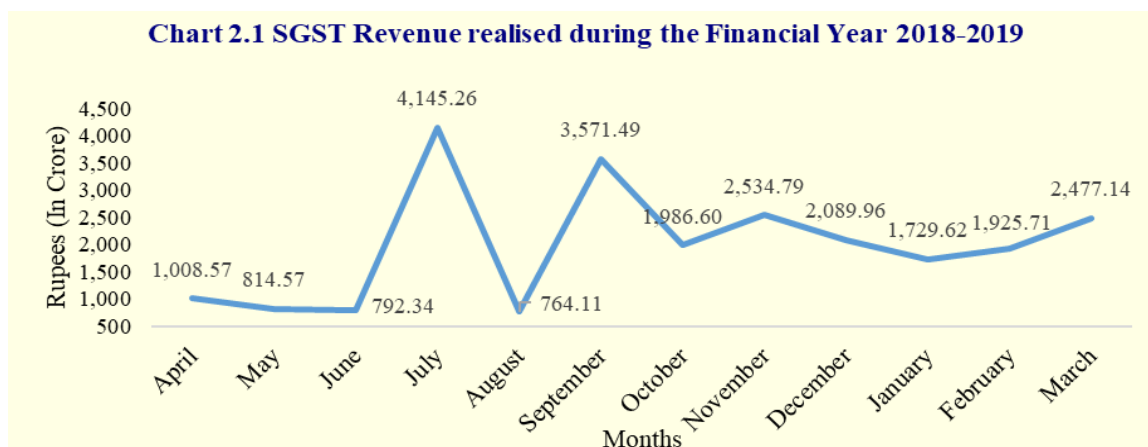
Sales Tax revenue (VAT and SGST) forms the largest source of revenue for the State and accounts for 43.51 *per cent* of the total revenue of the State. It has been increasing from year-to-year since the formation of Telangana State in June 2014. However, it has fallen short of budget estimates during the five-year period 2014-15 to 2018-19. During the year 2018-19, the total revenue from Sales Tax (VAT and SGST) was ₹44,130.68 crore.

Revenue from SGST increased from ₹13,072.91 crore during 2017-18 to ₹23,840.18 crore in 2018-19 at a growth rate of 62.36 *per cent*.

**Figure-2.1: Organogram**



There was a wide variation in SGST receipts across the months during 2018-19 with July and September 2018 accounting for 17 *per cent* and 15 *per cent* respectively, of the total receipts of SGST for the year, as can be seen from the Chart given below.



## 2.2 Results of Audit

Audit of State Commercial Taxes Department was conducted through a test check of the assessment files, refund records and other related records in 73 out of 112 offices (65.18 per cent) during 2018-19, to gain assurance that the taxes were assessed, levied, collected and accounted for in accordance with the relevant Acts, Codes and Manuals, and the interests of the Government are safeguarded. These offices were selected on the basis of revenue collected. Audit brought out instances of deviations/non-compliance with the relevant Acts/Codes/Manuals leading to under assessment of Value Added Tax (VAT) in 1,084 cases involving an amount of ₹538.93 crore, due to various reasons, as detailed in **Table 2.1**.

**Table-2.1: Categories of Audit observations on revenue receipts**

(₹ in crore)			
Sl. No.	Categories	No. of audit observations	Amount
1	Short levy of Tax on works contracts	26	22.13
2	Non-levy or short levy of interest and penalty	191	50.63
3	Excess claim or allowance of Input Tax Credit	112	12.18
4	Non-levy or short levy of Tax under VAT Act	290	215.44
5	Non-levy or short levy of Tax under Central Sales Tax (CST) Act	261	166.81
6	Sales Tax deferment	7	25.44
7	Observations under Goods and Services Tax Act (GST Act) (Refunds and Transitional claims)	5	1.99
8	Other irregularities	192	44.31
	<b>Total</b>	<b>1084</b>	<b>538.93</b>

The Department accepted audit findings involving tax effect of ₹75.02 crore in respect of 278 cases and recovered an amount of ₹37.53 lakh in 28 cases during the year 2018-19. In reply to the observations discussed in the Chapter, the test checked Assessing Authorities (AA) stated that files were submitted to higher authorities for revision; show-cause notices were being issued; action was under process; matter would be examined; penalty and interest would be levied, *etc.*

There are six broad categories of audit observations under VAT Act or CST Act and one audit observation under GST Act. There may be similar irregularities, errors or omissions in other units under the Department but not covered in the test audit. The Department may, therefore, examine all the units to ensure that taxes are levied as per provisions of the Acts and Rules.

### 2.2.1 Non-observance/ non-compliance with provisions of Telangana VAT Act and Rules read with Government notifications

The VAT Act, the Telangana Value Added Tax Rules, 2005 (VAT Rules) made thereunder, CST Act and the Central Sales Tax (Registration and Turnover) Rules, 1957 (CST Rules) provide for:

- Allowance of Input Tax Credit on purchases made at the prescribed rate for each type of commodity
- Levy and collection of output Tax by adopting rates of Tax prescribed by the Act
- Levy and collection of Tax on interstate sales turnover
- Levy of penalty and interest on belated payment of Tax
- Levy of Tax on the correctly assessed Taxable turnover
- Levy of Tax on works contract turnover

The Telangana Goods and Services Tax Act, 2017 (TGST Act) provides for levy of tax on intra-State supply of goods and services (*except alcohol for human consumption and five specified petroleum products*<sup>1</sup>). TGST Act also provides for claim of refunds and transitional credits.

The AAs, while finalising the assessments of the dealers did not observe some of the aforesaid provisions involving ₹278.62 crore. Specific instances are discussed in the following paragraphs. Similar omissions are pointed out in audit every year. However, such irregularities not only persist; but also remain undetected till the next audit is conducted. There is a need for improvement of internal control system so that recurrence of such omissions are avoided, or detected timely and rectified.

## 2.3 Input Tax Credit

### 2.3.1 Allowance of Input Tax Credit on ineligible items

#### **Input Tax Credit amounting to ₹1.27 crore was allowed on ineligible items**

According to VAT Act<sup>2</sup>, Input Tax Credit<sup>3</sup> (ITC) is allowed to a VAT dealer for the Tax charged in respect of all Taxable goods purchased if such goods are for use in the business of the dealer.

However, ITC cannot be claimed by a dealer where:

- (i) goods purchased are used in the construction or maintenance of any building including factory or office buildings, unless the dealer is a works contractor and who has not opted for Composition scheme<sup>4</sup>.
- (ii) a dealer, being a hotel having a status less than three star and restaurants/ caterers/ other eating establishments whose annual total turnover of sale or supply of food/ drinks is less than ₹1.50 crore<sup>5</sup>.

<sup>1</sup> Petroleum products: crude, high speed diesel, petrol, aviation turbine fuel and natural gas.

<sup>2</sup> Section 13 (1) of VAT Act.

<sup>3</sup> ITC is the Tax that a business pays on a purchase and that it can be used to reduce its Tax liability when it makes a sale. In other words, businesses can reduce their Tax liability by claiming credit to the extent of VAT/GST paid on purchases.

<sup>4</sup> Rules 20(2) (d) and 20(2) (i) of VAT Rules. Under Composition scheme, dealers are liable to pay Tax at fixed rate instead of the rate applicable to their goods as per schedule. Such composition dealers are not eligible to claim ITC (Input Tax Credit) on their purchases.

<sup>5</sup> Sections 4(9) (b) and 4(9) (d) of VAT Act.

(iii) a dealer whose registration is cancelled on closure of business<sup>6</sup>.

Audit test checked (between July 2017 and July 2018) the VAT assessments and VAT records for the period from 2011-12 to 2017-18. In 11 cases pertaining to eight Circles<sup>7</sup>, ITC claimed by eight dealers, who were involved in operating hotels (less than three star status)/ restaurants *etc.*, was not restricted during assessment. Further, in three cases, ITC was not restricted on goods used for maintenance of building, goods purchased for other than business use and on closure of the firms. This resulted in incorrect allowance of ITC of ₹1.27 crore as detailed in **Table 2.2**.

