

CHAPTER-III: TAX ON SALES, TRADE ETC.

3.1 Tax administration

The Additional Chief Secretary (Commercial Tax and Entertainment Tax), Uttar Pradesh administers the Sales Tax/Value Added Tax (VAT) laws and rules framed thereunder. The Commissioner, Commercial Tax (CCT), Uttar Pradesh is the head of the Commercial Tax Department. He/she 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.). Since 1 July, 2017, the Department is also administering the Goods and Services Tax (GST) in the State.

3.2 Results of audit

• Access to GST database

With the introduction of Information Technology (IT) platform for GST implementation, access to GST Portal data and back-end system of the tax department becomes necessary for audit so that assurance regarding robustness of the system can be derived. With respect to the CAG's requirement for complete access to the GST IT systems and data, GSTN had recommended (October 2016) to the Government of India to create login credentials for the CAG teams.

The State Government was informed by this office¹ (April 2018) that GST data could be shared with the C&AG of India subject to relevant protocols. The Department responded² (May 2018) that the issue of providing access to the GSTN portal and creating role script was possible only through the GST Council.

In June 2020, the GST Implementation Committee accepted the data access arrangement proposed by C&AG according to which Audit will have access to full pan-India data at GSTN premises and to back-end systems of the tax departments. Accordingly, access to GST data has been provided at GSTN premises. However, access to the back-end application of the State Commercial Tax Department has yet not been provided, without which audit of GST receipts is not possible as most GST records have now been digitised. In view of this, the matter relating to access to back-end systems of the State Commercial Tax Department was taken up in September 2020 with the Government of Uttar Pradesh. Response of the State Government in the matter is awaited (September 2020).

• Local audit during the year 2018-19

During 2018-19, test-check of records in 94 units³ out of total 769 auditable units of the Commercial Tax Department revealed under-assessment of tax and other irregularities involving ₹ 108.20 crore in 579 cases which fall under the following categories as tabulated in **Table - 3.1**.

¹ Vide letter no. AG(E&RSA), UP/Sectt/2018-19/03 dated 5 April 2018.

² Vide letter no. Joint Commissioner (Audit)/2018-19/431/*Vanijya Kar* dated 21 May 2018.

³ This consists of *Apar Mukhya Sachiv Vanijya Kar* *evam Manoranjan Kar* Uttar Pradesh *Shasan* (01), JCs (19), Sectors (64), Mobile Squad Units (09) and Administration Unit (01).

Table - 3.1

Sl. No.	Categories	Number of cases	Amount (₹ in crore)
1	Under-assessment of tax	127	29.64
2	Acceptance of defective statutory forms	22	2.14
3	Evasion of tax due to suppression of sale/ purchase	04	0.17
4	Irregular/Incorrect/ Excess allowance of Input Tax Credit (ITC)	83	8.21
5	Non/short charging of interest	68	3.08
6	Non-imposition of penalty	243	59.45
7	Other irregularities ⁴	32	5.51
	Total	579	108.20

The Department accepted (between April 2018 and August 2020) 31 cases amounting to ₹ 94.61 lakh pointed out in the year 2018-19 and reported recovery of ₹ 11.29 lakh in 13 cases. Further, in respect of audit observations prior to the year 2018-19, the Department accepted (between October 2019 and March 2020) 132 cases amounting to ₹ 12.70 crore and reported recovery of ₹ 2.09 crore in 65 cases.

This Chapter discusses 67 cases worth ₹ 37.92 crore. These cases pertain to assessment years for which the Uttar Pradesh Value Added Tax (UPVAT) Act, 2008 and Central Sales Tax (CST) Act, 1956 were applicable. The Department accepted 43 cases amounting to ₹ 29.06 crore, out of which in 13 cases the Department reported recovery of ₹ 78.68 lakh. Some of these irregularities continue to persist, despite similar cases having been repeatedly reported during the last five years as detailed in **Table - 3.2**. The errors/omissions pointed out are on the basis of a test audit. **The Government/Department may, therefore, undertake a thorough review of all units to check whether similar errors/omissions have taken place elsewhere and if so, to rectify them and put in place a system that would prevent such errors/omissions.**

Table - 3.2

Nature of observations	(₹ in crore)											
	2013-14		2014-15		2015-16		2016-17		2017-18		Total	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount
Application of incorrect rate of tax	75	8.49	132	7.49	35	2.72	24	2.00	58	12.36	324	33.06
Irregular concession allowed on goods not covered under the Registration Certificate (RC)	16	1.03	9	0.41	7	0.27	24	3.80	14	1.05	70	6.56
Inadmissible ITC	15	12.41	21	0.87	15	0.77	20	1.18	27	1.01	98	16.24
Delayed deposit of tax deducted at source	28	8.74	25	8.75	14	2.98	28	8.05	69	26.80	164	55.32

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 the Audit.

