

CHAPTER-V

REVENUE SECTOR

5.1 General

5.1.1 Trend of revenue receipts

The tax and non-tax revenue raised by the GoN during 2019-20, the State's share of net proceeds of divisible Union taxes and duties assigned to the State and Grants-in-Aid received from the GoI during the year and the corresponding figures for the preceding four years are shown in **Table 5.1.1**.

Table 5.1.1: Trends of revenue receipts

(₹ in crore)

Sl. No.	Particulars	2015-16	2016-17	2017-18	2018-19	2019-20
1.	Revenue raised by the State Government					
	• Tax Revenue	427.10	510.75	638.28	846.43	958.23
	• Non-Tax Revenue	256.39	345.52	388.53	255.24	339.29
	Total	683.49	856.27	1,026.81	1,101.67	1,297.52
2.	Receipts from the GoI					
	• Share of net proceeds of divisible Union Taxes and Duties	2,540.72	3,032.63	3,353.13	3,792.41	3,267.08
	• Grants-in-Aid	4,819.36	5,553.38	6,639.27	6,543.33	6,858.69
	Total	7,360.08	8,586.01	9,992.40	10,335.74	10,125.77
3.	Total revenue receipts of the State Government (Sl. No. 1 and 2)	8,043.57	9,442.28	11,019.21	11,437.41	11,423.29
4.	Percentage of 1 to 3	8	9	9	10	11

Source: Finance Accounts of the respective years

The above table indicates that during the year 2019-20, the revenue raised by the State Government (₹1,297.52 crore) was 11 *per cent* of its total revenue receipts. The balance 89 *per cent* of the receipts during 2019-20 was from the GoI.

The details of tax revenue raised against the Budget Estimates (BEs) during the period 2015-20 are shown in **Table 5.1.2**.

Table 5.1.2: Details of the Tax Revenue against the Budget Estimates (BEs)

(₹ in crore)

Sl. No.	Head of revenue	2015-16		2016-17		2017-18		2018-19		2019-20		Percentage of 2019-20 over 2018-19
		BEs	Actuals	BEs	Actuals	BEs	Actuals	BEs	Actuals	BEs	Actuals	
1.	SGST	0	0	0	0	0	187.57	250.00	469.64	340.37	613.22	31
2.	Sales Tax/ VAT	332.78	328.58	400.00	400.12	410.00	287.55	225.00	186.69	252.89	175.15	(-) 6
3.	Taxes on vehicle	46.00	53.09	57.63	57.39	58.00	101.52	105.00	126.22	121.04	113.93	(-) 10
4.	Stamps and Registration Fees	1.98	2.04	2.14	2.05	2.31	2.62	2.40	2.53	2.64	2.79	10
5.	State Excise	4.90	5.12	5.40	4.63	5.60	4.20	5.10	4.65	5.10	3.24	(-) 30
6.	Taxes on Goods and Passengers	12.10	5.88	13.31	14.76	7.00	17.59	14.60	20.16	18.91	18.09	(-) 10

Audit Report for the year ended 31 March 2020

Sl. No.	Head of revenue	2015-16		2016-17		2017-18		2018-19		2019-20		Percentage of 2019-20 over 2018-19
		BEs	Actuals	BEs	Actuals	BEs	Actuals	BEs	Actuals	BEs	Actuals	
7.	Land Revenue	0.89	0.75	0.98	0.82	1.08	0.90	0.65	1.13	0.81	1.04	(-) 8
8.	Others ¹	35.81	31.64	35.85	30.98	32.16	36.33	37.81	35.41	38.38	30.77	(-) 13
Total (Own Tax Revenue)		434.46	427.10	515.31	510.75	516.15	638.28	640.56	846.43	780.14	958.23	13

Source: Budget documents and Finance Accounts of the respective years

GST collection of the State had increased by 31 per cent from ₹469.64 crore in 2018-19 to ₹613.22 crore in 2019-20. Tax revenue under Stamps and Registration Fees increased by 10 per cent whereas tax revenue under State Excise, taxes on vehicle and taxes on Goods and Passengers decreased by 30, 10 and 10 per cent respectively over the previous year.

Details of the Non-tax revenue against the BEs raised during the period 2015-16 to 2019-20 are shown in **Table 5.1.3**.

Table 5.1.3: Details of Non-Tax Revenue against the BEs raised during 2015-20

(₹ in crore)

Sl. No.	Head of revenue	2015-16		2016-17		2017-18		2018-19		2019-20		Percentage of 2019-20 over 2018-19
		BEs	Actuals	BEs	Actuals	BEs	Actuals	BEs	Actuals	BEs	Actuals	
1.	Police	4.73	1.68	5.11	31.54	2.00	2.70	2.50	1.86	3.00	36.56	1866
2.	Miscellaneous General Services	10.00	13.43	11.00	13.64	12.10	16.10	14.50	24.15	23.50	22.18	(-) 8
3.	Education, Sports, Art and Culture	40.21	76.52	44.23	119.40	48.65	132.84	100.00	4.33	80.00	62.04	1333
4.	Power	100.00	111.1	125.00	114.58	156.25	127.89	158.00	147.97	160.00	159.31	8
5.	Civil Aviation	9.68	1.04	10.64	20.77	11.71	2.09	20.00	6.70	10.00	8.79	31
6.	Road Transport	17.26	10.81	18.12	9.00	9.03	7.35	11.00	8.74	8.50	8.43	(-) 4
7.	Other Non-tax receipts	48.72	41.80	47.49	36.59	40.07	99.56	41.45	61.49	44.02	41.98	(-) 32
Total (Non-Tax Revenue)		230.60	256.38	261.59	345.52	279.81	388.53	347.45	255.24	329.02	339.29	33

Source: Budget documents and Finance Accounts of the respective years

The revenue receipts under the head 'Police' increased by ₹34.70 crore from ₹1.86 crore during 2018-19 to ₹36.56 crore during 2019-20 due to increase in 'Minor Head: 800-Other Receipts' and increase by ₹57.70 lakh from ₹4.33 crore to ₹62.04 crore under the head 'Education, Sports, Art and Culture' due to increase in revenue receipts under 'Minor Head: 101-Elementary Education'.

5.1.2 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2020 on some principal heads of revenue amounted to ₹9.91 crore out of which ₹2.24 crore was outstanding for more than five years, as shown in **Table 5.1.4**.

¹ Other taxes on income and expenditure, taxes on duties and electricity, other taxes and duties on commodities and services

Table 5.1.4: Arrears of revenue

(₹ in crore)

Sl. No.	Head of revenue	Total Amount outstanding as on 31 March 2020	Amount outstanding for more than 5 years as on 31 March 2020	Replies of Department
1.	Nagaland Value Added Tax	4.92	0.68	Reply not furnished
2.	Petroleum Tax	3.88	0.59	
3.	Central Sales Tax	0.68	0.61	
4.	Purchase Tax	0	0	
5.	Professional Tax	0.09	0.02	
6.	Nagaland Sales Tax	0.34	0.34	
Total		9.91	2.24	

Source: Departmental figures

The entire arrears of ₹9.91 crore were pending with the departmental authorities of which recovery of ₹2.24 crore was pending for more than five years.

The Departments may review the arrears and take action for recovery under the law.

5.1.3 Arrears in assessments

The details of cases pending at the beginning of the year, cases becoming due for assessment, cases disposed off during the year and number of cases pending for finalisation at the end of the year as furnished by the Sales Tax Department in respect of Sales Tax/ VAT on Sales, Trades *etc.* are shown in **Table 5.1.5**.

Table 5.1.5: Arrears in assessments

(₹ in crore)

Head of Revenue	Opening Balance of arrears in assessment as on 1 April 2019	New cases due for assessment during 2019-20	Total assessment due	Cases disposed-off during 2019-20	Balance at the end of the 31 March 2020	Percentage of cases disposed to the total assessment due
1	2	3	4	5	6	7 (5 to 4)
Taxes/ VAT on Sales, Trades, <i>etc.</i>	1,513	514	2,027	733	1,294	36.16

Source: Departmental figures

The arrears in assessment decreased from 1,513 to 1,294 cases with the addition of 514 cases, which became due for assessment during 2019-20 and 733 cases were disposed during the year.

5.1.4 Cases of evasion of tax detected by the Taxes Department

The details of cases of evasion of tax detected by the Taxes Department, cases finalised and the demands for additional tax raised were requisitioned (March 2021) from the Commissioner of Taxes, Dimapur. The Commissioner of Taxes, Dimapur replied (April 2021) that there was no evasion of tax detected.

5.1.5 Response of the Government/ Departments towards Audit

The Principal Accountant General (Audit), conducts periodical inspection of the Government departments to test check the transactions and verify the maintenance of

important accounts and other records as prescribed in the rules and procedures. These inspections are followed up with the Inspection Reports (IRs) incorporating irregularities detected during the inspection and which are not settled on the spot, are issued to the Heads of the Offices inspected with copies to the next higher authorities for taking prompt corrective action. The Heads of the Offices/ Departments are required to promptly comply with the observations contained in the IRs, rectify the defects and omissions and report compliance through initial reply to the Accountant General (Audit) within one month from the date of issue of the IRs. Serious financial irregularities are reported to the Heads of the Department and the Government for response. If replies to such serious and important audit observations are not found acceptable/convincing, these are included in the Report of the C&AG of India.

