

Chapter IV
Revenue Sector
Compliance Audit

CHAPTER IV

COMPLIANCE AUDIT (Revenue Sector)

A. General

4.1 Tax administration

4.1.1 Sales Tax/ Value Added Tax/ Goods and Services Tax

Sales Tax/ Value Added Tax/ Goods and Services Tax are administered by the Principal Secretary, Finance Department at the Government level. The Commissioner State Taxes, is entrusted with overall control and superintendence of the State Taxes Department. He is assisted by three Additional Commissioners (one each in Jammu and Kashmir Divisions and one for Tax Planning), 19 Deputy Commissioners (Jammu: 09; Kashmir: 08 and one each for headquarter and judicial matters) and 10 Assistant Commissioners (Jammu: 05; Kashmir: 05). The State is divided into 63 State Taxes Circles (Jammu: 30; Kashmir: 33), each headed by one State Taxes Officer.

4.1.2 State Excise

The State Excise Department of J&K is responsible for charging of Excise Duties under the J&K Excise Act, 1901 and the Rules made thereunder. The Department is headed by the Excise and Taxation Commissioner who is assisted by five Deputy Excise Commissioners (Jammu: 04; Kashmir: 01) and 16 Excise and Taxation Officers (Jammu: 10; Kashmir: 06). There are 20 Distilleries/ Bottling Plants which fall within the jurisdiction of the Excise and Taxation Officer, Distilleries, Jammu.

4.1.3 Taxes on Vehicles

Receipts from the Transport Department are regulated under the Central and the State Motor Vehicles Acts and Rules made thereunder and are under the administrative control of the Transport Commissioner.

4.2 Results of audit

Test-check of records of 54 units out of a total of 398 units of State Taxes, State Excise, Transport and Law Departments conducted by Audit during the year 2018-19 revealed under-assessment/ short levy of revenue aggregating ₹ 900.11 crore in 502 cases as detailed in Table 4.1.

Table 4.1: Results of Audit

(₹ in crore)

Sl. No.	Categories	Number of cases	Amount
Taxes on Sales, Trade/ VAT, etc.			
1.	Under-assessment of Tax	20	3.50
2.	Evasion of tax due to suppression of sales/ purchase	280	58.95
3.	Irregular/ incorrect/ excess allowance of Input Tax Credit	39	2.93
4.	Other irregularities	60	687.92
	Total	399	753.30
State Excise			
1.	Short/ Non realisation of Excise duty	1	0.01
2.	Short/ Non realisation of licence fee/ interest/ penalty	12	13.43
3.	Short levy of collection of Toll Tax	3	0.09
4.	Other irregularities	14	1.33
	Total	30	14.86
Motor Vehicle taxes			
1.	Non/ short realisation of Token Tax	9	15.42
2.	Non/ short realisation of Passenger and goods tax	29	39.35
3.	Other Irregularities	35	77.18
	Total	73	131.95
	Grand Total	502	900.11

During the year 2018-19, an amount of ₹ 1.55 crore of revenue was recovered by the Departments under various heads¹ of receipt that had been pointed out in audit during previous years.

¹ Taxes on Sale, Trade/ VAT etc.: ₹ 1.54 crore; Stamps and Registration fee: ₹ 1.00 lakh.

B. Compliance Audit

4.3 Coverage of this Chapter

This Chapter of the Report on the Revenue Sector contains five paragraphs involving revenue implication of ₹ 2.03 crore relating to short demand due to irregular allowance of input tax credit, irregular grant of tax remission, concealment of purchases and misappropriation of Government money, etc. The Departments/ Government have accepted audit observations involving ₹ 2.03 crore, out of which ₹ 13.02 lakh have been recovered.

Finance Department

(State Taxes Department)

4.4 Short levy of tax due to concealment of purchases

Failure of the Assessing Authority to detect concealment of turnover while assessing a dealer, resulted in short levy of tax, interest and penalty of ₹ 17.67 lakh.

