

Chapter-VI

Revenue Receipts

6.1.1 Trend of revenue receipts

The tax and non-tax revenue raised by the Government of Jammu and Kashmir during the year 2006-07, the State's share of divisible Union taxes and grants-in-aid received from the Government of India during the year and the corresponding figures for the preceding four years are given below:

Table 6.1

(Rupees in crore)

Sl. No.		2002-03	2003-04	2004-05	2005-06	2006-07
I-Revenue raised by the State Government						
(i)	Tax revenue	1,033.09	1,170.28	1,351.05	1,626.84	1,798.97
(ii)	Non-tax revenue	865.21	632.54	641.42	535.81	632.53
(iii)	Total	1,898.30	1,802.82	1,992.47	2,162.65	2,431.50
II-Receipts from the Government of India						
(i)	State's share of divisible Union taxes	684.52	817.42	934.43	1,135.36	1,413.43
(ii)	Grants-in-aid	4,965.35	5,591.43	5,939.58	7,017.14	7,337.10
	Total	5,649.87	6,408.85	6,874.01	8,152.50	8,750.53
III-Total receipts of the State		7,548.17	8,211.67	8,866.48	10,315.15	11,182.03¹
IV-Percentage of I to III		25	22	22	21	22

The above table indicates that during the year 2006-07 the revenue raised by the State Government was 22 per cent of the total revenue of Rs. 11,182.03 crore against 21 per cent in the preceding year. The balance 78 per cent of receipts during 2006-07 was from the Government of India.

The details of tax revenue raised during the year 2006-07 alongwith the figures for the preceding four years are mentioned below:

¹ Note: For details, please see Statement No. 11-Detailed account of revenue by minor heads in the Finance Accounts of the Government of Jammu and Kashmir for the year 2006-07. Figures under the head "0020-corporation tax, 0021-taxes on income other than corporation tax, 0032-taxes on wealth, 0037-customs, 0038-union excise duties, 0045- other taxes and duties on commodities and services"-share of net proceeds assigned to states booked in the Finance Accounts under tax revenue have been excluded from revenue raised by the State and included in State's share of divisible Union taxes in this statement.

Table 6.2

(Rupees in crore)

Sl. No.	Head of revenue	2002-03	2003-04	2004-05	2005-06	2006-07	Percentage increase (+)/ decrease (-) in 2006-07 over 2005-06
1.	Sales tax	535.97	674.38 ²	804.12	1,014.49	1,159.72 ³	14
2.	State excise	222.51	204.83	272.37	218.68	212.80	(-) 3
3.	Stamps and registration fee	25.67	33.58	39.25	46.43	56.93	23
4.	Taxes and duties on electricity	25.66	32.67	49.36	58.02	59.70	3
5.	Taxes on vehicles	33.66	38.43	41.68	49.17	63.96	30
6.	Taxes on goods and passengers	182.84	182.63	132.62	236.27	243.16	3
7.	Taxes on immovable property other than agricultural land	1.03	0.29	0.30	0.09	0.06	(-) 33
8.	Land revenue	2.80	3.18	11.24	3.47	2.57	(-) 26
9.	Other taxes and duties on commodities and services	2.95	0.29	0.11	0.22	0.07	(-) 68
Total		1,033.09	1,170.28	1,351.05	1,626.84	1,798.97	10.58

The departments did not intimate the reasons for variation despite being requested (September 2007).

The details of major non-tax revenue raised during the year 2006-07 alongwith figures for preceding four years are given below.

Table 6.3

(Rupees in crore)

Sl. No.	Head of revenue	2002-03	2003-04	2004-05	2005-06	2006-07	Percentage increase (+)/decrease (-) in 2006-07 over 2005-06
1	Power	606.61	368.22	382.87	384.31	478.94	(+) 25
2	Interest receipts, dividends and profits	136.32	133.90	144.40	25.05	34.02	(+) 36
3	Forest and wild life	49.28	56.35	43.46	45.51	18.99	(-) 58
4	Public works	9.23	10.13	11.76	12.63	16.16	(+) 28
5	Medical and public health	7.84	8.38	8.02	8.83	12.62	(+) 43
6	Water supply and sanitation	5.57	6.21	7.36	9.58	10.95	(+) 14
7	Police	4.92	7.26	5.30	8.01	6.59	(-) 18
8	Non-ferrous mining and metallurgical industries	3.09	4.39	6.01	8.54	9.98	(+) 17
9	Crop husbandry	3.67	3.69	4.18	4.35	4.31	(-) 1
10	Animal husbandry	2.92	3.61	3.99	3.98	4.75	(+) 19
11	Others	35.76	30.40	24.07	25.02	35.22	(+) 41
Grand total:		865.21	632.54	641.42	535.81	632.53	(+) 18

² Includes service tax of Rs. 72.23 lakh

³ Includes service tax of Rs. 66.55 lakh

The following reasons for variations were reported by the concerned departments:

Power	The increase was due to realisation of additional receipts on account of rural electrification.
Interest receipts	The increase was due to more receipts of interest and dividends from investment.
Forest and wildlife	The decrease was mainly due to decrease in sale of timber and other forest produce.
Public works	The increase was due to more realisation of revenue on account of hire charges of machinery and equipment.
Medical and public health	The increase was due to realisation of additional receipts from hospital and dispensary services, medical store depots, fees etc.
Police	The decrease was mainly due to non-realisation of revenue from “police supplied to the other Government” and lesser receipts under sub head fees, fines and forfeitures.
Animal husbandry	The increase was due to more receipts from ‘cattle and buffalo development’ and ‘sheep and wool development’.

6.1.2 Variation between budget estimates and actuals

The variations between the budget estimates and actuals of revenue receipts for the year 2006-07 in respect of the principal heads of tax revenue are given below:

Table 6.4

(Rupees in crore)

Head of revenue	Budget estimates	Actuals	Variations excess (+) or shortfall (-)	Percentage of variation
Tax Revenue				
Sales tax including service tax	1,235.00	1,159.72	(-) 75.28	6
State excise	223.00	212.80	(-) 10.20	5
Stamps and registration fee	47.35	56.93	9.58	20
Taxes on goods and passengers	262.00	243.16	(-) 18.84	7
Taxes and duties on electricity	80.00	59.70	(-) 20.30	25
Taxes on vehicles	50.28	63.96	13.68	27

The departments did not inform the reasons for variation despite being requested (September 2007).

6.1.3 Analysis of collection

The break-up of the total collection at pre-assessment stage and after regular assessment of sales tax and motor spirit tax for the year 2006-07 and the corresponding figures for the preceding two years, in respect of which information was furnished by the department, was as follows:

Table 6.5

(Rupees in crore)

Head of revenue	Year	Amount collected at pre-assessment stage	Amount collected after regular assessment (additional demand)	Penalties for delay in payment of taxes and duties	Amount refunded	Net collection	Percent age of column 3 to 7
1	2	3	4	5	6	7	8
Sales tax including service tax	2004-05	490.60	30.83	14.40	-	535.83	92
	2005-06	736.74	3.66	-	0.03	740.37	100
	2006-07	887.11	1.00	-	-	888.11 ⁴	100
Motor spirit tax	2004-05	179.87	0.37	-	-	180.24	100
	2005-06	218.27	0.14	-	-	218.41	100
	2006-07	248.99	-	0.20	-	249.19	100

Between 92 and 100 *per cent* of sales tax and motor spirit tax collections were made at pre-assessment stage during the period 2004-05 to 2006-07 which reflects improvement in voluntary compliance with the provisions of Acts and Rules.

6.1.4 Cost of collection

The figures for gross collection in respect of major revenue receipts, expenditure incurred on collection and the percentage of such expenditure to gross collection during the years 2004-05, 2005-06 and 2006-07, alongwith the relevant all India average percentage of expenditure on collection to gross collection for 2005-06 were as follows:

Table 6.6

(Rupees in crore)

Head of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage for the year 2005-06
Sales tax including service tax	2004-05	804.12	11.88	2	0.91
	2005-06	1,014.49	12.94	1	
	2006-07	1,159.72	13.88	1	
Taxes on vehicles	2004-05	41.68	2.68	6	2.67
	2005-06	49.17	2.98	6	
	2006-07	63.96	3.12	5	
State excise	2004-05	272.37	8.48	3	3.40
	2005-06	218.68	9.98	5	
	2006-07	212.80	9.43	4	
Stamps and registration fee	2004-05	39.25	4.33	11	2.87
	2005-06	46.43	4.83	10	
	2006-07	56.93	4.55	8	

Percentage cost of collection of sales tax, taxes on vehicles, State excise and stamps and registration fee during 2006-07 was higher than the all India average cost of collection.