IRs issued upto March 2020 revealed that 362 paragraphs involving ₹405.06 crore relating to 84 IRs remained outstanding. Such details along with the corresponding figures for the preceding two years are shown in **Table 5.1.6**.

Table 5.1.6: Details of outstanding audit observations

Particulars	March 2018	March 2019	March 2020
Number of outstanding IRs	71	78	84
Number of outstanding audit observations	324	318	362
Amount involved (₹ in crore)	404.63	376.96	405.06

Source: IRs of Revenue Sector

5.1.5.1 Outstanding Inspection Reports and Audit Observations

The Department-wise details of the IRs and audit observations outstanding as on 31 March 2020 and the amount involved are shown in **Table 5.1.7**.

Table 5.1.7: Department-wise details of the IRs and audit observations outstanding

Sl. No.	Name of Department	Name of Receipts	No. of outstanding IRs	No. of Outstanding Audit Observations	Money Value involved (₹ in crore)
1.	Finance	Taxes/VAT on Sales, Trade, etc.	32	226	171.21
2.	Finance	Miscellaneous General Services/Lottery	5	21	214.88
3.	Transport	Taxes on Vehicles/ Taxes on Goods & Passengers	39	96	15.20
4.	Forests & Environment	Forests & Wildlife	8	19	3.77
Total			84	362	405.06

Source: IRs of Revenue Sector

The pendency of IR due to non-receipt of replies was indicative of the fact that the Heads of Offices/ Departments had not initiated action to rectify the defects, omissions and irregularities pointed out by the Principal Accountant General (Audit) in the IRs.

The Government may consider to have an effective system for prompt and appropriate response to audit observations.

5.1.5.2 Departmental Audit Committee meetings

In order to expedite settlement of the outstanding audit observations contained in the IRs, Departmental Audit Committees are constituted by the Government. These Committees are chaired by the Secretaries of the Administrative Department concerned and attended by the officers concerned of the State Government and officers of the Accountant General (Audit). The Audit Committees need to meet regularly in order to expedite clearance of the outstanding audit observations.

During 2019-20, the Department did not convene any Audit Committee meeting to clear the outstanding audit observations.

Recommendation: *The State Government may ensure holding of regular meetings of the Audit Committees for ensuring effective remedial action on the audit observations.*

5.1.5.3 Response of the departments to the draft audit paragraphs

The draft audit paragraphs proposed for inclusion in the Report of the C&AG are forwarded by the Principal Accountant General (Audit) to the Principal Secretaries/Secretaries of the departments concerned, drawing their attention to audit findings and requesting them to send their response within six weeks.

The fact of non-receipt of the replies from the Departments/ Government is invariably indicated at the end of such paragraphs included in the Audit Report of the C&AG.

Five revenue draft paragraphs were sent to the Principal Secretaries/ Secretaries of the respective Departments during June 2021 to May 2022. The reply in respect of four draft paragraphs were received and incorporated with suitable comments.

5.1.5.4 Follow up on the Audit Reports-summarised position

The internal working system of the Public Accounts Committee (PAC), notified in December 2002, laid down that after the presentation of the Report of the C&AG in the Legislative Assembly, the departments shall initiate action on the audit paragraphs and the action taken explanatory notes thereon should be submitted by the Government within three months of tabling the Report, for consideration of the Committee. In spite of these provisions, the explanatory notes on audit paragraphs of the Reports were being delayed inordinately.

Twenty paragraphs² and two Performance Audits³ included in the Reports of the C&AG on the Revenue Sector of the GoN for the years 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19 were placed before the State Legislative Assembly on 18 July 2013, 25 July 2014, 17 March 2015, 19 March 2016, 28 March 2017, 20 September 2018, 15 February 2020 and 05 August 2021 respectively.

² During 2011-12 = one paragraph, 2012-13 = three paragraphs, 2013-14 = two paragraphs, 2014-15 = three paragraphs, 2015-16 = three paragraphs, 2016-17 = three paragraphs, 2017-18 = three paragraphs and during 2018-19 = two paragraphs

³ During 2015-16 = two Performance Audits viz. Nagaland State Lotteries (Finance Department) and Computerisation of Motor Vehicle Department (Transport and Communication Department)

PAC discussed (during 2011-12 to 2016-17) 15 paragraphs⁴ pertaining to the Reports of the years 2011-12 to 2016-17. The Departments did not furnish *suo-moto* explanatory notes to the Principal Accountant General (Audit) through the Nagaland Legislative Assembly Secretariat in respect of paragraphs/ reviews which appeared in the Audit Reports.

During 2019-20, two PAC meetings were held (August and October 2019) and no Action Taken Note was received.

5.1.6 Analysis of the mechanism for dealing with the issues raised by Audit

To analyse the system of addressing the issues highlighted in the IRs/ Audit Reports by the Departments/ Government, the action taken on the paragraphs and performance audits included in the Audit Reports of the last 10 years for Taxation Department was evaluated.

The succeeding **Paragraphs 5.1.6.1 and 5.1.7** discuss the performance of Taxation Department in dealing with the cases detected in the course of local audit conducted and also the cases included in the Audit Reports for the years 2015-16 to 2019-20.

5.1.6.1 Position of Inspection Reports

The summarised position of IRs issued during the last five years, paragraphs included in these reports and their status as on 30 March 2020 are shown in **Table 5.1.8**.

Table 5.1.8: Position of Inspection Reports

(₹ in crore)

Year	Opening Balance			Addition during the year			Clearance during the year			Closing Balance		
	IR	Paras	Money Value	IR	Paras	Money Value	IR	Paras	Money Value	IR	Paras	Money Value
2015-16	66	297	296.15	2	27	26.58	7	48	9.47	61	276	313.26
2016-17	61	276	313.26	11	45	32.84	2	12	1.37	70	309	344.73
2017-18	70	309	344.73	3	30	70.93	2	15	11.03	71	324	404.63
2018-19	71	324	404.63	9	49	23.10	2	55	50.77	78	318	376.96
2019-20	78	318	376.96	12	65	40.83	6	21	12.73	84	362	405.06

Source: IRs of Revenue Sector

It is evident from the above table that against 66 outstanding IRs with 297 paragraphs as on 01 April 2015, the number of outstanding IRs increased to 84 with 362 paragraphs at the end of March 2020. The Department needs to take adequate steps to settle the outstanding IRs to avoid accumulation of the IRs and paragraphs.

5.1.7 Recovery in cases accepted by the Departments

The position of paragraphs included in the C&AG's Audit Reports of the last five years, those accepted by the Departments and the amounts recovered are shown in **Table 5.1.9**.

⁴ During 2011-12 = one paragraph, 2012-13 = three paragraphs, 2013-14 = two paragraphs, 2014-15 = three paragraphs, 2015-16 = three paragraphs and during 2016-17 = three paragraphs

Table 5.1.9: Position of recovery of accepted cases

(₹ in crore)

Year of Audit Report	Number of paragraphs included	Money value of the paragraphs	Number of paragraphs accepted	Money value of accepted paragraphs	Amount recovered during the year	Cumulative position of recovery of accepted cases as of 31-03-2020
2014-15	3	1.64	3	0.25	0.00	0.00
2015-16	3	16.10	2	5.64	0.00	0.00
2016-17	3	25.59	1	11.47	0.12	0.12
2017-18	3	19.86	1	3.34	0.05	0.17
2018-19	2	21.02	0	0.00	0.00	0.17
Total	14	84.21	7	20.70	0.17	--

Source: Previous C&AG Reports

From the above table, it may be seen that during the last five years, the Department accepted paras with an amount of ₹20.70 crore as against which, they recovered only ₹0.17 crore. Thus, it is evident that the progress of recovery even in accepted cases was very slow during the last five years.

Recommendation: *The Department may take immediate action to pursue and monitor prompt recovery of the dues involved in the accepted cases.*

5.1.7.1 Action taken on recommendations accepted by Government

The draft Reports of the PAs conducted by the Principal Accountant General (Audit) are forwarded to the departments concerned/Government to furnish their replies. These PAs are also discussed during exit conference and views of departments/Government are taken into account while finalising PAs for inclusion in C&AG Audit Reports.

During 2015-16 to 2019-20, two PAs relating to Finance Department and Transport Department were included in the C&AG's Audit Report. Nine recommendations were made in C&AG's Report for consideration by the Government. Status of acceptance of these recommendations is shown in **Table 5.1.10**.