Section 7 of Jammu and Kashmir General Sales Tax Act, 1962 and the Rules made thereunder provide that every dealer shall submit the return of his turnover in such a manner as may be prescribed under the Act. Further, if a dealer furnishes incorrect particulars of turnover or conceals his turnover, the Assessing Authority (AA) shall direct the dealer under the sections 8(8) and 17 (1) (f) of the aforesaid Act to pay in addition to tax payable, interest at the rate of two *per cent* per month for the period of default and penalty not less than the amount of tax which was attempted to be evaded but not exceeding double the amount of such tax.

Scrutiny (December 2014/ May 2019) of records of Commercial Taxes Circle 'H' Srinagar, revealed that the assessment of a dealer² for the financial year 2009-10 was done (March 2014) by the AA at a taxable turnover of ₹ 6.04 crore after enhancing the turnover by ₹ 34.99 lakh. However, the inter-state purchase statements filed by the dealer alongwith his quarterly returns and the 'C-Form' consumption statements revealed that the inter-state purchases of ₹ 43.15 lakh had not been accounted for by the dealer in his accounts which led to concealment of sales turnover of ₹ 86.29 lakh³. Therefore, the dealer had violated Section 7 of Jammu and Kashmir General Sales Tax Act, 1962 and the Rules made thereunder and was required to pay tax, interest and penalty as determined under the Sections 8(8) and 17 (1) (f) of the Act. The assessing authority, while assessing the case enhanced the turnover by ₹ 34.99 lakh against the concealment of turnover of ₹ 86.29 lakh. The net concealed turnover worked out to

² Dealing in construction/ electrical works contracts.

³ Includes freight, profit and other charges at the rate of 100 *per cent* as declared by the dealer in his trading account.

₹ 51.30 lakh, for which the dealer was liable to pay tax, interest and penalty of ₹ 17.67 lakh⁴.

On this being pointed out (December 2014), the Assessing Authority re-assessed (December 2018) the dealer and raised a demand of ₹ 16.72 lakh⁵. It was further stated (December 2019) that the demand has been referred (May 2019) to the Deputy Commissioner Recovery Division, Kashmir. However, the progress of recovery was awaited (September 2020).

The matter was referred to Department/ Government in November 2019; their replies were awaited (September 2020).

4.5 Short demand of tax and interest due to irregular grant of tax remission

Irregular grant of tax remission by the Assessing Authorities, Commercial Taxes Circles I and II, Udhampur, to two industrial units which had concealed purchases of ₹ 12.32 lakh during the years 2010-11 and 2013-14, resulted in short demand of ₹ 26.22 lakh.

In exercise of the powers conferred by Section 79-A of the Jammu and Kashmir Value Added Tax (JKVAT) Act, 2005, the Government issued (March 2006) a notification for remission of tax in respect of small, medium and large scale industrial units which was to be granted subject to fulfillment of certain conditions. These conditions stipulated that to avail the remission of tax, the Industrial unit should be formally registered⁶, it should submit tax remission claims in the prescribed forms, maintain correct and regular accounts of purchases of goods including plant, equipment, raw material, production and sale of goods etc. and provide employment to permanent residents of the State. Besides, the unit should not claim input tax credit and in no case shall procure the finished product from outside the state and shall not dispose of the raw material in any manner whatsoever except as provided in the certificate of registration. Any industrial unit found guilty of an offence specified under Section 66 (6), Section 67, Section 69(1)(f), Section 69(1)(g), Section 69(1)(h), Section 69(1)(k), Section 69(1)(I) of the JKVAT Act, 2005 was not entitled to remission of tax for the year during which such offence was committed.

