

***Chapter-2***  
***Compliance Audit***  
***(Revenue Sector)***



## **CHAPTER - 2**

### **2.1 Tax administration**

#### **2.1.1 Sales Tax/Value Added Tax**

Sales Tax/Value Added Tax are administrated at the Government level by the Principal Secretary to Government, Finance Department. The Commissioner Commercial Taxes is entrusted with overall control and superintendence of the Commercial Taxes Department. He is assisted by three Additional Commissioners of Taxes (one each in Jammu and Kashmir Divisions and one for Tax Planning) and 13 Deputy Commissioners of Commercial Taxes (Jammu: 06; Kashmir: 05 and one each for headquarter and judicial matters). The State is divided into 52 Commercial Taxes Circles (Jammu: 25; Kashmir: 27) each headed by one Commercial Taxes Officer.

#### **2.1.2 State Excise**

The J&K State Excise Department is responsible for charging of excise duties under the J&K Excise Act 1901 and the rules made thereunder. The department is headed by the Excise and Taxation Commissioner who is assisted by five Deputy Excise Commissioners (04: Jammu; 01: Kashmir) and eight Excise and Taxation Officers (06: Jammu; 02: Srinagar). There are 20 Distilleries Bottling Plants which fall within the jurisdiction of the Excise and Taxation Officer, Distilleries, Jammu.

#### **2.1.3 Taxes on Vehicles, Goods and Passengers**

Receipts from the Transport Department are regulated under the Central and the State Motor Acts and rules made thereunder and are under the administrative control of the Transport Commissioner. The receipts from the goods and passengers tax are regulated under the Jammu and Kashmir Motor Vehicle Taxation Act 1957 and the Jammu and Kashmir Motor Vehicle Rules 1991 administered by the Transport Commissioner of the State.

### **2.2 Results of audit**

Test-check of the records of 66 units of sales tax/Value Added Tax, State Excise, Motor Vehicles and Stamp Duty and Registration fee conducted during the year 2015-16 revealed under-assessment/short levy/loss of revenue aggregating ₹208.71 crore in 635 cases as detailed in **Table-2.1**.

Table-2.1: Results of Audit

(₹ in crore)

| Sl. No.  | Categories  | Number of cases | Amount        |
|--|---|-----------------|---------------|
| <b>Taxes/VAT on Sales, Trade etc.</b>          |   |                 |               |
| 1.   | Under-assessment of tax   | 64              | 12.10         |
| 2.   | Evasion of tax due to suppression of sales/purchase   | 102             | 10.89         |
| 3.   | Irregular/incorrect/excess allowance of Input Tax Credit                                      | 16              | 1.31          |
| 4.   | System of Collection of arrears of revenue  | 1               | 85.24         |
| 5.   | Other irregularities  | 84              | 22.26         |
|  | <b>Total</b>  | <b>267</b>      | <b>131.80</b> |
| <b>State Excise</b>                            |   |                 |               |
| 1.   | Non/short realization of excise duty  | 10              | 6.06          |
|  | Non/short recovery of license fee/interest/penalty  | 8               | 17.23         |
| 2.   | Collection of Toll tax  | 1               | 35.35         |
| 3.   | Other irregularities  | 52              | 0.62          |
|  | <b>Total</b>  | <b>71</b>       | <b>59.26</b>  |
| <b>Taxes on Vehicles, Goods and Passengers</b> |   |                 |               |
| 1.   | <b>Non/short realization of</b><br>• Token tax and composite fee<br>• Passenger and goods tax | 25              | 8.92          |
| 2.   | <b>Other irregularities</b><br>• Vehicle tax  | 62              | 0.36          |
|  | <b>Total</b>  | <b>87</b>       | <b>9.28</b>   |
| <b>Stamp Duty and Registration Fee</b>         |   |                 |               |
| 1.   | Under valuation of proper/short levy  | 119             | 0.25          |
| 2.   | Non-accountal/less accountal/short deduction  | 3               | 0.01          |
| 3.   | Other regularities  | 88              | 8.11          |
|  | <b>Total</b>  | <b>210</b>      | <b>8.37</b>   |
|  | <b>Grand Total</b>  | <b>635</b>      | <b>208.71</b> |

During the year, the departments realized revenue of ₹40.74 lakh under various heads that had been pointed out in audit during 2015-16 and previous years.

## FINANCE DEPARTMENT

### 2.3 Collection of Toll Tax in the State

**Audit review of the system of collection of toll tax revealed non-adherence to rules and statutory provisions as well as differing application that resulted in loss of revenue of ₹35.35 crore.**

#### Introduction

Toll tax is levied and collected in the State under the Jammu and Kashmir Levy of Toll Act 1995 and rules made thereunder called the Jammu and Kashmir Toll Rules, 1995. Toll is levied on movement of persons, livestock, vehicles, machinery, commodities and goods in any form within the State. The Excise Department is responsible for collection of toll at various toll posts and for assisting the Government in formulating policy for levy of toll and administration of matters relating to excise and toll.

The records of all five major TPs and eight<sup>1</sup> out of 13 minor TPs for the period 2011-12 to 2015-16 were test-checked in audit during September 2015 to March 2016. Collaterally, the records of the Motor Vehicles Department (MVD), the Commercial Taxes Department and the Industries and the Commerce (I&C) Department, as they relate to efficient and effective administration and collection of toll tax were also checked in audit. In addition, assessment of records of one<sup>2</sup> industrial circle was test-checked for cross verification of correctness and genuineness of the toll exemptions allowed to industrial units. The audit findings are detailed below.

#### 2.3.1 Non-imposition of penalty and fine for over-loading of vehicles

According to the departmental instructions (October 2008), all overloaded vehicles were to be stopped at the toll posts and referred to the Motor Vehicles Department (MVD) for unloading additional weight and for imposition of double toll tax<sup>3</sup>, penalty and fine.

Test check of records of one<sup>4</sup> major and four<sup>5</sup> minor TPs for the period 2011-12 to 2015-16 revealed that 3,81,775 overloaded vehicles were not referred to the MVD which resulted in non-imposition of penalty and fine of at least of ₹114.53 crore<sup>6</sup>.

