



## **Chapter II**

## Chapter-II

### VAT on Sales, Trade, etc. and Goods and Services Tax

#### 2.1 Tax Administration

On introduction of Goods and Services Tax (GST), the organisational set-up of the Commercial Taxes Department (CTD) continued as in the Value Added Tax (VAT) regime. The erstwhile Local VAT Offices (LVOs) were re-designated as Local GST Offices (LGSTOs), erstwhile VAT Sub-Offices (VSOs) were re-designated as Sub GST Offices (SGSTOs) and the Audit Offices continued as such. The applicable laws and Rules are administered at the Government level by the Additional Chief Secretary, Finance Department. The Commissioner of Commercial Taxes (CCT) who is the head of the Commercial Taxes Department is assisted by 14 Additional Commissioners. There are 13 Divisional Offices, 13 Appeal Offices, 13 Enforcement/Vigilance Offices and one Minor Acts Division in the State managed by 42 Joint Commissioners (JCCTs). There are 123 Deputy Commissioners (DCCTs), 321 Assistant Commissioners (ACCTs) and 526 Commercial Tax Officers (CTOs) in the State. At the field level, the tax is being administered through 118 Local GST Offices and Sub GST Offices headed by ACCTs and CTOs respectively. The DCCTs, ACCTs and CTOs head 266 Audit Offices where assessments/re-assessments are finalised by the Department.

#### 2.2 Internal Audit

As per the information furnished by the Department, the Internal Audit Wing is functioning from the year 2011-12. During the year 2019-20, 317 Offices were due for audit, of which, 65 Offices were audited. Year-wise details of the number of objections raised, settled and pending along with tax effect, as furnished by the Department, are given in **Table 2.1**.

**Table 2.1**  
Year-wise details of observations raised by IAW

(₹ in crore)

Year	Observations raised		Observations settled		Observations pending	
	Number of cases	Amount	Number of cases	Amount	Number of cases	Amount
2015-16	9161	288.45	987	6.98	8174	281.47
2016-17	3429	140.85	44	1.23	3385	139.62
2017-18	2339	21.90	102	6.85	2237	15.05
2018-19	2554	47.69	144	2.76	2410	44.93
2019-20	6383	39.22	48	0.26	6335	38.96
<b>Total</b>	<b>23866</b>	<b>538.11</b>	<b>1325</b>	<b>18.08</b>	<b>22541</b>	<b>520.03</b>

As seen from the table, 22,541 cases involving ₹ 520.03 crore were pending for settlement as on 31 March 2020. Early action may be taken to settle pending observations.

#### 2.3 Goods and Services Tax (GST)

Goods and Services Tax, a multistage and destination-based tax, came into effect from 1 July 2017 after enactment of the Karnataka State Goods and Services Tax Act, 2017 on 27 June 2017. A few relevant aspects relating to

GST registrations and the filing pattern of monthly GSTR-3B return have been given below:

### 2.3.1 GST Registrations

The category-wise registrations under GST have been given in table 2.2 below.

**Table 2.2**  
**GST Registrations**

Category of Registrant	Number of Registrants	Percentage of total
Normal taxpayers	735620	84.86
Composition taxpayers	110780	12.78
Tax Deductors at Source	15366	1.77
Tax Collectors at Source	630	0.07
Input Service Distributors	779	0.09
Others (Casual, NRTP, OIDAR)	3708	0.43
<b>Total Registrants</b>	<b>8,66,883</b>	

Source: Figures furnished by the Department

The total registrations under GST as on 31 March 2020 were 8.67 Lakh, of which normal taxpayers accounted for 84.86 *per cent* and composition taxpayers were around 12.78 *per cent*.

### 2.3.2 GST Return filing pattern

#### 2.3.2.1 Filing pattern of GSTR 3B

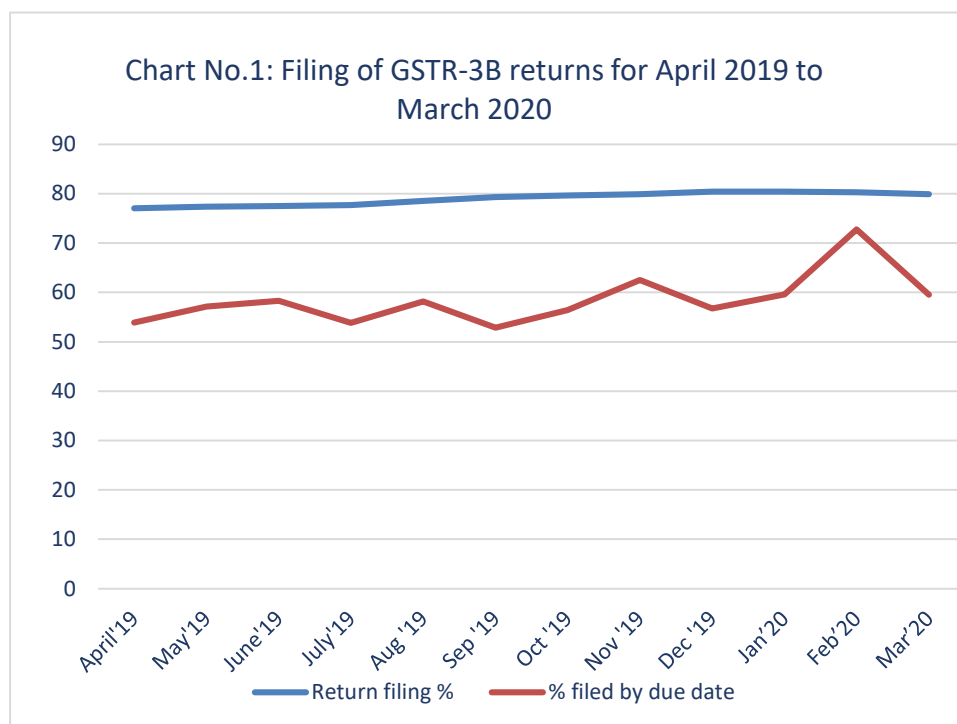
The trends of filing of GSTR-3B<sup>8</sup> for the period from April 2019 to March 2020, as per the figures furnished by the Department, have been depicted in Table 2.3 below.