⁴ Includes interest levied/collected

6.1.5 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2007 in respect of some principal heads of revenue in respect of which information was furnished by the department amounted to Rs. 991.65 crore of which Rs. 652.07 crore was outstanding for more than five years as detailed in the following table:

Table 6.7

(Rupees in crore)

Sl. No.	Head of revenue	Amount outstanding as on 31 March 2007	Amount outstanding for more than five years as on 31 March 2007	Remarks
1.	Sales tax	943.48	610.53	Out of the total arrears of Rs. 943.48 crore, recovery of Rs. 77.49 crore was stayed by courts/appellate authority, Rs. 177.37 crore was lying under amnesty and Rs. 667.19 crore was outstanding against the Government departments/corporations/SSI units/ traders/non-existing units. The arrears of Rs. 21.43 crore on account of motor spirit tax were outstanding for more than five years.
2.	State excise	3.59	3.59	Out of the total arrears of Rs. 3.59 crore, recovery of Rs. 0.13 crore was stayed by courts and arrears of Rs. 3.46 crore was proposed to be recovered as arrears of land revenue. Demand notices for recovery of Rs. 1.11 crore were stated to have been issued
3.	Taxes on goods and passengers	44.36	37.73	Out of the total arrears, recovery of Rs. 14.89 crore on account of toll tax was stayed by courts and Rs. 2.37 crore was proposed to be recovered as arrears of land revenue.
4.	Entertainment tax	0.22	0.22	Demand notices for recovery of Rs. 0.22 crore were stated to have been issued.
Total		991.65	652.07	

The arrears outstanding for more than five years constituted 66 per cent of the total arrears.

6.1.6 Arrears in assessment

The details of cases pending assessment at the beginning of the year 2006-07, cases due for assessment during the year, cases disposed during the year and the number of cases pending finalisation at the end of the year 2006-07, as furnished by the Sales Tax Department in respect of sales tax and tax on works contracts, are as follows:

Table 6.8

Sl. No.	Name of tax	Opening balance	New cases due for assessment during 2006-07	Total no. of assessments due	Cases disposed during the year 2006-07	Balance at the end of the year	Percentage of column 6 to 5
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	Sales tax	17,238	408	17,646	10,553	7,093	60
2.	Tax on works contracts	2,531	-	2,531	1,101	1,430	44
Total		19,769	408	20,177	11,654	8,523	58

Despite reduction of 58 *per cent* in arrears of assessments 8,523 assessments were in arrears at the close of 2006-07. Since Value Added Tax has been introduced in the State from the year 2005-06, the department needs to take immediate steps to complete the pending assessments within a definite period.

6.1.7 Evasion of tax

The details of cases of tax evasion detected by sales tax and excise departments, cases finalised and the demands for additional tax raised as reported by the departments are given below:

Table 6.9

Sl. No.	Name of tax/duty	Cases pending as on 31 March 2006	Cases detected during 2006-07	Total	No. of cases in which assessment/investigations completed and additional demand including penalty etc. raised		No. of cases pending finalisation as on 31 March 2007
					No. of cases	Amount (Rupees in crore)	
1.	Sales tax	181	169	350	328	0.26	22
2.	State excise	1	-	1	-	-	1
3.	Taxes on goods and passengers	611	164	775	676	0.07	99

The progress of recovery of amount was not intimated (September 2007).

6.1.8 Write off and waiver of revenue

Arrears of Rs. 8.29 crore pertaining to sales tax were waived off. Further, Rs. 10.18 crore were reduced due to rectification, appeals and revision during the year 2006-07.

6.1.9 Refund

The number of refund cases pending at the beginning of the year 2006-07, claims received during the year, refunds allowed during the year and the cases pending at the close of year 2006-07, as reported by the Sales tax Department are given below:

Table 6.10

(Rupees in crore)

Sl. No.		Sales tax	
		No. of cases	Amount
1.	Claims outstanding at the beginning of the year 2006-07	13 ⁵	0.11
2.	Claims received during the year	55	3.15
3.	Refund made during the year	11	0.07
4.	Balance outstanding at the end of the year 2006-07	57	3.19

Reasons for non-settlement of the remaining 57 cases at the end of the year 2006-07 were not intimated despite being requested (September 2007).

⁵ Variation with the closing balance in Audit Report 2005-06 is due to revised figures communicated by the department

6.1.10 Results of audit

Test check of the records of sales tax, state excise and motor vehicles tax conducted during the year 2006-07 revealed underassessment/short levy/loss of revenue amounting to Rs. 133.16 crore in 385 cases. During the year, the departments accepted/issued notices on account of short levy/loss of revenue of Rs. 75.63 crore in 150 cases.

This chapter of Audit Report contains four paragraphs and one review bringing out non/short levy of taxes, duties, interest/penalty and irregular tax exemption of Rs. 65.73 crore. Of this, the Government/department accepted nine cases involving money value of Rs. 2.72 crore and recovered Rs. 1.01 lakh. The progress of recovery in remaining cases has not been intimated (September 2007).

6.1.11 Response of the departments to draft audit paragraphs

Draft paragraphs are forwarded to the Principal Secretary/Secretary of the concerned administrative department seeking confirmation of facts and figures as well as comments within six weeks. Eight paragraphs and one review were forwarded to the concerned departments/Government in January, March, April and June 2007. Replies to seven draft paragraphs were received in July 2007 and reply of review and a draft paragraph was received in August 2007 from the concerned department/Government.

6.1.12 Follow up on Audit Reports-summarised position

Status of reviews/paragraphs of Revenue Receipts Chapter pending discussion by the Public Accounts Committee as on 31 March 2007 was as under:

Table 6.11

Period of Audit Reports	Total number of reviews and paragraphs that appeared in Revenue Receipts Chapter of Audit Report		No. of reviews and paragraphs pending discussion	
	Reviews	Paragraphs	Reviews	Paragraphs
1990-1991	-	5	-	5
1991-1992	-	8	-	8
1992-1993	1	5	1	5
1993-1994	2	5	2	5
1994-1995	1	14	1	14
1995-1996	4	9	4	9
1996-1997	2	4	2	4
1997-1998	-	9	-	4+2 ⁶
1998-1999	1	11	1	9+2 ⁶
1999-2000	-	7	-	6+1 ⁶
2000-2001	1	7	1 ⁶	7
2001-2002	1	8	1	8
2002-2003	1	8	1	8
2003-2004	-	4	-	4
2004-2005	1	5	1	5
2005-2006	-	8	-	8
Total	15	117	15	114

⁶ Partly discussed

Performance Review

Finance Department

(Sales Tax)

6.2 Industrial exemption under GST and CST Acts

Highlights

- Failure of the assessing authorities (AAs) to ensure submission of prescribed declaration forms at the time of assessment and verify their correctness resulted in irregular exemption of Rs. 34.80 crore including interest.
(Paragraph: 6.2.6.1)
- Failure of the AAs to disallow exemption to 15 dealers whose business activities did not amount to manufacture resulted in non-levy of tax and interest of Rs. 7.76 crore.
(Paragraph: 6.2.7.1)
- Failure of the AAs to levy tax on eight industrial units which had purchased and sold finished goods without carrying out any processing thereof led to inadmissible tax exemption of Rs. 5.19 crore including interest.
(Paragraph: 6.2.7.2)
- Failure of the AAs to detect concealment and disallow exemption to 16 industrial unit holders resulted in non-raising of demand of Rs. 4.80 crore.
(Paragraph: 6.2.7.3)
- Failure of the AAs to follow the directions of the CCT led to undue allowance of tax exemption to seven dealers who had not carried out manufacturing of finished goods and resulted in non-raising of demand of Rs. 3.16 crore.
(Paragraph: 6.2.7.4)
- Loss of revenue due to lacunae in notifications providing exemption of CST for interstate sales.
(Paragraph: 6.2.8)

6.2.1 Introduction

Receipts from sales tax in the State are regulated under the Jammu and Kashmir General Sales Tax (GST) Act 1962, Central Sales Tax (CST) Act, 1956 and Rules framed thereunder. With a view to promoting industrial development in the State and improving the viability of industrial units, the State Government introduced from time to time various sales tax incentive schemes. The schemes, *inter alia*, provided for:

- exemption from the GST on purchase of raw material by small scale industrial (SSI) units except on items brought on negative list;
- exemption from payment of the GST/CST on sale of finished goods manufactured by small scale, medium and large industrial units except on items brought on negative list; and
- exemption from the GST on machinery purchased within the State for a period of five years from the date of provisional registration.

The Government through notifications issued from time to time provided exemption to industrial units registered in the State with the Industries Department/Handicrafts Department/Handloom Development Corporation from payment of the GST and CST on sale of goods manufactured by such units. As the grant of such exemption involves foregoing of State revenues, the AAs are required to assess the dealers correctly. The system of grant of exemption to units under the incentive schemes was reviewed in audit which revealed a number of system and compliance issues which have been subsequently discussed.