**Table 2.2**  
**Incorrect allowance of ITC**

Authority	Subject	No. of Divisions/ Circles	No. of Cases	Incorrect allowance of ITC (₹ in crore)
As per Section 13(5)(h) of the Telangana VAT Act, 2005, no Input Tax Credit is allowed on the supply of goods on which VAT dealer pays Tax under clause (b) and (d) of sub section (9) of section 4 of the Act.	Incorrect claim of ITC by dealers running Hotel business	Six Circles <sup>8</sup>	8	0.57
Under section 13(4) of the Act read with Rule 20(2) of Telangana VAT Rules, 2005, a VAT dealer shall not be entitled for ITC in respect of purchase of items used for maintenance of factory buildings and goods purchased for other than business use.	ITC claimed on ineligible items	Two Circles <sup>9</sup>	2	0.55
As per Section 13 of VAT Act read with Rule 14(4) of Telangana VAT Rules, 2005, the dealer whose registration is cancelled, shall pay back ITC availed on goods available as closing stock.	ITC not restricted on goods in closing stock at the time of cancellation of registration	One Circle <sup>10</sup>	1	0.15
<b>Total</b>			<b>11</b>	<b>1.27</b>

Assistant Commissioner (AC) State Tax (ST), Madhapur replied that the relevant file was submitted to Joint Commissioner (JC)(ST) for revision and seven AAs<sup>11</sup> replied that the matter would be examined. Assistant Commissioner (ST), Nizamabad-II replied that the dealer was eligible for ITC, as the turnover was more than ₹1.50 crore. However, this is not acceptable as the dealer was not a Star Hotel.

The matter was referred to the Department (March/May 2019) and to the Government (October 2019). Reminders were issued to the Government in May 2020 and October 2020; replies have not been received.

<sup>6</sup> Rule 14(4) of VAT Rules.

<sup>7</sup> ACs (ST) - Madhapur, MG Road, Nampally, Punjagutta, Ramgopalpet, RP Road, Tarnaka, and Nizamabad-II.

<sup>8</sup> ACs (ST), MG Road, Madhapur, Nampally, Nizamabad-II, Punjagutta and RP Road.

<sup>9</sup> ACs (ST) - Ramgopalpet and Tarnaka.

<sup>10</sup> ACs (ST) - MG Road.

<sup>11</sup> ACs (ST) - MG Road, Nampally, Punjagutta, Ramgopalpet, RP Road, Tarnaka and Nizamabad-II (10 cases).

### 2.3.2 Excess claim of ITC due to incorrect restriction

#### Excess allowance of ITC amounting to ₹4.54 crore due to incorrect method of restriction

As per VAT Act:

1. ITC is not allowed<sup>12</sup> on purchase of Taxable goods corresponding to sale of exempt goods and exempted sales.
2. Where a VAT dealer makes consignment sale/branch transfers of goods, ITC<sup>13</sup> will be:
  - (i) allowed in full upto 9.5 per cent portion of 14.5 per cent purchases,
  - (ii) on the balance five per cent portion of 14.5 per cent, purchases shall be restricted by applying formula<sup>14</sup> and
  - (iii) on one per cent and five per cent, purchases shall be restricted by applying formula<sup>15</sup>.
3. Where a VAT dealer makes Taxable sales, exempt sales and also exempt transactions by using common inputs, ITC is allowed proportionately<sup>16</sup>.

Audit test checked (between August 2017 and August 2018) VAT assessments and VAT records for the period from 2010-11 to 2016-17. In 28 cases pertaining to two Divisions and 13 Circles<sup>17</sup>, ITC was not restricted correctly towards SEZ sales/ exempt sale and branch transfers/consignment sales, resulting in excess allowance of ITC of ₹ 4.54 crore.

In reply to Audit, three AAs<sup>18</sup> stated (May 2019) that the files were submitted to JC (ST) for further necessary action. JC(ST) Punjagutta replied (February 2018) that sale of Taxable goods in the course of inter-State trading are Zero rated sales and eligible for ITC under Section 8A. Reply is not acceptable, as sale of goods to Special Economic Zone units, which were earlier included in Section 8 and Schedule II of the Act, were deleted vide Amendment Act No. 28 of 2008. JC (ST) Begumpet replied that the dealer had filed Appeal in Sales Tax Appellate Tribunal. Audit was assured by the remaining ten AAs<sup>19</sup> that the matter would be examined.

The matter was referred to the Department (March/April 2019) and to the Government (October 2019); Reminders were issued to the Government in May 2020 and October 2020; replies have not been received.

<sup>12</sup> Section 13(5) of VAT Act read with Rule 20(7) of VAT Rules.

<sup>13</sup> Section 13(6) of VAT Act read with Rule 20(8) of VAT Rules.

<sup>14</sup>  $A*B/C$ , where A is the input tax for common inputs for each Tax rate, B is the Taxable turnover and C is the total turnover.

<sup>15</sup>  $A*B/C$ , where A is the input tax for common inputs for each Tax rate, B is the Taxable turnover and C is the total turnover.

<sup>16</sup> Section 13(5) & (6) of VAT Act read with Rule 20(9) of VAT Rules.

<sup>17</sup> JC (ST) - Begumpet and Punjagutta; ACs (ST)s - Hyderguda, Narayanaguda, Miryalaguda, Nacharam, General Bazar, Ramgopalpet, Jubilee Hills, Maharajgunj, Balanagar, M.G.Road, Rajendranagar, Gandhinagar and Vengalrao Nagar.

<sup>18</sup> ACs (ST) - Jubilee Hills, General Bazar and Vengalrao Nagar (3 cases).

<sup>19</sup> ACs (ST) - Hyderguda, Narayanaguda, Miryalaguda, Nacharam, Ramgopalpet, Maharajgunj, Balanagar, M.G.Road, Rajendranagar and Gandhinagar (22 cases).

### 2.3.3 Excess allowance of ITC due to incorrect determination of purchase turnover

#### Excess allowance of ITC amounting to Rupees four crore due to incorrect determination of purchase turnover

According to VAT Act<sup>20</sup>, ITC is allowed to a VAT dealer for the Tax charged in respect of Taxable goods purchased by that dealer if such goods are for use in the business.

Rule 25(10) of the VAT Rules requires VAT dealers to furnish for every financial year to the prescribed Authority, statements of Manufacturing/Trading, Profit and Loss (P&L) accounts, Balance Sheet and Annual Report duly certified by a Chartered Accountant on or before 31 December subsequent to the financial year to which the statements relate. As per para 5.12 (a) of the VAT Audit Manual 2012, Audit Officer has to reconcile the figures given by the dealer on VAT returns with certified annual accounts.

Audit test checked (between July 2017 and August 2018) the VAT assessments and VAT records for the period from 2011-12 to 2015-16 and observed that in the case of 15 dealers pertaining to 12 Circles<sup>21</sup>, purchase turnover reported in VAT returns was in excess of that shown in the Profit and Loss Accounts. The AAs did not cross-check the accounts and adopted the figures reported in the returns to allow ITC, resulting in excess allowance of ITC of Rupees four crore.

Three Circles<sup>22</sup> replied that assessment files were sent to JC (ST) for further action; the remaining circles<sup>23</sup> assured that the matter would be examined.

The matter was referred to the Department (May 2019) and to the Government (September 2019); Reminders were issued to the Government in May 2020 and October 2020; replies have not been received.

## 2.4 Short or Non-levy of Value Added Tax

### 2.4.1 Short levy of Tax due to adoption of incorrect rate of Tax

#### Application of incorrect rates resulted in short levy of Tax aggregating ₹32.78 crore

According to VAT Act<sup>24</sup>, every dealer shall pay Tax on sale of Taxable goods at the rates specified in Schedules III, IV and VI of the Act. Goods which are not covered under the above mentioned Schedules fall under Schedule V and are liable to be Taxed at the rate of 14.5 *per cent*. Further, every dealer whose annual turnover is ₹1.50 crore and above in respect of sale or supply of goods, being food and drinks served in restaurants, sweet-stalls, clubs, eating houses or by caterers *etc.* are to be Taxed at the rate specified for Schedule V<sup>25</sup>.

<sup>20</sup> Section 13 (1) of VAT Act.

<sup>21</sup> ACs (ST) - Agapura, Hyderguda, Hydernagar, Jadcherla, Jeedimetla, Ladbazar, Madhapur, Marredpally, MG Road, Miryalaguda, Nacharam and Rajendranagar.