**Table 2.3**  
**Filing pattern of GSTR-3B**

GSTR-3B					
Months	Due for filing	Returns filed	Return filing per cent	Returns filed by due date	Percent filed by due date
April'19	811705	625231	77.03	437278	53.87
May'19	813675	629375	77.35	464949	57.14
June'19	818270	634076	77.49	476844	58.27
July'19	825571	641552	77.71	444574	53.85
Aug '19	824120	647061	78.52	479447	58.18
Sep '19	822011	651931	79.31	434314	52.84
Oct '19	826873	658570	79.65	466528	56.42
Nov '19	832137	664670	79.88	520356	62.53
Dec '19	836248	672241	80.39	474347	56.72
Jan'20	840887	676231	80.42	501365	59.62
Feb'20	844900	678180	80.27	614615	72.74
Mar'20	847997	677706	79.92	504637	59.51

<sup>8</sup> GSTR-3B return is a monthly self-declaration, to be filed by a registered GST taxpayer, consisting details regarding outward supplies, input tax credit, payment of tax etc.

The filing of GSTR-3B on an average for the year 2019-20 was 78.99 per cent. It was noticed that GSTR-3B returns were filed within the due date on an average by only 58.47 per cent.



## 2.4 Results of Audit

There are 430 auditable units in the Commercial Taxes Department. Out of these, audit selected 134 units for test-check wherein 4.55 lakh assessments were finalised. Out of these, Audit test-checked 2.37 lakh dealers (52.08 per cent) during the year 2019-20 and noticed 12,658 cases (5.34 per cent of audited sample) of non/short-levy of tax, non/short payment of tax as per Form VAT 240, non-levy of tax on sale of liquor, non/short-levy of tax on works contract receipts, non/short-levy of penalties and interest, non-follow-up on payments, incorrect/excess allowance of input tax credit and non-observance of provisions of Acts/Rules, etc., in 126 units involving an amount of ₹ 280.58 crore. These cases are illustrative only as these are based on test-check of records. The observations broadly fell under the following categories as given in **Table 2.4**.

**Table 2.4**  
Results of Audit

(₹. in crore)

Sl. No.	Category	No. of Paragraphs	No. of cases	Amount
<b>I</b>	<b>Value Added Tax</b>			
1	Non/ short payment of tax as per VAT-240	36	102	5.95
2	Non/ short levy of tax	149	209	51.19
3	Non levy of tax on sale of liquor	21	57	15.34
4	Non/short levy of penalties (Under Sections 72(1), 72(2) & 74(4) of KVAT Act)	137	9982	49.58
5	Non/short levy of interest	29	127	2.97
6	Not-Acknowledged Returns	37	372	11.62

7	Incorrect/ excess allowance of Input Tax Credit (ITC)	86	149	13.40
8	Excess carry forward of credit	29	39	2.59
9	Non/short-levy of tax on works contract receipts, incorrect allowance of sub-contractor payments etc.	44	64	31.97
10	Incorrect/excess refund	26	28	4.77
11	Non-levy/payment of tax on URD purchases	23	35	1.58
12	Incorrect credit taken as Transitional Credit to GST	13	19	3.93
13	Non/short declaration of output tax (e-UPASS)	41	1053	60.86
14	Other irregularities including non-filing of TDS	91	418	24.62
	<b>Total</b>	<b>762</b>	<b>12,654</b>	<b>280.37</b>
<b>II Entry Tax (KTEG)</b>				
15	Non/short levy of Entry Tax/interest	4	4	0.21
	<b>Grand total</b>	<b>766</b>	<b>12,658</b>	<b>280.58</b>

During the course of the year, the Department reported recovery of ₹ 17.15 crore in 417 paragraphs that were pointed out in the earlier years.

A few illustrative cases of non/short-realization of VAT, penalty and interest involving ₹ 61.19 crore are discussed in the following paragraphs.

### 2.5 Non-levy of penalty under section 72(1) of the KVAT Act

According to Section 35 (1) of the KVAT Act, 2003, every registered dealer shall furnish a return and shall pay tax due on such return within twenty days (or fifteen days<sup>9</sup>) after the end of the preceding month or any other tax period as may be prescribed.

Section 72(1) of KVAT Act, 2003 states that a dealer who fails to furnish a return or who fails to pay the tax due on any return furnished as required under the Act shall be liable to pay together with any tax or interest due, a penalty equal to:

- five *per cent* of the amount of tax due or ₹ 50 whichever is higher, if the default is not for more than 10 days; and
- ten *per cent* of the tax due, if the default is for more than 10 days.