6.2.2 Organisational set up

The Commissioner, Commercial Taxes (CCT) is responsible for overall control and superintendence of Sales Tax (now Commercial Tax) Department which in turn is under the administrative control of the State Finance Department. He is assisted by three Additional Commissioners of Commercial Taxes (one each in Jammu and Kashmir divisions and one for tax planning) and 11¹ Deputy Commissioners of Commercial Taxes (five in Jammu, four in Kashmir, one for headquarter and one as judicial). The State is divided into 44² commercial taxes assessment circles (21 in Jammu and 23 in Kashmir) and two survey circles (one each in Jammu and Kashmir) each headed by one Commercial Taxes Officer. Of these 44 assessment circles, six circles (three each in Jammu district and Srinagar district) dealt exclusively with the assessment of dealers operating industrial units during the period covered by audit. Besides, two assessment circles (one in Kathua district and one in Udhampur district) in Jammu division and three assessment circles (two in Anantnag district and one in Baramulla district) in Kashmir division dealt in assessment of both, industrial unit holders as well as dealers engaged in trade.

6.2.3 Audit objectives

The review was conducted with a view to assess:

- adequacy of the provisions contained in notifications issued by the Government for regulating the grant of exemption from tax payable by the industrial units under the GST and CST Acts,
- extent to which the provisions of the GST and CST Acts and notifications issued thereunder were complied with by the AAs,

¹ Excluding 2 Deputy Commissioners Commercial Taxes Stamps

² Excluding Passenger Tax/Urban Immovable Property Tax circle

- performance of the AAs while framing assessments of the dealers operating industrial units and the extent to which tax exemption was correctly allowed by them, and
- effectiveness of monitoring and control mechanism existing in the Commercial Tax Department to guard against grant of irregular/erroneous exemption causing revenue loss.

6.2.4 Scope of audit

Test check of the assessment records was conducted from November 2006 to April 2007 in five³ out of six commercial tax circles where assessments of only the dealers operating industrial units in the State were dealt with and in three⁴ out of five commercial tax circles where assessments of industrial unit holders as well as other dealers were finalised by the AAs during the years 2003-04 to 2005-06 under the GST and CST Acts.

All cases involving gross turnover (GTO) of Rs. 50 lakh and above were selected for test check. From the remaining cases, 25 *per cent* cases involving GTO between Rs. 25 lakh and Rs. 50 lakh and 10 *per cent* cases involving GTO below Rs. 25 lakh were selected for test check. Simple Random Sampling (fixed interval method) was adopted for selecting cases involving gross turnover below Rs. 50 lakh.

6.2.5 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the Commercial Taxes Department in providing necessary information for audit. The audit objectives and methodology were discussed with the Commissioner, Sales Tax and other officers of the Commercial Taxes Department. Audit findings as a result of test check of records were reported to the Government in July 2007 and was discussed in the Audit Review Committee meeting held in September 2007. Commissioner cum Secretary, Finance Department represented the Government while the CCT, represented the department. Views of the Government/Department have been incorporated in the relevant paragraphs.

System issues

6.2.6 Irregular exemptions allowed under the Central Sales Tax Act

6.2.6.1 On interstate sales

Under the provisions of Section 8 (5) of the CST Act as amended in May 2002, the State Governments can provide exemption or concession from payment of tax due on interstate sales made by dealer(s) only if such sales are covered by declaration in form 'C' issued by the registered dealer or certificate in form 'D' issued by the Government department to whom the goods are sold.

³ Commercial Tax Circle 'G' 'I' 'M' Jammu; 'E' and 'I' Srinagar

⁴ Commercial Tax Circles, Anantnag-II, Kathua; Udhampur-I

Test check of the records in eight commercial tax circles (five in Jammu division and three in Kashmir division) revealed that exemption from payment of tax claimed under the notifications governing the grant of exemption of the CST, by 64 dealers (industrial units) on interstate sales aggregating Rs. 158.11 crore during 2002-03 to 2004-05, without furnishing the prescribed declarations/certificates in form C or form 'D', was allowed by the AAs while finalising assessments of these dealers between April 2003 and March 2006. After taking into account 'C' forms for Rs. 8.41 crore obtained by the AAs (circle I and M, Jammu) during the course of audit in January and March 2007, irregular exemption allowed by the AAs to 64 dealers on their interstate sales aggregating Rs. 149.70 crore amounted to Rs. 34.80 crore on account of tax and interest as shown below:

Table 6.12

(Rupees in lakh)

Sl. No.	Name of the circle (No. of dealers)	Total value of Inter State sales not supported by declaration form 'C' or form 'D'	Value of sales for which form 'C' were furnished during the course of audit	Value of sales not covered by form 'C' or 'D'	Tax due under the CST Act	Interest for non-payment of tax due	Total tax and interest recoverable
1	'G' Jammu (18)	4,434.28	Nil	4,434.28	450.19	601.47	1,051.66
2	'I' Jammu (14)	9,274.85	59.87	9,214.98	971.79	1,164.83	2,136.62
3	'M' Jammu (5)	1,446.99	781.03	665.96	67.63	77.37	145.00
4	Udhampur-I (1)	43.83	Nil	43.83	4.38	5.87	10.25
5	Kathua (13)	340.88	Nil	340.88	34.90	36.93	71.83
6	'E' Srinagar (2)	86.43	Nil	86.43	8.64	10.85	19.49
7	'I' Srinagar (2)	114.02	Nil	114.02	11.40	16.53	27.93
8	Anantnag-II (9)	69.50	Nil	69.50	6.95	10.32	17.27
Total	8 circles (64 dealers)	15,810.78	840.90	14,969.88	1,555.88	1,924.17	3,480.05

After these cases were pointed out, the department collected declarations in form 'C' from four dealers in support of interstate sales to the extent of Rs. 43.75 crore. During the Audit Review Committee Meeting (ARC), the Government stated (September 2007) that demands would be raised against all the dealers who had failed to furnish the prescribed declarations in form C/D.

6.2.6.2 On stock transfers

Section 6-A of the CST Act as amended in May 2002, provides that if a person fails to furnish a declaration in form F in support of his stock transfer of goods to a place of his business located outside the State, then movement of such goods shall be treated as a sale under the CST Act and liable to tax thereunder.

- Test check of the records in the Commercial Tax Circle G, Jammu (March 2007 and September 2007) revealed that finished goods like

'shampoo' and 'Amla hair oil' were inserted in the CST registration certificate (RC) of a dealer with effect from 18 March 2004. Subsequently, items 'Amla extract oil compound' "Kshudhavaradhak churana regular", 'Kshudhavaradhak churana imli' and 'Chyawanprash prakashep special' were also inserted in the RC of the dealer from 6 May 2004. Audit scrutiny further revealed that stocks of 'Shampoo' and 'hair oil' valuing Rs. 28.09 crore and 'Amla extract oil compound', Kshudhavaradhak churana regular'. Kshudhavaradhak churana imli' and 'Chyawanprash prakashep special' valuing Rs. 4.41 crore were transferred by the dealer to its branches outside the State against forms 'F' during the period 7 November 2003 to 17 March 2004 and 24 January 2004 to 30 March 2004 respectively, when the dealer was not holding valid RC for these items under the CST Act. Since the dealer was not registered to deal in these goods at that time, he was also not authorised to appoint agents/branches to deal with such goods in other states during the said period. Forms F furnished by the dealer were thus, invalid and the entire transaction should have been treated as interstate sales not supported by declaration forms and taxed accordingly. While finalising the assessment of the dealer in September 2005, the AA allowed exemption on the value of stock transfer of goods amounting to Rs. 32.50 crore without noticing that these were not covered by RC of the dealer which resulted in short levy of tax amounting to Rs. 8.04 crore including interest.

- Test check of the assessment records in Commercial Tax Circle M, Jammu revealed that without furnishing the prescribed declarations in form F, exemption claimed by one dealer (industrial unit) on stock transfers valuing Rs. 4.78 crore during the years 2002-03 and 2003-04 was allowed by the AA while finalising assessments of the dealer in July 2005. Non-compliance of the provisions of the Act by the AA resulted in irregular grant of exemption of Rs. 98.81 lakh on account of tax and interest.

After the cases were pointed out, the AA issued notice to the dealer in December 2006. Outcome of the notice has not been reported (September 2007).

On the matter being pointed out, the Government during ARC (September 2007), stated that demands will be issued against the dealers who had failed to furnish the prescribed declaration form.

Thus, failure of the AAs to ensure submission of forms at the time of assessment and lack of cross verification with reference to RC and other records resulted in irregular exemption on interstate sales and stock transfers.

Recommendation

The Government may consider issuing direction to all the AAs for strict compliance of the Act and Rules to avoid irregular exemption.

6.2.7 Exemption to industrial units

The GST/CST Acts and the Rules made thereunder provide that the AAs shall finalise assessments after ascertaining the correctness of the returns of turnover and accompanying documents furnished by the dealer and books of account maintained by him. If the dealer conceals his turnover or furnishes inaccurate particulars thereof, he is liable to pay penalty and interest at prescribed⁵ rates in addition to tax.

