

CHAPTER-II
TAXES ON SALES,
TRADE, SUPPLIES, etc.

CHAPTER-II TAXES ON SALES, TRADE, SUPPLIES, etc.

2.1 Tax administration

The receipts from the Goods and Services Tax/Value Added Tax/Central Sales Tax/Entry Tax payable under the respective laws relating to state taxpayers are administered at the Government level by the Principal Secretary (Finance). The Commissioner is the head of the Commercial Taxes Department (Department) and is assisted by 23 Additional Commissioners, 46 Deputy Commissioners (DC), 91 Assistant Commissioners (AC), 136 Commercial Taxes Officers (CTO), 405 Assistant Commercial Taxes Officers (ACTO) and a Financial Advisor (FA). They are assisted by Junior Commercial Taxes Officers (JCTO) and other allied staff for administering the relevant tax laws and rules.

2.2 Internal audit

Financial Advisor is the head of the Internal Audit Wing. There are 17 internal audit parties. The status of internal audit conducted during the period from 2015-16 to 2019-20 is given in **Table 2.1** below:

Table 2.1

Year	Units Pending for audit	Units due for audit during the year	Total units due for audit	Units audited during the year	Units remaining unaudited	Shortfall in per cent
2015-16	252	413	665	181	484	73
2016-17	484	468	952	426	526	55
2017-18	526	468	994	526	468	47
2018-19	468	467	935	847	88	9
2019-20	88	467	555	486	69	12

Source: Information furnished by Commercial Taxes Department.

The Department has improved its internal audit system and the pendency of units to be audited has come down substantially since 2015-16. The Department needs to continue this practice to complete the targeted number of units in future.

It was noticed that 11,826 paragraphs of the internal audit reports were outstanding as on 31 March 2020. Year-wise break up is given in the **Table 2.2** below:

Table 2.2

Year	Up to 2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	Total
Paragraphs	4,677	520	585	1,666	1,635	2,743	11,826

Source: Information furnished by Commercial Taxes Department.

Out of 11,826 paragraphs, 4,677 paragraphs were outstanding for more than five years for want of compliance/corrective action. The Department should take prompt action on the findings of the Internal audit reports so as to improve the internal control systems and maximize revenue collection.

2.3 Results of audit

There are 485 auditable units in the Commercial Taxes Department, out of which, audit selected 132 units for test check during the year 2019-20 wherein 4.31 lakh assessments were finalised. Among these, audit test checked 12,494 assessments (approximately 3 per cent) and noticed 613 cases (approximately 4.91 per cent of the audited sample) of short/non-levy of tax/interest, irregular allowance of Input Tax Credit, non-imposition of penalty for misuse of declaration forms, irregular allowance of investment subsidy, application of incorrect rate of tax and non-observance of provisions of Acts/Rules *etc.* involving an amount of ₹ 71.23 crore. These cases are illustrative only as these are based on test check of records. Audit pointed out some of the similar omissions in earlier years also, however, not only do these irregularities persist, but they also remain undetected till the next audit is conducted. Irregularities noticed broadly fall under the following categories as given in the **Table 2.3** below:

Table 2.3

(₹ in crore)

Sl. No.	Category	Number of cases	Amount
1.	Under assessment of tax	234	25.28
2.	Acceptance of defective statutory forms	1	0.09
3.	Evasion of tax due to suppression of sales/purchase	85	15.05
4.	Irregular/incorrect/excess allowance of Input Tax Credit	128	10.53
5.	Other irregularities relating to		
	(i) Revenue	152	20.21
	(ii) Expenditure	13	0.07
Total		613	71.23

During 2019-20, the Department accepted underassessment and other deficiencies of ₹ 56.87 crore in 1170 cases, of which 128 cases involving ₹ 0.95 crore were pointed out in audit during 2019-20, and rest in the earlier years. In addition, during 2019-20, the Department recovered/ adjusted ₹ 16.36 crore in 245 cases, of which 14 cases involving ₹ 14.36 lakh pertained to the year 2019-20 and the rest to earlier years.