<sup>1</sup> Passenger side Jammu, Bari Brahamna, Upshi, Mandi Madkian, Kot Punnu, Goond, Kediyan Gandiyal, Govindsar

<sup>2</sup> CTO, Circle-I, Jammu

<sup>3</sup> Section 3 amended vide J&K Gazette dated 21.04.2010

<sup>4</sup> Railway Station, Goods Side, Jammu

<sup>5</sup> Mandi Madkian, Kot Punnu, Goond and Kediyan Gandiyal

<sup>6</sup> Number of vehicles (381775) x Fine and penalty (₹3000)

Further, cross verification of records of TP Lakhanpur with the MVD brought out that penalty and fine was imposed on 60,850 vehicles out of 62,142 vehicles which were subjected to double basic toll during April 2011 to December 2015 for over loading.

### **2.3.2 Irregular Exemptions**

State Government notified (January 2004) that the industrial units registered with the Industries and Commerce (I&C) Department would be exempted from payment of toll on goods imported/exported by them except in respect of items appearing in the negative list specified under the notification. Scrutiny of records revealed that the department had allowed irregular exemption amounting to ₹32.67 crore as detailed below.

(i) Audit scrutiny of Chief Article Statement<sup>7</sup> at TP Lakhanpur for the period 2011-12 to 2014-15 revealed that the toll authorities had allowed irregular exemption to industrial units from payment of toll tax of ₹1.63 crore on 2,75,596 quintals of items<sup>8</sup> imported during 2011-12 to 2014-15 which were included in the negative list. In addition, interest<sup>9</sup> of ₹1.58 crore was also leviable as per Section 6-B of the J&K Levy of Toll Act 1995. It was further observed that the names of the consignor/consignee were not recorded in the computerized data sheets maintained by Deputy Excise Commissioner, TP Lakhanpur. As such, audit could not identify the industrial units that had been allowed inadmissible exemption on imported raw materials. The Excise Commissioner stated (September 2016) that industrial goods were being exempted from payment of toll in strict adherence with the extant rules. The reply was not tenable as no exemption is allowable on items falls under the negative list.

(ii) According to the notification of January 2004, all kinds of oils (edible and non-edible), excluding oil seeds, which are imported by industrial units registered with the I&C Department are to be subjected to levy of toll tax. Audit scrutiny of records at TP Lakhanpur revealed that the department had allowed irregular exemption from payment of toll tax on 2,03,950 quintals of 'Mentha Oil/Crude Mentha Oil (non-edible oil)', imported by various industrial units into the State during 2011-12 to 2014-15. The irregular exemption resulted in non-realization of toll tax of ₹1.21 crore. In addition, interest of ₹1.19 crore was also leviable. However, audit could not again ascertain the names of these industrial units as the computerized data sheets did not include the names of the consignor/consignee. The Excise Commissioner stated (September 2016) that as per the clarification of the I&C Department dated June 2005, toll applied only to 'Edible and Non-Edible

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<sup>7</sup> Commodity wise monthly consolidated entries of import and export

<sup>8</sup> H.R/C.R coils, H.R/C.R/G.P/G.C/M.S sheets, spices, packing material, plywood, milk powder, steam coal

<sup>9</sup> At the rate of 3 *per cent* per month

oils' and not to industrial oils like transformer oil, turpentine oil and mentha oil, which were either petroleum products or organic chemicals commonly called as 'Oils'. The reply is not tenable as all kinds of oils (edible and non-edible) excluding oil seeds had been placed under negative list in the Government notification without any further distinction as to the nature or use of oil.

(iii) Audit scrutiny of records of TP Lakhampur for 2011-15 revealed that exemption from payment of toll tax of ₹29.74 crore was allowed on 48,86,337 quintals of 'Miscellaneous Goods' imported into the State by industrial units/units under various Government notifications<sup>10</sup>. 'Miscellaneous Goods' are neither covered in the list of items specified/authorized in Government notifications nor classified in the annual verification certificates approved by the I&C Department. The Excise Commissioner stated (September 2016) that exemption from payment of toll tax for specific goods was being granted by the ETOs on the basis of documents accompanying the goods and mere classification of an item under the 'Miscellaneous Goods' in no way challenged the genuineness of any exemption granted. It was further stated that 'Miscellaneous Goods' was a broader term used in the software and all the items categorized under it were having same toll rate. The reply was not tenable as "Miscellaneous Goods" might contain one or more tollable items and there was no such term used in the Toll Act or rules.

Such instances reveal flexible interpretation of toll related provisions resulting in potential revenue loss. As exemptions involve revenue implication it is imperative to explicitly mention the description of goods for transparency and clarity.

### 2.3.3 Internal control

The J&K Levy of Toll Rules 1995 provides for maintenance of records aimed at ensuring proper accounting and monitoring of revenues due and collected. Audit observed widespread non-maintenance of stipulated records and non-observance of stipulated procedures as below.

(i) Every Assessing officer is to maintain an assessment note book (RT-3) at each toll post for recording details of assessment made in respect of any vehicle arriving at the post. Scrutiny of records of four major TPs<sup>11</sup> and seven minor TPs<sup>12</sup> for the period 2011-12 to 2015-16 revealed that the assessment note book had not been maintained and as such the toll tax collected could not be linked with the details of assessment made.

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<sup>10</sup> SRO-334 of 1969, SRO-22 of 2004 and SRO-150 of 2010

<sup>11</sup> Udampur, Nagri, Lower Munda, Railway Station Goods side, Jammu

<sup>12</sup> Passenger side Jammu, Bari Brahmana, Kote Punnu, Mandi Madkian, Kediyan Gandial, Govindsar, Goond

(ii) At the close of a day, revenue received at a post shall be entered in a Cash Book and the Cash Book shall be attested daily by the officer in-charge. The Cash Book was not maintained at one TP<sup>13</sup> and it was not maintained in prescribed format at five TPs<sup>14</sup> during the period 2011-12 to 2015-16. Similarly, remittance register had not been maintained at two major toll posts at Lower Munda and Goods side, railway station Jammu and another five<sup>15</sup> minor TPs.

(iii) A “Khilafwarzi” register shall be maintained at each post indicating the date of detection of violation of rules, name and address of the accused, place of detection, amount of duty evaded, amount of fine, etc. imposed. Khilafwarzi register had not been maintained at two major Toll Post<sup>16</sup> and seven minor toll posts<sup>17</sup> during 2011-12 to 2014-15.