Audit scrutiny revealed that assessments had not been completed by the AAs correctly resulting in undue exemption to industrial units as indicated below.

6.2.7.1 Exemption wrongly allowed on processes not amounting to 'manufacture'

Under the notifications dated 20 August 1998 and 31 January 2004, the Government provided exemption to industrial units registered in the State from payment of sales tax on their intrastate and interstate sales of finished goods manufactured by them. For this purpose, the term 'manufacture', as defined in the notification of August 1998 means, "a process by which raw material is converted into an entirely different commodity". The Supreme Court while deciding various cases⁶, ruled that processes like retreading of old tyres, laminating/metallising of duty paid films and pulverisation of rock phosphate do not amount to 'manufacture'. The apex court observed that retreading of tyres was just like resoling of old shoes and did not bring into being a commercially distinct and different entity.

Test check of the assessment records in five⁷ assessment circles revealed that while finalising 39 assessments of 15 industrial units (nine in Jammu and six in Kashmir divisions) between April 2003 and November 2005 for the years 1994-95, 1995-96 and 1999-2000 to 2004-05, the AAs wrongly allowed exemption from tax payable under the GST Act to 13 units engaged in the process of retreading of tyres, one unit dealing in lamination of plastic film and slitting/cutting of the laminated film and one unit engaged in pulverisation of crystal sodium bicarbonate. Since retreading of old tyres, lamination of films and pulverisation of crystal sodium bicarbonate cannot be termed as 'manufacture' in view of the Government notifications and judgments of the apex court, exemption allowed by the AAs were irregular and resulted in non-levy of tax and interest aggregating to Rs. 7.76 crore as shown below:-

⁵ Penalty not less than the amount of tax evaded but not exceeding double the amount of such tax. Interest at the rate of two *per cent* per month if the period of default does not exceed six months and three *per cent* per month if it exceeds six months.

⁶ (i) P.C Cheriyan Vs Mst. Barfi Devi [Civil appeal No. 1722 (N) of 1969 decided on 16-10-1979 reported as 1979 (4) E.L.T (J593) (S.C)]
(ii) METEX (I) Private Limited Vs Commissioner of Central Excise [reported as 2004 (165) ELT 129 SC]
(iii) Collector of Central Excise, Madras Vs Coimbatore Pioneer Fertilizers Limited [reported as 1997 (94) E.L.T. 6 (SC)]

⁷ CTOs: E and I circles Srinagar, G and I circles Jammu and Udhampur-I

Table 6.13

(Rupees in lakh)

Sl. No.	Name of the circle (No. of dealers)	Business activity	Month and year of assessment	Turnover	Tax due on the turnover	Interest payable on tax due	Total tax and interest recoverable
1	'T', Jammu (5)	Retreading of tyres	Between 6/2004 and 11/2005	952.74	81.38	109.24	190.62
2	'G', Jammu (2)	Retreading of tyres	Between 7/2003 and 5/2005	657.77	57.74	108.71	166.45
	(1)	Lamination of Plastic film	September 2005	943.08	94.31	96.19	190.50
3	Udhampur- I (1)	Retreading of tyres	January 2004	96.87	8.14	16.11	24.25
4	'E' Srinagar (4)	Retreading of tyres	Between April 2003 and February 2005	446.36	41.98	94.30	136.28
	(1)	Pulversiation of crystal sodium bicarbonate	June 2003 and November 2004	105.29	8.84	8.34	17.18
5	'T', Srinagar (1)	Retreading of tyres	Between May 2003 and June 2005	245.67	21.65	29.54	51.19
Total	5 circles (15 dealers)			3,447.78	314.04	462.43	776.47

After the cases were pointed out, the Government while accepting the audit observation stated that tax on retreading of tyres will be levied from prospective date after rescinding the CCT's clarification dated 18 January 1996 under which retreading of tyres was held as a process of manufacture. Levy of tax on retreading of tyres from prospective date is not correct and needs to be levied for all the years pointed out by audit as the issue was decided by the apex court long back in 1979. Developments regarding two other dealers engaged in lamination of plastic film and pulverisation of sodium bicarbonate have not been reported (September 2007).

6.2.7.2 Diversion of goods to ordinary trade

Under the notifications issued between April 1995 and January 2004, the State Government directed that finished goods manufactured by industrial units and sold within the State or in the course of interstate trade or commerce shall be exempted from the levy of tax. Finished goods purchased and sold by industrial units without undertaking any processing, or raw material diverted to ordinary trade instead of being used in the manufacture of finished goods, are, however, not exempted from levy of sales tax.

Test check in four assessment circles revealed that the AAs while finalising 21 assessments of eight industrial units between April 2003 and August 2005 for the years 1999-2000 to 2003-04, allowed inadmissible tax exemption on *badam giri*, almonds, *namkeen* material, flavoured *namkeen* nuts, plastic granules, synthetic *newar* and galvanised corrugated (G C) sheets purchased and sold by

them without carrying out any processing involving aggregate turnover of Rs. 32.21 crore.

Failure of the AAs to carefully scrutinise these records and levy tax on these sales resulted in grant of incorrect tax exemption and consequent short levy of tax of Rs. 5.19 crore as shown below:-

Table 6.14

(Rupees in lakh)

Sl. No.	Name of the circle (No. of dealers)	Accounting years	Particulars of goods purchased and sold without carrying out any processing (No. of dealers)	Sale value	Tax due	Interest and penalty	Total amount recoverable
1	'T', Jammu (3)	1999-2000 and 2000-01	<i>Almonds, namkeen material and flavoured namkeen nuts</i> (1)	299.13	25.13	58.59	83.72
		2002-03 and 2003-04	<i>Plastic granules</i> (1)	298.46	37.60	87.15	124.75
		2001-02	<i>Synthetic Newar</i> (1)	59.42	2.50	4.45	6.95
2	'M', Jammu (1)	2000-01 and 2001-02	<i>Badam giri</i> (1)	8.48	0.71	1.43	2.14
3	'E' Srinagar (1)	2002-03	<i>G.C.sheets</i> (1)	81.33	3.41	4.29	7.70
4	'T' Srinagar (3)	1999-2000 to 2003-04	<i>G.C. sheets</i> (3)	2474.51	103.93	189.47	293.40
Total	4 circles (8 dealers)			3,221.33	173.28	345.38	518.66

After the cases were pointed out, the CCT stated in August 2007 that after scrutinising the documents of three dealers who sold plastic granules, synthetic newar and badam giri, nothing came to the notice of the AAs that these activities did not involve manufacturing. Also, in all the three cases new commercial commodities have come into being which are totally different from the ingredients from which they were shaped. The reply is not tenable as the records show that the goods purchased by these dealers were sold in the same form without carrying out any processing. Outcome of the notices issued to five other dealers was not intimated.

The Government stated that the records would be examined and necessary demands raised against the dealers. Further development has not been reported (September 2007).

6.2.7.3 Non-detection of concealment

The conditions prescribed in the notifications dated 20 August 1998 and 31 January 2004 providing exemption to the industrial units from payment of tax due under the GST Act, stipulate that if a dealer is found guilty of concealing his turnover or furnishing inaccurate particulars thereof, he shall not be entitled to any exemption for the year during which the dealer has committed such offence.

Test check of the records in five assessment circles revealed that goods valuing Rs. 1.45 crore purchased by 16 dealers (industrial units) during the years 1999-2000 to 2004-05, as per consumption statements of declaration form 'C' and computerised statements of lading bills, had not been accounted for by the dealers

in the purchase statements for the relevant years. While assessing these dealers between April 2004 and March 2006, the AAs failed to detect the concealment and allowed undue exemption from tax payable on their gross turnover aggregating Rs. 23.23 crore.

This resulted in non-raising of demand of Rs. 4.80 crore (tax: Rs. 1.91 crore and interest Rs. 2.89 crore) as mentioned below:-

Table 6.15 (Rupees in lakh)

Sl. No.	Name of the circle (No. of dealers)	Total value of purchases concealed	Total turnover liable to withdrawal of tax exemption	Tax due on total turnover	Interest chargeable for non- payment of tax due	Total amount recover- able
1	'G', Jammu (5)	55.72	829.40	69.88	121.33	191.21
2	'I', Jammu (4)	55.51	350.08	22.18	39.76	61.94
3	'M', Jammu (4)	10.01	493.45	29.59	34.72	64.31
4	Kathua (1)	12.65	241.05	30.37	23.24	53.61
5	'I', Srinagar (2)	11.33	409.34	38.72	70.31	109.03
Total	5 circles (16 dealers)	145.22	2,323.32	190.74	289.36	480.10

After the cases were pointed out, the CCT stated in August 2007 that the replies furnished by 14 dealers of Jammu division (except one dealer in circle M) in response to the notices issued, were being examined. Two dealers of Srinagar had availed of amnesty provided in May 2007⁸ and deposited the principal amount of tax of Rs. 34,860 that was determined on the concealed purchases. The Government stated that records would be scrutinised. Further replies have not been received (September 2007).