The State Government accepted and recovered/adjusted (between June 2020 and October 2020) an amount of ₹ 0.88 crore out of the total objected amount of ₹ 0.91 crore from six dealers on account of non-levy of exemption fee, irregular allowance of ITC and under assessment of Inter-state sale after it was pointed out (between November 2019 and March 2020) by the Audit, while ₹ 0.03 crore remained unrecovered. These paragraphs have not been discussed in the Report.

Few illustrative cases involving ₹ 10.72 crore are discussed in the succeeding paragraphs. It is pertinent to mention that most of these issues have been raised earlier and published in the CAG's Audit Report (Revenue Sector) of previous years wherein the Government accepted the observations and initiated action/recoveries. However, it is seen that the Department took action only in cases which were pointed out by audit and failure to strengthen the Internal Control system has led to recurrence of the same issues in subsequent years.

2.4 Input Tax Credit

2.4.1 Irregular allowance of Input Tax Credit

Assessing Authority while finalising tax assessment allowed excess Input Tax Credit on goods consigned outside the state through branch transfer

As per Section 18 of Rajasthan Value Added Tax (RVAT) Act, 2003, Input Tax Credit (ITC) shall be allowed to registered dealers in respect of purchase of any taxable goods made within the State from a registered dealer to the extent and in such manner as may be prescribed. The State Government *vide* notification dated 31 March 2006 under Section 18(4) of the RVAT Act, allowed a dealer to claim ITC, in excess of four *per cent* of tax paid in the state on purchase of goods which were used as raw material in manufacture of goods and such manufactured goods were consigned outside the State by way of branch transfer. Further, as per Section 61(2) (b) of RVAT Act, where any dealer has wrongly availed ITC, the assessing authority shall reverse such credit and shall impose a penalty equal to double the amount of such credit.

During test check of assessment records of Circle A, Bhiwadi it was noticed (September 2019) that two dealers purchased goods amounting to ₹ 62.09 crore within the State at the prescribed tax rates and availed ITC of ₹ 3.23 crore on entire purchase of taxable goods during 2016-17. This included purchase of furnace oil of ₹13.46 crore, on which an ITC of ₹ 0.74 crore was claimed. The dealers consigned goods worth 74.55 *per cent* and 75.74 *per cent* respectively of their total turnover outside the state by way of branch transfer. Hence out of the total ₹ 13.46 crore worth of furnace oil, ₹ 10.11 crore worth of oil was used as a raw material in the manufacture of goods which were consigned outside the state.

Since part of the purchased goods was used as raw material in manufacturing of goods and such manufactured goods were consigned outside the State, the dealers could have availed the ITC only to the extent (*i.e.* tax paid in excess of 4 *per cent*) as prescribed by notification dated 31 March 2006 *ibid*. This means ITC of ₹ 0.33 crore was claimable on the furnace oil. The assessing authority, however, while finalising the assessments (December 2018) could not detect the irregularity and allowed ITC of ₹ 0.74 crore as claimed by the dealers. This resulted in irregular allowance of ITC of ₹ 0.41 crore on purchase of furnace oil besides leviable interest of ₹ 0.20 crore.

The omission was reported to the Government (June 2020). The Government replied (August 2020) that demand of the entire amount of ₹ 0.61 crore was raised, out of which, ₹ 0.05 crore¹ had been recovered and stay had been granted against the remaining demand by the appellate authority. Further progress is awaited (March 2021).

¹ ₹ 3.12 lakh from one dealer and ₹ 2.00 lakh from another.

2.4.2 Non-reversal of excess Input Tax credit

Irregular allowance of Input Tax Credit on the goods sold at subsidized price

According to section 18(3)(A) of RVAT Act, 2003, notwithstanding anything contained in this Act, where any goods purchased in the State are subsequently sold at subsidized price, the input tax allowable under this sub-section in respect of such goods shall not exceed the output tax payable on such goods.

During test check of the assessment records of three circles², it was noticed (between October 2019 and March 2020) that three dealers purchased goods in the state and subsequently sold them at subsidized prices.

However, the assessing authorities while finalising the assessments did not reverse the excess ITC and allowed the ITC as claimed by the dealers. This resulted in irregular allowance of ITC of ₹ 0.37 crore.

The omission was reported to the Government (August 2020). The Government replied (October 2020) that in two cases, ₹ 0.22 crore had been adjusted against the available ITC of previous years and ₹ 0.04 crore³ had been recovered, while notice had been issued in the remaining case. Further progress is awaited (March 2021).