⁴ Non-forfeiture of excess money realised by dealers against provisions of the Act, non-registration of unregistered dealers, delayed deposit of realised revenue in the treasury, non-maintenance of documents/registers etc.

Recommendation:

Given that assessments of legacy VAT cases is underway, the State Government may take steps to prevent recurrence of the reported irregularities before such cases become time-barred. There is a high probability that undetected leakages of revenue at this stage would go unaddressed as the system would be totally focussed upon GST administration in the future.

3.3 Turnover escaping assessment

Audit cross-verified the records submitted by the dealer to the Income Tax Department and the Commercial Tax Department and found that he had concealed turnover of goods valued at ₹ 21.85 crore which resulted in non-levy of tax of ₹ 3.17 crore and penalty of ₹ 9.51 crore.

Under UPVAT Act, 2008⁵, the Assessing Authority (AA) is required to finalise the assessment after examining the books, accounts and documents kept by the dealer in relation to his business and other relevant records. Further, under UPVAT Act⁶, where a dealer has concealed particulars of his turnover or has deliberately furnished inaccurate particulars of such turnover, or submitted a false tax return under this Act or evaded payments of tax which he is liable to pay under this Act, the AA may direct that such dealer shall, in addition to the tax, if any, payable by him, pay by way of penalty, a sum equal to three times the amount of tax concealed or avoided.

Audit cross-verified in the office of Joint Commissioner (Corporate Circle), Commercial Tax, Allahabad, the annual return, Form No. 3CD⁷, Balance Sheet and Trading & Profit & Loss Account submitted by a dealer and the VAT assessment orders of the dealer for the period 2013-14 to 2015-16 with Form No. 3CD, Balance Sheet and Trading & Profit & Loss Account obtained from the Income Tax Department (December 2019) and found that the dealer concealed sales turnover of vehicles and vehicle accessories and spare parts of ₹ 21.85 crore in his returns filed in the Commercial Tax Department (CTD) when compared with the returns filed in the Income Tax Department for the years 2013-14 to 2015-16. It was observed that the same Chartered Accountant firm prepared different sets of Form 3CD which were submitted to the Commercial Tax Department and the Income Tax Department. The AA, while finalising the assessments of the dealer between September 2017 and March 2019 for the above years, failed to detect this concealed turnover of ₹ 21.85 crore. This led to non-levy of tax of ₹ 3.17 crore and consequently penalty of ₹ 9.51 crore for concealment of turnover was also not imposed. Details are mentioned in **Table 3.3**.

⁵ Section 28 of the UPVAT Act, 2008.

⁶ Section 54(1)(2) of the UPVAT Act, 2008.

⁷ 3CD is a statement of particulars required to be furnished under section 44AB of the Income Tax Act, 1961, and contains details such as name of partners/members and their profit sharing ratio, turnover, gross profit, method of valuation of closing stock and particulars of depreciation.

Table - 3.3
Turnover escaping assessment

							(₹ in lakh)
Year	Sales turnover shown in 3CD filed in ITD	Sales turnover shown in 3CD filed in CTD	Sales turnover shown in Form-LII ⁸	Turnover on which tax assessed in assessment order	Turnover on which tax not assessed (1-3) ⁹	Tax leviable on sales short declared (at the rate of 14.5 per cent)	Penalty imposable on concealed turnover
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
2013-14	10,213.91	9,683.43	9,683.43	9,683.43	530.48	76.92	230.76
2014-15	13,255.24	12,408.13	12,408.13	12,411.63	847.11	122.83	368.49
2015-16	14,942.96	14,135.38	14,135.38	14,138.88	807.58	117.10	351.30
Total	38,412.11		36,226.94		2,185.17	316.85	950.55

Audit reported the matter to the Department in December 2019. In response (June 2020), the Department stated that it was taking necessary action to reassess the case based on audit observation.

Recommendations:

1. The Department may consider instituting a system for undertaking cross-verification of actionable information submitted to the CTD with the other taxation authorities to protect the interest of revenue.
2. The Department may initiate action against the Chartered Accountant firms for furnishing false certificates by *inter-alia* taking up the matter with the Institute of Chartered Accountants of India.