6.2.7.4 Exemptions allowed without ascertaining the genuineness of manufacturing activities

To avoid grant of undue exemption from tax to those SSI units who divert raw materials imported from outside the State towards ordinary trade instead of utilising the same for manufacture of finished goods, the CCT in June 1999 and April 2003, issued detailed directions to the AAs.

Test check of the records in the Commercial Tax Circles Kathua, I, G and M, Jammu revealed that the AAs failed to adhere to these directions and granted tax exemption of Rs. 3.16 crore to six industrial unit holders without ascertaining genuineness of their manufacturing activities and proper verification of returns/documents furnished by them as detailed below:

- An SSI unit dealing in assembly of air conditioners and refrigerators, registered on 27 March 2003, with commencement of production from 12 March 2003, was assessed by the Industries Department for assembling 200 air conditioners and 3,000 refrigerators per annum. Against this, 15,909 air conditioners were shown to have been

⁸ Under SRO 172 of 7 May 2007

assembled/sold by the unit between 27 March 2003 and 31 March 2004. In February 2004, the Industries Department raised the assembling capacity of the unit to 60,000 air conditioners and 19,500 refrigerators per annum. However, while assessing, details of corresponding increase in workers, power consumption and plant/machinery was not called for by the AA Circle G, Jammu.

Audit observed that with the then existing plant and machinery and the number of workers, assembling of the aforementioned number of air conditioners was not feasible. Besides, the average wage worked out by audit for assembling each air conditioner (involving assembling of 17 parts with four workers on strength) came to Rs. 67.34 (2002-03) and Rs. 50.20 (2003-04), which was also not credible. But, while finalising the assessments of the dealer in October 2004 and April 2005, the AA allowed exemption from payment of tax of Rs. 2.50 crore on interstate and intrastate sale valued at Rs. 20.85 crore during the years 2002-03 and 2003-04 without verifying the genuineness of the manufacturing activities of the unit.

- A dealer in Kathua district was registered for manufacturing door/window frames and furniture with hand tools from 18 March 2002 with annual capacity production/sales of Rs. 15 lakh. In addition to wood and timber, raw material such as adhesives, nuts, bolts, nails, handles etc were required for manufacturing activity of the dealer as per assessment made by the Industries Department and project report on record.

Test check of the records revealed that the dealer had not purchased any consumables/raw material other than timber and plywood/plyboard during the year 2004-05. In the absence of these essential ingredients, the dealer had clearly not undertaken any manufacturing activity during the year. The AA, while assessing the dealer in January 2006, failed to notice this and allowed exemption of Rs. 1.10 crore during the year as claimed by the dealer. This resulted in irregular exemption of demand of Rs. 24.53 lakh against the dealer on account of tax and interest.

After the case was pointed out, the CCT stated in August 2007 that the dealer had manufactured frames and joined these by inserting wooden pegs in the holes drilled through the corners and no other material was required. The reply is not tenable as the sales statement filed by the dealer clearly reflected sales of wooden door/window frames as well as furniture which required use of various consumable items also, as assessed by the DIC.

- An SSI unit who claimed to have manufactured and sold steel almirahs valuing Rs. 28.03 lakh during the year 2002-03, was granted (January 2004) exemption from payment of tax by AA, Circle M, Jammu. Except for a meagre amount of Rs. 740 incurred on electricity charges, no expenditure for purchase of fuel, gas or coal which are invariably required for welding in the manufacture of steel almirahs was incurred as per manufacturing, trading and profit and loss account of the dealer.

Another SSI unit was also allowed exemption by the AA, Circle G, Jammu in April 2005 on sale of furniture/joinery items valuing Rs. 57.46 lakh during the year 2003-04. The trading account, purchase statement and consumable store account filed by this dealer also did not include any expenditure on electricity or diesel required for running five motors in connection with the manufacturing activity. Clearly, the dealers had not carried out manufacture of finished goods and were, therefore, not entitled to tax exemption on sales thereof. While finalising their assessments, the AAs granted exemption on intrastate sales aggregating Rs. 85.49 lakh without proper verification of documents furnished by these dealers which resulted in undue exemption of tax of Rs. 23.80 lakh.

After the cases were pointed out, the CCT replied in August 2007 that fabrication of steel almirahs by the unit was mainly centered around usage of acetylene flame for which the requirement was of gas and not electricity and, therefore, no prima facie case against the dealer could be made out. The reply is not tenable as the dealer had not made any purchase of gas as well, as per its records. In the case of the SSI unit which, claimed exemption on sale of furniture/joinery items, it was stated that matter would be examined and action would be taken against the dealer accordingly. Further replies have not been received (September 2007).

- A unit registered with the Industries Department and manufacturing hand knitted woollen garments was allowed (January 2006) full tax exemption of Rs. 11.31 lakh on sales aggregating Rs. 2.69 crore by the AA Circle 'I', Jammu, for the accounting years 2001-02 and 2002-03. The tax exemption was allowed by the AA on the plea that it was an export oriented unit and the raw material imported and finished goods exported by it were supported by shipping documents. The unit informed that it was conducting manufacturing activities at Delhi and Jammu but had not maintained separate manufacturing accounts for each of the units.

Audit observed that the exemption was granted by the AA without obtaining separate manufacturing account for the Jammu unit and scale of consumption of imported wool and wastage involved in the manufacturing process. Spot verification of the unit conducted by the AA in February 2003 revealed non-existence of any workers. Thus, the AA allowed tax exemption of Rs. 11.31 lakh to the unit on its sales, without conducting necessary checks and ascertaining the genuineness of manufacturing activities of the unit.

After this case was pointed out, the CCT stated (August 2007) that the unit in Jammu, being a branch, was not required to keep a separate manufacturing account. No reply was furnished about how the physical existence and state of production of the unit at Jammu was ascertained in the absence of manufacturing account, consumption scale of raw material and any workers in the unit.

- An SSI unit was registered with the Industries Department in July 2001 for manufacture of plastic granules from plastic scrap. The

annual capacity of the unit to procure raw material (plastic scrap) and to conduct sale of finished goods (plastic granules) as reflected in the project report of the unit and approved by the Industries Department was Rs. 24 lakh and Rs. 38.38 lakh respectively. The unit was provisionally registered with the Industries department in May 2000 and commenced production from April 2001. Audit observed that the dealer in the very first year of manufacture i.e. 2001-02 had purchased and sold goods to the extent of Rs. 58.88 lakh and Rs. 69.84 lakh respectively which were substantially more than the approved capacity of the unit. Clearly, the unit had resorted to trading instead of manufacturing and, therefore, was not entitled to tax exemption on sales.

The AA Circle I, Jammu, while finalising the assessment of the dealer in August 2004, failed to notice this and granted tax exemption of Rs. 7.11 lakh on turnover without ascertaining the reasons for import of raw material, sale of goods in excess of assessed capacity and verifying the genuineness of the manufacturing activity of the unit.

All these cases are clear indications of the fact that exemption was allowed by the AAs without considering the information provided thus defeating the very purpose for which the exemption was granted. This also tantamounted to violation of instructions issued by the CCT.

The Government stated in September 2007, that necessary demands against all these dealers would be raised after scrutiny of the records.

6.2.8 Loss of revenue due to lacunae in notifications providing exemption of the CST

Under the notifications dated 20 August 1998 and 31 January 2004, an industrial unit found guilty of the following offences or defaults shall not be entitled to exemption from payment of tax on goods sold within the State for the years during which such offence or default is committed namely,

- offence under the GST Act, such as, non-accounting of goods noticed during inspection, concealment of turnover or furnishing inaccurate particulars thereof; etc.
- failure to obtain formal registration and exemption license within the prescribed time;
- failure to submit quarterly returns and annual returns of turnover by the due dates; and
- non-maintenance of proper and correct books of account.

However, no such conditions, except furnishing of quarterly and annual returns of turnover on due dates had been prescribed in the notifications dated 4 April 1995, 20 August 1998 and 31 January 2004, which provide tax exemption on interstate sales to industrial units registered in the State.

Test check of the assessment records in two⁹ assessment circles revealed that the AAs while finalising seven assessments of six industrial unit holders between July 2003 and January 2006, allowed exemption from tax on interstate sales aggregating Rs. 23.39 crore for the years 2000-01 to 2003-04 even though the unit holders were either guilty of offence under provisions of the GST Act or had concealed their purchases or defaulted in obtaining exemption licence within the prescribed time.