(iv) The officer in charge of a toll post is required to maintain Stock account in the form RT-6 of permit books RT-4 received from the office of DEC (Executive). The Stock account was either not maintained or was not maintained in prescribed format at two major TPs<sup>18</sup> and six minor TPs<sup>19</sup> during the period 2011-12 to 2014-15. It was also seen that permits books which had remained unused at the end of a year at the TPs Lower Munda and Upshi had not been cancelled as was required under the J&K Levy of Toll Rules 1995 but were carried forward to the next year.

(v) At the close of a month, the Officer in charge of a post shall verify the stock of permit books in their custody. No monthly verification/closure of abstracts of RT-4 books received/entered in the RT-4 register was conducted in two major TPs<sup>20</sup> and six minor TPs<sup>21</sup> during the period 2011-12 to 2014-15.

### **2.3.4 Conclusion**

Hence, non-adherence to the stipulated provisions resulted in non/short levy of toll tax amounting to ₹35.35 crore. Further, the efficacy of internal control mechanisms and procedures that would have enabled effective monitoring and supervision of toll collection was undermined by poor maintenance of mandatory records including assessment note book, cash book and stock account.

The matter was reported to the Government in July 2016; its reply was awaited (October 2016).

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<sup>13</sup> Passenger side Jammu

<sup>14</sup> Goond, Govindsar, Kediyan Gangyal, Kote Punnu and Mandi Madkian

<sup>15</sup> Upshi, Mandi Madkian, Kote Punnu, Goond, Govindsar

<sup>16</sup> Lower Munda, Railway Station Goods Side, Jammu

<sup>17</sup> Upshi, Passenger Side Jammu, Mandi Madkian, Kote Punnu, Goond, Kediyan Gandial, Govindsar

<sup>18</sup> Lower Munda, Lakhanpur

<sup>19</sup> Govindsar, Goond, Kediyan Gandiyal, Mandi Madkian, Kote Punnu and Upshi

<sup>20</sup> Lower Munda, Lakhanpur

<sup>21</sup> Govindsar, Goond, Kediyan Gandiyal, Mandi Madkian, Kote Punnu and Upshi



## 2.4 System of Collection of Arrears of Revenue in the State

**Audit review of system of collection of arrears of revenue revealed non-adherence to statutory provisions for recovery of arrears resulting in revenue loss of ₹85.24 crore, besides improper maintenance of records and procedural delays that affected realisation of Government dues.**

### 2.4.1 Introduction

The levy, assessment and collection of both tax and non-tax revenues is governed under the provisions of the relevant Acts and Rules framed thereunder. Every dealer/consumer/licensee is required to deposit the tax within a specified time period. Taxes which remain unpaid are declared to be collected as arrears of land revenue under the provisions of the J&K Land Revenue Act 1996. The Finance Department headed by Commissioner/Secretary is responsible for collection of arrears of tax revenues. Similarly, Commissioner/Secretaries of non-tax revenue earning departments are responsible for functioning of their departments.

Audit of the system of collection of arrears of revenues for the period 2011-12 to 2015-16 was conducted of four<sup>22</sup> major revenue generating departments between January 2016 and April 2016 to ascertain the efficiency and effectiveness of the revenue collecting machinery and enforcement of the various Acts especially collection of arrears of revenue (*Appendix-2.1*).

### 2.4.2 Commercial Taxes Department

#### 2.4.2.1 Position of Arrears of Revenue

The position of arrears of revenue and revenue realized during the period 2011-12 to 2015-16 is depicted in **Table-2.4.1** below.

**Table-2.4.1: Position of Arrears of Revenue**

(₹ in crore)

| Year    | Opening Balance of Arrears of revenue | Arrears of revenue during the year | Arrears reduced by rectification/ Appeal effect/ stayed by courts/ Tribunal | Total arrears | Arrears realized (Percentage) | Closing Balance |
|---------|---------------------------------------|------------------------------------|---|---------------|-------------------------------|-----------------|
|         | 1                                     | 2                                  | 3   | (1+2-3) = 4   | 5                             | 6               |
| 2011-12 | 862.55                                | 156.23                             | 264.32  | 754.46        | 9.75 (1.29)                   | 744.71          |
| 2012-13 | 744.71                                | 423.28                             | 246.63  | 921.36        | 30.15 (3.27)                  | 891.21          |
| 2013-14 | 891.21                                | 232.62                             | 132.82  | 991.01        | 54.46 (5.49)                  | 936.55          |
| 2014-15 | 936.55                                | 164.00                             | 103.14  | 997.41        | 34.34 (3.44)                  | 963.07          |
| 2015-16 | 963.07                                | 231.38                             | 149.61  | 1044.84       | 19.17 (1.83)                  | 1025.67         |

(Source: Departmental records)

<sup>22</sup> Commercial Taxes Department; Excise Department; Geology and Mining Department and Power Development Department

The recovery of arrears ranged between a minuscule 1.29 *per cent* and 5.49 *per cent* during the period 2011-12 to 2015-16. The arrears had swelled from ₹744.71 crore in 2011-12 to ₹1,025.67 crore in March 2016 representing an increase of 41.58 *per cent* over the five years period.

#### **2.4.2.2 Delay in forwarding of Recovery Certificates by Assessing Authorities**

Rule 42 of the Jammu and Kashmir Value Added Tax (VAT) Rules, 2005 and section 16 of the Jammu and Kashmir General Sales Tax (GST) Act 1962 provide that where a dealer or any other person is in default or is deemed to be in default in making payment of tax or any other amount due under the Act/Rules<sup>23</sup>, the Authority concerned, shall, forward a certificate to the Collector (DC Recovery) for effecting its recovery under the provisions of the J&K Land Revenue Act 1996.

Test check of records of the ten<sup>24</sup> Commercial Taxes Circles (Jammu: 5; Kashmir: 5) revealed that 670 revenue recovery certificates involving arrears of ₹102.84 crore raised between 2011-12 to 2012-13 had not been forwarded by the Assessing Authorities to the Collector for effecting recovery even after two years as required under section 45 (9) of the VAT Act 2005. Further, Assessing Authorities of five circles had forwarded 974 recovery certificates to the Collectors after a delay of 14 days to 29 months. Recoveries are still pending (October 2016).

The Assessing Authorities of Circle (H,F, Anantnag-I and Anantnag-II) Kashmir stated (March 2016) that efforts would be made to forward all recovery certificates to the Collector for recovery while the Assessing Authorities of Circle (O and E) Jammu stated (May 2016) that matter shall be looked into and detailed reply would be furnished in due course of time.