3.4 Application of incorrect rate of tax

Assessing Authorities accepted the tax rates on sale of goods worth ₹ 23.07 crore as mentioned in the tax returns without verification. Thus, tax amounting to ₹ 1.95 crore was short/not levied.

Under the 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 on such goods. 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 tax, additional tax notified by the Government from time to time is also levied.

Audit test-checked (between September 2018 and March 2019) assessment records of 2,277 dealers in 10 CTOs and noticed that in the case of 13 dealers, the AAs, while finalising the assessments (between April 2017 and March 2018) for the years 2013-14 to 2015-16, accepted tax rates of zero to five per cent on the sale of goods worth ₹ 23.07 crore as mentioned by the dealers in their respective tax returns. The AAs failed to verify and levy the applicable rates of five to 14.5 per cent on such goods as per the schedules. Thus, tax amounting to ₹ 1.95 crore was short/not levied (**Appendix-IV**).

⁸ LII is an annual return submitted by the dealer in the CTD and contains details of purchase, sale, ITC, computation of tax, etc.

⁹ Columns 1 and 3 here are taken for tax not assessed as in these columns the dealer himself declares its turnover both in the ITD and in the CTD, whereas column 4 shows sales declared by the dealer plus concealed turnover of burnt oil not disclosed by the dealer in its annual return to the CTD.

Audit reported the matter to the Department (between October 2018 and April 2019). In reply (March 2020), the Department accepted the audit observations in seven cases amounting to ₹ 1.62 crore, out of which in three cases recovery of ₹ 6.68 lakh was reported by them. In two cases, the Department did not accept the audit observation. The analysis of the Department's replies in these two cases is listed in **Table 3.4**.

Table - 3.4

Sl. No.	Audited Unit/ Observation in brief	Department's reply in brief	Rebuttal
1	DC-Sec 5 Ghaziabad: Sale of plastic poultry equipment was taxed at the rate of five <i>per cent</i> against the leviable rate of 14 <i>per cent</i> .	Due to typographical error in the assessment order in place of plastic goods, poultry equipment was mentioned, which has been amended under Section 31 on 4 June 2019.	The reply is not acceptable, as in the initial assessment order passed on 30 May 2017 sale of poultry equipment was shown on numerous pages. A typographical error cannot occur on several pages. Further, it is also notable that the dealer himself in his annual return has shown the same commodity. No supporting documents were made available to the audit to establish the claim of the Department on sale of plastic goods. As such, plastic poultry equipment is taxable at the rate of 14 <i>per cent</i> as per UPVAT Act.
2	DC-Sec 18 Ghaziabad: Sale of wood was taxed in the assessment order at the rate of five <i>per cent</i> against the leviable rate of 14 <i>per cent</i> .	The Department stated that as per the purchase list wooden shaving packing had been purchased which has also been verified from the selling dealer's list.	The reply is not acceptable, as both in the annexures and annual return submitted by the dealer and also in the assessment order passed by the AA, sale of wood was shown. As such, wood is taxable at the rate of 14 <i>per cent</i> , as per UPVAT Act.

In the remaining four cases, amounting to ₹ 27.60 lakh, the Department stated that action was under process (September 2020).

Recommendation:

The Department should institute a system of periodic reviews of the assessment orders passed by the AAs by the higher level authorities.

3.5 Irregular concession allowed on goods purchased against Form 'C'

The dealers had purchased goods valued at ₹ 14.32 crore, which were not covered under the Registration Certificates (RC) or used them for purposes other than those for which the RCs were granted, at concessional rates of tax against the declaration in form 'C'. However, penalty of ₹ 2.48 crore was not imposed by the AAs.

Under CST Act, 1956¹⁰, a registered dealer may purchase any goods from outside the State at a concessional rate of tax against a declaration in form 'C' issued by the purchasing dealer. If his registration certificate does not cover such goods or if such goods are used for purposes other than those for which the RC is granted, the dealer is liable for prosecution under the CST Act.¹¹ However, if the AA deems it fit, he may, in lieu of prosecution, impose penalty up to one and a half times the tax payable on the sale of such goods.