During test-check of returns (1.26 lakh) pertaining to 4,704 assesseees (3.70 *per cent*) out of 1.27 lakh assesseees in 23 Local GST Offices (LGSTOs) in eight districts<sup>10</sup> between October 2019 and June 2020, Audit noticed that 208 assesseees (4.42 *per cent* of the audited sample) had filed 1324 returns for the years 2013-14 to 2017-18 in which tax of ₹ 89.63 crore was paid belatedly, i.e. beyond 20 days after the expiry of the applicable tax period. Though all these cases attracted penalty under Section 72(1) of the Act, it was neither paid by the assesseees nor was any effort made by the Officers concerned to impose the same. This has resulted in non-levy of penalty of ₹ 5.73 crore.

It is pertinent to note here that basic checks on the returns filed by the dealers are not exercised by the Department and hence the belated payments of taxes go unnoticed, escaping levy of penalty.

<sup>9</sup> In case of dealers opted for paying tax under Composition Scheme.

<sup>10</sup> Belagavi, Bengaluru, Dharwad, Mangaluru, Mysuru, Raichur, Uttara Kannada and Yadgir.

After these cases were brought to the notice of the Department in June 2020, an amount of ₹ 7.61 lakh was collected in six cases, notices were issued in five cases amounting to ₹ 5.12 lakh, orders were passed in 17 cases amounting to ₹ 1.27 crore and reassessment order was passed in one case amounting to ₹ 1.28 lakh. Replies are awaited in remaining 179 cases (April 2021).

*It is recommended that the Department may adhere to stricter implementation of penal provisions for delay in payment of taxes.*

## 2.6 Short-levy of tax on sale of liquor

According to Section 4 (1) (a) (ii) of the Karnataka Value Added Tax (KVAT) Act, 2003, every registered dealer shall be liable to pay tax on his taxable turnover at the rate of five and one half *per cent* on sale of goods mentioned in the Third Schedule of the Act. Under Section 5 (1) of the KVAT Act, 2003, tax shall be exempt for the sale of goods specified in First Schedule of the said Act. As per the First Schedule of the KVAT Act, 2003, tax payable on sale of liquor including beer, fenny, liqueur and wine was exempted.

The Government vide Notification<sup>11</sup> of 28 February 2014 removed exemption of tax payable on sale of liquor and introduced Value Added Tax (VAT) at the rate of five and one half *per cent* on sale of liquor by CL-9 licensees<sup>12</sup> i.e. Bar and Restaurants situated in areas coming under Bruhat Bangalore Mahanagara Palike, City Municipal Corporation, City Municipal Council and Town Municipal Council or Town Panchayat and CL-7 licensees<sup>13</sup> i.e. Hotel and Boarding houses with effect from 1 March 2014. The aforesaid Notification was amended on 21 April 2014<sup>14</sup>, where tax on sale of liquor by CL-9 licences situated in rural areas was exempted.

During test-check of records of 379 CL-9 and CL-7 licensees (Audited sample-100 per cent) in 14 Local GST Offices in seven<sup>15</sup> Districts between November 2019 and March 2020, Audit noticed that in respect of 30 licensees (7.91 *per cent*) (Bar and Restaurants situated in urban areas, Hotel and Boarding houses), the turnover of sale of liquor for the period from March 2014 to March 2017 was ₹ 71.85 crore. Tax payable at the rate of five and one half *per cent* amounted to ₹ 3.95 crore, of which only ₹ 0.31 crore was paid. This resulted in non-payment of tax of ₹ 3.64 crore. Further penalty and interest under Sections 72(2) and 36 of KVAT Act, 2003, amounted to ₹ 0.36 crore and ₹ 2.15 crore respectively.

Hence, total non-payment of tax including penalty and interest works out to ₹ 6.15 crore. Though the tax on sale of liquor by Bars and Restaurants situated in urban areas and by Hotel and Boarding houses was to be levied with effect from 1 March 2014, the Department did not take action to verify whether the taxes were getting paid from all the dealers concerned.

<sup>11</sup> Notification No. FD 21 CSL 2014 (II) dated 28 February 2014.

<sup>12</sup> CL-9 licence is given by the Excise Department for sale of liquor in Bar and Restaurants.

<sup>13</sup> CL-7 licence is given by the Excise Department for sale of liquor in Hotel and Boarding Houses.

<sup>14</sup> Notification No. FD 41 CSL 2017, Bangalore dated 21 April 2014.

<sup>15</sup> Bengaluru, Chitradurga, Davanagere, Koppal, Mandya, Raichur and Yadgir.

After these cases were brought to the notice of the Department during June and December 2020, reassessment orders were passed in 15 cases and amount of ₹ 3.41 crore was demanded. In one case, wherein three years were objected, recovery proceedings initiated with respect to two years amounting to ₹ 0.24 crore and another year was forwarded for review. Replies are awaited in remaining 14 cases (April 2021).

*It is recommended that the Department may review all such cases in the other Districts as well and demand taxes wherever they are not paid.*

## **2.7 Incorrect/Excess claim of Transitional Credit**

As per Section 140(1) of KGST Act, 2017, a registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of Value Added Tax (VAT) credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day (1 July 2017), furnished by him under the existing law in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:

- i. where the said amount of credit is not admissible as input tax credit under this Act; or
- ii. where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date;
- iii. Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as VAT credit under the existing law and is also admissible as input tax credit under this Act.

Audit conducted a test-check of records of 358 assesseees (25.05 per cent), who had claimed transitional credit of ₹ 30.91 crore, out of 1,429 assesseees in eight<sup>16</sup> Local GST Offices (LGSTOs) in five districts<sup>17</sup> between April 2019 and March 2020. It was noticed that 16 assesseees (4.47 per cent of the audited sample) had claimed transitional credit of ₹ 3.71 crore in their TRAN-1 forms. However, a check of VAT returns, Audited Statement of Accounts filed in Form VAT-240, filing or otherwise of TDS certificates and re-assessment orders in these cases revealed that these dealers were eligible to claim transitional credit of only ₹ 1.05 crore. This resulted in incorrect/ excess claim of transitional credit of ₹ 2.66 crore.