<sup>22</sup> ACs (ST) - Agapura, Jeedimetla and Madhapur.

<sup>23</sup> ACs (ST) - Hyderguda, Hydernagar, Jadcherla, Ladbazar, Marredpally, MG Road, Miryalaguda, Nacharam and Rajendranagar.

<sup>24</sup> Section 4 (3) of VAT Act.

<sup>25</sup> Section 4 (9) (c) of VAT Act.



Audit test checked (between March 2017 and November 2018) the VAT assessments and VAT records for the period from 2010-11 to 2017-18 and observed in the case of 29 dealers pertaining to 15 Circle Offices<sup>26</sup>, that in respect of three dealers who owned restaurant, bar and restaurant, canteen and bakery shops, whose annual total turnover was more than ₹1.50 crore, Tax was levied at the rate of five *per cent* only. Further in respect of 26 dealers, Tax was levied at the rate of four/ five *per cent* only though they were dealing in Schedule-V goods *viz.*, Leather footwear, Fabricated steel structures, Explosives, Doors & windows, Water purifiers, Empty gas cylinders, Phenyl, *etc.* This resulted in short levy of Tax of ₹ 32.78 crore on a turnover of ₹ 345.04 crore.

Four AAs<sup>27</sup> replied that files were submitted to JC (ST) for revision; show-cause notices were issued to the dealers by four AAs<sup>28</sup> and the remaining seven AAs<sup>29</sup> replied that the matter would be examined.

The matter was referred to the Department (March/April 2019) and to the Government (October 2019); Reminders were issued to the Government in May 2020 and October 2020; replies have not been received.

## 2.4.2 Short levy of VAT

**Incorrect levy of Tax at five *per cent* instead of at 14.5 *per cent* on mobile phones resulted in short levy of Tax amounting to ₹ 43.89 crore**

According to VAT Act<sup>30</sup> every VAT dealer shall pay Tax at the rate of 14.5 per cent on the sale of goods falling under Schedule V. Government orders issued in March 2013<sup>31</sup> placed “Mobile Phones” under Schedule V. Prior to that, and post July 2016, these were under Schedule IV with tax rate of five *per cent*. Thus, sale of Mobile Phones during the intermediary period from 1 April 2013 to 27 July 2016<sup>32</sup> was to be taxed at 14.5 *per cent*.

Audit test checked (between August 2017 and November 2018) the VAT assessments and VAT records for the period from 2013-14 to 2016-17 and observed that in the case of 18 dealers pertaining to 12 Circles<sup>33</sup>, the AAs levied Tax on sale of Mobile phones at the rate of five *per cent* instead of at 14.5 *per cent*. This resulted in short-levy of Tax of ₹43.89 crore at differential rate of 9.5 *per cent* on a turnover of ₹ 461.96 crore.

Assistant Commissioner (ST), Srinagar Colony replied that files were submitted to JC (ST) for revision. ACs (ST), Mahabubnagar and Vidyanagar replied that showcause

<sup>26</sup> ACs (ST) - Agapura, Balanagar, Bhongir, Charminar, Hyderguda, IDA Gandhinagar, Jeedimetla, Malakpet, Malkajgiri, Nacharam, Narayanguda, RP Road, Rajendranagar, Tarnaka and Vengalrao Nagar.

<sup>27</sup> ACs (ST) - Jeedimetla, R P Road, Vengalrao Nagar and Charminar (9 cases).

<sup>28</sup> ACs (ST) - Agapura, Bhongir, IDA Gandhinagar and Malkajgiri (11 cases).

<sup>29</sup> ACs (ST) - Balanagar, Hyderguda, Malakpet, Nacharam, Naryanaguda-MJ Market, Rajendranagar and Tarnaka (12 cases).

<sup>30</sup> Section 4(3) of VAT Act.

<sup>31</sup> i) G.O.Ms.No.1615 Revenue (Commercial Taxes-II) Department, dated 31 August 2005 under Schedule IV at the rate of five *per cent*.

ii) G.O.Ms.No.140 Revenue (Commercial Taxes-II) Department, dated 19 March 2013 under Schedule V at the rate of 14.5 *per cent* and

iii) G.O.Ms.No.186 Revenue (Commercial Taxes-II) Department, dated 28 July 2016 under Schedule IV at the rate of five *per cent*.

<sup>32</sup> Mobile Phones were brought under Schedule IV in July 2016 liable to be Taxed at five *per cent*.

<sup>33</sup> ACs (ST) - Basheerbagh, Bowenpally, Hyderguda, Karimnagar-II, Madhapur, Mahabubnagar, MJ Market, Nampally, Narayanaguda- MJ Market, Srinagar Colony, Tarnaka and Vidyanagar.

notices have been issued to the dealers and the remaining nine AAs<sup>34</sup> replied that the matter would be examined.

The matter was referred to the Department (March/April 2019) and to the Government (September 2019); Reminders were issued to the Government in May 2020 and October 2020; replies have not been received.

### 2.4.3 Non-levy of Purchase Tax

#### **Non-adherence to the provisions of the Act resulted in non-levy of Purchase Tax of ₹84.43 lakh**

As per section 4 (4) of VAT Act, every VAT dealer, who in the course of his business, purchases any taxable goods, shall be liable to pay tax at the rate of five percent on the purchase price of such goods subject to the following conditions:

- (a) Purchase of taxable goods from a person or a dealer not Registered as a VAT dealer;
- (b) Purchase of taxable goods from a VAT dealer in circumstances under which no tax is payable by the selling VAT dealer;
- (c) After such purchase, the goods are used as inputs for goods which are exempt from tax under the Act.

Audit test checked (between October 2017 and February 2018) the VAT assessments and VAT records for the period from 2011-12 to 2015-16. In respect of three dealers pertaining to three offices<sup>35</sup>, the AAs did not levy purchase tax on two dealers who purchased taxable goods from unregistered dealers and used those goods as inputs for exempt sale. In another case, a SEZ dealer, purchased goods from VAT dealers without paying any tax and after purchase these goods were used as inputs for exempt sale but purchase tax was not levied. Non-adherence to the above provisions resulted in non-levy of purchase tax of ₹84.43 lakh.

In reply, AC (ST), Punjagutta stated that purchase tax is not leviable because the goods manufactured by the dealer were not exempt goods as enumerated in sub-item (i) of Section 4(4). The contention of the Department is not correct, as clause (i) of Section 4(4) states that after purchase, goods should be used as input for manufacture of the goods which are exempt from tax under the Act. Hence, it covers exempt goods as well as exempt sales<sup>36</sup> as opposed to Department's contention that it covers only exempt goods. In respect of one case, Deputy Commissioner (ST) Punjagutta replied that the matter would be examined. In another case, Asst. Commissioner (ST), Nizamabad-I replied that file has been submitted to JC (ST) for revision.

The matter was referred to the Department (April 2019) and to the Government (August 2019); Reminders were issued to the Government in May 2020 and October 2020; replies have not been received.

<sup>34</sup> ACs (ST) - Basheerbagh, Bowenpally, Hyderguda, Karimnagar-II, Madhapur, MJ Market, Nampally, Narayanaguda - MJ Market and Tarnaka.

<sup>35</sup> Deputy Commissioner (ST) - Punjagutta.  
ACs (ST) - Nizamabad-I and Punjagutta.

<sup>36</sup> Exempt goods are the goods enumerated in Schedule-I of the Act whereas exempt sales means though goods are taxable, tax is not leviable due to nature of transaction *i.e.* sale of taxable goods to SEZ units is exempt sales.

## 2.5 Inter-State sales

### 2.5.1 Non or Short levy of Tax on the turnover not covered by statutory forms

**Inter-State sales turnover not supported by statutory forms resulted in non/short levy of Tax of ₹9.54 crore**

According to CST Act and CST Rules,<sup>37</sup> the rate of Tax on inter-State sales not covered by 'C Forms' shall be at the rate applicable to the sale or purchase of such goods inside that State and under the Sales Tax laws of that State.