Table 5.1.10: Status of acceptance of audit recommendations made in PAs/ Audit Paragraphs

Year of Audit Report	Name of the Performance Audit* (Administrative Department)	No. of recommendations in PAs	No. of recommendations in Audit paragraphs	Status of acceptance of recommendations
2015-16	Nagaland State Lotteries (Finance Department)	5	Nil	Not communicated
	Computerisation of Motor Vehicle Department (Transport and Communication Department)	4		Not communicated
2016-17	Nil	Nil	Nil	--
2017-18	Nil	Nil	3	Not communicated
2018-19	Nil	Nil	2	Not communicated

Source: C&AG's Audit Reports

* No Performance Audit on Revenue Sector conducted during 2016-17 to 2018-19

5.1.8 Audit Planning

The offices under various departments are, for the purpose of audit, categorised into high, medium and low risk units according to their revenue position, past trends of audit observations and other parameters. The annual audit plan is prepared on the basis of risk analysis which *inter-alia* include critical issues in government revenues and tax administration *i.e.*, budget speech, white paper on State finances, Reports of the Finance Commission (State & Central), recommendations of the Taxation Reforms Committee, statistical analysis of revenue earnings during the past five years, factors of tax administration, audit coverage and its impact during past five years, *etc.*

Out of 43 auditable units, 13 auditee units were planned for audit during 2019-20 and 13 units were covered in audit.

5.1.9 Results of Audit

5.1.9.1 Position of local audit conducted during the year

Test check of the records of 13 units during 2019-20 revealed under assessment/ short levy/ loss of revenue/ non-realisation of outstanding revenue/ evasion of tax *etc.*, in nine offices aggregating ₹40.53 crore in 48 cases.

5.1.10 Coverage of this chapter

This chapter contains one Subject Specific Compliance Audit and five compliance audit paragraphs (selected from the audit observations made during the local audit referred to above) and previous years involving financial effect of ₹31.42 crore⁵.

Subject Specific Compliance Audit

FINANCE (TAXATION) DEPARTMENT

5.2 Processing of refund claims under Goods and Services Tax

5.2.1 Introduction

Timely refund mechanism constitutes a crucial component of tax administration, as it facilitates trade through release of blocked funds for working capital, expansion and modernization of existing business. The provisions pertaining to refund contained in the Goods and Services Tax (GST) laws aim to streamline and standardise the refund procedures under GST regime. During the process of implementation, it was also decided that the claim and sanctioning procedure would be completely online. However, due to unavailability of electronic refund module on the common portal, a temporary mechanism was devised and implemented. In this electronic-cum-manual procedure, the applicants were required to file the refund applications in Form GST RFD-01A on the common portal, take a print out of the same and submit it physically to the jurisdictional tax office along with all supporting documents.

⁵ ₹0.61 crore + ₹3.10 crore + ₹4.59 crore + ₹7.90 crore + ₹2 crore + ₹9.37 crore + ₹2.23 crore + ₹1.62 crore

Further processing of those refund applications, *i.e.* issuance of acknowledgement, issuance of deficiency memo, passing of provisional/ final refund orders, payment advice *etc.* was being done manually. In order to make the process of submission of the refund application electronic, Circular No. 79/53/2018-GST dated 31 December 2018⁶ was issued wherein it was specified that the refund applications in Form GST RFD-01A, along with all supporting documents, had to be submitted electronically. However, various post submission stages of processing of the refund applications continued to be manual.

For making the refund procedure fully electronic, wherein all the steps from submission of applications to processing thereof could be undertaken electronically, have been deployed on the common portal with effect from 26 September 2019 (also called Automation of Refund Process). In cases of all refund applications filed on the common portal before 26 September 2019, the applications shall continue to be processed manually as were done prior to deployment of new system.

5.2.2 Audit Objectives

Audit of Refund cases under GST regime was conducted to assess:

- (i) the adequacy of Act, Rules, notifications, circulars, *etc.* issued in relation to grant of refund.
- (ii) the compliance of extant provisions by the tax authorities and the efficacy of the systems in place to ensure compliance by taxpayers.
- (iii) whether effective internal control mechanism exists to check the performance of the Departmental officials in disposing the refund applications.

5.2.3 Scope of Audit

The Department processed 126 refund cases consisting of 99 pre-automation cases (₹2.06 crore) and 27 post-automation cases (₹3.23 crore). Out of 126 refund cases, a risk based sample of 61 refund cases for ₹3.66 crore falling under the jurisdiction of three⁷ Divisional Offices (DCT) was taken up for audit. Out of 61 cases, 34 cases for refund amount of ₹43.40 lakh pertain to pre-automation (prior to 26 September 2019) and 27 cases involving refund amount of ₹3.23 crore pertain to post-automation.

5.2.4 Audit Methodology

The Subject Specific Compliance Audit (SSCA) commenced on 20 November 2020 and was completed on 09 January 2021 covering all the three Divisions. The draft report was sent to the Department in March 2021. The reply to the draft report was received from the Department in August 2021, and the same has been incorporated in the report.

⁶ No separate circular/ endorsement was issued by the State Tax Department (STD) regarding Central Board of Indirect Taxes and Customs (CBIC)

⁷ Dimapur, Mokokchung and Kohima

5.2.5 Legal provisions and Audit checks/ Criteria

The following sections/ rules/ notifications provide the guidelines/ procedure for claiming the refunds:

- (i) Section 54 to 58 and Section 77 of Nagaland Goods and Services Tax (NGST) Act, 2017;
- (ii) Rule 89 to 97 of NGST Rules, 2017;
- (iii) Section 15, 16 and 19 of Integrated Goods and Services Tax (IGST) Act, 2017; and
- (iv) Notifications/ circulars/ instructions issued by the CBIC/ STD.

The CBIC allowed (November 2017⁸) manual filing and processing of refund in respect of zero-rated supplies due to non-availability of the refund module on the common portal. Manual filing and processing of refund claims on account of inverted duty structure, deemed exports and excess balance in electronic cash ledger was also allowed (December 2017⁹). After allocation of taxpayers between Central and State, the registered person needs to file the refund claim with the jurisdictional tax authority to which the taxpayer has been assigned as per the administrative order. In case such an order has not been issued in the State, the registered person is at liberty to apply for refund before the Central Tax Authority or State Tax Authority till the administrative mechanism for assigning of taxpayers to respective authority is implemented. However, in the later case, an undertaking is required to be submitted stating that the claim for sanction of refund has been made to only one of the authorities. The payment of the sanctioned refund amount shall be made only by the respective tax authority of the Centre or State Government. In other words, the payment of sanctioned refund amount in relation to CGST, IGST and cess shall be made by the central tax authority while in relation to SGST and UTGST it would be made by the State/ UT tax authority. To ensure timely payment of entire refund Board had instructed that refund order issued either by the central tax authority or the State Tax Authority is communicated to the concerned counter-part tax authority within seven working days for the purpose of payment of the relevant sanctioned refund amount.

5.2.6 Categories of Refunds

Though claim for refund may arise on account of 13 categories of transactions, refund cases arising out of only five categories were seen, which are shown below:

- (i) Refund of accumulated Input Tax Credit (ITC) of GST on account of inverted duty structure/ Reverse Charge cases;
- (ii) Finalisation of provisional assessment;
- (iii) Refund of balance in Electronic Cash Ledger;

⁸ vide circular no. 17/17/2017-GST dated 15 November 2017

⁹ vide circular no. 24/24/2017-GST dated 21 December 2017

- (iv) Excess GST payment;
- (v) Refund of CGST and SGST paid by treating the supply as intra-state supply which is subsequently held as inter-state supply and vice versa.

5.2.7 Audit Findings

The findings on examination of refund cases (*Appendix 5.2.1*) are given in the succeeding paragraphs.

Objective 1- The adequacy of Act, Rules, notifications, circulars etc. issued in relation to grant of refund

5.2.7.1 Adequacy of Act, Rules, notifications, circulars, etc.

NGST Act, 2017 and NGST Rules 2017, contain all relevant provisions contained in Sections 54 to 58 & Section 77 of the Central Goods and Services Tax (CGST) Act, 2017 Sections 15, 16 & 19 of the IGST Act, 2017 and corresponding Rules pertaining to refund matters. Further, the Commissioner of State Taxes had also issued various notifications in line with various notifications issued by Central Government. No lapses were noticed in this regard.

Objective 2- The compliance of extant provisions by the tax authorities and the efficacy of the systems in place to ensure compliance by taxpayers

5.2.7.2 Issue of Acknowledgement

Rule 90 (1) and (2) of NGST Rules, 2017 stipulate that where the application related to claim for refund from the Electronic Cash Ledger (ECL), an acknowledgement in Form GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period *i.e.* 60 days specified for processing of refund application. For refund applications other than ECL, the application shall be forwarded to the Proper Officer (PO) who shall within a period of 15 days of filing of the said application, scrutinise the application for its completeness. An acknowledgment in Form GST RFD-02 shall be made available to the applicant within 15 days through common portal. The acknowledgement shall clearly indicate the date of filing claim and the time period *i.e.* 60 days specified for processing of refund.