After these cases were brought to the notice of the Department and Government between November to December 2020, an amount of ₹ 0.68 crore was collected in three cases. Replies are awaited in the remaining 13 cases.

*It is recommended that the CTD should consider reviewing all cases and detect cases where transitional credit has been availed incorrectly.*

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<sup>16</sup> LGSTO-60-Bengaluru, LGSTO-70-Bengaluru, LGSTO-75-Bengaluru, LGSTO-140-Bengaluru, LGSTO-195-Mysuru, LGSTO-230-Sagar, LGSTO-260-Mangaluru and LGSTO-535-Sindhanuru.

<sup>17</sup> Bengaluru, Mangaluru, Mysuru, Raichur and Shivamogga.



## 2.8 Short-levy of tax due to incorrect allowance of sub-contractor payments

According to Section 4 (1) (c) of the Karnataka Value Added Tax (KVAT) Act, 2003, tax shall be levied in respect of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contracts at the rates specified in the Sixth Schedule of the Act. Section 15(1) of the KVAT Act, 2003 provides that a dealer who executes works contract may elect to pay, in lieu of the net amount of tax payable by him under this Act, by way of composition at the specified rate on the total consideration for the works contracts executed.

As per Rule 3(2) of KVAT Rules, 2005 the taxable turnover shall be determined by allowing the deductions from the total turnover as prescribed in clauses (a) to (m). Rule 3(2) (i-1) of the KVAT Rules provides for deduction of all amounts paid or payable to sub-contractors as the consideration for execution of works contract whether wholly or partly, provided that no such deduction shall be allowed unless the dealer claiming deduction produces document in proof that the sub-contractor is a registered dealer liable to pay tax under the Act and that the turnover of the such amounts is included in the return filed by such sub-contractor.

During test-check of 245 out of 4,886 (5.01 *per cent*) records of seven Local GST Offices (LGSTOs) in six<sup>18</sup> Districts between August 2019 and January 2020, Audit noticed 13 cases (5.31 *per cent*) in which the civil works contractors had claimed deduction of ₹ 46.71 crore in turnover towards sub-contractor payments for the tax periods 2015-16 to 2017-18 (upto June 2017).

On cross-verification of returns filed by these works contractors with those filed by related sub-contractors, it was noticed that a turnover aggregating ₹ 25.64 crore only was declared in the returns filed by the sub-contractors as against ₹ 46.71 crore claimed as exemption by the works contractors in their returns, in contrary to Rule 3(2)(i-1) of KVAT Rules. This resulted in excess allowance of sub-contractor turnover of ₹ 21.07 crore and consequent short-levy of tax of ₹ 0.84 crore. Besides, penalty of ₹ 0.06 crore and interest of ₹ 0.26 crore was also leviable. Total liability worked out to ₹ 1.16 crore.

After these cases were brought to the notice of the Department in December 2020, Reassessment orders were passed in three cases and tax of ₹ 0.20 crore was demanded Replies are awaited in remaining 10 cases (April 2021).

*It is recommended that the Department may consider verification of claims of works contractors vis-à-vis sub-contractors, as a risk parameter for selection of cases for detailed scrutiny.*

## 2.9 Incorrect/Excess adjustment of credit amount

According to Section 10 of the KVAT Act, 2003, the tax payable by a dealer under the Act on sale is called 'Output Tax' while the tax paid by the dealer on purchases is called 'Input Tax'. A dealer is liable to pay the net tax after setting off input tax paid against output tax payable.

<sup>18</sup> Belagavi, Bengaluru, Hubballi, Mangaluru, Tumakuru, and Uttara Kannada.



The said provision of the KVAT Act, 2003, also stipulates that “where the input tax deductible by a dealer exceeds the output tax payable by him, the excess amount shall be adjusted or refunded together with interest, as may be prescribed”. As per Rule 127 of the Karnataka Value Added Tax Rules, 2005, any dealer, whose input tax deductible exceeds the output tax payable by him as specified under sub-section (5) of Section 10 on the basis of the return submitted for any month or quarter during a year or where any dealer, in whose case the input tax deductible exceeds the output tax payable by him on the basis of any final return submitted under sub-section (4) of Section 27, such dealer may, adjust such amount towards the tax payable by him under this Act or the Central Sales Tax Act, 1956.

Test check of records of 21,643 out of 24,270 (89.17 per cent) in 10 Offices (eight Audit Offices, one LGSTOs and one Admin Office) in four<sup>19</sup> districts were conducted between April 2019 and March 2020. Audit cross verified the credit amounts brought forward and adjusted against the output tax liability by the dealers in their returns with respect to returns/revised returns filed by them for previous tax periods, advices given by auditors in Form VAT-240 and re-assessments concluded by the prescribed authorities.

The cross verification revealed that 12 dealers for the tax periods from 2010-11 to 2017-18 were eligible for input tax credit amounting to ₹ 0.83 crore, however, these dealers had adjusted input tax credit of ₹ 2.39 crore, resulting in excess adjustment of credit amount of ₹ 1.56 crore. Further, penalty (at 10 per cent) and interest (at 1.5 per cent) wherever applicable amounted to ₹ 0.12 crore and ₹ 0.99 crore respectively. Total liability amounted to ₹ 2.67 crore as detailed in table 2.5 below.