I. Scrutiny of records⁷ (May 2014) of State Taxes Circle-I, Udhampur, revealed that an industrial unit⁸ was allowed (October 2013 and January 2014) tax remission of ₹ 7.45 lakh⁹ for the first and second quarter of 2013-14, assessed on 23 October 2013 and 27 January 2014, respectively. However, cross check of purchase statement filed by the dealer with the VAT-65 Forms revealed that purchases of ₹ 3.54 lakh¹⁰ made

⁴ Tax: ₹ 4.31 lakh; Interest with effect from effect from April 2010 to December 2018: ₹ 9.05 lakh; Penalty: ₹ 4.31 lakh.

⁵ Tax: ₹ 4.35 lakh; Interest: ₹ 8.02 lakh; Penalty: ₹ 4.35 lakh.

⁶ With Department of Industries and commerce/ Directorate of Handicrafts/ Handloom and also with the Department of Commercial taxes.

⁷ Out of 224 case assessed during 2013-14 audit test checked 55 cases.

⁸ Dealing in manufacture of cement.

⁹ First Quarter: ₹ 3.21 lakh; Second quarter: ₹ 4.24 lakh.

¹⁰ First Quarter: ₹ 3.31 lakh; Second quarter: ₹ 0.23 lakh.

during the first and second quarter of 2013-14 were not accounted for by the dealer in the purchase statement. The dealer was therefore guilty of offence under section 69 (1) (f) of the JKVAT Act, 2005 and was not entitled to the remission of tax. The Assessing Authority while passing the remission orders for the above period failed to notice the concealment of purchases which resulted in irregular remission of tax and short levy of tax including interest and penalty of ₹ 18.22 lakh¹¹.

On this being pointed out (May 2014/ October 2019), the Assessing Authority reassessed (March 2019/ January 2020) the unit and raised a demand of ₹ 18.74 lakh¹² in March 2019 and January 2020 against the industrial unit. However, the status of recovery was awaited (September 2020).

The matter was referred to the Department/ Government in April 2020; their replies were awaited (September 2020).

II. Test-check of the records (August 2017) of Commercial Taxes Circle-II, Udhampur, revealed that an industrial unit¹³ had concealed purchases of ₹ 8.78 lakh during the year 2010-11 and was guilty of offence under Section 69 (1) (f) of the JKVAT Act, 2005. The Assessing Authority while assessing the industrial unit, raised (February 2017) a demand of ₹ 2.27 lakh¹⁴ on the concealed turnover during the year 2010-11. However, the Assessing Authority allowed the remission of tax amounting to ₹ 3.09 lakh for the year 2010-11, which was irregular and resulted in short levy of tax and interest of ₹ 8.00 lakh¹⁵.

On this being pointed out (August 2017), the Assessing Authority reassessed (April 2018) the unit and raised a demand of ₹ 10.80 lakh¹⁶. It was further stated (January 2020) that the dealer has applied for amnesty, paid principal tax of ₹ 3.61 lakh and the interest and penalty stands waived off.

The reply is not tenable as the dealer had concealed the turnover chargeable to tax, the demand created in consequence thereof was outside the purview of Amnesty Scheme.

The matter was referred to Department/ Government in July 2019; their replies were awaited (September 2020).

The Government should ensure that only permitted remissions are allowed and recovery of interest and penalty be made from the dealers who have irregularly availed such remissions.

¹¹ Tax: ₹ 0.21 lakh; Interest: ₹ 0.27 lakh and Penalty: ₹ 0.42 lakh on concealed turnover and Irregular remission of tax of ₹ 7.45 lakh and interest ₹ 9.87 lakh thereupon.

¹² Tax: ₹ 7.66 lakh; Interest: ₹ 10.66 lakh; Penalty: ₹ 0.42 lakh.

¹³ Dealing in manufacture of jute bags.

¹⁴ Tax: ₹ 0.52 lakh; Interest: ₹ 0.72 lakh; Penalty: ₹ 1.03 lakh.

¹⁵ Tax: ₹ 3.09 lakh; Interest: ₹ 4.91 lakh.