2.4.3 Non-levy of tax

Non-levy of reverse tax on purchase return

According to Section 17 of RVAT Act, 2003, the net tax payable by a registered dealer for a tax period shall be calculated as per the prescribed formula⁴. Section 18 of the RVAT Act provides that ITC shall be allowed to registered dealers in respect of purchases of any taxable goods made within the State from a registered dealer to the extent and in such manner as may be prescribed. Further, Section 2 (33) of RVAT Act provides that the ITC availed in contravention of provisions of Section 18 will be reversed.

During test check of assessment records of four circles⁵ it was noticed that eleven dealers declared purchase return in their quarterly returns (VAT-10) during the years 2014-15 to 2016-17.

However, the assessing authorities while finalising the assessments of these dealers (between January 2017 and January 2019) failed to take these purchase return into account resulting in non-levy of reverse tax of ₹ 2.15 crore.

The omission was reported to the Government (September 2020). The Government replied (October 2020) that demand of ₹ 1.50 crore was raised in respect of ten cases, of which ₹ 1.03 crore had been adjusted from the excess ITC of previous

2 Circle-L, Jaipur, Circle-B, Bikaner and Circle-B, Ajmer

3 Including interest of ₹ 0.16 lakh

4 $T = (O+R+P) - I$ where T is net tax payable; O is amount of output tax; R is amount of reverse tax; P is the amount of tax payable under sub-section (2) of Section 4 and I is the amount of input tax.

5 Circle-L Jaipur, Special Circle-V, Jaipur, Special Circle-VII, Jaipur and Circle-A, Hanumangarh.

years while notice was issued in the remaining case⁶. Further progress is awaited (March 2021).

2.4.4 Excess carry forward of the VAT credit balance

The Assessing Authority failed to add the reverse tax liability for calculating the total tax liability and erroneously carried forward the excess amount under VAT for adjustment of CST dues

As per Section 17(1) of RVAT Act, 2003, the net tax payable by a registered dealer for a tax period shall be calculated by adding reverse tax in output tax and subtracting input tax credit. Sub-section (2) of this section further provides that where the net tax payable under sub-section (1) has a negative value the same shall be first adjusted against any tax payable or amount outstanding under the CST Act, 1956

During test check of assessment records of Office of the Assistant Commissioner, Special Circle-I, Bhiwadi, it was noticed (September 2019) that a dealer declared his total tax liability by adding reverse tax of ₹ 0.45 crore in output tax for his returns during the year 2016-17. The Assessing Authority (AA) while rectifying (May 2019) the assessment of the dealer, failed to add the reverse tax liability for calculating the total tax liability of the dealer and carried forward the excess paid amount under VAT for adjustment of the CST dues. On being pointed out, the AA rectified the VAT assessment (September 2019) and added the reverse tax of ₹ 0.45 crore in total tax liability but did not increase the CST dues proportionately.

The omission was reported to the Government (June 2020). The Government replied (July 2020) that the AA had rectified the assessment (September 2019) by giving impact of reverse tax liability and increased the CST dues by ₹ 0.42 crore (from ₹ 0.97 crore to ₹ 1.39 crore), while the remaining ₹ 0.03 crore was adjusted from the excess ITC of previous year carried forward. Further, interest amount on revised CST dues had also been increased by ₹ 0.12 crore. It was also stated that demand is outstanding due to ITC mismatch and non-submission of declaration forms for which action is being taken as per rules. Further progress is awaited (March 2021).

2.4.5 Irregular allowance of Input Tax Credit

Assessing Authority allowed Input Tax credit on inadmissible item which resulted in loss of revenue to the Government

According to sub-section (1)(e) of Section 18 of the RVAT Act, Input Tax Credit (ITC) shall be allowed to registered dealers in respect of purchase of any taxable goods made within the State from a registered dealer for being used as raw material in manufacturing of goods. Further, according to section 2(22) of the Act, *manufacture* includes every processing of goods which brings into existence a commercially different and distinct commodity.

⁶ Special Circle-V, Jaipur.