**Table 2.5**  
**Excess adjustment of credit amount**

(Amount in Rupees)									
Sl No.	Assessee TIN No	Tax period	Actual refund/ credit to be brought forward from previous month	Amount brought forward	Excess amount brought forward	Penalty	Delay Period (Months)	Interest	Total amount
1.	29860091301	2014-15	0	2168315	2168315	216832	64	2081582	4466729
In the re-assessment for the year 2013-14 vide order dated 30.03.2019 by ACCT(Audit)-2.5, Bengaluru, additional liability of tax of ₹ 39,86,036 was raised. Hence, there is no credit eligible to be carried forward to April 2014. However, the assessee had brought forward credit of ₹ 21,68,315 for the tax period April 2014 and same was not disallowed while passing Rectification order under Section 69(1) read with Section 39(1) for the tax period 2014-15 on 30.09.2019. This had resulted in excess adjustment of credit of ₹ 21,68,315 for the tax period April 2014.									
2.	29320622188	2014-15	3759358	4461767	702409	0	-	0	702409

<sup>19</sup> Ballari, Bengaluru, Chitradurga and Udupi.

	In the re-assessment order dated 24.04.17 under Section 39(1)(a) of KVAT Act for the year 2014-15, credit of ₹ 1,11,27,990 was allowed to be brought forward from March 2014 to April 2014. However, Audit scrutiny revealed that in the reassessment order dated 22.03.2018 for 2012-13, the carried forward amount was restricted to ₹ 37,59,358 but ₹ 44,61,767 was brought forward in VAT 100 for April 2013 and was also not restricted in order under Section 39(1) passed on 26.03.2019 for 2013-14. This had cumulative effect of excess carry forward of ₹ 7,02,409 for 2014-15.								
3.	29680563014	2012-13	0	283642	283642	28364	68	289315	601321
		2013-14	0	345429	345429	34543	79	409333	789305
	In the re-assessment order under Section 39(1)(a) for the year 2011-12 vide order dated 23.03.2018, additional liability of tax of ₹ 16,63,476 was raised. Hence, there was no credit eligible to be carried forward to April 2012. However, the assessee had brought forward credit of ₹ 2,83,642 for the tax period April 2012 and the same was not disallowed while passing re-assessment order for the tax period 2012-13 on 29.01.2018. This had resulted in excess adjustment of credit of ₹ 2,83,642 for the tax period April 2012. Further, as per re-assessment order of 2012-13, there was no credit to be carried forward to April 2013. However as per VAT-100 Return for the period April 2013, the assessee had carried forward ₹ 3,45,429, which resulted in excess carry forward of ₹ 3,45,429.								
4.	29391189357	2015-16	0	1338216	1338216	133822	52	1043808	2515846
	In the re-assessment for the year 2014-15 vide order dated 27.03.2019 by ACCT(Audit)-5.3,Bengaluru, additional liability of tax of ₹ 6,36,23,407 was raised. Hence, there is no credit eligible to be carried forward to April 2015. However, the assessee had brought forward credit of ₹ 13,38,216 for the tax period April 2015 and same was neither demanded by the assessing authority nor paid by the assessee. This had resulted in excess carry forward of credit of ₹ 13,38,216 for the tax period April 2015.								
5.	29700064714	2012-13	0	104935	104935	10494	70	66189	181618
	In the re-assessment order for 2012-13 passed on 16.03.2018, carry forward of credit of ₹ 1,04,935 from March 2012 to April 2012 was allowed. However in the re-assessment order for 2011-12 passed on 23.04.2018, additional demand of tax of ₹ 20,49,939 was raised and no proceedings of credit carried forward was discussed. Interest under Section 36 of KVAT Act had been levied on ₹ 63,037 which was payable for the month of April 2012 after disallowing the credit of ₹ 1,04,935.								
6.	29690075826	2011-12	1851958	3737537	1885579	188558	82	2319262	4393399
		2012-13	0	2788487	2788487	278849	62	2593293	5660629
	As per the reassessment order dated 6.4.2018 for the year 2011-12, the additional tax determined as payable for March 2012 was ₹ 1,65,71,116 and after deducting the amount of ₹ 1,50,83,434 paid in VAT 120 return and TDS of ₹ 8,84,785, the balance tax payable as per the reassessment order was worked out as ₹ 6,42,897. Though the amount of ₹ 27,88,487 was mentioned as carried forward to April 2012, the same was not added to the additional tax payable for March 2012. This had resulted in incorrect allowance of credit of ₹ 27,88,487 in the reassessment order passed for 2012-13 on 22.07.2017.								
7.	29070058416	2013-14	1026298	1071072	44774	4477	25	16790	66041
	As per re-assessment order dated 09.01.2015 for 2012-13, there was ₹ 10,26,298 credit to be carried forward to April 2013. However as per Re-assessment order dated 02.07.2015 for the year 2013-14 , the assessee was allowed to carry forward ₹ 10,71,072 which resulted in excess carried forward of ₹ 44,774.								
	29070058416	2014-15	0	1460690	1460690	146069	13	284835	1891594
	In the re-assessment for the year 2013-14 vide order dated 02.07.2016, the dealer was liable to an amount of ₹ 5,30,950 and there was no credit eligible to be carried forward to April 2014. However, the assessee had brought forward credit of ₹ 14,60,690 as per VAT 100 (Revised) for the tax period April 2014.								
8.	29440487971	2010-11	364105	1377454	1013349	0	-	0	1013349