Thirty-four refund cases pertaining to the Pre-automation involving a total amount of ₹43.40 lakh were provided for examination.

Examination of records (November 2020 to January 2021) revealed that acknowledgments were issued in all the 34 pre-automation cases on time (*Appendix 5.2.2*), which was also confirmed (August 2021) by the Department.

Twenty seven refund cases pertaining to Post-automation, falling under four categories¹⁰ were examined (*Appendix 5.2.3*).

¹⁰ Excess balance in EXBCL- 23 numbers, Provisional Assessment/ Appeal - ASSORD-1, Intra-state supply subsequently held to be Inter-state & *vice versa*-2, Excess payment of GST

It was observed (November 2020 to January 2021) that in 26 out of 27 cases, the Jurisdictional Officers issued acknowledgment in FORM RFD-02 within 15 days. In one case¹¹, it was seen that the acknowledgement was issued after 18 days which resulted in a delay of three days.

The Department accepted (August 2021) the audit findings.

5.2.7.3 Deficiencies in Refund Application

Rule 90 (3) of NGST Rules, 2017 stipulates that if any deficiencies are noticed, the PO shall communicate the deficiencies to the applicant in FORM GST RFD-03 within 15 days through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies.

During examination of records (November 2020 to January 2021) of Pre-automation cases, it was noticed that except in two¹² out of 34 cases, the Refund application in RFD- 01 was not supported by any supporting documents such as statement showing the details of the refund claimed, a certificate to the effect that the liability was not passed on to any other person and a certificate from the Chartered Accountant or a Cost Accountant, where the refund amount exceeds Rupees two lakh *etc.* However, the PO sanctioned the refunds in all the 32 cases without issuing any deficiency memo in RFD- 03.

Audit pointed this out to the Department in March 2021, the Department stated (August 2021) that information was being sought from the POs concerned as to why Refund sanction orders were issued without issuing deficiency memo in RFD-03 and Audit shall be intimated in due course.

During scrutiny of records (November 2020 to January 2021) of 27 Post-automation cases, it was observed that the applications in RFD-01 were not supported by any supporting documents in 17 cases and documents uploaded were incomplete in 10 cases (***Appendix 5.2.4***).

The Department accepted (August 2021) the audit findings and assured that the PO would not entertain any application in RFD-01 without supporting documents.

5.2.7.4 Non release of SGST component of refund

Rule 92 of the NGST Rules, 2017 stipulated that upon submission of refund application, the PO shall carry out the examination process. He shall examine if the refund claim amount is due and payable to the applicant, then he shall make an order in Form GST RFD-06, sanctioning the amount of refund to which the applicant is entitled within 60 days of receipt of application.

Out of 34 cases examined (November 2020 to January 2021) under Pre-automation, 29 applications pertained to refund of CGST/ SGST/ Cess and five applications for refund of IGST. Though the Department sanctioned for all the 34 cases for release of

¹¹ M/s Aja Communication (ARN AA130220000103L)

¹² M/s Aditi Solar Pvt. Ltd. (ARN AA130719000022W & ARN AA130719000003W)

all the components (CGST/ SGST/ IGST & Cess), the CBIC refunded only IGST/ CGST in three cases¹³. No amount was refunded in all other cases. Later, the Commissioner directed (14 July 2020) all the 26 SGST applicants to re-apply for refund of the SGST portion in Post-automation due to technical reasons.

Audit pointed this out to the Department in March 2021, the Department stated (January 2021 and August 2021) that SGST refund was not released due to non-placement of fund (Budgetary allocation) for refund. Audit recommends that the SGST refund should be expedited, as non-refund is a violation of the Statute.

5.2.7.5 Non-payment of interest on delayed refunds

As per Section 56 of the NGST Act, 2017 if any amount to be refunded to the applicant is not refunded within 60 days from the date of receipt of application, interest at the rate not exceeding six *per cent* will be payable. Rule 94 of the NGST Rules, 2017 provides that an order for interest shall be made along with payment advice in Form GST RFD- 05, specifying therein the amount of refund which is delayed. In case of refund arising from an order passed by an Adjudicating Authority or Appellate Authority or Appellate Tribunal or Court, interest at a rate not exceeding nine *per cent* shall be payable.

Out of 34 refund cases examined (November 2020 to January 2021) under Pre-automation, delays in refunds were noticed in 24 cases, involving a total interest of ₹0.21 lakh¹⁴, ranging from 04 days to 369 days (*Appendix 5.2.5*) with respect to issuance of the refund orders in RFD-05. The delay ranges are shown in **Table 5.2.1**.

Table 5.2.1 Delay in refunds

Sl. No.	Delay Range (in Months)	No of Refund cases
1.	Upto three months	5
2.	Three to six months	6
3.	Above six months	13
Total		24

Source: Departmental records

Though the Department was liable to pay interest at the rate of six *per cent* to the taxpayers along with the refund amount, it was noticed that the Department did not sanction interest on delayed payments.

Audit pointed this out to the Department in March 2021, the Department (August 2021) stated that the interest on delayed refunds had arisen due to non-automation of the refund process and non-placement (Budget allocation) of fund.

Out of 27 refund cases examined (November 2020 to January 2021) under Post-automation, delays in refunds were noticed in three cases involving a total interest of ₹0.69 lakh ranging from 12 days to 216 days (*Appendix 5.2.6*) in respect to

¹³ IGST-M/s Aditi Solar Pvt. Ltd. (ARN. AA130719000022W & AA130719000003W) & CGST-M/s Z.C. Marketing (AA130619000006S)

¹⁴ Delay for sanction of refund is to be calculated from the date of acknowledgement till the date of order in Form GST RFD-06 in absence of the credit's information of refund amount in the bank account of the taxpayer

issue of refund order in FORM RDF-05. Though the Department was liable to pay interest at the rate of 6 *per cent* to the dealers along with the refund amount, it was noticed that the Department did not sanction interest of ₹0.69 lakh on delayed payments.

Audit pointed this out to the Department in March 2021, the Department (August 2021) stated that processing of the refund applications were delayed because the ARN was not reflected in the task list of the jurisdictional authority due to technical glitches. However, the Department's reply was silent on the reasons as to why the Department did not pay interest on the delayed payment of refunds.

5.2.7.6 Non production of records

As per section 54 (4) of the NGST Act, 2017, the Refund application shall be accompanied by (a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and (b) such documentary or other evidence (including the documents referred to in Section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person.

Out of 34 cases selected for scrutiny (November 2020 to January 2021) under Pre-automation, the Department did not furnish any documents in support of eight refund cases under the jurisdiction of the Divisional Officers (*Appendix 5.2.7*).

Audit pointed this out to the Department in March 2021, the Department (August 2021) stated that matter would be intimated to audit in due course of time.

5.2.7.7 Abnormal delay in communicating refund orders to counterpart tax authority

Refund order¹⁵ issued either by Central Tax Authority or State/ UT tax authority shall be communicated to the concerned counterpart tax authority within seven working days for the purpose of payment of relevant sanctioned amount of tax or cess as the case may be. It was also reiterated therein to ensure adherence to the time line specified under Section 54 (7) and Rule 91 (2) of NGST Act and Rules respectively for sanction of refund orders.

While verifying the records (November 2020 to January 2021) of transmission of refund sanction orders communicated by the State tax authority to counterpart Commissionerate during financial year (FY) 2017-18 to 2019-20 (25 September 2019). 20 refund orders involving ₹17.11 lakh were forwarded with a delay ranging from 22 to 317 days (*Appendix 5.2.8*) which is shown in **Table 5.2.2**.

¹⁵ Circular No. 24/24/2017 GST dated 21 December 2017

Table 5.2.2 Delay in refund to counterpart tax authority

Sl. No.	Delay Range (in Months)	No. of Refund Cases
1.	Upto one month	5
2.	One to six months	14
3.	Above six months	1
Total		20

Source: Departmental records

Thus, the Department did not adhere to the prescribed timelines. Further, despite delay in refund of sanctioned amount, interest of ₹0.34 lakh as admissible under Section 56 of NGST Act, 2017 was not paid to the claimants.

The Department accepted (August 2021) the audit findings and assured that all refund orders were now being issued within the prescribed timelines.

5.2.7.8 Other Findings

5.2.7.8.1 Irregular refund of IGST under Pre-automation

Any amount, which remains unutilised in ECL, after discharge of tax dues and other dues payable under NGST Act and Rules, 2017 made thereunder, can be refunded to the registered person as excess balance in ECL in accordance with the proviso to sub-section (1) of Section 54, read with sub-section (6) of Section 49 of NGST Act, 2017.

As per Section 61 (1) of the NGST Act, 2017, the PO may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.