It was further observed that dealer-wise data base of Revenue Recovery certificates received from the Assessing Authorities had not been maintained by the department. The recovery certificates were received by the Collector DC (Recovery) Kashmir and Jammu in bulk from the Assessing Authorities and were passed on to the dealing Assistants/Inspectors/Sub-Inspectors without ensuring their entry in the Register of Recovery Certificates as required by Rule 42 of the J&K VAT Rules.

The DC (Recovery) Jammu admitted (April 2016) that the data base of recovery certificates has not been prepared but assured that the process for digitization

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<sup>23</sup> Any delay beyond 30 days for VAT (Section 44 (5 & 6 of VAT Act) and 15 days for GST (Section 8 & 16 of the GST Act) is to be treated as default

<sup>24</sup> Jammu Circle: O, I, E, G and Udhampur Circle 1; Kashmir Circle: H, F, Baramulla, Anantnag-I, Anantnag-II

of recovery certificates shall be taken up within two to three months and further stated (August 2016) that the dealing assistants have been provided registers for entering details of recovery certificates in these register and after completion of details in the recovery registers the data base of pending RCs would be available.

#### ***2.4.2.3 Delay in issue demand notices by Deputy Collectors (Recovery)***

Sections 61 and 62 of the Jammu and Kashmir Land Revenue Act 1996 empowers the taxation authorities to recover arrears from defaulters by service of a writ of demand on the defaulter issued on or after the day following that on which an arrear of land revenue accrues.

Test-check of records revealed that the DC (Recovery) had not issued timely demand notices against 42 dealers (out of 934) for recovery of arrears of revenue of ₹90.64 crore during the period from 2010-11 to 2014-15. The delay in issuance of writ demand notices to dealers ranged from 10 days to over three years indicating laxity in pursuance of arrears.

The DC (Recovery) Kashmir attributed (February 2016) the delay in issue of writ of demands to shortage of staff while as DC (Recovery) Jammu acknowledged (April 2016) the delay and stated that future demands would be issued in a time bound manner.

#### ***2.4.2.4 Delay in issue of recovery certificates to Collectors of Other Districts***

Section 60 of the J&K Land Revenue Act 1996 envisages that where an arrear of land revenue or a sum recoverable as arrear of land revenue is payable by a person residing or having property in a district other than that in which the arrear accrued or the sum is payable, the Collector of the district in which the arrear accrued or the sum is payable may send to the Collector of that district, a certificate duly signed by the Collector stating (a) the name of the defaulter and such other particulars as may be necessary for his identification and (b) the amount payable by him and the account on which it is due. The Collector of the district shall on receiving the certificate proceed to recover the amount, stated therein, as if it were an arrear of land revenue which had accrued in his own district.

Test-check of records of DC (Recovery) Jammu revealed that during the period 2011-12 to 2015-16, recovery certificates of 19 dealers involving arrears of ₹27.79 crore had not been forwarded to the Collectors of the districts where the dealers were residing for effecting recovery as arrears under the Land Revenue Act.

The DC (Recovery) Jammu stated (March 2016) that proper procedure of law shall be adhered to in future.

#### **2.4.2.5 Improper maintenance of records that hindered recovery of arrears**

Timely and effective recovery action requires the availability of all requisite details of the defaulters that would enable recovery action. Audit notices non-maintenance of such details that hindered the ability of the authorities in effecting recoveries as detailed below.

(i) Rule 42 (1) of the J&K VAT Rules 2005 and Rule 36 of the J&K GST Rules, 1962 provide that where a dealer or any other person is in default or is deemed to be in default in making payment of tax or any other amount due under the Act, the authority concerned shall forward a recovery certificate to the Collector. Section 66 of the J&K Land Revenue Act 1996 provides that, at any time after arrear of land revenue has accrued, the Collector may cause the estate or holding in respect to which the arrear is due to be attached and taken under his own management or that of any agent appointed by him for that purpose. Section 71 of the Act also provides that if arrear cannot be recovered by any of the processes or if the enforcement of any of these processes is inexpedient, the Collector may, where the defaulter owns any other estate or holding or any other immoveable property, proceed under the provisions of the Act against the property as if it were the land in respect of which the arrear is due.

Test-check of records of ten Commercial Tax Circles revealed that attachment of moveable/immoveable property or seizure of bank accounts of 28 defaulting dealers was not made by the department during the period from 2010-11 to 2015-16 due to non-availability of particulars of moveable/immoveable properties/bank details in the recovery certificates issued by the Assessing Authorities resulting in non-recovery of arrears of ₹30.70 crore.

The DC (Recovery) Jammu admitted (March 2016) that recovery of arrears through attachment of properties could not be made due to non-availability of property details of the defaulting dealers with the Collectorate. The DC (Recovery) Kashmir stated (February 2016) that steps would be taken for attachment of properties in due course.

Audit observed that the Assessing Authorities are responsible for obtaining property details from dealers and to forward them to the DC (Recovery) at the time of issuance of RC as per VAT Rules<sup>25</sup> and in the absence of such details, DC (Recovery) can initiate action for arrest of defaulters as per the Land Revenue Act<sup>26</sup>.

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<sup>25</sup> Rule 12 (k) – Form VAT-01A and Form VAT 28, Rule 42(1)

<sup>26</sup> Section 63 of the J&K Land Revenue Act, Samvat 1996

(ii) As per the provisions of the J&K GST Act, 1962 and VAT Act, 2005 every dealer other than casual trader has to submit application for registration containing details like residential address, Permanent Account Number (PAN), Bank details, Statutory Authority with whom the dealer is registered, etc. Section 61 of the Jammu and Kashmir Land Revenue Act 1996 empowers the Collector to recover the arrears either by service of a writ of demand, arrest and detention of the person.

Test-check of records revealed that in seven<sup>27</sup> Commercial Tax Circles, warrant of arrest issued against 53 defaulting dealers during 2011-12 to 2014-15 could not be executed by the police authorities due to non-availability of correct and updated particulars of the defaulting persons. Audit noticed that option of locating defaulting dealers through their PAN, Bank details and Statutory Authorities with whom dealers were registered, etc., had not been explored for effecting recovery of arrears of revenue, which resulted not only in non-execution of warrant of arrests but also led to non-recovery of arrears of revenue of ₹87.94 crore.