	In the re-assessment for the year 2010-11 vide order dated 02.07.2015, assessee was allowed to carry forward input tax credit of ₹ 13,77,454 from previous year. However as per VAT-100 of March 2010 only credit of ₹ 3,64,105 was to be carried forward to next year.								
9.	29280470211	2011-12	1129248	1426459	297211	0	-	0	297211
	In the re-assessment for the year 2011-12 vide order dated 26.11.2015, assessee was allowed to carry forward input tax credit of ₹ 14,26,459 from previous year. However as per re-assessment order for the period 2010-11 dated 11.08.2010 only credit of ₹ 11,29,248 was carried forward to next year, resulting in excess carried forward of ₹ 2,97,211.								
10.	29271161099	Apr-15	153733	1413567	1259834	0	-	0	1259834
	In the rectification order dated 28.06.2019 under Section 69 of KVAT Act for the year 2014-15 by ACCT(Audit) 1, Ballari, the credit eligible to be carried forward to April 2015 was ₹ 1,53,733. However, as per the VAT-100 return the assessee had brought forward credit of ₹ 14,13,567 for the tax period April 2015. This has resulted in excess adjustment of credit of ₹ 12,59,834 for the tax period April 2015.								
11.	29720782406	2011-2012	0	672954	672954	0	-	0	672954
	In the re-assessment for the year 2011-12 vide order dated 11.04.2017 by DCCT(Audit)-Udupi, the credit brought forward from March 2011 was ₹ 6,72,954. However, it was noticed in the EFS that the assessee had claimed and taken refund of ₹ 6,72,954 for March 2011 tax period vide order No.97040 on 22.08 2013. This has resulted in excess adjustment of credit of ₹ 672954 for the tax period April 2011.								
12.	29940060702	2016-17	30393	1258635	1228242	122824	45	829063	2180129
	In the re-assessment for the year 2015-16 vide order dated 31.07.2019, the credit eligible to be carried forward to April 2016 was ₹ 30,393. However, as per the VAT-100 return the assessee had brought forward credit of ₹ 12,58,635 for the tax period April 2016. This had resulted in excess adjustment of credit of ₹ 12,28,242 for the tax period April 2016.								
<b>Total</b>			<b>83,15,093</b>	<b>2,39,09,159</b>	<b>1,55,94,066</b>	<b>11,64,831</b>		<b>99,33,471</b>	<b>2,66,92,368</b>

After these cases were brought to the notice of the Department and Government between December 2020 and January 2021, demand notice is issued in one case amounting to ₹ 19.58 Lakh, one case is assigned to Audit, one case is before appellate authority and two cases are before NCLT. Replies awaited in remaining seven cases (April 2021).

*It is recommended that the correctness of carry forward credit available in monthly returns, revised returns, audited statement and re-assessment orders with respect to credit brought forward in subsequent monthly returns may be ensured by the Department.*

## 2.10 Non/short-payment of differential tax liability declared in audited statement of accounts

According to Section 31(4) of the Karnataka Value Added Tax (KVAT) Act 2003, every dealer whose total turnover in a year exceeds a prescribed amount<sup>20</sup> shall have the accounts audited by a Chartered Accountant or a Cost Accountant or a Tax Practitioner (Auditor) and shall submit to the prescribed authority a copy of the audited statement of accounts in Form VAT 240 and other documents as prescribed in the Act.

Form VAT 240 provides for the auditor to file a comparative statement of dealer's liability to tax and his entitlements for input tax/refund as declared in the tax returns, and the corresponding correct amount determined on audit. In

<sup>20</sup> ₹ 40 lakh till 31 March 2010, ₹ 60 lakh from 1 April 2010 to 31 March 2011 and ₹ 100 lakh thereafter.

case of a difference between them, the dealer has to pay the differential tax together with the penalty and interest, if any, or to claim refund due to him, as the case may be.

During test-check of records of 3,074 out of 78,363 dealers (3.92 per cent) in 16 Local GST Offices in seven<sup>21</sup> Districts between November 2019 and May 2020, Audit noticed that 65 dealers (2.11 per cent of the audited sample), in their audited accounts in Form VAT 240, had declared additional tax liability of ₹ 3.78 crore over and above the tax liability declared in the monthly returns for the years from 2014-15 to 2017-18 which was neither paid by the dealers concerned on their own while filing the audited accounts, nor were the dues demanded by the Local GST Offices concerned. Further, penalty (at 10 per cent) and interest (at 1.5 per cent per month) leviable on such additional tax liability amounted to ₹ 0.38 crore and ₹ 1.95 crore respectively. Total non/short-payment thus works out to ₹ 6.11 crore.

The Department had failed to identify the cases of non-payment of additional tax declared by the dealers in the audited statement of accounts. The Offices concerned were not watching the unacknowledged status<sup>22</sup> of Form VAT 240 in e-FS, which prevented detection of non-payment cases. Mismatch between the digital data sheet depicting summary of Form- VAT 240 and PDF files uploaded<sup>23</sup> has added to the problem as in such cases, identification needs to be taken up case-wise. Thus, lack of a system for scrutinising the audited statement of accounts in the returns filed by the dealers resulted in non-collection of taxes declared by them as payable.

After these cases were brought to the notice of the Department and Government between December 2020 to February 2021, an amount of ₹ 0.07 crore was collected in five cases, re-assessment order was passed in two cases amounting to ₹ 0.60 crore and two cases were assigned to Audit. Replies are awaited in remaining 56 cases (April 2021).