Thus, lacunae in the notifications resulted in excess allowance of tax exemption of Rs. 6.67 crore (including interest Rs. 4.36 crore), with consequent loss of revenue to that extent as shown below:

Table 6.16

(Rupees in lakh)

Sl. No.	Name of the circle (No. of dealers)	Offence/default committed	Total value of interstate sales	Tax due	Interest payable on unpaid tax	Total tax and interest recoverable
1	“G” Jammu (4)	Two dealers were found guilty of offence under section 15 (5) of the GST Act. Two dealers had concealed purchases valuing Rs. 50.50 lakh, one of whom had also defaulted in obtaining exemption licence within the prescribed time.	113.12 2,181.03	11.31 215.83	24.94 403.38	36.25 619.21
2	Anantnag –II (2)	Both the dealers had concealed purchases valuing Rs. 3.85 lakh.	44.50	4.45	7.21	11.66
Total	2 circle; (6 dealers)		2,338.65	231.59	435.53	667.12

After the cases were pointed out, the Government while accepting the audit contention stated in September 2007 that though there was sufficient scope to seek amendment to the relevant notifications and levy tax on the dealers, no action was possible at this stage.

Recommendation

The Government may consider amending the notifications to provide for these conditions and consequences on their violation.

6.2.9 Internal controls

Internal controls are intended to provide reasonable assurance of proper enforcement of laws, rules and departmental instructions. These also help in prevention and detection of frauds and other irregularities and creation of adequate safeguards against evasion of taxes and duties. It is therefore the responsibility of the department to ensure that a proper internal control structure is instituted, reviewed and updated from time to time. It was noticed in audit that internal controls instituted by the department for monitoring the assessments of

⁹ CTOs: Anantnag-II and G- Jammu

the AAs granting exemption to industrial units were not adequate and effective as indicated below:

6.2.9.1 Inspection of industrial units

In order to verify bonafide use of raw material by the unit holders in their approved manufacturing activity, the CCT issued instructions in April 2003 directing the AAs to finalise the assessments after conducting physical inspection of the units. The position of inspections conducted vis-a-vis the number of assessments finalised under the GST Act during 2003-04 to 2005-06 is mentioned below.

Table 6.17

Name of the circle	Number of assessments finalised during the year				Number of inspections conducted during the year			
	2003-04	2004-05	2005-06	Total	2003-04	2004-05	2005-06	Total
'G', Jammu	633	810	725	2,168	N.A ¹⁰	N.A	N.A	N.A
'I', Jammu	704	931	932	2,567	51	15	Nil	66
'M', Jammu	620	912	1,106	2,638	N.A	N.A	N.A	N.A
'E', Srinagar	391	126	78	595	Nil	Nil	Nil	Nil
'I', Srinagar	1,102	497	201	1,800	Nil	Nil	Nil	Nil
Anantnag II	245	43	19	307	Nil	Nil	Nil	Nil

The above table indicates that 2,702 assessments were finalised during the years 2003-04 to 2005-06 in three circles 'E' and 'I' Srinagar and Anantnag II without conducting any inspection of the industrial units. In circle I, Jammu, only 66 inspections were conducted against 2,567 assessments finalised during these years. This indicated that the AAs finalised the assessments of the industrial units without verifying bonafide use of raw material and manufacturing activity in violation of CCT's instructions cited above. The remaining two circles "G" and "M" Jammu did not furnish any information.

After the case was pointed out, the Government stated (September 2007) that in future a minimum percentage of the number of units to be inspected by the AAs will be fixed and compliance ensured.

6.2.9.2 Internal audit

Internal audit provides assurance regarding efficient functioning of the internal control mechanism instituted by the organisation. The internal audit wing in the Commercial Tax Department is headed by two deputy commissioners of commercial taxes (audit), one each in Jammu and Kashmir divisions. The number of assessments checked by internal audit wing during the years 2003-04 to 2005-06 in six commercial tax circles (three each in Jammu and Kashmir divisions) where assessments of industrial units were only made was as under:

¹⁰ Not available

Table 6.18

Year in which internal audit conducted	Total number of circles exclusively dealing in assessments of industrial units		No. of circles covered by internal audit during the year		No. of assessments checked by internal audit wing		No. of objections with money value pointed out by internal audit wing			
	Jammu division	Kashmir division	Jammu division	Kashmir division	Jammu division	Kashmir division	Jammu division		Kashmir division	
							No.	Rs. in lakh	No.	Rs. in lakh
2003-04	3	3	3	2	NA	70	46	11.30	59	136.05
2004-05	3	3	3	Nil	467	Nil	54	7.85	Nil	NA
2005-06	3	3	3	01	1,209	30	78	5.97	32	70.97

In Kashmir division, 70 assessments covering two commercial tax circles during 2003-04 and 30 assessments covering one circle during 2005-06 were checked by internal audit. However, in 2004-05, internal audit of all the three circles was left out. In Jammu Division, 467 assessments and 1,209 assessments were checked during the years 2004-05 and 2005-06. The internal audit wing in either division was not aware of the recoveries made by the AAs/recovery agencies against the objections pointed out by it. No manual or standing instructions for conducting internal audit were available with the wing.

A proper control mechanism in regard to checking of assessments by internal audit wing was, thus, lacking in the department leading to inadequate coverage of the units and assessments by the wing.

The Government stated (September 2007) that the department has issued guidelines for conducting internal audit and that internal audit wing will be geared up to ensure proper audit coverage of circles and assessment cases on regular basis.

Recommendation

An appropriate internal control measure needs to be evolved to monitor the inspections conducted by the AAs and verify the genuineness of manufacturing activities of units availing tax exemptions/concessions. Functioning of the internal audit wing, its efficacy and effectiveness also needs to be reviewed and made more effective by the department.

Compliance issues

6.2.10 Non-levy of tax on IMFL sales to CSD

The State Government provided sales tax exemption on the purchase of raw material and sale of finished goods by industrial units, except on items, which are in negative list notified from time to time, which, included Indian made foreign liquor (IMFL). Sales of IMFL to the Canteen Stores Department (CSD) by registered dealers which were earlier exempt from tax in terms of notification dated 28 April 2000 were, however, made liable to tax at the rate of four *per cent* by virtue of amendment vide notifications dated 29 March 2002 and dated 9 April 2002.

Test check of the assessment records in Commercial Tax Circle 'G' Jammu revealed that a dealer operating as industrial unit claimed exemption from tax on intrastate sales of IMFL to CSD amounting to Rs. 8.24 crore for the years 2002-03 to 2004-05 on the basis of exemption certificates issued by the CSD. While finalising (November 2005 and March 2006) the assessments of the dealer, the AA allowed exemption on the turnover of Rs. 8.24 crore which resulted in non-raising of demand of Rs. 71.32 lakh on account of tax and interest.

After the case was pointed out, the CCT stated in August 2007 that the AA had rightly allowed exemption to the manufacturer as the point of tax for IMFL was the last point and the manufacturer conducting first sale was entitled to exemption subject to production of prescribed certificate issued by the purchaser. The reply is not tenable as the sales made by the dealer to the CSD were not supported by the prescribed certificates in form 'A'. Instead, the dealer had filed exemption certificates prescribed under notification of 28 April 2000 prior to its amendment. Besides, the reply is not tenable in the light of notifications of March/April 2002 prescribing four *per cent* tax on sales to CSD from 1 April 2002. Exemption was not available to the dealer even under notifications of August 1998 and January 2004 as an industrial unit as the commodity was placed in the negative list.

The Government stated in September 2007, that necessary demand would be raised against the industrial unit holder in case it is found that CSD has not deposited tax due on sales of IMFL purchased from the industrial unit. Further developments have not been intimated (September 2007).

6.2.11 Under assessment due to concealment of purchases

Test check of the records revealed that a dealer had failed to apply for exemption licence within the prescribed period of three months from the date of formal registration. The AA, while finalising (September 2005) the assessment, disallowed exemption to the dealer and levied tax on local sale of Rs. 9.72 lakh. Audit scrutiny, however, revealed that the dealer in the purchase statement for the said year, had not reflected interstate purchases of raw materials and packing materials valuing Rs. 48.08 lakh made as per form 'C' consumption account which involved turnover of Rs. 1.27 crore. The AA failed to detect this concealment which resulted in short levy of tax of Rs. 48.49 lakh including interest and minimum penalty.

The Government stated in September 2007 that assessment records and documents filed by the dealer would be scrutinised and necessary demand raised against him. Report on recovery has not been received (September 2007).

6.2.12 Exemption wrongly allowed to industrial units having provisional registration

Under the GST Act, every person shall be liable to pay tax on sales while he holds provisional registration. The CCT clarified on 22 September 1999 that even a dealer holding an SSI unit is not entitled to any exemption from payment of tax on goods sold during the period of its provisional registration.

Test check of the records in the Assessment Circle 'I' Jammu, revealed that exemption from payment of tax claimed by two dealers was wrongly granted by the AA on sales amounting to Rs. 47.96 lakh made during the year 2001-02¹¹ when the dealers held provisional registration of the Industries Department. Failure to disallow tax exemption while assessing these industrial units between August 2004 and January 2006, was in violation of CCT's clarification and resulted in non- realisation of tax of Rs. 43.96 lakh including interest and penalty.

