CHAPTER II

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Audit of Commercial Taxes Department was conducted through a test check of the assessment files and other related records in 17 (11 *per cent*) of 159 offices during 2022-23, to gain assurance that the taxes were assessed, levied, collected and accounted for in accordance with the relevant Acts, Codes and Manuals, and the interests of the Government are safeguarded. Audit brought out instances of deviations/ non-compliance with relevant Acts/ Codes/ Manuals leading to under assessment of VAT in 170 cases having money value of ₹ 53.73 crore, for reasons like non-levy of interest and penalty on belated payments of tax and under-declaration of tax, short levy of tax due to incorrect determination of turnover/ incorrect application of tax rate *etc.*

This Chapter contains seven paragraphs involving money value of ₹ 7.72 crore and the Department/ Government had accepted audit observations involving ₹ 3.55 crore. Audit findings are detailed in succeeding paragraphs.

2.1 Interest and penalty

2.1.1 Non-levy of interest and penalty on belated payment of taxes

Assessing Authorities did not levy interest and penalty amounting to ₹ 4.70 crore on belated payment of taxes / demands raised by the Department in respect of 87 dealers.

As per Section 51 (1) of AP VAT Act, 2005, where a dealer who fails to pay tax due on the basis of the return submitted by him by the last day of the month in which it is due, he shall be liable to pay tax and a penalty of 10 *per cent* of the amount of tax due.

Section 22 (2) of the Act stipulated that if any dealer fails to pay the tax due on the basis of return submitted by him or fails to pay any tax assessed or penalty levied or any other amount due under the Act, within the time prescribed or specified there for, he shall pay, in addition to the amount of such tax or penalty or any other amount, interest calculated at the rate of 1.25 *per cent* per month for the period of delay from such prescribed or specified date for its payment.

Further, as per Section 9 (2) of Central Sales Tax (CST) Act, 1956, all provisions relating to due dates for payment of tax and applicable penalty/ interest for late payment of such tax, envisaged in the general sales tax law of each State are applicable in the cases of delayed payment of taxes under CST Act.

During test check (between February 2022 and April 2023) of monthly returns in 11 Circles[15], Audit observed that the assessing authorities (AA) did not levy interest

[15] Adoni-II (2), Anakapalli (4), Ananthapuramu-I (17), Chittoor-I (3), Gajuwaka (23), Kurnool-I (12), Nandyal-II (5), Parvatipuram (1), Puttaparti (4), Steel Plant (4) and Tadipatri (12)

and penalty on belated payment of taxes/ demands raised by the department in 87 cases[16] which resulted in non-realisation of revenue of ₹ 4.70 crore (interest: ₹ 3.07 crore and penalty: ₹ 1.63 crore).

On this being pointed out, Government replied (March and August 2024), in 80 cases, that demands were taken in to Debt Management Unit (DMU). Reply in respect of remaining seven cases[17] had not been received (January 2025).

2.1.2 Non-levy/ short-levy of penalty on under-declared tax/ delayed filing of returns

Non-compliance with the provisions relating to penalty in cases of delayed filing of returns/ under-declaration of tax in six VAT cases resulted in non-levy/ short levy of penalty amounting to ₹ 0.94 crore.

As per Section 50 (3) of AP VAT Act, 2005, where a dealer files a return after the last day of the month in which it is due he shall be liable to pay a penalty of 15 *per cent* of the tax due.

Section 53 (1) of APVAT Act, 2005, stipulated that where any dealer has under-declared tax and where it has not been established that fraud or willful neglect has been committed and where under-declared tax is less than 10 *per cent* of the tax, a penalty shall be imposed at 10 *per cent* of such under-declared tax, and if more than 10 *per cent* of the tax due, a penalty shall be imposed at 25 *per cent* of such under-declared tax.

Rule 25 (8) of APVAT Rules, 2005, specified that for the purpose of Section 53, the tax under-declared in respect of input tax means the excess of input tax claimed over and above the input tax actually entitled to be claimed in the return for a particular tax period. The tax under-declared in respect of output tax means the difference between output tax actually chargeable and the output tax actually declared in the return.

Further, as per the provisions of Rule 17 of the APVAT Rules, 2005, the taxpayers of works contracts are to submit TDS details along with the tax return.

During test check (between February and June 2022) of VAT assessment records in three circles[18], covering the period 2013-14 to 2017-18 (up to 30 June 2017), we noticed that in six cases the AAs did not levy penalty of ₹ 0.94 crore as shown in **Table-2.1**.