The DC (Recovery) Jammu stated (March 2016) that subsequent to the audit observations fresh recovery certificates are received only after obtaining all the necessary details.

(iii) Arrears due from non-existing dealers had accumulated to ₹201.02 crore at the end of March 2016. The department had not ascertained reasons of non-traceability from the Assessing Authorities with whom these dealers were registered. After this was pointed out in audit, the DC (recovery) Kashmir stated that review of such cases shall be conducted and cases referred to Police Department for further action.

Thus, failure of the departmental authorities to ensure due maintenance and updating of details of dealers resulted in delay or non-recovery of arrears amounting to ₹319.66 crore. If Assessing Authorities do not obtain property and collateral details, the State faces the risk of losing substantial revenues at present as well as in future due to non-existence or un-traceability of the defaulters.

#### **2.4.2.6 Short levy of interest of ₹25.18 lakh**

Section 44 (11) of the J&K VAT Act, 2005 stipulates that if tax or any other amount due under this Act excluding interest is not paid by the dealer or any other person, by whom it is payable within the period allowed, the dealer or such other person shall be liable to pay interest on the tax or other amount from the date it was payable to the date of actual payment at the rate of two *per cent* per month.

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<sup>27</sup> (Jammu:5; Kashmir:2)

Audit scrutiny of records of DC (Recovery) Kashmir and DC (Recovery) Jammu revealed that department had not charged interest on the tax from the date it was payable to the date of actual payment at the rate of two *per cent* per month in respect of 66 dealers during the period from 2010-11 to 2015-16 resulting in non-levy of interest amounting to ₹25.18 lakh. The DC (Recovery) Jammu stated (March 2016) that statutory notices for belated interest have been issued and outcome would be communicated in due course of time, however, DC (Recovery) Kashmir replied (February 2016) that interest would be calculated in all the cases.

#### **2.4.2.7 Non-recovery of arrears of revenue from government departments/agencies**

An amount ₹67.52 crore was outstanding against eight Government departments (₹20.11 crore) and seven Semi-Government (₹47.41 crore) on account of recovery of sales tax arrears ending March 2015 for which no action has been taken by the Department. Audit noticed that Assessing Authorities did not follow up the cases for recovery of arrears. The department had replied (March 2016) that fresh show cause notices have been issued.

#### **2.4.2.8 Incorrect reporting of Arrears of Revenue**

The Assessing Authorities of the Commercial Taxes Circles, forward revenue recovery certificates to the Collectors (DC Recovery Kashmir and Jammu) for effecting recovery as per the provisions of the J&K Land Revenue Act, 1996. The amount of revenue reflected in recovery certificates is recorded in the Revenue Recovery Certificate Register by the Recovery wing of the department. During course of cross check of records of DC (Recovery) Jammu, audit noticed variation of ₹147.08 crore in arrears of revenue which had been communicated to the Commissioner Commercial Taxes through Performance indicators during the period from 2011-12 to 2015-16 thereby submission of incorrect reports to the Government as shown in **Table-2.4.2**.

**Table-2.4.2: Variation in Reporting of Arrears**

| Year         | No of recovery certificates received from Assessing Authorities during year | Addition of arrears as per Revenue Recovery Certificates (₹ in crore) | Addition to arrears reflected in Performance indicators (₹ in crore) | Variation (₹ in crore) |
|--------------|---|---|--|------------------------|
| 2011-12      | 1366  | 166.39  | 79.58  | (+) 86.81              |
| 2012-13      | 1222  | 175.63  | 177.87   | (-) 2.24               |
| 2013-14      | 674   | 55.72   | 50.12  | (+) 5.60               |
| 2014-15      | 584   | 117.82  | 135.82   | (-) 18.00              |
| 2015-16      | 1099  | 250.73  | 175.82   | (+) 74.91              |
| <b>Total</b> |   | <b>766.29</b>   | <b>619.21</b>  | <b>(+) 147.08</b>      |

(Source: Departmental records)

On this being pointed out, the DC Recovery (Jammu) stated that variation in two sets of figures would be reconciled and reflected in the Performance indicator for the month of April 2016 by making modification to that extent.

Test-check of records of DC (Recovery) Jammu further revealed that the department had incorrectly reduced arrears of revenue in four recovery cases at the time of issue of demand notices, warrant of arrests, attachment orders or closure of case which had resulted in loss of revenue of ₹3.16 crore. In reply the department stated (April 2016) that the amount of arrears were erroneously calculated (two cases), firm was not traceable (one case), and fresh allotment notice was issued (one case).

### **2.4.3 Geology and Mining**

Section 9A of the Mines and Mineral (Development and Regulation) Act, 1957, envisages that the holder of a mining lease shall, notwithstanding anything contained in the instrument of lease or in any other law for the time being in force, pay to the State Government every year dead rent at such rate as may be specified for all the areas included in the instrument of lease provided that where the holder of such mining lease becomes liable to pay royalty for any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area, he shall be liable to pay either such royalty or the dead rent in respect of that area whichever is greater.

Section 25 (1) of the Act further stipulates that any rent, royalty, tax, fee or other sum due to the Government under this Act or the rules made thereunder may be recovered in the same manner as an arrear of land revenue. The amount of royalty/rent which remained unrecovered during 2011-12 to 2014-15 increased from ₹9.74 crore in 2011-12 to ₹16.88 crore in 2015-16.

#### **2.4.3.1 Non-referral of arrears to the Collector**

Test-check of arrear cases of seven licensees out of 42 revealed that the department had not pursued the arrear cases in accordance with the provisions of the Acts/ Rules resulting in accumulation of arrears of ₹10.27 crore as discussed below.

(i) Notice under Rule 27(5) of the Mineral Concession Rules 1960 for liquidation of arrears of royalty amounting to ₹3.92 crore (as of July 2012) was issued (October 2013) against a lessee for compliance within sixty days from the date of receipt of notice failing which the case could be referred to the Collector for effecting recovery under the provisions of the J&K Land Revenue Act 1996. Audit noticed that despite issue of fresh demand notices in October 2014 for ₹3.73 crore and August 2015 for ₹4.33 crore and grant of extension by one month from the date of issue of fresh notices, the lessee neither made payment

of arrears nor had any action been initiated to declare the arrears to be collected as arrears of land revenue. The Director Geology and Mining had referred the case for determination of mining lease in August 2014 and January 2016 to the Government but no action had been taken and amount of ₹4.33 crore remained un-recovered.