M/s Aditi Solar Pvt. Ltd. (GSTIN 13AAICA7380A1Z2) filed application for refund of ₹10.20 lakh as excess balance in ECL¹⁶ (01 July 2019) supported with ECL, FORM GSTR-2A and other necessary declaration, etc. The application was processed and sanctioned by the ST (03 September 2019) on the basis of documents furnished by the firm. The amount claimed by the firm as excess credit was credited to the ECL as TDS on IGST by three firms during February to March 2019 (February- ₹2.90 lakh by GSTIN 13SHLD04061B1DU, ₹5.06 lakh by 16SHLT00616A1D0 and March-₹2.22 lakh by 16SHLT00616A1D0). As per the TDS and TCS credit statement for the month of February 2019 and March 2019, the total taxable value of the taxpayer was ₹5.10 crore whereas this taxable value was not declared in the corresponding GSTR-3B returns for February 2019 and March 2019. Thus, there is a suspected suppression of turnover of ₹5.10 crore by the firm with tax implication of ₹61.20 lakh.

Audit pointed this out to the Department in December 2021, the Department stated (August 2021) that the PO had been asked to report the reasons for non-declaration of transactions in GSTR-3B during the relevant tax periods.

¹⁶ ARN-AA130719000022W

5.2.7.8.2 Irregular refund of ECL under Post-automation

Any amount, which remains unutilised in ECL, after discharge of tax dues and other dues payable under NGST Act and rules made thereunder, can be refunded to the registered person as excess balance in ECL in accordance with the proviso to sub-section (1) of Section 54, read with sub-section (6) of Section 49 of NGST Act.

As per Section 61 (1) of the NGST Act, 2017, the PO may scrutinise the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.

Three¹⁷ firms filed refund applications of ₹77.39 lakh as excess balance in ECL vide four ARNs. The applications were processed and sanctioned by the STs on the basis of refund applications filed by the three firms. Audit pointed out to the Department in December 2020 that the amount claimed by the firm as excess credit was credited to the ECL of the three firms as TDS on CGST/ SGST/ IGST. The details of refund claimed on account of excess balance in ECL, TDS deducted as per FORM GSTR-7/ GSTR-7A and taxable amount declared in FORM GSTR-3B by the taxpayers are shown in **Table 5.2.3**.

Table 5.2.3: Irregular refund under Post-automation

(₹ in lakh)					
Name of Firm	ARN	Form reference	TDS deducted	Taxable Amount	Total Tax (CGST/ SGST)
M/s T. Tachu & Co.	AA1309190004866	GSTR 7/ GSTR 7A (TDS)	17.04	760.81	91.30
M/s Coal Mines Associated Traders Pvt. Ltd.	AA1302200005843		13.70	611.56	73.39
	AA131119000027X		44.41	1,982.46	237.90
M/s Ren kik EZJ & Co.	AA131019000168R		2.24	100.40	12.05
Sub-Total (A)			77.39	3,455.23	414.64
M/s T. Tachu & Co.	AA1309190004866	GSTR 3B		0.00	0.00
M/s Coal Mines Associated Traders Pvt. Ltd	AA1302200005843			504.70	60.56
	AA131119000027X			375.00	45.00
M/s Ren kik E.Z.J. & Co.	AA131019000168R			0.006	0.0007
Sub-Total (B)				879.71	105.56
Evasion of Tax (A - B)				2,575.54	309.06

Source: Departmental records

As can be seen from the table above, though the three firms were supposed to disclose the transactions in the Monthly Return (GSTR-3B) and pay the tax liability of ₹4.15 crore as CGST & SGST, the three firm had declared taxable amount of ₹8.80 crore against the total taxable turnover of ₹34.55 crore. This has resulted in suppression of taxable turnover of ₹25.76 crore by the three firms leading to evasion of ₹3.10 crore (*Appendix 5.2.9*).

¹⁷ M/s T. Tachu & Co., M/s Coalmines Associated Traders Pvt. Ltd. and M/s REN KIK E.Z.J & Co.

- In reply, the Department stated (August 2021) that M/s T. Tachu & Co applied for refund of ₹17.04 lakh on 27 September 2019, which was a works contract-related TDS credit (IGST) filed by the Office of the Chief Engineer, Guwahati. The firm claimed refund on the grounds that this payment pertained to works executed in VAT era, *i.e.* before 01 July 2017 and the concerned Department (O/o PWD NH Division-I on behalf of the Chief Engineer, Guwahati, Assam) had erroneously deducted five *per cent* VAT as well as two *per cent* IGST while making part-payment to the firm. The firm is yet to submit the documentary evidence of the payment. The final outcome of the case shall be intimated to Audit in due course of time.
- In reply, the Department (August 2021) stated that refund application of M/s Coal Mines Associated Traders Pvt. Ltd. (ARN -AA1302200005843) was correctly processed and sanctioned by the ST. The refund sanctioned amount of ₹13.70 lakh for September 2019 as excess balance in ECL was the TDS component deducted by the TDS authority. The PO further stated that taxable value declared in GSTR-3B by the firm was the actual contract value and the question of suppression of turnover leading to evasion of tax does not arise.

The Department's reply is not acceptable as the total taxable value of the firm was ₹6.12 crore as per the TDS statement of September 2019, arrived after deducting of the tax component of ₹73.39 lakh. However, the firm declared only ₹5.05 crore in the monthly return of September 2019. Therefore, there is a suppression of turnover of ₹1.07 crore.

- In reply, the Department (August 2021) stated that the refund application of M/s Coal Mines Associated Traders Pvt. Ltd. (ARN - AA131119000027X) was correctly processed and sanctioned by the PO. The refund sanctioned amount of ₹44.41 lakh as excess balance in ECL was the TDS component deducted by the TDS authority. The taxable value declared in GSTR-3B by the firm was the actual contract value. Therefore, the question of suppression of turnover leading to evasion of tax does not arise.

The Department's reply is not acceptable as the total taxable value of the firm was ₹19.82 crore as per TDS statement of April, May & June 2019 arrived after deducting the tax component of ₹2.38 crore. However, the firm declared a turnover of only ₹3.75 crore in the monthly returns of April, May & June 2019. Therefore, there is a suppression of turnover of ₹16.07 crore.

- In reply, the Department (August 2021) stated that notice was issued to the firm, M/s Ren kik EZJ & Co. for payment of tax and accordingly, the firm had paid the tax of ₹15.74 lakh (including interest of ₹2.25 lakh).

Objective 3- Whether effective internal control mechanism exists to check the performance of the Departmental officials in disposing off the refund applications.

5.2.7.9 Effectiveness of internal control

Proper monitoring and evaluation systems are essential for the successful implementation of any Act or Programme. NGST/ CGST/ IGST Acts and Rules and the various notifications issued by the respective Boards/ Authorities contains relevant provisions governing the refund matters including the mechanisms for proper monitoring of the processes by concerned Departmental officers.

Examination of records (November 2020 to January 2021) revealed that no proper registers/files were maintained at the level of PO or at the Divisional level to capture the full details of refund claims, though the refund application were to be indexed and processed as per seniority, especially in case of pre-automation cases. Further, no periodic reports were sent to the Commissionerate by the STs or Divisions and there was lack of monitoring by the higher officers. This has led to non-availability of records with the STs/ Divisions and delays in sanctioning refund cases and communicating sanction of refunds to counter-part central office, *etc.* as mentioned in above paragraphs.

5.2.8 Conclusion

Audit noticed certain cases where the Department did not adhere to the prescribed timelines leading to instances of delay in issuing of refund orders and communicating refund orders to counterpart tax authority. Further, lack of proper scrutiny of refund claims by the jurisdictional officers led to irregular allowance of refund in certain cases.

In addition, systematic issues such as deficiency in record keeping at the level of Proper Officers/ Divisions to capture the full details of refund claims were noticed. Periodic reports were not forwarded to the Commissioner by the Proper Officers (POs) resulting in lack of effective monitoring.

5.2.9 Recommendations

- i. The Department should ensure that Refund applications are supported by documents and processed in a timely manner as delay in processing of refund entail interest liability.*
- ii. Periodic reports may be forwarded to the Commissioner in a timely manner and monitoring of refund cases may be strengthened.*

Compliance Audit Paragraphs

FINANCE (TAXATION) DEPARTMENT

5.3 Evasion of Nagaland Value Added Tax

Twenty one dealers evaded Nagaland Value Added Tax of ₹4.59 crore by utilising invalid/ obsolete C Forms. In addition, an amount of ₹7.90 crore is also payable by them as penal interest.

Section 28 of the Nagaland Value Added Tax (NVAT) Act, 2005 stipulates that every dealer registered under the Act shall furnish Annual Returns containing information in respect of gross purchases including exemption, non-taxable purchases, gross sales including export sales, interstate sales and consignment transfers, total tax due including interest and penalty less tax credit during the assessment year and tax payable and paid.

Section 8 of the Central Sales Tax (CST) Act, 1956 provides for inter-State sales of goods to registered dealers supported by valid declaration in 'Form-C' as taxable at the concessional rate of two *per cent*. As per Rule 12 (7) of the CST (Registration and Turnover) Rules, 1957, the declaration in Form C or Form F or the certificate in Form E-I or Form E-II shall be furnished to the prescribed authority within three months after the end of the period to which the declaration or the certificate relates. Provided that if the prescribed authority is satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate within the aforesaid time, that authority may allow such declaration or certificate to be furnished within such further time as that authority may permit.