Audit test checked (between September 2017 and October 2018) the CST assessments and CST records for the period from 2012-13 to 2016-17. Of the 36 dealers pertaining to JC (ST), Abids and ten Circles<sup>38</sup>, it was found that in respect of 31 dealers, the AAs levied Tax at lesser rate of five *per cent* instead of 14.5 *per cent* for non-submission of 'C' Forms towards inter-State sale of Schedule-V goods. In the case of five dealers, no Tax was levied treating the commodities as exempt goods, although they were Taxable goods<sup>39</sup>. This resulted in short levy of Tax of ₹9.54 crore on the turnover of ₹112.16 crore.

In reply to audit, two AAs<sup>40</sup> stated that files have been submitted to JC (ST) for revision. Two AAs<sup>41</sup> replied that show cause notices have been issued to the dealers. The remaining AAs<sup>42</sup> stated that the matter would be examined.

The matter was referred to the Department (April/May 2019) and to the Government (October 2019); Reminders were issued to the Government in May 2020 and October 2020; replies have not been received.

### 2.5.2 Non or Short levy of Tax due to non-availability of required documents and sale of intangible goods

**Sales turnover not supported by required documents and sale of intangible goods resulted in non or short levy of Tax of ₹41.32 crore**

According to CST Act and CST Rules<sup>43</sup>, if a dealer fails to submit necessary statutory forms in support of exports, branch transfers, transit sales etc., they are treated as interstate sales not covered by 'C' forms and Tax is levied at respective State rates applicable to such goods<sup>44</sup>. Further, the Hon'ble Supreme Court upheld<sup>45</sup> (March 2009)

<sup>37</sup> Section 8 of CST Act read with Rule 12 of CST Rules.

<sup>38</sup> ACs (ST) - Charminar, Bhongir, Nampally, Keesara, Bowenpally, Vidyanagar, Nacharam, Jeedimetla, Vengalrao Nagar and Punjagutta.

<sup>39</sup> The Tax leviable on these commodities was 5-14.5 *per cent*.

<sup>40</sup> ACs (ST) - Keesara and Jeedimetla (5 cases).

<sup>41</sup> ACs (ST) - Bowenpally and Vengalrao Nagar (7 cases).

<sup>42</sup> JC (ST) - Abids & ACs (ST) - Charminar, Bhongir, Nampally, Vidyanagar, Nacharam, and Punjagutta (24 cases).

<sup>43</sup> Sections 5, 6, 6A and 8 of CST Act read with Rule 12 of CST Rules.

<sup>44</sup> Section 8(2) of CST Act.

<sup>45</sup> Civil Appeal No. 4970 of 2008.

the judgement made by Hon'ble Allahabad High Court<sup>46</sup> for submission of 'F' Form declarations in respect of job work transactions to claim exemption.

As per Entry no. 2(vi) of Schedule IV of VAT Act, credits of Duty Entitlement Pass Book (DEPB) was chargeable to VAT at the rate of five *per cent* under Section 4(3) of the Act.

Audit test checked (between July 2017 and August 2018) the CST assessments and CST records for the period from 2010-11 to 2016-17. Out of 14 dealers pertaining to eight Circles,<sup>47</sup> it was found that in 11 cases, the AAs allowed exemption though the transactions were not supported by proper H-forms, Foreign buyer purchase orders, Shipping bills, Bill of lading, High sea sale agreement *etc.* Further, in three other cases, Tax (at five *per cent*) on sale of intangible goods (credit of Duty Entitlement Pass Book (DEPB)) was not collected by AC (ST) Medak. In two cases, Tax was not levied on inter-State job-works not supported by 'F' Forms. This resulted in non or short levy of Tax of ₹41.32 crore on the turnover of ₹443.50 crore.

AC (ST), Malkajgiri replied that notice was issued to the dealer and the remaining AAs<sup>48</sup> assured that the matter would be examined.

The matter was referred to the Department (July 2019) and to the Government (October 2019); Reminders were issued to the Government in May 2020 and October 2020; replies have not been received.

## **2.6 Non or Short levy of Tax due to incorrect determination of Taxable Turnover**

### **Variation in sales turnover between Profit and Loss accounts and assessment orders/ VAT ledgers led to non or short levy of Tax of ₹73.56 crore**

As per Section 21(4) of VAT Act, the competent authority may, based on any information available or on any other basis, conduct a detailed scrutiny of the accounts of any VAT dealer and where any assessment, as a result of such scrutiny, becomes necessary, such assessment shall be made within a period of six years from the end of the period for which assessment is to be made. As per Rule 25(10) of VAT Rules, all the VAT dealers are required to furnish for every financial year to the prescribed authority, the statements of manufacturing or trading, Profit and Loss accounts, balance sheet and annual report duly certified by Chartered Accountant on or before 31 December subsequent to the financial year to which the statements relate. As per para 5.12 of the VAT Audit Manual, 2012, audit officer has to reconcile the figures given by the dealer on VAT returns with certified annual accounts.

As per Sections 5, 6, 6A and 8 of the CST Act, read with Rule 12 of CST Rules, if the dealer fails to submit necessary statutory forms in support of exports, branch transfers, transit sales etc., the relevant transactions are to be treated as inter-State sales not covered

<sup>46</sup> M/s Ambica Steels Ltd. vs State of Uttar Pradesh (2008) 12 VST 216 (ALL HC DB).

<sup>47</sup> ACs (ST) - Karimnagar - II, Medak, Malkajgiri, Nacharam, Nampally, Nizamabad, R P Road and Srinagar Colony.

<sup>48</sup> AC (ST) - Karimnagar - II, Medak, Nacharam, Nampally, Nizamabad, R P Road and Srinagar Colony (12 cases).

by 'C' forms and Tax levied under Section 8(2) of the Act at the rates applicable to sale of such goods inside the appropriate State.

Audit test checked (between February 2017 and November 2018) the VAT/CST assessments and VAT/CST records for the period from 2011-12 to 2016-17. It was found that in 95 cases pertaining to three Divisions and 40 Circles,<sup>49</sup> there were variations in sales turnover between VAT assessments orders/VAT ledgers/CST assessments orders/CST ledgers and Profit and Loss accounts. Sale turnover as per accounts was more than the sale turnover as assessed in VAT/ CST assessments orders/ VAT/ CST ledgers. This resulted in non or short levy of Tax of ₹73.56 crore on the turnover of ₹743.07 crore as detailed in **Table 2.3**.

**Table 2.3**

**Variation in Turnover between P&L Account and VAT/CST assessments/VATIS Ledger**

(₹ in crore)

Sl. No.	Category	Turnover as per P&L A/c	Turnover as per AO/VATIS Ledger	Difference in turnover	Short levy of Tax
1.	CST	1760.38	1251.63	508.75	63.54
2.	VAT/VATIS ledger	1134.56	900.24	234.32	10.02
	<b>Total</b>	<b>2894.94</b>	<b>2151.87</b>	<b>743.07</b>	<b>73.56</b>

In reply to audit, nine AAs<sup>50</sup> in respect of 24 cases stated that files have been submitted to JC (ST) for necessary action or revision. Three AAs<sup>51</sup> in respect of three cases replied that show-cause notices have been issued to the dealers. In respect of one case AC (ST), IDA Gandhinagar replied that revision orders are to be issued. In one case AC(ST), Begumpet replied that the dealer has paid Tax at the rate of 1.25 *per cent* on the sale value at Sub-registrar's office and at the time of assessment paid Tax at the rate of 1.25 *per cent* on the advances appearing in their ledgers. The reply is not acceptable as the turnover assessed was less than the turnover as per P&L A/c. In another case, the JC (ST), Karimnagar replied that since the dealer has not claimed ITC on furniture at the time of purchase, no Tax was payable at the time of sale of such furniture as per Rule 20(2). The reply is not acceptable because furniture is not mentioned under Rule 20(2). Hence, as per Section 4(3) of VAT Act, Tax shall be leviable on sale of goods even if no ITC was claimed at the time of purchase. Remaining AAs<sup>52</sup> replied that the matter would be examined.

<sup>49</sup> JCs (ST) - Abids, Karimnagar and Secunderabad.