(ii) Director Geology and Mining issued (December 2014) notice under Rule 27 (5) of Mineral Concession Rules 1960 to a lessee for liquidation of arrears on account of royalty amounting ₹3.77 crore (as of June 2014). Audit noticed that despite issue of notices, the lessee failed to remedy the breaches and deposited (January 2015) ₹2.98 crore. Fresh demand notice for ₹3.23 crore was issued (August 2015) with grant of extension by one month from the date of issue of fresh notices. The lessee neither made payment of arrears nor had any action been taken by the department to declare the arrears to be collected under the provisions of the J&K Land Revenue Act 1996 or referred arrears to the Collector of the concerned district. The department had, however, referred (April 2015) the case for determination of mining lease but no action had been taken and amount of ₹3.23 crore remained un-recovered from the lessee.

(iii) Demand notice under Rule 27 (5) of Mineral Concession Rules, 1960 was issued (July 2015) for an amount of ₹1.55 crore against a lessee. Audit noticed that the lessee neither made payment of arrears to the department nor any action was taken to declare the arrears to be collected as arrears of land revenue. The department had referred (December 2015) the case to the Commissioner/Secretary to Government, Industries and Commerce Department, Srinagar for determination of mining lease but no action had been taken and amount of ₹1.55 crore had remained un-recovered from the lessee.

(iv) Audit noticed that arrears amounting to ₹0.95 crore outstanding against a lessee from September 2013 on account of royalty had neither been recovered from the lessees despite issue of demand notice between September 2013 and December 2015 nor had the arrears of revenue been referred to the Collector for effecting recovery under the provisions of the J&K Land Revenue Act 1996.

(v) The department had not charged interest of ₹20.98 lakh on ₹43.70 lakh for the period April 2013 to March 2015 while issuing demand notice against a lessee.

In response to audit observations, the department directed (February 2016) the Joint Director, Geology and Mining Department, Kashmir to issue final notice to all defaulters for making payment of royalty in full within one month. Further action taken in this regard was awaited (October 2016).



### 2.4.4 Power Development Department

Levy and collection of electricity charges and duty on electricity is governed by the Jammu and Kashmir Electricity Act 2010 and the Jammu and Kashmir Electricity (Duty) Act 1963 respectively. Section 50 (2) of the Jammu and Kashmir Electricity Act 2010 stipulate that notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off supply of electricity. The Jammu and Kashmir Electricity (Duty) Act provides for levy of Electricity Duty at rates specifically to be notified by the State Government. Section 8 of the Act states that any duty or penalty leviable under this Act which remains unpaid shall be recoverable as arrears of land revenue. It is the responsibility of the Power Development Department to ensure collection of arrears of electricity charges and electricity duty and remitting into Government accounts.

The position of arrears of electricity charges including duty outstanding at the beginning of the year, assessed and recovered during the period 2011-12 to 2015-16 is depicted in **Table-2.4.3** below.

**Table 2.4.3: Arrears of Revenue of Electricity Charges**

(₹ in crore)

| Year    | Opening Balance      | Revenue assessed during the year | Total realizable arrears | Amount of arrears recovered during the year | Closing balance |
|---------|----------------------|----------------------------------|--------------------------|---|-----------------|
| 2011-12 | 1747.76              | 1255.60                          | 3003.36                  | 1197.85 (40)                                | 1805.51         |
| 2012-13 | 1805.51              | 1539.72                          | 3345.23                  | 1492.36 (45)                                | 1852.87         |
| 2013-14 | 833.25 <sup>28</sup> | 1967.06                          | 2800.31                  | 1691.08 (60)                                | 1109.23         |
| 2014-15 | 1109.23              | 2094.53                          | 3203.76                  | 1715.06 (54)                                | 1488.70         |
| 2015-16 | 1488.70              | 2379.82                          | 3868.52                  | 1872.30 (48)                                | 1996.22         |

(Source: Departmental records)

The percentage recovery of electric charges including duty against the realizable arrears ranged between 40 and 60 *per cent* during the period 2011-12 to 2015-16. Audit noticed that despite reducing electricity arrears of State Government departments in the year 2013-14 by ₹1,019.62 crore and waiving off surcharge of domestic consumers under amnesty schemes by ₹39.26 crore (Jammu: ₹16.94 crore; Kashmir: ₹22.32 crore) during 2012-13 and 2015-16, the arrears of electricity charges including duty increased from ₹833.25 crore in 2013-14 to ₹1,996.22 crore at the end of March 2016.

<sup>28</sup> Arrears of electric charges against Government Department amounting to ₹1019.62 crore waived off as per Cabinet decision

Test check of eight (out of 27) electric divisions during the period 2011-12 to 2015-16 brought out arrears of ₹645.62 crore in 6,153 cases as brought out in **Table-2.4.4** below.

**Table-2.4.4: Consumers against whom notices issued, disconnections effected or referred for collection under Land Revenue Act**

(₹ in crore)

| Division     | Number of Consumers who owe arrear in the range of |               |                        |              |                    |               | Notices issued | Disconnections effected | Cases referred for collection under Land Revenue Act, 1996 | Cases pursued through courts |
|--------------|--|---------------|------------------------|--------------|--------------------|---------------|----------------|-------------------------|--|------------------------------|
|              | ₹One lakh to ₹Five lakh                            |               | ₹Five lakh to ₹10 lakh |              | ₹10 lakh and above |               |                |                         |  |                              |
|              | No.  | Amount        | No.                    | Amount       | No.                | Amount        | No.            | No.                     | No.  | No.                          |
| Jammu        | 2999   | 84.98         | 402                    | 28.91        | 642                | 441.35        | 191            | 18                      | 7  | 27                           |
| Kashmir      | 1815   | 44.20         | 198                    | 13.61        | 97                 | 32.57         | 105            | 89                      | -  | 2                            |
| <b>Total</b> | <b>4814</b>  | <b>129.18</b> | <b>600</b>             | <b>42.52</b> | <b>739</b>         | <b>473.92</b> | <b>296</b>     | <b>107</b>              | <b>7</b>   | <b>29</b>                    |

(Source: Departmental records)

Audit analysis revealed that:

- Writ of demands for recovery of electricity arrears of ₹645.62 crore has been issued by the departmental authorities against only 296 out of 6,153 consumers (5 per cent) during the period from 2011-12 to 2015-16;
- Disconnection for recovery of electricity charges has been made by the departmental authorities against only 107 consumers out of 6,153 consumers; and
- Department had not referred/declared any arrears to be collected as per the provisions of the J&K Land Revenue Act, 1996 and no mechanism was in place in the department for identifying cases to be declared as arrears of revenue.