During test check of assessment records of Office of the Assistant Commissioner, Commercial Taxes, Special Circle 1, Ajmer, it was noticed (October 2019) that a dealer, who was involved in the business of mining of limestone and manufacturing of cement, purchased explosives worth ₹ 1.77 crore and ₹ 1.92 crore within the state and claimed ITC of ₹ 0.26 crore and ₹ 0.28 crore on the purchases during the years 2015-16 and 2016-17 respectively. Mining activity does not fall under the definition of *manufacture* as per section 2(22) of the Act. In addition, explosives cannot be used as raw material in the manufacture of cement. Therefore, ITC on the purchase of explosives should not have been allowed to the dealer.

However, the assessing authorities, while finalizing the assessment of the dealer (March 2018 and December 2018) did not detect the irregularity which resulted in irregular allowance of ITC of ₹ 0.54 crore, besides interest of ₹ 0.26 crore.

The matter was reported to the Government (September 2020). The Government replied (October 2020) that demand of ₹ 0.80 crore⁷ had been raised, which has been stayed by the appellate authority. Further progress is awaited (March 2021).

2.5 Non-levy of tax on Taxable turnover

The dealer submitted returns with ‘nil’ turnovers for the years 2015-17, but in reality, sold goods to other registered dealers and collected tax, for which tax liability was not assessed resulting in non-levy of tax.

As per Rule 19 (5) of the Rajasthan VAT Rules, 2006, quarterly return shall be submitted by the dealers along with statement of purchases in Form VAT-07A and statement of sales in Form VAT-08A.

During test check of assessment records of Office of the Assistant Commissioner, Circle- Spl-I, Kota, it was noticed (January 2020) that a dealer had submitted returns with ‘nil’ turnovers for the years 2015-17. Further, scrutiny of the report generated through *RajVISTA* disclosed that the dealer sold goods worth ₹ 7.36 crore to other registered dealers during 2015-17 and collected tax of ₹ 0.40 crore.

The assessing authority, however, while finalizing the assessments (February 2018 and September 2018) could not detect the irregularity and did not utilize the information available on *RajVISTA*. This resulted in non-levy of tax amounting to ₹ 0.40 crore and interest ₹ 0.20 crore (upto March 2020).

The omission was reported to the Government (June 2020). The Government replied (July 2020) that demand for entire amount had been raised. Further progress is awaited (March 2021).

⁷ Tax = ₹ 0.54 crore and Interest = ₹ 0.26 crore

2.6 Non-levy of Tax

Nil assessment of dealer having taxable turnover

Section 4(1) of RVAT Act, 2003 provides that tax is levied on the taxable turnover of the dealer as per the rate prescribed in the schedules appended to the Act.

During test check of assessment records of Office of the Assistant Commissioner, Circle-A, Hanumangarh, it was noticed (November 2019) that a dealer had disclosed gross turnover of ₹ 13.16 crore in its return for the year 2016-17 for which the tax payable was ₹ 0.29 crore. However, the assessing authority passed an assessment order (December 2018) for 'nil' tax.

This resulted in non-levy of tax amounting to ₹ 0.29 crore besides interest of ₹ 0.14 crore (upto March 2020).

The omission was reported to the Government (July 2020). The Government replied (August 2020) that the dealer had executed the works contract against Exemption Certificate (EC) for which taxable goods had been purchased from outside the State. Consequently, assessment order was revised (July 2020) and total demand of ₹ 0.45 crore was raised which was partly adjusted against the TDS of ₹ 0.11 crore and available ITC of ₹ 0.06 crore. Further progress is awaited (March 2021).

2.7 Non-imposition of penalty for misuse of declaration forms

Assessing Authority did not impose penalty for misuse of declaration forms which resulted in loss of revenue to the Government

According to Section 10A read with Section 10(d) of Central Sales Tax Act, 1956, if any person, after purchasing any goods for any of the purposes specified in Section 8(3)(b)⁸ fails to make use of the goods for any such purpose specified, the authority who granted to him a certificate for registration under this Act, may impose upon him by way of penalty a sum not exceeding one and half times the tax leviable under Section 8(2) of the Act in respect of sale to him of the goods.