ACs (ST) - Adilabad, Agapura, Balanagar, Basheerbagh, Begumpet, Bhongir, Bodhan, Bowenpally, Charminar, Gadwal, General Bazar, Gowliguda, Hissamgunj, Hyderguda, Hydernagar, IDA Gandhinagar, Jeedimetla, Jubilee Hills, Karimnagar-II, Keesara, Madhapur, Mahabubnagar, Medak, Mehdiapatnam, M.G.Road, MJ Market, Musheerabad, Nacharam, Nalgonda, Nampally, Narayanguda-MJ Market, Nizamabad-II, Nizamabad-III, Ramgopalpet, RP Road, Sangareddy, Srinagar Colony, Tarnaka, Vidyanagar and Vengalrao Nagar.

<sup>50</sup> ACs (ST) - Agapura, Jeedimetla, Jubilee Hills, Madhapur, Musheerabad, Nacharam, Nizamabad-II, RP Road and Srinagar Colony.

<sup>51</sup> ACs (ST) - Bowenpally, IDA Gandhinagar and Mahabubnagar.

<sup>52</sup> JCs (ST) - Abids and Secunderabad.

ACs (ST) - Adilabad, Balanagar, Basheerbagh, Begumpet, Bhongir, Bodhan, Charminar, Gadwal, General Bazar, Gowliguda, Hissamgunj, Hyderguda, Hydernagar, Karimnagar-II, Keesara, Medak, Mehdiapatnam, M.G.Road, MJ Market, Nalgonda, Nampally, Narayanguda-MJ Market, Nizamabad-II, Nizamabad-III, Ramgopalpet, RP Road, Sangareddy, Srinagar Colony, Tarnaka, Vidyanagar and Vengalrao Nagar.

The matter was referred to the Department (February, May, June & July 2019) and to the Government (January 2020); Reminders were issued to the Government in May 2020 and October 2020; replies have not been received.

## 2.7 VAT on Works Contracts

### 2.7.1 Payment of VAT under non-composition method

#### 2.7.1.1 Short levy of Tax on works contracts due to under-assessment of turnover

**Under-assessment of Taxable turnover under works contract resulted in short levy of Tax of ₹3.54 crore.**

According to VAT Act,<sup>53</sup> every dealer executing works contract shall pay Tax on the value of goods incorporated in the work at the rates applicable to the goods. Main contractor is exempted from Tax on the turnover which has been assessed in the hands of sub-contractors. Further, if the dealer does not maintain detailed accounts, Tax shall be levied at 14.5 per cent on the total consideration after allowing specified deduction from gross receipts.

Audit test checked (between November 2017 and August 2018) the VAT assessments and VAT records for the period from 2013-14 to 2015-16. In respect of five dealers pertaining to one Division and four Circle Offices,<sup>54</sup> it was found that:

- AC (ST) Balanagar allowed exemption to a main contractor on a turnover of ₹67.20 crore on the ground that the same was assessed in the hands of sub-contractor but turnover of ₹44.31 crore only was assessed in the hands of sub-contractor resulting in excess allowance of exemption on a turnover of ₹22.89 crore.
- Three AAs<sup>55</sup> have adopted turnover less than that shown in the Profit and Loss Account in three cases;
- In one case, AA<sup>56</sup> incorrectly exempted a work treating the same as 'labour work' though there was material incorporated in the work.

All the five dealers did not maintain detailed accounts to determine the value of goods incorporated in the works. Hence, Tax at the rate of 14.5 per cent on the Taxable turnover was chargeable. All the above omissions resulted in under assessment of Taxable turnover to an extent of ₹24.42 crore and consequent short levy of Tax of ₹3.54 crore.

Three AAs<sup>57</sup> replied that files were submitted to JC (ST) for revision and the other AAs<sup>58</sup> assured that the matter would be examined.

The matter was referred to the Department (May 2019) and to the Government (October 2019); Reminders were issued to the Government in May 2020 and October 2020; replies have not been received.

<sup>53</sup> Section 4(7) (a) of VAT Act.

<sup>54</sup> JC (ST) - Begumpet, ACs (ST) - Balanagar, Jeedimetla, Ramgopalpet and Jubilee Hills.

<sup>55</sup> JC (ST) - Begumpet, ACs (ST) - Jeedimetla and Ramgopalpet.

<sup>56</sup> AC (ST) - Jubilee hills.

<sup>57</sup> ACs (ST) - Balanagar, Jeedimetla and Jubilee hills (three cases).

<sup>58</sup> JC (ST) - Begumpet and AC (ST) - Ramgopalpet (two cases).



### 2.7.1.2 Short levy of Tax due to incorrect allowance of ITC in works contracts

#### **Incorrect restriction of ITC resulted in excess allowance of ITC of ₹1.32 crore**

As per VAT Act,<sup>59</sup> ITC allowed in respect of a dealer executing Works Contracts is limited to 75 per cent of the related input Tax.

Audit test checked (between October 2017 and August 2018) the VAT assessments and VAT records for the period from 2011-12 to 2016-17. In five offices,<sup>60</sup> it was found that ITC was not restricted in respect of eight dealers who were engaged in works contracts related to printing. This resulted in excess allowance of ITC of ₹1.32 crore.

Two AAs<sup>61</sup> replied that files were submitted to JC (ST) for further necessary action. AC(ST) Narayanaguda replied that the dealer is not a works contractor, which is not acceptable, as the dealer is involved in printing activities and is adjusting his Output Tax through Form VAT 501A applicable to works contractor. The remaining two AAs<sup>62</sup> stated that the matter would be examined and report submitted in due course.

The matter was referred to the Department (April/May 2019) and to the Government (October 2019); Reminders were issued to the Government in May 2020 and October 2020; replies have not been received.

## 2.7.2 Payment of VAT under composition method

### 2.7.2.1 Short levy of Tax on works contract under Composition Scheme

#### **Incorrect allowance of certain deductions on works contract under composition scheme resulted in short levy of Tax of ₹10.24 lakh**

According to VAT Act,<sup>63</sup> a works contractor can opt to pay Tax by way of composition at the rate of five per cent on the total consideration on works executed whereby Tax is payable on gross receipts without any deductions.

Audit test checked (between November and December 2017) the VAT assessments and VAT records for the period from 2012-13 to 2013-14. In respect of two dealers pertaining to AC (ST), Panjagutta, it was found that certain deductions viz. labour charges, payments made to sub-contractors etc. were incorrectly allowed as deductions from gross receipts in respect of two dealers. This resulted in short levy of Tax of ₹10.24 lakh.

AC (ST), Panjagutta assured that the matter would be examined.

The matter was referred to the Department (June 2019) and to the Government (September 2019); Reminders were issued to the Government in May 2020 and October 2020; replies have not been received.

<sup>59</sup> Section 4(7) (a) read with Section 13(7) of VAT Act.

<sup>60</sup> AC(ST)s - Hyderguda, Musheerabad, Narayanaguda, R.P.Road and Nizamabad-II.

<sup>61</sup> ACs (ST) - Musheerabad and RP Road (5 cases).

<sup>62</sup> ACs (ST) - Nizamabad-II and RP Road (2 cases).

<sup>63</sup> Section 4(7)(b) of VAT Act as amended w.e.f 15 September 2011.

## 2.8 Levy of penalties and interest under VAT

### 2.8.1 Non-levy of penalty and interest on belated payment of Tax

**Penalty of ₹6.22 crore and interest of ₹4.28 crore on delayed payment of Tax by dealers was not levied**

Every VAT dealer shall pay the Tax declared as due in Form VAT- 200 not later than 20 days after the end of the Tax period<sup>64</sup>. A dealer who fails to pay the Tax by the last day of the month in which it is due, shall pay the Tax along with a penalty of 10 *per cent* of the amount of Tax due<sup>65</sup>. If Tax or penalty due is not paid within the prescribed time, the dealer is liable to pay in addition to the amount of such Tax or Penalty, interest at the rate of 1.25 *per cent* per month for the period of delay<sup>66</sup>.