The Chief Engineer (EM&RE) Jammu stated (August 2016) that the department has initiated steps for recovery of arrears by holding review meetings, issuing updated bills to the consumers, conducting inspections and effecting disconnections wherever necessary.

The reply is not acceptable as the arrears were pending for periods ranging from two to nine years and such prolonged delay or inaction was indicative of the lack of seriousness in pursuance of these arrears. Moreover, recovery of electricity charges may be time-barred under the provisions of the Jammu and Kashmir Electricity Act, 2010 while recovery of Electricity Duty as arrears of land revenue is unlikely given the long delay and it may be irrecoverable.

### 2.4.5 Excise Department

Section 24 of the J&K Excise Act 1958 stipulates that all duties, taxes, fines and fees payable to the State may be recovered from the person primarily liable to pay the same or from his surety (if any), as if they were arrears of land revenue. Further section 24-A of the Act stipulates that if any tax or other amount due under this Act is not paid by the licensee within the specified time, he shall be liable to pay in addition to tax or amount due a sum equal to two *per cent* of such tax or amount for each month or part thereof after the period specified for its payment.

An amount of ₹39.56 crore out of the total arrears of ₹48 crore outstanding from 2011-12 could not be realized due to stay granted by Courts. However, even the balance arrears of ₹8.44 crore referred to the Collectors for collection as arrears of land revenue had remained unattended resulting in their non-recovery as discussed below.

(i) Demand notices/attachment orders under the provisions of J&K Land Revenue Act had been issued by the Collector in respect of only seven recovery certificates out of 78 during January 2001 to March 2016 resulting in non-recovery of arrears amounting to ₹4.65 crore. The DC (Executive) Jammu stated (April 2016) that process to effect the recovery has been initiated by issuing notices to the defaulters. The DC (Executive) Kashmir stated (April 2016) that the process of issuing notices to these defaulters would be started immediately.

(ii) Test-check of records of the DC (Executive) Jammu revealed that excise arrear demands amounting to ₹71.90 lakh pertaining to 1984-85 to 1999-2000 received by DC Executive for effecting recovery had remained unattended due to non-issuance of demand notice or attachment order/warrant of arrest resulting in non-recovery of these arrears.

(iii) Test-check of records (March 2009/April 2015) of Excise and Taxation Officer, Excise Range, Kashmir and Dy. Excise Commissioner (Executive) Kashmir revealed that the dealers had not paid the dues on account of license fee and entertainment/show tax to the Government resulting in accumulation of arrears of ₹1.24 crore at the end of 1990. Further, some dealers had made full payment/part payment of outstanding arrears of principal amount of ₹13.09 lakh only between April 1990 to June 2015 and ₹1.11 crore was still pending for realization (June 2015). The department did not invoke the penal provision of section 24-A of the Act for recovery of arrears including interest in the cases where part payment/full payment was made. The inaction of the department by not recovering the arrears by invoking provisions of section 24-A

of the Act, resulted in loss of revenue to the extent of ₹8.42 crore<sup>29</sup> including interest.

Dy. Excise Commissioner (Executive) Kashmir stated (April 2015) that necessary notices were served.

#### **2.4.6 Conclusion**

Efforts of the departments in pursuing recovery of arrears of government dues was characterised by lack of seriousness as reflected in undue delays in initiating actions provided for under the relevant Acts and non-enforcement or non-adherence of statutory provisions and the rules made thereunder. Delay in issue of recovery certificates, non-maintenance of requisite details of moveable/immoveable property and addresses that could facilitate appropriate recovery action, non-enforcement of penal actions in case of persistent defaults cumulatively resulted in overall 16 *per cent* increase in the arrears across all the four departments from ₹2,668.05 crore in 2011-12 to ₹3,086.77 crore in 2015-16.

The matter was reported to the Government in June 2016; its reply was awaited (October 2016).

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

**Assessing Authority incorrectly allowed input tax credit during a period of suspension of registration resulting in short levy of tax of ₹7.39 lakh including interest and penalty.**

Section 27 (7) of the J&K VAT Act 2005 stipulates that when any dealer to whom a certificate of registration is granted, fails to furnish any return or fails to pay any tax, penalty or interest payable under the Act, the certificate of registration of such dealer may be suspended by the prescribed Authority. Sub-section 9 (8) of section 21 of the Act further provides that no input tax credit shall be claimed or allowed to the registered dealer in respect of goods purchased by him for the period his certificate of registration is under suspension. Under Sections 51(4) and 69(1) (m) of the Act the dealer is also liable to pay interest @ two *per cent* per month and double the amount of tax leviable on such goods for the above offences.

Test-check (February 2015) of records of the Commercial Taxes Circle 'N' Jammu revealed that the registration of a dealer was suspended from 24 April 2010 and restored on 14 October 2011. However, the dealer was allowed benefit of input tax credit of ₹1.85 lakh during the period 24 April 2010 to 31 March 2011 which was irregular. The allowance of input tax credit resulted in short demand of tax

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<sup>29</sup> Arrears: ₹1.11 crore; Interest: ₹7.31 crore

of ₹1.85 lakh. In addition, interest of ₹1.84 lakh and penalty of ₹3.70 lakh was also leviable.

The Commissioner Commercial Taxes, J&K, Jammu stated in March 2016 that the Assessing Authority re-assessed the dealer raising a demand of ₹29.54 lakh (Tax: ₹11.74 lakh; Interest: ₹14.10 lakh and Penalty: ₹3.70 lakh). Status of recovery is awaited (October 2016).

The matter was reported to the Government in February 2016; its reply was awaited (October 2016).

## **2.6 Short levy of service tax/penalty due to concealment of stocks/purchases**

**Failure of the Assessing Authority to detect concealment of stock/purchases by the dealers at the time of assessment resulted in short levy of service tax of ₹33.77 lakh including interest/penalty.**

Section 7 of the Jammu and Kashmir General Sales Tax Act, 1962 and the 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 dealer who has without any cause failed to furnish correct return of his turnover or concealed any particulars of his turnover, the Assessing Authority (AA) shall direct the dealer under section 8(8) and 17 (1) (f) of the said Act to pay in addition to tax and interest payable by him, penalty not less than amount of tax evaded but not exceeding twice the amount of tax.