¹⁶ Tax on account of rejection of remission: ₹ 3.09 lakh; Tax on account of concealment of inter-state purchases: ₹ 0.52 lakh; Interest: ₹ 6.16 lakh; Penalty: ₹ 1.03 lakh.

4.6 Short demand due to irregular allowance of input tax credit

Failure of the Assessing Authorities, Commercial Taxes Circle-II, Udhampur and Circle 'L', Jammu to disallow Input Tax Credit claimed by dealers on purchases made during the period of suspension of their registration certificate, resulted in short demand of ₹ 1.26 crore.

Section 27 (7) of the Jammu and Kashmir Value Added Tax (JKVAT), 2005, stipulates that when any dealer to whom a certificate of registration is granted, fails to furnish any return or fails to pay any tax, penalty or interest payable under the Act, the certificate of registration of such dealer may be suspended by the prescribed Authority. Section 27 (8) of the above Act provides that suspension of certificate of registration will be withdrawn and registration certificate shall be restored on an application made by the dealer on furnishing evidence of payment of all taxes and on furnishing of overdue return(s) within 90 days of suspension. During the period the certificate of registration of a dealer remains suspended, he shall not be entitled to any benefits that a dealer whose certificate of registration is in force, is entitled to. The dealer is liable to pay interest and penalty under Section 51(4) and 69(1) (m) of VAT Act 2005 for willfully claiming Input Tax Credit for the period during which his registration certificate was placed under suspension.

I. Scrutiny of records (August 2017) of Commercial Taxes Circle II, Udhampur revealed that for non-filing of quarterly return for the third quarter of 2012-13, the registration certificate of a dealer¹⁷ was suspended by the Assessing Authority from 30 April 2013 to 12 February 2014. The dealer, however, claimed input tax credit of ₹ 40.09 lakh during 2013-14 which included an amount of ₹ 30.76 lakh pertaining to the period when his registration was under suspension and the same was allowed by the Assessing Authority while assessing (March 2017) the dealer for the Accounting year 2013-14. Thus, the failure to disallow the input tax credit resulted in short demand of ₹ 1.21 crore¹⁸.

On this being pointed out (August 2017), the assessing authority re-assessed (October 2018) the dealer for the accounting year 2013-14 and raised a demand of ₹ 1.29 crore¹⁹. However, the status of recovery was awaited (September 2020).

The matter was referred to the Department/ Government in June 2019; their replies were awaited (September 2020).

II. Scrutiny of records (September 2018) of Commercial Taxes Circle 'L', Jammu revealed that for non-filing of quarterly return for the fourth quarter of 2013-14, the registration certificate of a dealer²⁰ was suspended on 23 June 2014 which was not restored as of May 2015. During the period of suspension of his registration, the dealer was not entitled to avail the input tax credit under Section 21 of the Act. However, Input

¹⁷ Dealing in packaged milk, ghee etc.

¹⁸ Tax: ₹ 30.76 lakh; Interest: ₹ 28.35 lakh; Penalty: ₹ 61.53 lakh.

¹⁹ Tax: ₹ 30.76 lakh; Interest: ₹ 36.95 lakh; Penalty: ₹ 61.53 lakh.

²⁰ Dealing in sale/ purchase of Medicines and Cosmetics.

Tax Credit claim of ₹ 1.37 lakh on purchase of ₹ 26.92 lakh made by the dealer during the period 23 June 2014 to 31 March 2015, was allowed by the Assessing Authority while assessing (March 2018) the dealer to tax for the Accounting year 2014-15 under Section 39(5) of the Act. Thus, the failure to disallow the input tax credit resulted in a short demand of ₹ 5.35 lakh²¹ towards tax, interest and penalty.

On this being pointed out (September 2018), the Assessing Authority re-assessed (September 2019) the dealer for accounting years 2014-15 and raised a demand of ₹ 5.59 lakh²².