Audit test checked (between May 2017 and November 2018) the VAT assessments and VAT records for the period from March 2011 to June 2017. In respect of 360 dealers pertaining to 41 offices<sup>67</sup>, it was noticed that Tax was paid belatedly with delay ranging from one to 1,224 days as detailed in **Table 2.4**:

**Table 2.4: Age-wise analysis of delayed payments**

Sl. No.	Delay in number of days ( month/ year)	Number of dealers
1	1 to 180 days (up to 6 months)	201
2	181 days to 365 days (more than 6 months and up to one year)	94
3	366 days to 730 days (more than one year and up to two years)	29
4	Above 730 days (above two years)	36
	<b>Total</b>	<b>360</b>

The AAs did not levy penalty and interest. This resulted in non-levy of penalty of ₹6.22 crore and interest of ₹4.28 crore.

Five AAs<sup>68</sup> stated that show-cause notices have been issued to the dealers and the remaining AAs<sup>69</sup> assured that the matter would be examined.

The matter was referred to the Department (June 2019) and to the Government (October 2019); Reminders were issued to the Government in May 2020 and October 2020; replies have not been received.

<sup>64</sup> As per Rule 24(1) of VAT Rules, every month is considered as a Tax period.

<sup>65</sup> Section 51(1) of VAT Act.

<sup>66</sup> Section 22 (2) of VAT Act.

<sup>67</sup> JCs (ST) - Abids, Begumpet, Charminar, Nizamabad and Karimnagar.

ACs (ST) - Balanagar, Basheerbagh, Beetbazar, Bodhan, Bowenpally, Charminar, Fathenagar, Gadwal, General Bazar, Gowliguda, Hissamgunj, Hydernagar, Jeedimetla, Khairatabad, Madhapur, Malakpet, Maredpally, Medak, M.G. Road, Miryalaguda, M.J. Market, Narayanguda- M.J. Market, Musheerabad, Nacharam, Nalgonda, Nampally, Narayanguda, Nirmal, Nizamabad – III, Rajendranagar, Ramgopalpet, Ranigunj, S.D. Road, Srinagarcolony, Tarnaka and Warangal.

<sup>68</sup> ACs (ST) - Balanagar, Bowenpally, Jeedimetla, Musheerabad and Khairatabad (67 dealers).

<sup>69</sup> JCs (ST) – Abids, Begumpet, Charminar, Nizamabad and Karimnagar (293 dealers).

ACs (ST) – Basheerbagh, Beetbazar, Bodhan, Charminar, Fathenagar, Gadwal, General Bazar, Gowliguda, Hissamgunj, Hydernagar, Madhapur, Malakpet, Maredpally, Medak, M.G. Road, Miryalaguda, M.J. Market, Nacharam, Nalgonda, Nampally, Narayanguda, Narayanguda- M.J. Market, Nirmal, Nizamabad – III, Rajendranagar, Ramgopalpet, Ranigunj, S.D. Road, Srinagarcolony, Tarnaka and Warangal.



## 2.8.2 Non or short-levy of penalties on under-declaration of Taxes

### Non/short levy of penalties of ₹5.13 crore on under-declared Taxes

Under Section 53(1) of VAT Act, a dealer who has under-declared Tax, is liable for penalty. If the under-declared Tax is less than 10 *per cent* of the Tax, the penalty shall be imposed at 10 *per cent* of such under-declared Tax; if it is more than 10 *per cent* of the Tax due, a penalty shall be imposed at 25 *per cent* of such under-declared Tax.

Further, as per Rule 25(8)(a) & (b) of VAT Rules, for the purpose of Section 53 -

- (a) the Tax under-declared in respect of input Tax means the excess of input Tax claimed over and above the input Tax actually entitled to be claimed; and
- (b) the Tax under-declared in respect of output Tax means the difference between output Tax actually chargeable and the output Tax declared in the returns.

Audit test checked (between September 2017 and November 2018) the VAT assessments and VAT records for the period from 2010-11 to 2017-18. In respect of 40 dealers pertaining to one Division and 24 Circles,<sup>70</sup> it was found that the dealers under-declared output Tax and/ or claimed excess Input Tax Credit of ₹36.83 crore. However, the AAs did not levy penalty in 27 cases and short levied penalty in the remaining 13 cases. This resulted in loss of revenue of ₹5.13 crore to the State Government as detailed in the **Table 2.5:**

**Table 2.5: Short / Non-levy of penalty**

(₹ in crore)

Subject	No. of cases	Short levy of penalty	Non-levy of penalty
Excess claim of ITC	5	0.11	0.07
Under-declaration of output Tax	30	0.23	1.80
Excess claim of ITC as well as under-declaration of output Tax	5	0.03	2.89
<b>Total</b>	<b>40</b>	<b>0.37</b>	<b>4.76</b>

In reply to Audit, four AAs<sup>71</sup> stated in respect of five cases that the files have been submitted to JC (ST) for revision. In respect of two cases, the AAs<sup>72</sup> replied that penalty notices have been issued. AC (ST) Saroornagar replied in respect of two cases that penalty order would be issued. In respect of remaining 31 cases, the AAs<sup>73</sup> replied that the matter would be examined.

The matter was referred to the Department (March/May 2019) and to the Government (July 2019); Reminders were issued to the Government in May 2020 and October 2020; replies have not been received.

<sup>70</sup> JC (ST) - Abids, ACs (ST) - Bhongir, Begumpet, Bowenpally, General Bazar, Hissamgunj, Hydernagar, Hyderguda, Jubilee Hills, Madhapur, Mehdipatnam, Maredpally, M.G. Road, Musheerabad, Nalgonda, Nacharam, Nampally, Narayanguda, Rajendra Nagar, Ranigunj, RP Road, Taranaka, Saroornagar, Special Commodities and SD Road.

<sup>71</sup> ACs (ST) - Begumpet, General Bazar, Hissamgunj and Jubilee Hills.

<sup>72</sup> ACs (ST) - Hissamgunj and Musheerabad.

<sup>73</sup> JCs (ST) - Abids, ACs (ST) - Bhongir, Bowenpally, Hydernagar, Hyderguda, Madhapur, Mehdipatnam, Maredpally, M.G. Road, Nalgonda, Nacharam, Nampally, Narayanguda, Rajendra Nagar, Ranigunj, RP Road, Taranaka, Special Commodities and SD Road.

### 2.8.3 Non or short levy of penalty on wilful under-declaration of Tax

#### Wilful under declaration of Tax or excess claim of ITC resulted in non or short levy of penalty of ₹30.72 crore

As per Section 53(3) of VAT Act, where it is established that a dealer committed fraud or wilful neglect while declaring Tax, he shall be liable to pay penalty equal to the Tax under declared.

Audit test checked (between January 2017 and July 2018) the VAT assessments and VAT records for the period from 2011-12 to 2016-17. In 19 cases pertaining to 14 Circles<sup>74</sup>, it was found that dealers wilfully<sup>75</sup> under declared Tax/claimed excess Input Tax Credit of ₹30.89 crore. The AAs short levied penalty in 13 cases and in six cases, no penalty was levied. This resulted in non-levy/short levy of penalty of ₹ 30.72 crore.

In reply to Audit, AAs<sup>76</sup> stated that in respect of two cases, penalty notices were issued. In three cases AC (ST), Madhapur replied that assessment files were submitted to JC (ST). In one case AC (ST), Agapura replied that assessment file would be submitted to JC (ST). AC (ST) Charminar replied that assessment orders could not be served to the dealer in respect of one case. In respect of remaining 12 cases, the AAs<sup>77</sup> replied that the matter would be examined.

The matter was referred to the Department (April 2019) and to the Government (July 2019); Reminders were issued to the Government in May 2020 and October 2020; replies have not been received.

### 2.8.4 Non or short levy of penalty for using false Tax invoice

#### Penalty of ₹2.04 crore was not levied or short levied on dealers for using false Tax invoice

According to Section 55(2) of VAT Act, any VAT dealer, who issues a false Tax invoice or knowingly receives a false Tax invoice, is liable to pay a penalty of 200 *per cent* of Tax shown on the false invoice.

Audit test checked (between July 2017 and November 2017) the VAT assessments and VAT records for the period from 2012-13 to 2015-16. In two cases pertaining to two Circles<sup>78</sup>, the AAs disallowed ITC based on false Tax invoices. However, the AAs did not levy penalty at 200 *per cent* as per Section 55(2) of VAT Act. In respect of AC(ST), Medak penalty was not levied and in respect of AC (ST), Suryapet penalty was levied under Section 53(1)(ii) at 25 *per cent* only. This resulted in non/short levy of penalty of ₹2.04 crore.