[16] Belated payment of tax (78 cases) and delay in payment of demand raised by Department (9 cases)

[17] Gajuwaka (2) and Nandyal-II (5)

[18] Gajuwaka (3), Nellore-I (2) and Suryabagh (1)

Table-2.1: Non-levy/ short levy of penalty under VAT

Issue	Circle (No. of cases)	No. of cases	Penalty levied	Amount of penalty not levied/ short levied (₹ in crore)
Delayed filing of returns	Nellore-I (2)	2	--	0.05
Under-declaration of tax	Gajuwaka (2) Suryabagh (1)	3	-- 0.16	0.73 0.08
Excess claim of input tax credit (ITC)	Gajuwaka (1)	1	--	0.08
Total		**6**	**0.16**	**0.94**

Source: Records of test-checked units

On this being pointed out, the AAs stated (March/ May 2023 and January 2024) in four cases[19] that penalty amounting to ₹ 20.99 lakh was levied/ taken to DMU. Details of action taken in the remaining cases had not been received (January 2025).

The matter was referred to the Government (January, February and April 2024); their reply has not been received (January 2025).

2.2 Value Added Tax (VAT)

2.2.1 Short levy of tax due to incorrect determination of turnover

Incorrect determination of turnover in two cases resulted in short levy of tax amounting to ₹ 6.48 lakh.

As per Rule 25 (10) of AP VAT Rules, 2005, every VAT dealer shall furnish, for every financial year, to the prescribed authority, the statements of Manufacturing/ Trading account, Profit and Loss Account, Balance Sheet and Annual Report duly certified by a Chartered Accountant on or before the 31st day of December subsequent to the financial year to which the statements relate.

Section 4(8) of AP VAT Act, 2005, stipulated that every VAT dealer who transfers the right to use goods taxable under the Act for any purpose whatsoever, whether or not for a specified period, to any lessee or licensee for cash, deferred payment or other valuable consideration, in the course of his business shall, on the total amount realized or realizable by him by way of payment in cash or otherwise on such transfer or right to use such goods from the lessee or licensee, pay a tax for such goods at the rate specified in the schedule.

During test check (March 2023) of records in Tadipatri circle, Audit observed that in two cases the assessing authority had not considered the turnover declared in the returns / P&L account and had not reviewed the income received from other sources in the assessment orders which resulted in short levy of tax of ₹ 6.48 lakh in these cases.

[19] Gajuwaka (2) and Nellore-I (2)

On this being pointed out, the Government replied (March 2024) that effectual/ revision orders have been issued to the dealers. Further progress is awaited (January 2025).

2.2.2 Allowance of excess credit than admissible

Assessing authority had allowed excess credit of ₹ 6.20 lakh than admissible to a taxpayer.

As per Rule 25 (5) of APVAT Rules, 2005, where any VAT return filed by the VAT dealer appears to the authority prescribed to be incorrect or incomplete, the authority shall assess the tax payable to the best of his judgment.

Section 53 (3) of APVAT Act, 2005, prescribed levy of penalty equal to the tax under-declared in case of willful neglect in declaration of tax by the dealer.

Further, as per Rule 25 (8) (a) (b) of APVAT Rules, 2005, for the purpose of Section 53, the tax under-declared in respect of (a) input tax means the excess of input tax claimed over and above the input tax actually entitled to be claimed in the return for a particular tax period; (b) output tax means the difference between output tax actually chargeable and the output tax declared in the return for a particular tax period.

During test check (June 2022) of records in Daba Gardens circle, while assessing the turnover of a dealer, for the period from July 2013 to June 2017, the Assessing Authority (AA) assessed the turnover and arrived at tax payable amount as ₹ 1,284. Considering the dealer's explanation, refund amount of ₹ 5.07 lakh as of March 2013 and refund of ₹ 1.74 lakh mentioned in the consequential order (August 2015) aggregating to ₹ 6.81 lakh was adjusted (₹ 3.68 lakh towards output tax and ₹ 3.13 lakh through transitional credit) while computing the tax payable amount.

Audit, however, from the assessment orders observed that the available excess credit for the dealer was only ₹ 61,014. Instead, the AA allowed ₹ 6.81 lakh which resulted in excess credit of ₹ 6.20 lakh.

In response, the Department replied (March 2024) that the excess credit allowed by the assessing authority is found to be correct. Further, the Assessment Order No. 108268, dated 31 March 2018 and penalty order dated 31 May 2018 are barred by limitation of time to take up revision under Section 32 of APVAT Act 2005.

The reply is not acceptable since both the initial assessment order (No. 6851 dated 27 January 2014) and the consequential order (dated 07 August 2015) had covered the period from 2010-11 to 2013-14 (up to June 2013) and considered all the input and output details. Thus, allowing the refund claimed by the dealer up to the end of March 2013 in the assessment made in 2018 was not justifiable as previous assessments covered the period up to June 2013.

Regarding limitation of time, Hon'ble Supreme Court in its judgement[20] excluded the period from 15 March 2020 to 28 February 2022 (*i.e.,* more than 23 months) for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. Thus, in the instant case the extended period of limitation was up to February 2024. Audit brought to the notice of the Circle and Department about the lapse in June and December 2022 respectively. Despite availability of more than 14 months period, revision was not carried out by the Department.

The matter was referred to the Government (March and April 2024); their reply has not been received (January 2025).