Audit test-checked (between January 2018 and March 2019) assessment records of 2,323 dealers in nine CTOs and noticed that 10 dealers had purchased goods valued at ₹ 14.32 crore during the years 2011-12 and 2013-14 to 2015-16, at concessional rates of tax against declaration in Form 'C'. However, the goods purchased were not covered by their respective RCs or were used for purposes other than those for which the RC was granted, due to which they were liable to pay penalty at one and a half times of the tax payable on the sale of such goods, in lieu of prosecution. The AAs, while finalising the assessment between July 2014 and March 2018, did not scrutinise the relevant RCs and the utilisation details of forms 'C' of the dealers in question and consequently penalty of ₹ 2.48 crore could not be imposed (**Appendix-V**).

Audit reported the matter to the Department (between February 2018 and April 2019). In reply (March 2020), the Department accepted the audit observations in nine cases amounting to ₹ 63.28 lakh, out of which in five cases, recovery of ₹ 36.06 lakh was effected.

In the remaining one case, amounting to ₹ 1.84 crore, the Department stated that action was under process (September 2020).

Recommendation:

The Department may ensure that when finalising the assessments, the RCs and utilisation certificates, where such concessions are being considered, should be carefully examined.

¹⁰ Section 8 of the CST Act, 1956.

¹¹ Section 10-A and 10-D of the CST Act, 1956.

3.6 Inadmissible ITC allowed to dealers

The dealers wrongly claimed ITC amounting to ₹ 2.88 crore which was irregularly allowed by the AAs. This resulted in non-reversal of ITC along with interest totalling ₹ 4.52 crore.

Under UPVAT Act, 2008¹², in cases of tax paid on purchase of goods from registered dealers against tax invoices within the State or cash deposited on purchase of goods from unregistered dealers, ITC to the extent provided under the relevant clauses of the said Act, is allowed to the dealer subject to certain conditions and restrictions for resale or use in manufacture of goods intended for sale. Further¹³, if any dealer has wrongly claimed ITC in respect of any goods, benefit of ITC to the extent it is not admissible, shall stand reversed along with simple interest at the rate of 15 per cent per annum.

Audit test-checked (between September 2018 and March 2019) assessment records of 6,694 dealers in 18 CTOs and noticed that 18 dealers had wrongly claimed ITC of ₹ 2.88 crore during the years 2013-14 to 2015-16, which was not admissible to them. The AAs, while finalising the assessments (between November 2016 and March 2018), were required to reverse the inadmissible ITC and direct the dealers to pay such amount of ITC which was reversed along with simple interest. Failure to do so resulted in non-reversal of ITC along with interest totalling ₹ 4.52 crore (ITC ₹ 2.88 crore and interest ₹ 1.64 crore) (**Appendix-VI**).

Audit reported the matter to the Department (between October 2018 and May 2019). In reply (March 2020), the Department accepted the audit observations in six cases amounting to ₹ 1.48 crore, out of which, in one case, recovery of ₹ 9.33 lakh was reported by the Department. In five cases, the Department did not accept the audit observation. The analysis of the Department's replies in these five cases is listed in **Table 3.5**.

Table - 3.5

Sl. No.	Audited Unit/ Observation in brief	Department's reply in brief	Rebuttal
1	JC-(CC) Agra: ITC of ₹ 1.46 crore was not found verified during the cross verification. Therefore, it should be reversed along with interest.	The Department stated that ITC was allowed at the time of assessment after scrutinising the accounts of the dealer and tax paid on the purchases made by him.	The reply is not acceptable, as internal correspondence of the Department reveals that ITC of ₹ 1.46 crore was not found verified during the cross verification within the Department.
2	DC-Secundrabad Bulandshahar: ITC was claimed on exempted (no tax) items Organic Manure and Bio fertilisers, Zinc Sulphate fertilisers and Macro Nutrient mixture as per the return submitted by the dealer. Hence, ITC	Due to typographical error in the monthly returns, purchase of Organic Manure and Bio fertilisers, Zinc Sulphate fertilisers and Macro Nutrient mixture was shown in the dealer's purchase list in place of pesticide, fertiliser and	The reply is not acceptable, as Organic Manure and Bio fertilisers, Zinc Sulphate fertilisers and Macro Nutrient mixture are exempted items entailing no levy of VAT. Further, no supporting documents were made available to the audit to establish the claim of the

¹² Section 13 of UPVAT Act, 2008.

¹³ Under Section 14 (2) of UPVAT Act, 2008.