During test check of assessment records of Office of the Assistant Commissioner, Commercial Taxes Department, Circle-A, Udaipur, it was noticed (August 2019) that a dealer engaged in the business of operating bar and restaurants, purchased goods *i.e.* air conditioner, refrigerator and tiles valued ₹ 0.60 crore from other States against declaration form 'C' during the year 2016-17. These goods were not used by the dealer for the purposes as specified in Section 8(3) (b). The dealer was, therefore, liable for a penalty of ₹ 0.13 crore *i.e.* one and half time of tax leviable at the rate of 14.5/15 *per cent* as applicable. The assessing authority, while finalising (December 2018) the assessments of the dealer, did not impose the prescribed penalty of ₹ 0.13 crore.

8 Purposes of purchase by registered dealer as specified in Section 8(3)(b) of Central Sales Tax Act, 1956 are for re-sale by him or for use by him in the manufacture or processing of goods for sale or in the tele-communications network or in mining or in the generation or distribution of electricity or any other form of power.

The omission was reported to the Government (August 2020). The Government replied (October 2020) that demand of ₹ 0.13 crore was raised, which has been stayed by the appellate authority. Further progress is awaited (March 2021).

2.8 Non-levy of tax on inter-state purchases

Non-levy of tax on inter-state purchase of goods utilised in execution of works under Exemption Certificate

According to condition 5.1 (a) of the Notification No. F.12 (23) FD/Tax/2015-206 dated March 9, 2015, the dealer, who has opted for payment of exemption fee in lieu of tax under option A of clause 1, shall purchase taxable goods within the state from the registered dealer of the State for the execution of works contract. Further, condition 5.1 (b) provides that in case such dealer, procures or purchases any goods in any manner other than the manner as provided in condition 5.1(a), he shall, in addition to the exemption fee, be liable to pay an amount equal to the amount of tax that would have been payable had the goods been purchased in the State from a registered dealer.

Scrutiny of the information available on the departmental web-application *RajVISTA* disclosed that in three circles⁹, six dealers purchased goods¹⁰ amounting to ₹ 5.22 crore from outside the state during the years 2015-16 to 2017-18. These goods were utilised in the execution of the works for which Exemption Certificate was granted under option 'A' as mentioned above. Therefore, VAT amounting to ₹ 0.39 crore at the rate of 5/5.5/14.5 *per cent* was leviable on these goods in addition to exemption fee. However, while finalising the assessment of the dealers, the assessing authorities did not levy tax on these goods. This resulted in short levy of tax amounting to ₹ 0.39 crore besides interest of ₹ 0.15 crore (upto March 2020).

The omission was pointed out to the Government (September 2020). The Government replied (October 2020) that demand had been raised in all the cases, of which, ₹ 13.27 lakh had been recovered/ adjusted in respect of three dealers and efforts were being made for the recovery from remaining dealers. Further progress is awaited (March 2021).

2.9 Short/Non-levy of Entry Tax

Short/Non-levy of Entry Tax on specified goods

According to notifications dated 9 March 2011, 14 July 2014 and 9 March 2015 under section 3(1) of the Tax on Entry of Goods into Local Area Act, 1999, the State Government notified the tax payable by a dealer in respect of the specified goods brought into any local area for consumption or use or sale at such rates as given in the notification.

9 Works Tax-I, Jaipur, Circle, Karauli and Circle, A Hanumangarh.

10 Pipe and fitting, bitumen, iron sheet, steel structure, wire, cable tray, kit ply, aluminium, panel, MS steel tubes, paints, machine MS flat etc.

During test check of entry tax assessment records with VAT assessment records of 15 Commercial Taxes Offices¹¹, it was noticed that 29 dealers purchased goods worth ₹ 133.45 crore from outside the state during 2014-15 to 2017-18. The dealers had not mentioned the sale of these goods in their respective VAT returns which indicated that the goods were used for consumption or in business due to which entry tax was leviable on these goods. Complete information regarding purchase of goods was available on the web-based application *RajVISTA* and accessible to all assessing authorities (AAs). However, the concerned AAs while finalizing the entry tax assessment of these dealers did not utilize the information available to impose entry tax and plug the revenue leakage. This resulted in short/non-levy of entry tax of ₹ 2.87 crore and interest of ₹ 1.63 crore.

The omission was reported to the Government (September 2020). The Government replied (January 2021) that demand of ₹ 2.86 crore¹² has been raised in 20 cases, out of which, ₹ 0.76 crore¹³ has been recovered in 11 cases while notices have been issued in nine cases. Further progress is awaited (March 2021).