2.2.3 Short levy of tax due to omission of taxable turnover

Non-consideration of the portion of advances while assessing taxable turnover resulted in short levy of tax of ₹ 40.10 lakh.

As per Section 4(7)(d) of APVAT Act, 2005, any dealer engaged in construction and selling of residential apartments, houses, buildings, or commercial complexes may opt to pay tax by way of composition at the rate of five *per cent* of 25 *per cent* of the consideration received or receivable or the market value fixed for the purpose of stamp duty whichever is higher.

Audit test-checked VAT Assessment files of China Waltair circle and observed (in February 2022) that a dealer engaged in the business of construction of apartments had received advances from the customers amounting to ₹ 31.41 crore as on 31 March 2017. The taxpayer also received an amount of ₹ 0.67 crore as interest from advances. These amounts were however not considered in the assessment order No. 137307 dated 19 November 2018. Thus, this amount was not included in the tax computation which resulted in short levy of tax of ₹ 40.10[21] lakh.

On this being pointed out, Government replied (February 2024) that revision orders were passed. Further progress is awaited (January 2025).

2.3 Central Sales Tax (CST)

2.3.1 Short levy of tax due to incorrect determination of turnover

Incorrect determination of CST turnover resulted in short levy of tax amounting to ₹ 1.40 crore in nine cases.

As per Section 9 (2A) of CST Act 1956, all the provisions relating to offences, interest and penalties of the general sales tax law of each state shall apply in relation to the assessment, re-assessment, collection and the enforcement of payment of any tax required to be collected under CST Act as if the tax under CST Act were a tax under state sales tax law.

[20] M.A. No. 29 of 2022, dated 10 January 2022

[21] (₹ 31.41 crore + ₹ 0.67 crore) X 25% = ₹ 8.02 crore X 5% = ₹ 40.10 lakh

Rule 25 (10) of AP VAT Rules, 2005, stipulated that every VAT dealer shall furnish, for every financial year, to the prescribed authority, the statements of Manufacturing/ Trading account, Profit and Loss Account, Balance Sheet and Annual Report duly certified by a Chartered Accountant on or before the 31st day of December subsequent to the financial year to which the statements relate. As per Para 5.12 of VAT Audit Manual, mandatory basic checks of comparing turnover figures reported by VAT dealers in their monthly VAT returns with those recorded in certified annual accounts were prescribed to the assessing authorities so as to detect under-declaration of tax, if any.

During test check of CST assessment files in three circles[22], Audit observed (March 2022 and March 2023), in nine cases, that the taxable turnover under the CST Act was not determined correctly due to non-reconciliation with the CST returns, sales ledger and e-way bill turnover of CST sales, etc. This resulted in short levy of tax of ₹ 1.40 crore in these cases.

On this being pointed out, Department replied (June 2023) that effectual orders have been passed in case of Dwarakanagar circle. Regarding three cases of Adoni-II circle, Government accepted the audit observations and replied (December 2024) that the details have been verified, the deficit tax was computed and the amounts were taken into DMU. Reply in respect of the remaining six cases has not been received (January 2025).

2.3.2 Tax levied at lesser rate than applicable rate

Levying tax at the rate of five *per cent* instead of 14.5 *per cent* resulted in under-declaration of tax amounting to ₹16.27 lakh in five cases

As per Section 8 (4) of the Central Sales Tax Act, 1956 (CST Act), read with Rule 12 (1) of CST Registration and Turnover (R&T) Rules, 1957, inter-State sales not supported by 'C' declaration forms are liable to tax at the rate applicable to sale of such goods inside the appropriate State. Section 6(2) of the CST Act, read with Rules 12(1) and (4) of CST (R&T) Rules envisaged that transit sales not supported by 'C' declaration forms along with 'E' declaration forms are liable to tax at the rate applicable to sale of such goods inside the appropriate State.

Further, as per Section 6A of CST Act, read with Rule 12 (5) of CST (R&T) Rules, transfer of goods by a taxpayer to any other place of his business or to his agent or principal, not supported by 'F' declaration forms are liable to tax at the rate applicable to sale of such goods inside the appropriate State.

During test check of CST assessment files in three circles[23]Audit observed (between February 2022 and October 2022) that in respect of five dealers the AAs levied tax[24] at five *per cent* on the inter-State sales/ transit sales/ branch transfers not supported by

[22] Adoni-II (3), Dwaraka Nagar (1) and Steel Plant (5)
[23] China Waltair (1), Hindupur (3) and Suryabagh (1)
[24] for the period from 2015-16 to 2016-17

'C' or 'F' declaration forms, instead of the applicable rate of 14.5 *per cent*. This resulted in short levy of tax of ₹ 16.27 lakh, on the turnover of ₹ 1.71 crore.

In response, Government replied (February 2024) that revision orders were passed and demands were taken to DMU in all the five cases. Further progress is awaited (January 2025).