Rule 4(12) of CST (Nagaland) Rules states that when a notification declaring Forms of Declaration of a particular series, design or colour to be obsolete and invalid is published, all registered dealers shall, on or before the date with effect from which the Forms are so declared obsolete and invalid, surrender to the Superintendent of Taxes all unused Forms of that series, design or colour which may be in their possession and obtain in exchange such new Forms as may be substituted for the forms declared obsolete and invalid. Provided that new Forms shall not be issued to a dealer until he has rendered a satisfactory account of the Old Forms issued to him and returned the unused ones if any, to the said authority.

The Commissioner of Taxes (CT), GoN in April 2013 intimated¹⁸ the CTs of all States that offline issuance of Form-C to the dealers shall continue in conjunction with the online issuance till 31 August 2013. However, offline forms issued up to August 2013 shall remain valid for use upto 30 September 2013 and unutilised forms shall stand obsolete and invalid with effect from 01 October 2013.

During audit of units under Commissioner of Commercial Taxes, Assam, it was noticed that 12 dealers from five ACTs-Guwahati (Ward A, B & D, Jorhat and Dhubri) had claimed concessional rate of tax on the basis of 52 'C Forms' which had been declared obsolete by CT, GoN. These C Forms were submitted by 21 dealers

¹⁸ Notification No. CT/Leg/CR/128/2006 dated 01 April 2013

registered in Nagaland. Since, the onus of submission of genuine statutory forms is with the purchasing dealer¹⁹, the matter was cross examined by audit. Scrutiny (April to May 2022) revealed the following observations:

- (i) Out of 52 declaration forms, 49 forms were issued by the Superintendents of Taxes (STs) of 10 wards under Dimapur, Kohima and Mokokchung Divisions to 20 dealers (***Appendix 5.3.1***) for purchasing goods at concessional rate from Assam, when the issue of manual C Forms was in force. However, examination of records revealed that these dealers had purchased goods valued at ₹57.47 crore at concessional rate after the forms had become obsolete.

Examination of assessment records of these 20 dealers in Nagaland revealed that Utilisation Certificates (UCs) against these 49 C Forms were neither submitted by them nor declared in Returns filed under Section 28 of NVAT Act, which led to evasion of VAT amounting to ₹4.59 crore²⁰ by these dealers as shown in the ***Appendix 5.3.1***. Further, due to lack of internal controls in the Department, the AAs also failed to notice non-submission of the UCs. The dealers are also liable to pay interest at two *per cent* per month from the date of utilisation till the date of payment of tax amounting to ₹7.90 crore (interest calculated up to April 2022). In addition, the dealers are liable to be penalised under Section 10 of the CST Act, 1956.

- (ii) Three declaration forms bearing series 0JBB²¹ were found utilised by M/s R.S Traders. However, registration of the said dealer was found cancelled (29 September 2012) prior to the issue of the declaration forms and as per the departmental records, no such forms were found to be issued to him. The matter needs to be investigated and appropriate action should be taken.

This indicates that no monitoring system either existed in the Department or the AAs failed to monitor the issue and utilisation of C Forms required as per extant rules. Thus, the AAs failure in ensuring submission of UCs or return of unused forms which had been declared obsolete and invalid, had resulted in evasion of NVAT of ₹4.59 crore by 21 dealers. In addition to this, the dealers are also liable to pay ₹7.90 crore as penal interest. Since no assessment is possible as per Section 38 of NVAT Act after the expiry of five years as these cases relate to the period from 2013-14 to 2016-17, the Department lost the opportunity to realise the amount of ₹12.49 crore²² resulting in a loss to the Government.

In reply, the Department confirmed (May 2022) that all the 21 dealers had neither submitted the UCs nor declared the interstate purchases done with these forms in their returns. In respect of three C forms under 0JBB series, the Department stated that these forms were not issued by the Department. Further, the Department submitted

¹⁹ As per judgment of Hon'ble Supreme Court order on *The State Of Madras vs M/S. Radio and Electricals Ltd.* (19 April, 1966)

²⁰ Calculated at the applicable rate in force during the time of import/ purchase under NVAT Act.

²¹ 0JBB060396 dated 13-12-2013, 0JBB060397 dated 13-12-2013, 0JBB060398 dated 13-12-2013

²² ₹4.59 crore+ ₹7.90 crore

that, as per Section 38 of the NVAT Act, it is constrained to initiate fresh proceedings of any case after the limitation period of five years.

The reply of the Department is an admission of the audit findings and confirms that the Department had no system to check the return of the obsolete offline forms to prevent their misuse. The Department may take necessary steps to fix the responsibility upon the officers concerned for causing loss of revenue to Government.

Recommendation: *The Government may instruct the Department to realise the amount in above cases and action may be initiated against the officials whose negligence led to short realisation of revenue.*

FINANCE DEPARTMENT (TAXATION)

5.4 Evasion of tax

Three Dealers defaulted in payment of tax amounting to ₹2.23 crore and are also liable to pay interest of ₹1.62 crore.

As per Rule 49 (1) of NVAT Rules, 2005, the tax liability shall be deemed to have been discharged only if the amount payable is credited to the account of the State Government by the due date. Further, as per sub rule (2), if the dealer fails to pay the amount of tax by the due date, he shall be liable to pay the outstanding amount along with an interest at the rate of two *per cent* per month or parts of a month proportionately computed, starting with the first day following the due date till the date of actual payment.

Sub-section (6) of Section 42 of NVAT Act, 2005, further stated that the amount that remains unpaid after the due date of payment in pursuance of the notice issued under sub-section (4) and sub-section (5) shall be recoverable as a Public Demand under the Bengal Public Demand Recovery Act, 1913.

Compliance Audit on the accounts of the Deputy Commissioner of Taxes (DCT), Kohima for the period from April 2017 to December 2020 was conducted between October 2020 and February 2021. Examination of records revealed that 226 out of 986 dealers were assessed by the Assessing Authorities (AAs) for the assessment year 2015-16 to 2017-18.

Scrutiny (February 2021) of assessment records revealed that three dealers had defaulted in payment of tax of ₹2.23 crore for tax period 2015-16, 2016-17 and 2017-18. The AAs had served a demand notice under Sections 35, 36, 37 and 39 of the NVAT Act, 2005 on three dealers for defaulting in payment of assessed tax for the tax period 2015-16, 2016-17 and 2017-18 as shown in **Table 5.4.1**:

Table 5.4.1: Details showing demand notice served to tax defaulters

(₹ in lakh)

Sl. No.	Name of the dealer	Year (Tax period)	Date of issue of demand notice	Tax due for payment	Interest at 2 per cent on tax due	No. of month	Total interest due	Total amount due
1	2	3	4	5	6 (5*2 per cent)	7	8 (6*7)	9 (5+8)
1.	M/s Nezone Power Systems, Kohima	2017-18	08-01-2018	106.81	2.14	29	61.95	168.75

Sl. No.	Name of the dealer	Year (Tax period)	Date of issue of demand notice	Tax due for payment	Interest at 2 per cent on tax due	No. of month	Total interest due	Total amount due
2.	M/s Noiz Tyres, Kohima	2015-16	19-06-2018	18.03	0.36	53	19.11	37.14
		2016-17	24-10-2018	55.41	1.11	41	45.43	100.84
3.	M/s Modern Pan Shop, Kohima	2016-17	10-01-2019	42.85	0.86	41	35.14	77.99
Total				223.10	4.47	--	161.63	384.72

Source: Departmental records

However, the DCT, Kohima failed to invoke the provisions of sub-sections (5) and (6) of Section 42 of NVAT Act, 2005 even after expiry of 29 to 53 months from the date of issue of the demand notice served on the dealers. Tax of ₹2.23 crore due for payment remained outstanding for long periods thereby leading to less revenue collection. The three dealers are also liable to pay interest of ₹1.62 crore on the outstanding tax due for payment.

In reply, the Department (September 2021) stated that the function of the State Taxes Department in tax administration is quasi-judicial in nature. All proceedings have to be initiated and processed in accordance with the provisions of the Acts and Rules. The Department requested to allow the adjudicating authorities to examine and adjudicate the case further.

The reply is not acceptable as the Department did not invoke and initiate proceedings in accordance with the provisions of the Acts and Rules on time. The AAs also did not issue demand notice under sub-section (6) of Section 42 of NVAT Act, 2005. Besides, no responsibilities were fixed on the AAs for their negligence to exercise due diligence of cross verifying the invoice details uploaded in the Tax-soft e-filing system.

The cases stand a risk of becoming time barred, hence the Government should take immediate steps to recover revenue and interest.