2.10 Audit of Goods and Services Tax

The various functions related to Goods and Services Tax (GST) are performed through GSTN IT platform and hence to fulfil the CAG's Constitutional mandate, it is essential for Audit to transition from sample checks based on physical records to comprehensive check of the digital records of all the transactions. However, despite repeated requests the State Government did not provide access to the GST data overlooking the constitutional provisions (Article 149) and the Section 18 of the Duties, Powers & Conditions of the Service of CAG Act 1971. As a result, only limited audit checks of GST refunds could be conducted. The audit observation is based on physical copies of certain documents made available for audit. Comprehensive audit of GST receipts of the state in line with the Constitutional and Statutory provisions requires access to GST backend system of the State Tax Department. The Government of India's decision to provide access to Pan-India data at GSTN premises was conveyed on 22nd June, 2020. The administrative action to provide access to GST system was initiated by Government of Rajasthan in November, 2020 and access was provided by December 2020.

2.10.1 Results of Audit

Audit conducted test check of cases of refunds sanctioned under GST, a process which was manual till September 2019. In Rajasthan, 7815 refund cases were sanctioned between July 2017 and March 2019. During 2019-20, in the selected 40 departmental units, Audit examined 265 refund cases (10.54 per cent), out of 2,514 sanctioned refund cases and observed instances of irregular sanction of refunds of ₹ 1.50 crore in respect of six taxpayers (2.26 per cent). The State Government admitted the audit observation in all the cases and reported complete recovery of ₹ 0.18 crore in five cases. One illustrative case is discussed below:

11 Offices of the A.C. Circle Spl.- Pali, Spl. -I, Jodhpur, N, Jaipur, Spl. Bikaner, B-Bikaner, B-Jodhpur, Spl-1 Bhiwadi, L-Jaipur, J-Jaipur, WT-I & II Jaipur, Spl-VII Jaipur, Churu, A-Sriganganagar and A-Jaipur.

12 Tax = ₹ 1.90 crore, Interest = ₹ 0.96 crore

13 Tax = ₹ 0.60 crore, Interest = ₹ 0.16 crore

2.10.2 Irregular allowance of refund

Irregular refund of unutilised Input Tax Credit under Goods and Services Tax

The Central Government *vide* notification No. 15/2017- Central Tax (Rate) dated 28 June 2017 and No. 12/2017- Integrated Tax (Rate) dated 28 June 2017 notified that no refund of Input Tax Credit (ITC) shall be allowed under sub-section (3) of Section 54 of the Central Goods and Services Tax (GST) Act, in case of supply of services specified in sub-item (b) of item 5 of Schedule II of the Central GST Act¹⁴. The State Government notified the same under Rajasthan GST (RGST) Act *vide* notification no. F. 12(56) FD/Tax/2017-Pt.-I-53 dated 29 June 2017.

Scrutiny of the records of Office of the Assistant Commissioner, Circle-L, Jaipur revealed (October 2019) that a taxpayer claimed refund of unutilised ITC under Section 54(3) of the Central/Rajasthan GST Act, 2017 for the months of September-November 2017, and February-November 2018, amounting to ₹ 0.91 crore¹⁵ during the year 2018-19. Since the services provided by the taxpayer *i.e.* construction of roads, bridges etc., qualify as 'Supply of Service' under item 5(b) of Schedule II of Central/State GST Act, the taxpayer was, therefore, not eligible to claim refund of unutilized ITC. The Jurisdictional Officer, however, allowed the refund as claimed by the taxpayer.

This resulted in irregular refund amounting to ₹ 0.91 crore besides interest leviable on this amount under Section 50 of the RGST Act.

The omission was reported to the Government (September 2020). The Government replied (January 2021) that demand of ₹ 1.32 crore (tax ₹ 0.91 crore, interest ₹ 0.32 crore and penalty ₹ 0.09 crore) had been raised.

14 Supply of Service: 'construction of a complex, building, civil structure or a part thereof including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation whichever is earlier'.

15 IGST: ₹ 30.31 lakh, CGST: ₹ 30.36 lakh and SGST: ₹ 30.36 lakh.