Of these two dealers, one industrial unit dealing in IMFL evaded tax by tampering with the date of commencement of production in the photocopy of the registration certificate of the Industries Department submitted to the AA. Audit observed that this was predated to 15 July 2001 from 15 July 2004. No control system to verify the particulars shown in registration certificate direct from the Industries and Commerce Department was in vogue to keep watch over such tax evading industrial unit holders.

The Government stated in September 2007, that necessary demand would be raised against the dealer. Further development has not been reported (September 2007).

6.2.13 Under assessment due to inaccurate determination of turnover

Under the provisions of the GST Act, sale price includes any sum paid or payable for anything done by a dealer in respect of goods at the time of or before delivery thereof, except cost of outward freight/delivery/installation when such cost is separately charged. Accordingly, the cost of tins, bottles, plastic pouches and other packages containing mustard oil sold by the industrial units is to be included in the turnover even if such cost is separately charged, and is liable to tax at the rate applicable to the mustard oil.

Test check of the records revealed that cost of tins, bottles, plastic pouches and other packages amounting to Rs. 1.75 crore charged from the customers by three dealers while making sales of mustard oil was excluded by them from the turnover for the years 2000-01 to 2003-04. While finalising five assessments of these dealers between August 2004 and March 2006, the AAs failed to notice this which resulted in short levy of tax amounting to Rs. 28.74 lakh including interest and minimum penalty as detailed below:

¹¹ April 2001 to March 2002 in case of one dealer and April 2001 to June 2001 in case of other dealers.

Table 6.19

(Rupees in lakh)

Sl. No.	Name of the circle (No. of dealers)	Accounting year	Disclosed turnover	Cost of containers charged but not included in taxable turnover	Tax due on escaped turnover	Interest due for non-payment of tax	Minimum penalty	Total amount recoverable from the dealers
1	'I', Jammu (1)	2002-03 and 2003-04	3,477.84	45.96	1.93	2.39	1.93	6.25
2.	'G', Jammu (2)	2000-01 and 2001-02	2,205.22	128.81	5.41	11.67	5.41	22.49
Total	2 circles (3 dealers)		5,683.06	174.77	7.34	14.06	7.34	28.74

The Government accepted the audit contention in September 2007 and stated that necessary demands would be raised against the dealers.

6.2.14 Conclusion

Grant of exemption results in foregoing revenues of the State and hence, as a pre-requisite, it must be ensured that exemptions are granted correctly. The AAs failed to ensure submission of prescribed declaration forms at the time of assessment and verify their correctness. Detailed guidelines issued by the CCT for ascertaining the genuineness of manufacturing activities before granting exemption were ignored. The notification under which exemptions were granted suffered from various lacunae. The internal control mechanism was weak and ineffectual. Assessments were being finalised without conducting physical inspection which was a violation of CCT's instructions. The internal audit wing which is a control of all controls and is a management tool for plugging leakages of revenue was ineffectual. It needs to be reviewed and made more effective in the interest of revenue.

6.2.15 Recommendations

The Government may consider

- issuing instructions to the AAs to ensure that prescribed declarations by the dealer are submitted at the time of assessment and these are cross verified with reference to registration certificate of the dealer and other records to ascertain their genuineness;
- to amend the notification which provides tax exemption on interstate sales by inserting the conditions prescribed for grant of exemption on intrastate sales to avoid incorrect exemption;
- the need of evolving an appropriate internal control measure to monitor the inspections conducted by the AAs and verify the genuineness of manufacturing activities of units availing tax exemptions/concessions; and
- reviewing the functioning of the internal audit wing of the department to make it more effective in the interest of revenue.

Audit Paragraphs

Finance Department

(Sales Tax)

6.3 Non/short levy of tax, interest and penalty

The Jammu and Kashmir General Sales Tax (J&K GST) Act 1962 and rules made thereunder provide that every dealer shall submit a true and correct return of his turnover in such a manner as may be prescribed under the Act. Further, if a person (dealer) who has without any cause failed to furnish correct return of turnover or has concealed particulars of his turnover, the AA shall direct that person to pay in addition to tax and interest payable by him, an amount by way of penalty not less than the amount of tax evaded but not exceeding twice the amount of tax.

6.3.1 Inaction of the assessing authority to reassess the dealer in respect of concealed purchases resulted in non-levy and consequent non-realisation of tax, interest and penalty aggregating Rs. 6.40 lakh.

Test check of the records of sales tax circle-O, Jammu in February 2005 revealed that the AA while assessing a dealer between June 1999 and August 2002 noticed that the dealer had not accounted for 30¹ bills amounting to Rs. 18.80 lakh in his purchase statement during the years 1997-98 and 1998-99 as per the records of the bills of lading received from the Deputy Commissioner (Tax planning). On the basis of the affidavit filed by the dealer denying such purchases, the AA finalised the assessment with the condition that reassessment proceedings would be reinitiated in case concealment of purchases was established. After obtaining the bills of lading for 1997-98 from the Deputy Commissioner (tax planning), it was confirmed that the dealer had concealed the purchases, but AA did not reassess the dealer. No action was taken to verify the bills for 1998-99 despite lapse of more than two years. Inaction of the AA to reassess the dealer for these two years, resulted in non-levy and non-realisation of tax, interest and penalty aggregating Rs. 6.40 lakh².

After the case was pointed out (February 2005), the AA raised (January 2006) an additional demand of Rs. 6.40 lakh.

On the matter being pointed out, the Government admitted the audit contention and issued a recovery certificate for the additional demand of Rs. 6.40 lakh. Report on recovery has not been received (September 2007).

¹ 1997-98: 17 bills; Rs. 4.42 lakh; 1998-99: 13 bills; Rs. 14.38 lakh

² Tax: Rs. 1.47 lakh; Interest: Rs. 3.25 lakh; Penalty: Rs. 1.68 lakh

6.3.2 Incorrect computation of tax resulted in short levy of tax and interest aggregating Rs. 21.68 lakh.

Audit scrutiny of the records of the sales tax circle 'K' Jammu revealed in July 2006 that a registered dealer sold electrical goods valued at Rs. 1.07 crore to BSNL³ during the years 2001-02 to 2003-04 on which tax of Rs. 13.51 lakh was payable at the rate of 12.6 *per cent* including surcharge. But the dealer classified the sales as works contract in his returns and paid tax of Rs. 4.48 lakh at the rate of 4.2 *per cent*. The AA, at the time of assessment in July 2005, also failed to detect the mistake which resulted in short levy of tax and interest aggregating Rs. 21.68 lakh.

After the case was pointed out, the AA in January 2007 raised a demand of Rs. 21.68 lakh against the dealer. The status of recovery has not been intimated (September 2007).

On the case being pointed out, the Government stated in July 2007 that the demand for Rs. 21.60 lakh has been referred to the Deputy Commissioner Commercial Taxes, Recovery for realisation. It was also stated that the assessee had preferred an appeal with the Deputy Sales Tax Commissioner (Appeals), Jammu and the report had also been sent to the D.C (Appeals) in April 2007. Further development has not been reported (September 2007).

6.3.3 Failure of the AA sales tax circles 'H' and 'N', Jammu to detect concealment of purchases resulted in short levy of tax, interest and penalty aggregating Rs. 17.79 lakh.

6.3.3.1 Test check of the records of sales tax circle 'H' Jammu in August 2006 revealed that an IMFL⁴ dealer was assessed to tax in March 2006 for the year 2001-02 on best judgment basis on a taxable turnover of Rs. 23 lakh. Cross verification of the purchase statements and forms 'A', revealed that the dealer by reflecting less value of purchases in the purchase statements had concealed purchases of Rs. 7.70 lakh. After taking into account the concealed purchases of Rs. 7.70 lakh in the trading account of the dealer, the total taxable turnover during 2001-02 worked out to Rs. 26.52 lakh on which he was liable to additional tax of Rs. 5.61 lakh⁵.

After the case was pointed out, the AA without giving any credence to the trading account, reassessed the dealer in November 2006 and raised an additional demand of Rs. 13.01 lakh⁶. For effecting the recovery under the Land Revenue Act, the AA referred the matter to recovery agency who issued notices to the dealer which remained unserved (March 2007) due to the closure of the business premises of the dealer.

³ Bharat Sanchar Nigam Limited

⁴ Indian Made Foreign Liquor

⁵ Tax: Rs. 1.11 lakh; interest: Rs. 1.78 lakh; penalty: Rs. 2.72 lakh

⁶ Tax: Rs. 2.79 lakh; interest: Rs. 4.64 lakh; penalty: Rs. 5.58 lakh

Thus the failure of the AA to detect the concealment of purchases at the time of assessments resulted in non-levy and consequent non-realisation of tax, interest and penalty aggregating Rs. 13.01 lakh.