Recommendations: (i) *Due diligence may be exercised by the Assessing Authorities while assessing the self-assessed returns submitted by the dealers to avoid evasion of tax.*

(ii) *Time bound recovery of the Tax and penalty in these cases may be initiated and monitored at higher levels.*

FINANCE DEPARTMENT (TREASURIES & ACCOUNTS)

5.5 Avoidable procurement of stamp duty materials

Lack of planning and proper monitoring mechanism with regard to procurement and supply of stamp duty materials resulted in accumulation of ₹20.77 crore stamp duty material. No stock verification was conducted to confirm the actual physical availability of these materials.

Rule 210 of GFR 2017 states that the officer-in-charge of stores having custody of goods and materials, especially valuable and/ or combustible articles, shall take

appropriate steps for arranging their safe custody, proper storage accommodation, including arrangements for maintaining required temperature, dust free environment, etc.

Rule 214 further states that depending on the frequency of requirement and quantity thereof as well as the pattern of supply of a consumable material, optimum buffer stock should be determined by the competent authority.

Non-Judicial Stamp papers (NJS) are used in matters which concern transactional arrangement between parties, which are not judicial in nature, but used to make agreements, affidavits, lease, amendments in article, etc. Court fee stamps, on the other hand, are required by people who file cases in the court. Documents are notarised to prevent any kind of fraud document and impede someone from presenting a forged document. The stamp materials (non-judicial stamps, court fee stamps, notary stamps, etc.) are printed at the Government Security Press at Nasik and Hyderabad based on the indents received from the State Government. The cost of the printed stamp material is initially borne by the State Government. These printed stamp materials are then received by the State Government and sold to vendor/ public according to the face value to generate stamp duty of the State Government.

Scrutiny of records (March 2020) of the Principal Director, Treasuries and Accounts, Kohima revealed that Government of Nagaland sanctioned an amount of ₹4.38 crore for printing cost of non-postal stamps during 2014-15 to 2019-20. The Department paid the full amount through 14 cheques against printing of stamp duty materials from the Government Press' at Nasik and Hyderabad.

It was observed from records that stamp duty materials of face value ₹18.21 crore in different denominations were in stock (from April 2014). However, the Department continued to procure stamp duty materials on a year to year basis as shown in **Table 5.5.1**

Table 5.5.1: Details of procurement of stamp duty materials

(Amount in ₹)

Year	Opening balance	Receipt during the year	Sales during the year	Closing balance	Procurement cost of stamp duty incurred during the year
2014-15	18,21,08,534	2,14,00,000	1,52,15,400	18,82,93,134	81,61,966
2015-16	18,82,93,134	3,29,54,000	2,51,98,150	19,60,48,984	49,73,999
2016-17	19,60,48,984	2,09,05,000	2,12,99,890	19,56,54,094	58,46,034
2017-18	19,56,54,094	6,19,45,000	3,28,33,820	22,47,65,274	30,42,675
2018-19	22,47,65,274	37,04,000	2,31,25,990	20,53,43,284	40,78,493
2019-20	20,53,43,284	4,42,25,180	4,18,22,190	20,77,46,274	1,77,26,053
Total	18,51,33,180	15,94,95,440	15,94,95,440	--	4,38,29,220

Source: Departmental records

As can be seen from the table above, there was huge stock (₹18.21 crore) at the beginning of the year 2014-15 and the total outflow (₹15.95 crore) during the last six years (2014-20) was much less than the opening balance of stock (₹18.21 crore). The procurement of additional stamp duty materials of various denominations face valued at ₹18.51 crore during 2014-20 by the Department without stock verification

and assessment of actual requirement resulted in accumulation of huge stock of ₹20.77 crore (as of March 2020) besides incurring unnecessary procurement cost.

Joint verification (January 2020) of the Strong room in the office of the Kohima North Treasury revealed that the accumulated revenue papers, court fee stamps, NJS papers, etc. of different denominations were dumped haphazardly. As the stamp duty materials were not stocked properly and systematically, audit could not ascertain the actual position in spite of the efforts being made during the joint verification of the stock. The Senior Treasury Officer and Treasury Staff in charge of Strong room who are responsible for maintaining the stocks could not quantify the denomination-wise actual physical availability of the stamp duty materials in the Strong room. The lack of proper storage carries with it the risk of the valuable stamp duty material becoming unusable/ getting destroyed/ mutilated.

Therefore, lack of planning and proper monitoring mechanism in regard to procurement and supply of stamp duty materials resulted in accumulation of ₹ 20.77 crore stamp duty materials of various denominations.

The Department in reply (July and September 2021) stated that due to some communication gap, stamps were procured in excess, however, the system of procurement of stamps has now been rectified based on demand. The Department, while accepting accumulation of huge stock of stamps, stated that the almirahs in the Strong room are now been labelled properly and that the Department is trying to streamline the procurement process and therefore requested for an opportunity to rectify the lacunae in planning and monitoring mechanism.

The Department's reply of communication gap in procurement process, accumulation of huge stock and seeking for an opportunity to rectify the planning and monitoring mechanism is an acceptance of the audit findings.

- Recommendations:***
- (i) The Department may ensure the requirement of actual quantity by obtaining demands from the treasuries and after assessing the actual quantity available through regular physical verification of stock, before indent for printing of stamp duty materials.***
 - (ii) The State Government should assess and quantify the mutilated stocks and initiate steps to write off the damaged stamps.***
 - (iii) The Department should frame inventory management guidelines fixing stock limits such as minimum, maximum and re-ordering levels of various stamp duty materials, ensure proper storage of the usable stock and may adopt system like FIFO (First-In-First-Out).***

FINANCE DEPARTMENT (NAGALAND STATE LOTTERIES)

5.6 Loss of revenue due to non-renewal of license

Due to flaws in implementation of the Nagaland Prohibition of Gambling and Promotion and Regularisation of Online Games of Skill Rules, 2016, the State Lotteries sustained revenue loss of ₹ two crore. Royalty receivable by the State Government also remained un-assessed as the active licensees neither maintained the designated accounts nor the Department had any technical expertise to monitor and analyse the gross revenue of the licensees.

Rule 4 (1) of the Nagaland Prohibition of Gambling and Promotion and Regularisation of Online Games of Skill Rules, 2016 envisaged that for any entity to offer “games of skill” on their website, mobile platform, television or any other online media, and earn revenue from the same whether by means of advertising revenue or taking a percentage of winnings of gameplay or charging of fixed fee for membership or for downloading the game *etc.*, it shall be necessary for the entity to obtain a valid license for the games prescribed under **Schedule A** of the Nagaland Prohibition of Gambling and Promotion and Regularisation of Online Games of Skill Act, 2016.

Rule 4 (12) also states that a license issued under this Act shall be valid for a period of five years’ subject to compliance of prescribed conditions, and shall be deemed to have been renewed every year thereafter as long as the license fee has been duly paid by the license holder within the specified period, and the license has not been revoked as per the provisions of this Act. Rule 5 (5) also stated that if there is delay in payment of license fee, the said breach may be compounded by payment of penalty calculated at 12 *per cent* simple interest per annum.

Rule 10 (1) states that the licensee shall maintain a designated account known to the licensing authority for conduct of all financial transactions in connection with the conduct of ‘games of skill’ under license from the State Government. The gross revenues earned by the licensee shall be deposited only into the designated account to ensure transparency and control.

Further, Rule 11 (1) states that every licensee shall pay to the State Government (i) The annual license fee of ₹10 lakh per game per annum or ₹25 lakh for a bouquet of games per annum for the first three years, and ₹20 lakh per game per annum or ₹50 lakh for a bouquet of games per annum for the next two years. (ii) In addition, the licensee shall further be required to pay an amount of 0.50 *per cent* of the gross revenue generated (less Service Tax) as royalty to the State Government.

The main purpose and scope of organising the Nagaland State Lotteries is to earn additional revenue of the State for developmental activities²³.

²³ As envisages in Annexure to Lotteries (Regulation) Rules, 2010 (Sl. No. B) – Notified on 02 June 2010

Scrutiny (March 2020) of records for the period from October 2017 to February 2020 of the Director, Nagaland State Lotteries revealed the following:

- (i) The Director of Nagaland State Lotteries (Licensing Authority) issued license for conduct of online ‘games of skills’ to 12 firms during the period from December 2016 to December 2020. Out of the 12 firms, the license of two firms²⁴ were cancelled after payment of ₹35 lakh as license fee on grounds of violation/ non-compliance of the provisions and one firm²⁵ was suspended after payment of ₹10 lakh on grounds of non-fulfilment of the terms and conditions of the Rules. Though the license of two firms²⁶ were cancelled/ suspended, they were still liable to pay additional license fee of ₹60 lakh till their license were actually cancelled in 2019 and 2020 respectively. Further, out of nine live license holders, six firms neither renewed their license nor deposited Government royalty despite being active and operating (January 2021) online games of skill and defaulted in payment of ₹1.40 crore.

Therefore, the actual license fee receivable by the Government was ₹5.10 crore against which the State Lotteries received only ₹3.10 crore (December 2020). This resulted in loss of revenue to the tune of ₹two crore (**Appendix 5.6.1**) as license fee. It was also noticed that the Department issued show cause notices²⁷ to the defaulting license holders.