<sup>74</sup> ACs (ST) - Agapura, Beet Bazar, Bhongir, Charminar, Gowliguda, Gadwal, Madhapur, Malkajgiri, Musheerabad, Nacharam, Nizamabad - III, Rajendra Nagar, Saroornagar and Special Commodities.

<sup>75</sup> Wilful acts are discovered during verification at site or of Books of Accounts of the dealer which show that the dealer had suppressed his Taxable turnover.

<sup>76</sup> ACs (ST) - Musheerabad and Saroornagar.

<sup>77</sup> ACs (ST) - Beet Bazar, Bhongir, Gowliguda, Gadwal, Malkajgiri, Nacharam, Nizamabad - III, Rajendra Nagar, and Special Commodities.

<sup>78</sup> ACs (ST) - Medak and Suryapet.

AC (ST), Medak assured that the matter would be examined. AC (ST), Suryapet replied that penalty was collected. However, as verified from the copies of challans furnished, penalty was collected at 25 per cent only instead of 200 per cent on disallowed ITC.

The matter was referred to the Department (May 2019) and to the Government (September 2019); Reminders were issued to the Government in May 2020 and October 2020; replies have not been received.

### **2.8.5 Short realisation of Tax and non-levy of penalty for failure to register as a VAT dealer**

**Failure to register as VAT dealers despite Taxable turnover exceeding the threshold limit resulted in short-realisation of Tax of ₹22.83 lakh and non-levy of penalty of ₹75.31 lakh**

As per VAT Act, the dealers who meet the following criteria are required to be registered as VAT dealers.

- (a) Taxable turnover in the preceding twelve months exceeds ₹50 lakh<sup>79</sup> (Section 17(3));
- (b) Engaged in supply or sale of goods being food, drinks served in restaurants, sweet stalls etc., with an annual turnover of more than ₹7.5 lakh and on which Tax is to be paid at the rate of five percent of the Taxable turnover (Section 17(5)(h) read with Section 4(9)(d));
- (c) Registered or liable to be registered under the CST Act, 1956, or any dealer making purchases or sales in the course of inter-State trade or commerce or dispatches any goods to a place outside the state other than by way of sale - irrespective of their Taxable turnover (Section 17(5)(b));
- (d) Executing any works contract exceeding ₹7.5 lakh for the Government or local authority or dealers opting to pay Tax by way of composition on works contract (Section 17 (5) (g)).

As per Rule 11(1) of the VAT Rules, the assessing authority may *suo moto*, register a dealer, who is liable to apply for registration as VAT dealer but has failed to do so.

Further, as per Section 49(2) of VAT Act, any dealer who fails to apply for registration before the end of the month subsequent to the month in which the obligation arose (as per section 17), shall be liable to pay a penalty of 25 per cent of the amount of Tax due prior to the date of the registration by the Registering Authority. There shall be no eligibility for Input Tax Credit for sales made prior to the date from which the registration is affected.

Audit test checked (between May 2017 and November 2018) the VAT assessments and VAT/ TOT records for the period from 2011-12 to 2017-18. In 40 cases pertaining to 13 Circles<sup>80</sup>, it was observed that the dealers who met the criteria for mandatory registration as VAT dealer under VAT Act, 2005 did not register themselves. Failure to

<sup>79</sup> With effect from 1 May 2009.

<sup>80</sup> Ashoknagar, Basheerbagh, Jubileehills, Keesara, Khairatabad, Khammam-III, MJ Market, Madhapur, Malkajgiri, Nacharam, Nizamabad-I, Nizamabad-II and Suryapet.

get the assessees registered as VAT dealers resulted in short realization of Tax of ₹20.75 lakh and incorrect allowance of ITC ₹2.08 lakh besides a penalty of ₹75.31 lakh as detailed in **Table 2.6:**

**Table-2.6: Details of short levy of Tax and penalty**

			(₹in lakh)
Subject	No. of cases	Short levy of Tax or incorrect allowance of ITC	Penalty
Turnover above the threshold limit of ₹50 lakh	13	15.52	75.31
Inter-State purchases	1	3.15	
Bakeries with turnover above ₹7.5 lakh and below ₹1.5 crore	2	2.08	
Un-registered VAT dealers (builders, contractors, etc.)	23	-	
Incorrect allowance of ITC	1	2.08	
<b>Total</b>	<b>40</b>	<b>22.83</b>	<b>75.31</b>

In response, AAs stated in respect of 22 cases that the penalty orders were issued but did not furnish any supporting evidence. In respect of remaining 18 cases, the AAs replied that the matter would be examined.

The matter was referred to the Department (February/May 2019) and to the Government (June 2019); Reminders were issued to the Government in May 2020 and October 2020; replies have not been received.

## 2.9 Non-levy of penalty on Inter-State purchase of goods

**Purchase of goods from outside the State by issuing 'C' Forms and using them for other than re-sale/in manufacturing process resulted in non-levy of penalty of ₹5.27 crore**

All the goods purchased against Form- 'C' shall be either resold or used as inputs in manufacturing process. A penalty not exceeding 1.5 times the Tax is to be imposed if the dealer violates the above provision.<sup>81</sup>

Audit test checked (February 2018) the VAT assessment and VAT/ Entry Tax records for the period from 2014-15 to 2015-16. In one case pertaining to JC (ST) Punjagutta Division, it was found that a dealer dealing in construction and sale of apartments, villas, etc. entered into an agreement with land owners for development of land into apartments. As per agreement, 42.44 per cent of total built-up area was to be transferred to land owners and the same was exempt from levy of VAT. The dealer had purchased goods worth ₹73.93 crore from outside the State by issuing 'C' Forms and utilised the same into construction. As 42.44 per cent of such purchases were used in construction of owner's share, the same were not put to re-sale, hence the dealer was not entitled to purchase them against Form-'C'. A maximum penalty of ₹5.27 crore could have been imposed for misuse of Form-'C'.

The AA assured that the matter would be examined.

<sup>81</sup> Under Section 10(d) of CST Act.

The matter was referred to the Department (April 2019) and to the Government (October 2019); Reminders were issued to the Government in May 2020 and October 2020; replies have not been received.

## 2.10 Non-levy of penalty on self-consumption of Notified Goods

### Penalty of ₹5.56 crore for using notified goods for self-consumption was not levied

According to Section 3(2) of The Telangana Tax on Entry of Goods into Local Areas Act, 2001, any dealer importing notified goods from other States into any local area<sup>82</sup> for the purpose of re-sale or for use of the goods as inputs for manufacture of other goods in the State or inter-State trade is exempt from payment of Tax. If the dealer utilises the goods otherwise than by way of re-sale or as inputs he shall notify the AA of the self consumption of such goods and pay Tax, failing which, he is liable to pay Tax alongwith Penalty equivalent to the amount of Tax under Section 3(3) of the Act *ibid*.

Audit test checked (between June and August 2018) the Entry Tax assessment records for the period from 2011-12 to 2016-17. In two cases pertaining to one Division and one Circle<sup>83</sup>, dealers had utilised notified goods for purposes other than re-sale or as inputs for manufacture of goods for resale. On detection of this, the AAs had levied only the Entry Tax of ₹5.56 crore. They did not levy penalty of ₹5.56 crore as per the provisions.

The AAs assured that the matter would be examined.

The matter was referred to the Department (April, June 2019) and to the Government (October 2019); Reminders were issued to the Government in May 2020 and October 2020; replies have not been received.

## 2.11 Non collection of Profession Tax

### Profession Tax of ₹10.18 lakh was not collected from dealers

Under Section 4 of The Telangana Tax on Professions, Trades, Callings and Employment Act, 1987, every person engaged in any profession in the State shall be liable to pay a Tax as specified in the first Schedule of the Act. The administration of the Act was entrusted to the Commercial Taxes Department. An amount of ₹2,500 and ₹1,250 per annum is to be collected from VAT and Turnover Tax dealers respectively.

Audit test checked (between July 2018 and August 2018) the Profession Tax records for the period from 2015-16 to 2017-18. In respect of AC (ST), Bodhan Circle, it was found that the AA did not collect Profession Tax amounting to ₹10.18 lakh from 582 dealers.