The matter was referred to the Government/ Department in December 2019. The Deputy Commissioner State Taxes (Judicial) stated (February 2020) that in view of non-compliance on the part of dealer to make payment, the Assessing Authority referred (December 2019) the arrears to Deputy Commissioner State Taxes (Recovery) and proceedings for recovery under Land Revenue Act have been initiated.

The reply of Government is awaited (September 2020).

4.7 Short demand due to irregular availing of input tax credit

Failure of the Assessing Authority to correctly verify the return filed by a dealer and disallow irregular input tax credit claimed on expired/ returned goods, resulted in short demand of ₹ 16.04 lakh.

Section 35(1) of the Jammu and Kashmir Value Added Tax (JKVAT) Act, 2005 stipulates that, all the returns filed by the dealers shall be scrutinised by the Assessing Authority to verify the correctness of calculations, application of correct rate of tax/ interest and input tax credit claimed. Further, Section 14 of the JKVAT Act, 2005 stipulates that, any dealer who in the course of his business, purchases any taxable goods from a registered dealer in the circumstances in which no tax is payable by that registered dealer on the sale price of such goods or from any other person, the dealer shall be liable to pay tax on purchase price of such goods, if after such purchase, the goods are not sold within the State or sold in the course of inter-state trade and commerce or exported out of the territory of India. The JKVAT Act, 2005 also stipulates that no input tax credit (ITC) shall be claimed or allowed to a registered dealer in respect of goods purchased on payment of tax, if such goods are not sold because of any theft or due to their destruction.

The JKVAT Act, 2005 provides for reversal of the tax credit availed in respect of goods lost due to theft or destroyed due to any other reasons. For default in making the payment under Sections 37 to 40 of the JKVAT Act, a dealer is liable to pay interest on the amount at the rate of two *per cent* per month.

Scrutiny of records (December 2018) of the State Taxes Anantnag I Circle revealed that a dealer had filed a self-assessment return for the year 2013-14 which was accepted by the Assessing Authority. The dealer claimed to have made local purchases of

²¹ Tax: ₹ 1.38 lakh; Interest: ₹ 1.22 lakh; Penalty: ₹ 2.75 lakh.

²² Tax: ₹ 1.38 lakh; Interest: ₹ 1.46 lakh; Penalty: ₹ 2.75 lakh.

₹ 245.95 lakh. His tax liability of ₹ 20.60 lakh on sales of ₹ 250.82 lakh²³, was met by availing of input tax credit of ₹ 12.30 lakh and payment of tax of ₹ 8.30 lakh. However, as per the trading account filed by the dealer, the expired/ goods returned valued at ₹ 86.63 lakh²⁴ were reduced from the purchases, for which he was not entitled to claim input tax credit of ₹ 8.53 lakh. The Assessing Authority while accepting the return failed to verify and disallow the input tax credit of ₹ 8.53 lakh availed incorrectly by the dealer which has resulted in short demand of ₹ 16.04 lakh²⁵ including tax and interest.

On this being pointed out, the Assessing Authority re-assessed (May 2019) the dealer for the Accounting year 2013-14 under Section 42 of the JK VAT Act, 2005 and raised a demand of ₹ 19.11 lakh²⁶. The status of recovery is awaited (September 2020).

The matter was referred to the Department/ Government in April 2020; their replies were awaited (September 2020).

Revenue Department

4.8 Misappropriation of Government money

Tehsildar, Kathua failed to adhere to the rules prescribed for handling of revenues of the Government and also furnished incorrect information to audit which facilitated misappropriation of revenue receipts of ₹ 16.81 lakh.

Rules 2-1 to 2-15 of Jammu and Kashmir Financial Code (JKFC) Volume-I, prescribe the general principles regarding duties in respect of cash and accounts, receipt of Government money, its custody and payment into treasury and maintenance of accounts cash book. Rule 2-4 (1) of JKFC stipulates that an officer receiving money on behalf of Government is to give the payer a receipt in form FC-I, duly signed by the authorised officer, who shall satisfy at the time of signing the receipt and initialing its counterfoil that the amount has been properly entered in the cash book.