*It is recommended that the Department may scrutinise Form VAT 240 to follow up on the collection of additional tax declared by the dealers.*

### **2.11 Non-follow-up of pending tax liabilities declared in the returns**

Under Section 35(1) of the Karnataka Value Added Tax (KVAT) Act 2003, every registered dealer shall furnish a return in the prescribed form and shall pay the tax due on such return within 20 days (or 15 days in the case of dealers assessed under composition of tax) after the end of the tax period.

Test-check of 806 returns (44.43 per cent) out of 1814 returns (total number of 'Not Acknowledged Returns') between October 2019 and May 2020 in 14 Local GST Offices in five<sup>24</sup> Districts revealed that 293 returns (36.35 per cent) pertaining to the tax periods between November 2013 to June 2017 filed by 93 assesseees showed a 'Not acknowledged' status in the Electronic Filing System (e-FS) and the respective tax liabilities amounting to ₹ 3.17 crore were not

<sup>21</sup> Bengaluru, Koppal, Mandya, Mangaluru, Mysuru, Raichur and Yadgir.

<sup>22</sup> "Unacknowledged" status indicates non-payment of additional tax.

<sup>23</sup> PDF formats of Form VAT 240, Profit and Loss Account and Balance Sheet.

<sup>24</sup> Belagavi, Bengaluru, Kalaburagi, Shivamogga, and Uttara Kannada.

discharged. Penalty and interest as applicable worked out to ₹ 0.31 crore and ₹ 1.77 crore respectively. Total amount realisable worked out to ₹ 5.25 crore.

Even though the e-FS for online filing of returns clearly indicates a status of 'Not acknowledged' against all returns where the tax liability is not discharged in full, the Officers concerned failed to follow up these cases and ensure timely recovery.

After these cases were brought to the notice of the Department and Government during February 2021, an amount of ₹ 1.59 Lakh was collected in two cases. In one case reassessment order was passed and one case has been assigned to audit. Replies are awaited in remaining 89 cases (April 2021).

*It is recommended that "Not acknowledged" returns need to be followed up to ensure collection of tax declared by the dealers.*

## **2.12 Non-levy of penalty under Section 74(4) of KVAT Act for non-filing of Form VAT 240**

According to Section 31(4) of the Karnataka Value Added Tax (KVAT) Act, 2003 read with Rule 34(3) of KVAT Rules, 2005 every dealer whose total turnover in a year exceeds one hundred lakh rupees shall have his accounts audited by a Chartered Accountant or a Cost Accountant or a Tax Practitioner and submit a copy of the audited statement of accounts in Form VAT 240 and prescribed documents within nine months after the end of the relevant year.

Further, under Section 74(4) of the KVAT Act, any dealer who fails to submit within the time prescribed a copy of the audited statement of accounts, shall be liable to pay a penalty of five thousand rupees and, a further penalty of fifty rupees per day for so long as the failure to submit a copy of the audited statement of accounts continues.

Test-check of 87,203 out of 95,408 records (Audited sample 91.40 per cent) of 38 Local GST Offices in fourteen<sup>25</sup> Districts between April 2019 and May 2020 revealed that 7,346 assesseees (8.42 per cent) did not file Form VAT 240 for the years 2012-13 to 2017-18 (up to June 2017). Non-submission of Form VAT 240 implies that the assesseees have not got their accounts audited by the prescribed Authority. Further, the Assessing Officers concerned had not taken any action to enforce compliance in this regard either by issue of notice or by levy of the mandatory penalty under Section 74(4) of the KVAT Act. Consequently, the Assessing Officers are not ensuring the audit of books of accounts maintained by those assesseees and thereby the correctness of tax paid by such assesseees. As monthly returns filed by the assesseees are deemed to be assessed, failure to enforce such controls built into the system will result in leakage of revenue. Non levy of penalty under Section 74(4) of the KVAT Act in respect of the above assesseees works out to ₹ 26.99 crore.

After these cases were brought to the notice of the Department and Government during February 2021, an amount of ₹ 2.86 lakh was collected in nine cases, security deposit of ₹ 1.38 lakh was adjusted and notices were issued for the remaining amount in 31 cases and notices were issued in 277

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<sup>25</sup> Belagavi, Bengaluru, Chitradurga, Dakshina Kannada, Dharwad, Gadag, Mandya, Mysuru, Raichur, Shivamogga, Tumakuru, Udupi, Uttara Kannada, Yadgir.



cases amounting to ₹ 0.65 crore. In 7 cases amounting to ₹ 1.25 lakh it was replied that dealers have filed Form 240 and will be availing Karasamadhana Scheme for waiver of penalty. Replies are awaited in remaining 7022 cases (April 2021).

*It is recommended that the CTD may review all such cases of non-filing of Form VAT 240 as it serves as a control over the deemed assessment system.*

### **2.13 Incorrect allowance of Input Tax Credit**

Under Section 10(2) of the Karnataka Value Added Tax (KVAT) Act 2003, input tax in relation to any registered dealer means the tax collected or payable under this Act on the sale to him of any goods for use in the course of his business, and includes the tax on sale of goods to his agent who purchases such goods on his behalf subject to the manner as may be prescribed to claim input tax in such cases.

During check of 6,312 re-assessments (100 per cent) in six<sup>26</sup> Audit Offices and test-check of 984 dealers (4.26 per cent) in five LGSTOs (out of 23074 dealers), it was noticed that in 20 re-assessment cases (0.33 per cent) in Audit Offices and five dealers (0.50 per cent of the Audited sample) in LGSTOs, input tax credit (ITC) was allowed in contravention of the provisions of the KVAT Act as detailed below:

#### *(i) Incorrect allowance of ITC attributable to sale of exempt goods and immovable property*

As per Section 11(a)(1) of the KVAT Act, input tax shall not be deducted in calculating the net tax payable in respect of tax paid on purchases attributable to sale of exempted goods under Section 5 of the KVAT Act.