The AA assured that the matter would be examined.

The matter was referred to the Department (June 2019) and to the Government (August 2019); Reminders were issued to the Government in May 2020 and October 2020; replies have not been received.

<sup>82</sup> "Local area" means the area of jurisdiction of a local authority i.e. Municipal Corporations/Municipalities/Cantonment Boards/Panchayats etc.

<sup>83</sup> JC (ST) - Adilabad & AC (ST) - Nacharam.

## 2.12 Goods and Services Tax (GST)

Goods and Services Tax (GST) was implemented with effect from 01 July 2017. GST is being levied on intra-State supply of goods or services (*except alcohol for human consumption and five specified petroleum products*<sup>84</sup>) separately but concurrently by the Union (CGST) and the States (SGST)/ Union territories (UTGST). Further, Integrated GST (IGST) is being levied on inter-State supply of goods or services (including imports). Parliament has exclusive power to levy IGST.

State Government is empowered to regulate the provisions of TVAT Act, whereas, provisions relating to GST are regulated by Centre and State on the recommendation of the Goods and Services Tax Council (GSTC), which was constituted with representation from Centre and all the States to recommend on matters related to GST. The State Government notified (June 2017) the Telangana Goods and Services Tax (TGST) Act, 2017 and the Telangana Goods and Services Tax Rules, 2017 wherever various taxes were subsumed.

Goods and Services Tax Network (GSTN) was set up by the Government of India as a private company to provide IT services under GST. It provides front-end IT services to taxpayers like registration, payment of tax and filing of returns. Back-end IT services include registration approval, taxpayer detail viewer, refund processing, MIS reports *etc.* GSTN developed the back-end IT services for States that did not have the requisite IT support systems. These States, including Telangana State, are referred to as Model – II States. Model-I States are those that have developed the back-end systems on their own.

With automation of the collection of GST having taken place, it is essential for Audit to have access to GST data to transition from sample checks to a comprehensive check of all transactions. Accountant General (Audit) has written to Commissioner of State Taxes, Telangana to provide access to GST data (May 2018 and November 2018). However, access to data is yet to be provided (September 2020). State Government stated that a clarification had been sought from GST Council regarding guidelines and procedures to be followed in providing access to the data to maintain uniformity with other States.

The reply is not acceptable as Section 18 of the CAG's (Duties, Powers Conditions of Service) (DPC) Act, 1971 provides the CAG with the mandate to access any record, accounts and other documents that are relevant to his inquiry. Further, as per Section 16 of DPC Act, it shall be the duty of the CAG to audit all receipts which are payable into the Consolidated Fund of India and each State. Thus, not having access to the data pertaining to all GST transactions is violation of the provisions of CAG's DPC Act and has come in the way of comprehensively auditing the GST receipts of 2018-19.

---

<sup>84</sup> Petroleum products: crude, high speed diesel, petrol, aviation turbine fuel and natural gas.



## 2.12.1 GST Refunds

### 2.12.1.1 Excess allowance of GST Refund

#### **Non verification of Returns filed by assessee resulted in excess refund of ₹ 28.13 lakh**

According to TGST Rules<sup>85</sup> read with the Integrated Goods and Services Tax Act, 2017<sup>86</sup> (IGST Act), a registered Tax payer can claim refund of ITC in the case of zero-rated supply of goods<sup>87</sup> or services or both without payment of Tax at the end of any Tax period. Key concepts:

- i) 'Turnover of zero-rated supply of goods' means the value of zero-rated supply of goods made during the relevant period without payment of Tax.
- ii) 'Net ITC' means input Tax credit availed on inputs and input services during the relevant period (*i.e.* ITC Availed (-) ITC reversed).
- iii) 'Adjusted Total Turnover' means the sum total of the value of the turnover excluding the value of exempt supplies other than zero-rated supplies.
- iv) 'Relevant period' means the period for which the claim has been filed.

Audit test checked (July 2019) the GST refund records (Forms GSTR 3B and RFD 01) for the period 2017-18. In the case of two dealers pertaining to AC(ST), Begumpet Circle, it was noticed that the Net ITC and Adjusted Total Turnover reported (RFD 01) were not in agreement with the respective monthly returns (GSTR 3B)<sup>88</sup> filed by the assessee. The AA, while authorizing the claims, did not verify the Returns, which resulted in excess refund of ₹28.13 lakh.

AC (ST), Begumpet assured that the matter would be examined (July 2019).

The matter was referred to the Department (October 2019) and to the Government (November 2019); Reminders were issued to the Government in May 2020 and October 2020; replies have not been received.

## 2.12.2 GST Transitional credit claims

### 2.12.2.1 Incorrect claim of transitional credit

#### **Incorrect claim of transitional credit of ₹6.06 lakh without filing or filing of returns after due date**

As per Section 140(1) of the Telangana GST Act, 2017, a registered person, other than a person opting to pay tax under Section 10, was entitled to carry forward and claim un-availed amount of Input Tax Credit of the pre-GST regime in the GST regime provided that he has filed all the returns due under the pre-GST laws for the period of six months immediately preceding the appointed date or within the time period as may be extended by the Commissioner, by way of filing a Return (TRAN-1). The amount of credit specified in the application in FORM GST TRAN-1 shall be credited to the

<sup>85</sup> Rule 89 (4) of TGST Rules.

<sup>86</sup> Section 16 (3) of IGST Act.

<sup>87</sup> Export of goods or services or both to a Special Economic Zone developer or unit.

<sup>88</sup> Returns filed by the assessee in form GSTR-3B for the period from October 2017 to March 2018.

electronic credit ledger of the applicant maintained in FORM GST PMT 2 on the common portal.

The claims to be preferred in TRAN-1 Returns were to be examined by the Department against the above requirements. Department gave instructions to the AAs to verify only top 30 cases where transitional credit was claimed on stock.

Audit test checked (between April and May 2019) the transitional credit claims and VAT records for the period 2017-18. In the case of five dealers pertaining to three Circles<sup>89</sup>, it was noticed that dealers had incorrectly claimed transitional credit as they did not file VAT returns for the period of six months immediately preceding the appointed day. This resulted in incorrect claim of transitional credit of ₹6.06 lakh. As the Department gave instructions to the AAs to verify only top 30 cases where transitional credit was claimed on stock, the possibility of remaining cases of erroneous transitional credit claims being detected is remote.

The AAs have assured that the matter would be examined.

The matter was referred to the Department (October 2019) and to the Government (December 2019); Reminders were issued to the Government in May 2020 and October 2020; replies have not been received.

#### ***2.12.2.2 Excess claim of transitional credit***

##### **Excess claim of transitional credit of ₹1.27 crore than the credit shown in the monthly VAT returns**

According to TGST Act,<sup>90</sup> a registered person is entitled to take in his electronic credit ledger (in form TRAN-I) the credit of VAT carried forward in the return (VAT return) relating to the period ending with the day immediately preceding the appointed day<sup>91</sup>. Department gave instructions to the AAs to verify only top 30 cases where transitional credit was claimed on stock.

Audit test checked (between April and June 2019) the transitional credit claims and VAT records for the period 2017-18. In the case of 33 dealers pertaining to four Circles,<sup>92</sup> it was noticed that dealers had claimed SGST transitional credit (in form TRAN-I) in excess of the credit shown in their VAT returns (June 2017) resulting in excess claim of transitional credit of ₹1.27 crore by the dealers. As the Department gave instructions to the AAs to verify only top 30 cases where transitional credit was claimed on stock, the possibility of remaining cases of erroneous transitional credit claims being detected is remote.

The AAs assured that the matter would be examined.

The matter was referred to the Department (October 2019) and to the Government (January 2020); Reminders were issued to the Government in May 2020 and October 2020; replies have not been received.

<sup>89</sup> ACs (ST) - Gadwal, Jadcherla and Sanathnagar.

<sup>90</sup> Section 140(1) of TGST Act.

<sup>91</sup> 'Appointed day' means the day GST Act was introduced i.e., 01 July 2017. Hence, the credit available in the VAT return as on 30 June 2017 shall be carried forward to Tran-I.

<sup>92</sup> ACs (ST) - Begumbazar, Ladbazar, Warangal Urban and Jadcharla.