Audit scrutiny (September 2017) of the records of Tehsildar, Kathua revealed certain discrepancies in maintenance of records relating to collection and remittance of revenue into the Government Treasury. The money received²⁷ on behalf of the Government was not routed through the cash book or entered in the revenue register, cash receipts were not given in prescribed forms (FC-1) and the revenue remittance register was not maintained. Audit noticed instances of short/ non-remittance of revenue ₹ 5.66 lakh and delays ranging between two to nine months in remittance of revenue into the Government Treasury.

Despite this being pointed out (September 2017) in audit, reasons for the irregularity were not investigated (September 2019) and necessary corrective measures were not

²³ ₹ 156.04 lakh taxable at the rate of 5 per cent and ₹ 94.78 lakh taxable at the rate of 13.50 per cent.

²⁴ Purchases valuing ₹ 37.19 lakh taxable at the rate of 5 per cent involving ITC of ₹ 1.86 lakh and Purchases valuing ₹ 49.44 lakh taxable at the rate of 13.5 per cent involving ITC of ₹ 6.67 lakh.

²⁵ Tax: ₹ 8.53 lakh; Interest: ₹ 7.51 lakh.

²⁶ Tax: ₹ 8.53 lakh; Interest: ₹ 10.58 lakh.

²⁷ For issuance of income certificates, copies of mutation/ fard/ Khasra Girdawari, zamabandi, permanent resident certificate etc.

taken. The Tehsildar, Kathua, however, informed (July 2018) that due to shortage of staff, remittance could not be made into the treasury and stated that all the revenue had subsequently been remitted into the treasury.

The matter was again pursued with the Department (February 2019) and the Tehsildar, Kathua provided (April/ July 2019) details of revenue collected and remitted during the period 2015-16 to 2018-19, which reflected short remittance of ₹ 16.81 lakh as only ₹ 49.18²⁸ lakh out of the revenue collection of ₹ 65.99 lakh²⁹ had been remitted into the Treasury. The Tehsildar, Kathua also stated (October 2019) that non-remittance of revenue pertained to period long before his joining that office and the official who held the charge of *Nazir*³⁰ during that period had expired while in active service on 30 November 2018. Besides, it was stated that the existing loopholes in the system have been plugged and efforts will be made to recover the amount from the retirement benefits of the family of the deceased person (*Nazir*). It was also stated (August 2019) that in future, the payee receipt on FC-1 and the treasury challans in FC-2 shall be issued/ presented under the signatures of Drawing and Disbursing Officer. The Deputy Commissioner, Kathua stated (August 2020) that the Tehsildar, Kathua has recovered ₹ 9.41 lakh from Death-cum-retirement-Gratuity admissible to the wife of deceased employee and the balance amount shall be recovered from the family pension at the rate of ₹ 10,000 per month.

The reply confirms the fact that the Tehsildar, Kathua failed to observe the prescribed Rules with regard to handling of the revenues of the Government and also provided (July 2018) incorrect information to audit which facilitated the misappropriation of revenue receipts of ₹ 16.81 lakh.

The matter was referred to the Department/ Government in April 2020; their replies were awaited (September 2020).

The Department may put in place a system preferably an Information Technology enabled system to ensure that all Government receipts are accounted for and expeditiously deposited into the Government Account to prevent misappropriation of funds. Further, reasons for the lapse be examined and if necessary responsibility should be fixed.

²⁸ 2016-17: ₹ 19.71 lakh; 2017-18: ₹ 17.57 lakh; 2018-19: ₹ 11.90 lakh.

²⁹ 2016-17: ₹ 23.34 lakh; 2017-18: ₹ 21.51 lakh; 2018-19: ₹ 21.14 lakh.

³⁰ Cashier.