The matter was referred to the Government in March 2007. The Government admitted (July 2007) the audit observation and stated that proceedings for effecting recovery of the demand as arrears of land revenue were initiated by issuing recovery certificates. The report on recovery is awaited (September 2007).

6.3.3.2 Test check of the records of sales tax circle 'N' Jammu in January 2004 revealed that a dealer had not accounted for interstate purchases of stationery items valued at Rs. 14.86 lakh in the purchase statement for the accounting year 2001-02. The AA while assessing the dealer to tax in October 2002 failed to detect the concealment, which resulted in short levy of tax, interest and penalty aggregating Rs. 4.22 lakh⁷.

After the case was pointed out in January 2004, the AA reassessed the dealer in December 2005 and April 2007 and raised an additional demand of Rs. 4.78 lakh⁸. Further progress of recovery has not been intimated (September 2007).

The matter was reported to the Government in March 2007. It was stated in July 2007 that the dealer had filed an appeal before the Appellate Authority who had set aside the disputed demand and *denovo* assessment would be completed shortly. Further reply has not been received (September 2007).

<p>6.3.4 Failure of the assessing authority to detect concealment of inter State purchases of Rs. 43.38 lakh resulted in short levy of tax, penalty and interest aggregating Rs. 17.29 lakh.</p>

During test check of the Sales tax 'N' circle, Jammu in December 2002, a cross verification of purchase statements filed by a dealer dealing in television with the computerised purchase data compiled by the check post of Sales Tax Department revealed that interstate purchase of Rs. 22.46 lakh and Rs. 20.92 lakh was concealed during the accounting years 1996-97 and 1997-98 respectively. The AA while finalising the assessment in March 2001 and August 2001 failed to detect the concealment, which resulted in short levy of tax, interest and penalty aggregating Rs. 17.29 lakh⁹.

After the case was pointed out, the AA in December 2005 and October 2006, reassessed the dealer and raised an additional demand of Rs. 26.58 lakh¹⁰. The matter was referred to the Government/Department in June 2007 and the Department replied in August 2007 that proceedings for recovery of arrears by way of issuing '*dastak*' and 'attachment notice' initiated by the Deputy Commissioner Commercial Taxes (Recovery) had failed to evoke any response.

⁷ Tax: Rs. 1,24,862; Interest: Rs. 1,72,309; Penalty: Rs. 1,24,862

⁸ Tax: Rs. 1,24,862; Interest: Rs. 2,28,498; Penalty: Rs. 1,24,862

⁹ 1996-97: Tax: Rs. 2.48 lakh; Interest: Rs. 5.34 lakh; Penalty: Rs. 2.48 lakh

1997-98: Tax: Rs. 1.84 lakh; Interest: Rs. 3.31 lakh; Penalty: Rs. 1.84 lakh

¹⁰ 1996-97: Tax: Rs. 2.48 lakh; Interest: Rs. 9.85 lakh; Penalty: Rs. 4.95 lakh

1997-98: Tax: Rs. 1.84 lakh; Interest: Rs. 5.62 lakh; Penalty: Rs. 1.84 lakh

The defaulter was not accessible at his Jammu address and Police Commissioner, Chandigarh had been approached for execution of an arrest warrant against the defaulter. The Government in its reply (September 2007) endorsed the reply furnished by the department.

6.3.5 Failure of the assessing authority to levy penalty on concealed turnover of Rs. 5.20 crore resulted in non-levy of penalty of Rs. 55.75 lakh.

Test check of the records in sales tax circle 'F' Srinagar in January 2006 revealed that a dealer disclosed taxable turnover of Rs. 12.40 lakh during the year 2000-01. Since the dealer failed to furnish the trading account and purchase statement and also did not appear for assessments, the AA assessed the dealer ex-parte in March 2005 and determined taxable turnover of Rs. 5.20 crore. The AA, however, while computing the tax liability on the concealed turnover failed to impose the minimum penalty of Rs. 55.75 lakh.

After the case was pointed out in January 2006, the AA reassessed the dealer in May 2006 and raised a demand of Rs. 1.96 crore including penalty of Rs. 55.75 lakh. The status of recovery has not been intimated (September 2007).

The matter was reported to the Government in March 2007. It was stated in July 2007 that the registration certificates had been obtained fraudulently by the dealer and the matter had been referred to the crime branch in April 2007 for investigation.

6.4 Short levy of interest

Incorrect computation of interest by the assessing authority resulted in short levy of interest of Rs. 7.58 lakh.

The J&K GST Act and Rules made thereunder provide that if tax or any other amount due under this act is not paid by the dealer or any other person within the stipulated period, the dealer or such other person shall be liable to pay interest at the prescribed rates from the date it was payable to the date of actual payment.

Test check of the records of sales tax circle, Sopore in July 2005 revealed that the AA while assessing a dealer in March 2005 for the accounting year 2000-01 determined tax of Rs. 14.44 lakh. However, against the interest of Rs. 21.44 lakh recoverable from the dealer for non-payment of tax, the AA wrongly computed it as Rs. 13.86 lakh only. This resulted in short levy of interest of Rs. 7.58 lakh.

After the case was pointed out, the AA raised (October 2006) an additional demand of Rs. 7.58 lakh against the dealer.

The case was reported to the Government in April 2007. It was stated in July 2007 that the dealer has applied for amnesty notified under notification SRO-173 dated 7 May 2007 and the entitlement of the dealer to the benefits of the scheme would be known only after scrutiny of the declaration filed and records available in the circle. Further development has not been reported (September 2007).

6.5 Raising of short demand

Erroneous calculation of balance tax payable resulted in short demand of Rs. 5.83 lakh.

Under the J&K GST Act and Rules made thereunder, if the AA is satisfied that the return submitted by the dealer is correct and complete, he shall assess the amount of tax due from the dealer on the basis of such returns, pass an order and accordingly issue a demand notice in consequence of that order.

Test check of the records of the commercial tax officer, Kathua circle in February 2007 revealed that on the gross taxable turnover of Rs. 6.32 crore disclosed by a dealer during the year 2004-05, the AA in his assessment order determined (April 2005) the tax payable as Rs. 35.34 lakh¹¹. Out of this, the dealer had already deposited Rs. 5.83 lakh in January 2005. However, against the balance amount of Rs. 29.51 lakh recoverable from him, the AA raised a demand of Rs. 23.68 lakh only. This resulted in short demand of tax by Rs. 5.83 lakh.

After the case was pointed out, the AA issued a revised demand of Rs. 29.51 lakh. The progress of recovery has not been intimated (September 2007).

The case was reported to the Government in April 2007. It was stated in July 2007 that the dealer had opted for amnesty scheme notified under SRO-173 dated 7 May 2007 and in case he did not qualify for the benefits of the scheme, the outstanding amount for which demand had been raised shall be recovered from him. Further development had not been reported (September 2007).

Law Department

6.6 Short levy of stamp duty and non-imposition of penalty

Failure of the Sub-Registrar, Ramban to levy stamp duty in accordance with the prescribed rates on eight sale deeds resulted in short levy of stamp duty of Rs. 4.52 lakh and non-imposition of maximum penalty of Rs. 45.22 lakh.

Jammu and Kashmir Stamp Act 1977 Svt. (1920 AD) provides for the levy of stamp duty at prescribed rates¹² on lease deeds granted for a premium in addition to the rent reserved for a consideration equal to the amount of premium as set forth in the lease as well as the value of average annual rentals which would be paid or delivered for the first 10 years if the lease continued for this period. Instrument of conveyance of immovable property situated within the municipality was chargeable at three times the prescribed rates and at double the rate if such property was falling under the town/notified area. The Act further provides for imposition of penalty extending to 10 times the amount of deficiency in the levy of stamp duty.

Audit scrutiny of the records of the Sub Registrar (SR), Ramban under the District Registrar, Doda in March 2006 revealed that shops constructed by

¹¹ Tax: Rs. 26.52 lakh; Interest: Rs. 4.69 lakh; Penalty: Rs. 4.13 lakh

¹² Rs. 72 per thousand and Rs. 36 for every Rs. 500 or part thereof in excess of Rs. 1,000

municipal committee, Ramban on the national highway near bus stand Ramban were leased out to eight bidders on payment of premium and monthly rent. However, against the stamp duty of Rs. 4.56 lakh due on the lease deeds not purporting to be for any definite term, the SR levied stamp duty of Rs. 3,540 only, resulting in short levy of stamp duty of Rs. 4.52 lakh. The executants were also liable to pay a maximum penalty of Rs. 45.22 lakh for executing the instrument without the same having it duly stamped.

After the case was pointed out, the SR stated in May 2007 that the Additional Deputy Commissioner, Ramban to whom these cases were referred for recovery of stamp duty and penalty recovered Rs. 65,760 from the defaulters and the balance amount would be recovered on monthly instalment basis.

The matter was referred to the Government in April 2007. The Government in its reply in August 2007 endorsed the reply furnished by Sub-Registrar Ramban in May 2007.