- (ii) Out of 12 firms, 10 firms were liable to pay a penalty of ₹31.80 lakh (**Appendix 5.6.2**) from the date of issue of the license to December 2020. However, only one firm (Tictok Skill Games Pvt. Ltd.) paid penalty of ₹6,575. This resulted in default in payment of ₹31.73 lakh as penalty.
- (iii) The Department received royalty of ₹1.86 crore (**Appendix 5.6.1**) for the period from the date of issue of the licence till December 2020 from eight firms. The State Government sustained revenue loss of royalty as the Director of State Lotteries in a written reply (December 2020) admitted that the Department did not possess technical expertise to monitor the activities of the firms and to analyse the licensee’s gross revenue from the online games payable to the State Government. It was observed that the firms neither submitted the designated accounts to the licensing authority nor the Department insisted for its submission

²⁴ M/s Club Empire Tech Pvt. Ltd. and Golden Skill Game Pvt. Ltd.

²⁵ WYZ Games India Pvt. Ltd.

²⁶ M/s Club Empire Tech Pvt. Ltd. (License issued on 15 December 2016) and WYZ Games India Pvt. Ltd. (License issued on 16 December 2016)

²⁷

Sl. No	Name of firm	Date of issue of show cause notice			Date of issue of reminder	
1.	M/s K365 Web Assets Pvt. Ltd.	18-03-2017	25-06-2019	29-01-2021	27-07-2020	
2.	M/s Club Empire Tech Pvt. Ltd.	18-03-2017	22-02-2018	22-05-2018	01-03-2019	
3.	WYZ Games India Pvt. Ltd.	18-03-2017	22-02-2018		16-03-2018	01-03-2019
4.	Quantum Skill Gaming & Tech Pvt. Ltd.	22-02-2018	29-01-2021			
5.	Baazi Networks Pvt. Ltd.				03-02-2021	
6.	Sachar Gaming Pvt. Ltd.	29-01-2021				
7.	Tictok Skill Games Pvt. Ltd.				03-02-2021	
8.	Golden Skill Game Pvt. Ltd.	18-06-2019				

in accordance with Rule 10 of the Act. Therefore, the actual gross revenue generated by the active firms from the online games and the royalty at the prescribed rate of 0.50 *per cent* in terms of Rule 11 (ii) receivable by the State Government remained unassessed and unrealised.

Thus, the main purpose of running State Lotteries to earn additional revenue of the State for developmental activities was not met. Moreover, the firms were running the online games without renewing their licenses, hence, running their operation illegally. The State Government did not initiate any legal steps in any Court of Law against the firms for running illegal online games and stop the operation.

The Government stated (September 2021) that there is no legal compulsion for a firm hosting online games of skill to obtain a license, much less seek renewal of their license to be able to host online games of skill. There are already numerous firms hosting games on the internet without any restrictions. Thus, the decision to obtain a license from the GoN to host online games of skill is purely by choice of the licensee for their own personal reasons.

The reply is not acceptable as every firm has to obtain license for the games prescribed under **Schedule A** of the Act *ibid*. These firms are registered in India and would be filing returns as per law. The Department made no efforts to find the revenue attributable to registered gamers from Nagaland of these firms and verify the royalty. The reply of the Government contradicts the principles and purpose of enacting the Act and also undermined the executive control of the Legislative Assembly. Moreover, the Government's reply that there is no legal compulsion for a firm hosting online games of skill to obtain a license contradicts the fact that the Department had issued show cause notices to the defaulting licensees.

Recommendations: *The State Government may-*

- (i) *take legal steps in any Court of Law to stop the illegal operation of online games without renewing the licences.*
- (ii) *ensure that the licensees maintain designated accounts to resist the drainage of State revenue.*
- (iii) *recover the licence fee and penalty from defaulting license holders.*
- (iv) *also ensure that the Department utilises the latest technology and technical expertise to analyse the gross revenue of the licensees earned from the online games of skill.*

MOTOR VEHICLES DEPARTMENT

5.7 Default in payment of Motor Vehicles Taxes

The Motor Vehicles Department failed to invoke the provisions of Nagaland Motor Vehicles Taxation Act, 1967 and Nagaland Passengers and Goods Taxation Act, 1967 to recover the outstanding motor vehicles tax from vehicle owners resulting in shortfall of tax collection to the tune of ₹9.37 crore.

The Public Accounts Committee (PAC) has recommended²⁸ the Motor Vehicles Department to take action against the defaulting vehicle owners as pointed out in the C&AG Audit Report²⁹ for the year ended 31 March 2016 wherein it was mentioned that 36,040 goods/ passenger vehicles defaulted in payment of goods and passenger tax amounting to ₹5.64 crore and 45,631 vehicles defaulted in payment of road tax to the tune of ₹17.25 crore.

Despite the recommendation made by the PAC, it is observed during the scrutiny (September 2021) of VAHAN portal³⁰ in respect of the State of Nagaland that out of 1,33,377 vehicles³¹ registered under eight Regional/ District Transport Offices³² during 2016-21, 12,050 vehicles defaulted³³ in payment of Motor Vehicle Tax and Goods/ Passengers Tax.

The default in payment of Motor Vehicle Tax, Goods Tax and Passenger Tax by 12,050 vehicles³⁴ registered during the last five years amounted to ₹9.37 crore as on 31 March 2021, as shown in **Table 5.7.1**.

Table 5.7.1: Tax payable by vehicles

(Amount in ₹)

Period	MV Tax		Goods Tax		Passenger Tax		Total Tax due for payment
	Tax payable	Vehicle Count	Tax payable	Vehicle Count	Tax payable	Vehicle Count	
2016-2021	7,13,79,076	11,457	1,88,30,120	6,670	34,49,435	2,110	9,36,58,631
Total	7,13,79,076	11,457	1,88,30,120	6,670	34,49,435	2,110	9,36,58,631

Source: VAHAN Report Portal, MoRTH

As seen from the table above, an amount of ₹9.37 crore was due for collection at the prescribed rate³⁵ as given in *Appendices 5.7.1 and 5.7.2*. Details of the Transport office-wise defaulting vehicles are given in *Appendix 5.7.3*.

²⁸ 124 Report of the PAC (2020-21), adopted by the committee on 16 December 2020

²⁹ Paragraph 4.3.14.1 of C&AG's Audit Report for the year ended 31 March 2016

³⁰ VAHAN is an application developed by NIC Headquarters, Delhi for registration of vehicles and collection of road tax, issues various certificates and permits and record fitness of vehicles by the Regional Transport Authority (RTA) or Regional Transport Officer (RTO). VAHAN software *inter alia* is designed to generate list of defaulters for non-payment of motor vehicle tax and penalty, if any, levied

³¹ 64,408 Non-transport vehicles and 68,969 Transport vehicles

³² (i) DTO, Tuensang (NL-3); (ii) DTO, Mon (NL-4); (iii) DTO, Wokha (NL-5); (iv) DTO, Zunheboto (NL-6); (v) DTO, Dimapur (NL-7); (vi) DTO, Phek (NL-8); (vii) RTO, Kohima (NL-1); and (viii) RTO, Mokokchung (NL-2);

³³ Analysis of the data extracted from the portal and re-validation of the data received from Centre for Data Management and Analytics (CDMA), C&AG office

³⁴ Validated after excluding repeat vehicle count which had defaulted in payment of both MV tax and Goods/ Passenger tax

This indicates that the Department failed to take action on the PAC Recommendations and also indicates that there is no mechanism in place to safeguard the State's Own Tax Revenue.

The Department replied (October 2021) that there has been sharp decline on the tax defaulting amount due to efforts made by the Department through its enforcement agencies towards enabling vehicle owners to clear the dues. Furthermore, the Department stated that there are many instances where vehicles that are no longer used are neither reported nor their documents updated resulting in accumulation of data of default in payment of taxes, fees, etc. The Department also assured that the default in payment of mandatory taxes shall be pursued more vigorously and addressed in accordance to the provisions of the Acts and Rules.

The Department replies are not acceptable as the assurance made by the Department on the issues raised in the C&AG's Audit Report for the year ended 31 March 2016 and to the PAC was not complied. The Department also did not utilise the software facility meaningfully to identify the tax defaulting vehicle owners and initiated timely action to realise the outstanding tax. Due to inaction of the Department in recovery of the tax due, the vehicle owners defaulted in payment of mandatory tax of ₹9.37 crore during April 2016 to March 2021.

Recommendation: The Department should make effective use of the VAHAN software for detection of tax defaulters and invoke the relevant provisions of the Acts/ rules and recover the tax dues from the defaulting vehicle owners.

³⁵ Schedule under Section 3 of Nagaland Passengers & Goods Taxation (Amendment) Act, 2000 and Section IV and V of Nagaland Motor Vehicle Taxation (Amendment) Act 1999