Sl. No.	Audited Unit/ Observation in brief	Department's reply in brief	Rebuttal
	claimed by the dealer on the purchase of the exempted item should be reversed.	urea, which was amended under Section 31 on 1 February 2020.	Department. Hence, the basis of giving the excess benefit of ITC on the above item is not clear and the reply regarding typographical error is not acceptable.
3	DC-Sec 22 Lucknow: The entire ITC earned on capital goods (tools) was claimed and adjusted against tax payable in the same year. As per VAT rules, ITC on capital goods is to be claimed in three successive years in three equal instalments. Hence, it should be reversed along with interest.	The dealer has claimed ITC on consumable goods such as printing ink, paint and varnish etc., which in his annual return has been mentioned as tools. Thus, these are not capital goods but consumable goods which the dealer used in his manufacturing process.	The reply is not acceptable. As per the records submitted by the dealer 'tools' has been mentioned and the same has been accepted by the AA at the time of assessment. Further, no supporting documents were made available to the audit to establish the claim of the Department. As such, tools being a capital good, ITC should be claimed in three successive years in three equal instalments.
4	DC-Sec 3 Noida: Excess ITC brought forward from the previous year was allowed to the dealer in the assessment order against the brought forward ITC claimed by the dealer in his annual return and also in Audit Report (Form XXIII) certified by the Chartered Accountant (CA).	The Department stated that at the time of assessment a revised annual return was submitted by the dealer in which ITC shown as brought forward was allowed to the dealer at the time of assessment.	The reply is not acceptable, as a revised annual return was submitted by the dealer and accepted by the AA at the time of assessment without the revised Audit Report (Form XXIII) certified by the CA. Further, no supporting documents were made available to the audit to establish the claim of the Department. As such, without the revised Form XXIII certified by the CA, benefit of ITC is in question.
5	DC-Sec 8 Varanasi: Due to calculation mistake, while allowing ITC as per the ITC admissible on the purchase, excess ITC was allowed.	The Department stated that total tax payable on sale was ₹ 6,02,483. This was paid by adjusting ITC of ₹ 4,16,694 and payment of tax of ₹ 1,85,796 by the dealer. However, due to typographical error, ITC allowed was shown as ₹ 6,02,483 in assessment order, which has now been rectified under Section 31 on 6 February 2020.	The reply is not acceptable, as in the initial order passed by the AA on 20 March 2018, there was no mention made in the assessment order regarding the amount deposited by the dealer. It is also notable that both in the records submitted by the dealer and in the assessment order, ITC earned during the year was shown as ₹ 6,02,483. Further, no supporting documents were made available to the audit to establish the claim of the Department. Hence, the reply regarding typographical error is not acceptable.

In the remaining seven cases, amounting to ₹ 41.71 lakh, the Department stated that action was under process (September 2020).

Recommendation:

The Department should carefully examine and verify the transactions where ITC are being claimed by the dealers and benefit of ITC are being allowed by the AAs.

3.7 Delayed deposit of tax deducted at source

The Assessing Authorities had not imposed penalty amounting to ₹ 16.29 crore on dealers for not depositing the tax deducted at source amounting to ₹ 8.15 crore within the prescribed time.

Under UPVAT Act, 2008¹⁴, a person responsible for making payment to a contractor for the use of goods in pursuance of works contract, shall deduct tax equal to four *per cent* of such sum payable under the Act, on account of such works contracts. In case of failure to deduct the tax or deposit the tax so deducted into the Government treasury before the expiry of the 20th day of the month following the month in which the deduction was made, the AA may direct such person to pay, by way of penalty, a sum not exceeding twice the amount so deducted.

Audit test-checked (between October 2018 and March 2019) assessment records of 6,336 dealers in 16 CTOs and noticed that 25 dealers had deducted tax amounting to ₹ 8.15 crore at source while making payments to the contractors during the years 2013-14 to 2015-16 but did not deposit the same into the Government treasury within the prescribed time frame. The delays ranged from five days to 301 days. The AAs, while finalising the assessments (between October 2016 and March 2018), neither imposed the due penalty amounting to ₹ 16.29 crore nor recorded any reason for not imposing the same (**Appendix-VII**).

Audit reported the matter to the Department (between November 2018 and May 2019). In reply (March 2020), the Department accepted the audit observations in 20 cases amounting to ₹ 12.65 crore, out of which, in four cases, recovery of ₹ 26.61 lakh was reported by the Department.

In the remaining five cases amounting to ₹ 2.70 crore, the Department stated that action was under process (September 2020).

Recommendation:

The Department should ensure levy of penalty in cases of delay in deposit of tax deducted at source by the dealers/contractors.

¹⁴ Section 34 (8) read with Section 34 (1) of UPVAT Act, 2008.