Further, under Section 17 of the KVAT Act, a registered dealer making sale of both taxable and non-taxable goods (exempt under Section 5 of the Act), shall avail the input tax in proportion to taxable sales as per Rule 131<sup>27</sup> of the KVAT Rules.

On a test-check of the VAT Returns of three Local GST Offices (LGSTO-170, Tumakuru, LGSTO-470, Harihara and LGSTO-390, Belagavi) during October 2019 to March 2020, Audit noticed three dealers (M/s Parimala Agro Foods and Feeds Pvt Ltd, M/s Sri Anganeyya AgrotechPvt Ltd and M/s Nandagudi Oil and Agro Industries LLP), who were manufacturers of edible oil, had purchased edible crude rice bran, husk, chemicals during the years 2016-17 and 2017-18 (up to June 2017) and claimed ITC on these purchases. They had effected taxable sale of edible oil and exempted sale of de-oiled bran.

<sup>26</sup> ACCT(Audit)-1.2-Bengaluru, DCCT(Audit)-2.8, Bengaluru, ACCT(Audit)-2.9, Bengaluru, ACCT(Audit)-4.2, Bengaluru, ACCT(Audit)-4.6, Bengaluru and ACCT(Audit)-5.9, Bengaluru.

<sup>27</sup> Non-Deductible ITC = (Sale of Exempt goods + Non-taxable transactions) X (Total ITC/Total Turnover).

However, they had taken credit of entire ITC without restricting the ITC (non-deductible ITC) attributable to sale of de-oiled rice bran (exempted good) as per the provisions under Section 17 of the KVAT Act read with Rule 131 of KVAT Rules. This resulted in incorrect allowance of ITC of ₹ 1.64 crore. Besides, penalty of ₹ 0.16 crore and interest of ₹ 0.81 crore was also leviable. Total liability worked out to ₹ 2.61 crore.

On a test-check of re-assessment order in ACCT(Audit)-5.9, Bengaluru during December 2019, it was noticed from the re-assessment order for the year 2011-12 dated 10-4-2017 in respect of an assessee, M/s Balaji Constructions (Bangalore) Pvt Ltd that out of 44 (Developer's Share) of the constructed apartments, 24 were sold after receipt of Occupancy Certificate (OC) and hence the proceeds received were relating to sale of immovable property and not included in the taxable turnover of KVAT by the assessee which was accepted in the re-assessment order. As per Section 2(29) read with Section 2(37) of KVAT Act, sale of Flats after OC does not amount to 'Works contract' and hence does not amount to 'Sale' under KVAT Act. In other words, sale of Flats after OC is received is a transaction of sale outside the purview of KVAT Act. Consequently, input tax credit (ITC) is not allowable in respect of flats sold after receipt of OC.

However, ITC relating to sale of immovable property (24 flats) of ₹ 21.15 lakh out of the total ITC claim of ₹ 70.49 lakh relating to the project was not restricted. Besides, penalty of ₹ 2.11 lakh and interest of ₹ 19.03 lakh was also leviable. Total liability worked out to ₹ 42.29 lakh.

***(ii) Loss of revenue in the form of ITC***

Test-check of re-assessments concluded in five Audit Offices in Bengaluru, between January 2020 and May 2020 revealed that 19 assesseees were allowed ITC aggregating ₹ 0.89 crore for the years 2010-11 to 2016-17.

On a verification of the purchase registers of such assesseees, it was noticed that there were 37 corresponding selling dealers for the input tax claimed. Cross verification of the details of the selling dealers in e-FS revealed that 8 of them were de-registered during the period in which ITC was allowed, one dealer was not registered during the period in which ITC was claimed, TIN quoted in respect of one dealer was invalid. The remaining 27 selling dealers filed returns but had paid lesser output tax than the input tax claimed by the purchasing dealers or had not filed returns during the period in which ITC was claimed. Consequently, as against the input tax of ₹ 0.89 crore allowed by the Department, the corresponding output tax declared was only ₹ 0.19 crore. Thus, allowing input tax credit without realising the corresponding output tax resulted in loss of revenue of ₹ 0.70 crore. Besides, penalty of ₹ 0.07 crore and interest of ₹ 0.44 crore was leviable. Total dues worked out to ₹ 1.21 crore.



On a verification of purchase details uploaded in eFS, it was noticed that one purchasing dealer in LGSTO-373, Honnavara had claimed input tax credit of ₹ 6.51 lakh in respect of 13 invoices issued by the selling dealer to other dealers against ₹ 0.98 lakh uploaded by the selling dealer in respect of the purchasing dealer. Further, it was noticed in LGSTO-270, Mangaluru that the purchasing dealer had effected purchases and claimed ITC of ₹ 5.59 lakh for the tax periods April 2015 to February 2016. However, the selling dealer had not filed returns for these periods. Thus, the incorrect allowance of ITC resulted in loss of revenue of ₹ 12.11 lakh. Besides, penalty of ₹ 1.21 lakh and interest of ₹ 10.28 lakh was leviable. Total dues worked out to ₹ 23.60 lakh.

After Audit brought these cases to the notice of the Department and the Government during February 2021, an amount of ₹ 1.50 lakh was collected in one case and demand notices were issued in two cases amounting to ₹ 0.80 crore. Replies are awaited in remaining 22 cases (April 2021).

***It is recommended that the CTD may institute checks by the Departmental Officers to examine genuineness of the ITC claims.***