(i) Audit scrutiny (May 2015) of records of Commercial Taxes Circle O, Jammu revealed that the assessment of a dealer for the accounting year 2010-11 was made (February 2015) by the Assessing Authority under section 7 (8) of the J&K GST Act at a taxable turnover of ₹377.41 lakh. A cross-check of trading account for the year 2009-10 and 2010-11 showed that opening stock of ₹14.27 lakh was adopted in his accounts for the year 2010-11 against the actual closing stock of ₹34.27 lakh. This led to less accountal of stock of ₹20 lakh and consequent short levy of tax of ₹2.52 lakh. In addition, interest of ₹2.42 lakh and penalty of ₹2.52 lakh was also leviable. The matter was referred to the Government in March 2016. Deputy Commissioner Commercial Taxes Judicial Srinagar intimated (May 2016) that extra demand of ₹7.93 lakh including interest and penalty was raised against the dealer and referred to Deputy Commissioner Commercial Taxes Recovery, Jammu for recovery of arrears under the Land Revenue Act. It was further stated that the dealer had preferred an appeal before the appellate authority. Further progress was awaited (October 2016).

(ii) Audit scrutiny (May 2015) of records of Commercial Taxes Circle 'O', Jammu revealed that the assessment of a dealer for the financial year

2010-11 was made (March 2015) by the Assessing Authority under section 7 (8) of the J&K GST Act at a taxable turnover of ₹874.49 lakh. A cross-check of consumption statement of 'C' forms with the purchase statement and trading account for the year 2010-11 filed by the dealer showed that inter-state purchases of ₹69.58 lakh had not been accounted for by the dealer in his accounts resulting in suppression of purchases to that extent. This led to under-statement of turnover to the extent of ₹69.58 lakh resulting in short levy of service tax of ₹8.77 lakh. In addition, interest of ₹8.77 lakh and penalty of ₹8.77 lakh was also leviable. On this being pointed out (May 2015), the Assessing Authority re-assessed (January 2016) the dealer for the accounting year 2010-11 at a taxable turnover of ₹83.49 lakh and raised additional demand of ₹27.69 lakh which included tax ₹8.77 lakh, interest ₹10.15 lakh and penalty ₹8.77 lakh against the dealer.

The matter was reported to the Government in March/April 2016; its reply was awaited (October 2016).

## **2.7 Short levy of interest**

**Failure of the Deputy Commissioner Commercial Taxes (Recovery) Jammu to correctly work out interest on the amount of tax payable by dealers resulted in short levy of interest of ₹8.95 lakh.**

Section 14 (11) of the Jammu and Kashmir Value Added Tax Act 2005, provides that if any tax or any other amount due under this Act excluding interest is not paid by the dealer or any other person by whom it is payable within the stipulated period, a dealer or such other person shall be liable to pay interest on the tax or other amount from the date it was payable to the date of actual payment at the rate of two *per cent* per month. Further, Section 44 (6) of the Act provide that the amount that remains unpaid after the due date in pursuance of the notice may be recovered as arrears of land revenue.

Audit scrutiny (February/March 2015) of records of Deputy Commissioner Commercial Taxes (Recovery) Jammu, revealed that the Commercial Taxes Circle 'B' Jammu forwarded recovery certificates of a dealer for the years 2008-09 to 2010-11 to the Collector for recovery of an amount of ₹64.31 lakh including interest plus penalty payable for the periods up to February 2013. The defaulter paid the amount of ₹64.31 lakh in March 2014. However, interest of ₹8.95 lakh was not charged by the Collector from the defaulter from the date it was payable (February 2013) to the date of actual payment (March 2014). Failure of the Deputy Commissioner Commercial Taxes (Recovery) Jammu to correctly work out interest on the amount of tax payable by dealer resulted in short levy of interest of ₹8.95 lakh.

Deputy Commissioner Commercial Taxes, Judicial, Srinagar stated (June 2016) that the assessee had deposited ₹6.02 lakh out of due amount of ₹8.95 lakh and warrant of arrest was issued against the dealer for recovery of balance amount of ₹2.93 lakh.

The matter was reported to the Government in May 2016; its reply was awaited (October 2016).

## **2.8 Short levy of tax, penalty and interest**

### **Concealment of purchases/stock at the time of assessment resulted in short levy of tax, interest and penalty of ₹5.45 lakh.**

Section 42 of the Jammu and Kashmir Value Added Tax Act 2005 stipulates that in case of a dealer assessed under sections 37 to 40 of the Act, where the Assessing Authority has reason to believe that whole or any part of the turnover of the dealer in respect of any period has escaped assessment, the Assessing Authority may serve a notice on the dealer and after giving the dealer a reasonable opportunity of being heard and making such enquiries as it consider necessary, proceed to assess the amount of tax due from the dealer in respect of such turnover. Under Section 51(4) of the Act 2005, the dealer is liable to pay simple interest at the rate of two *per cent* per month from the date of default. Section 69(1)(f) of the Act stipulates that if any person conceals his turnover or furnishes inaccurate particulars thereof, the appropriate authority shall direct that such person shall pay in addition to the fee or tax by way of penalty a sum equal to double the amount of tax attempted to be evaded.

Audit scrutiny (December 2014) of the records of Commercial Taxes Circle 'K' Srinagar revealed that a dealer dealing in sale and service of vehicles disclosed purchase of ₹60.60 lakh and ₹110.73 lakh in his returns during the years 2009-10 and 2010-11 respectively against actual purchase of ₹71.10 lakh and ₹117.21 lakh shown in the imports. This led to short accountal of purchases of ₹10.50 lakh and ₹6.48 lakh during these years with corresponding tax effect to ₹1.91 lakh and ₹3.74 lakh respectively including interest and penalty.

On this being pointed out (December 2014), the Assessing Authority (November 2015) cross checked the purchases statements filed by the dealer. A net concealment of ₹8.82 lakh (₹1.39 lakh and ₹7.43 lakh) for the accounting years 2009-10 and 2010-11 respectively was determined and assessed to tax (August 2015) under Section 42 of J&K Value Added Tax Act 2005. A demand of ₹5.45 lakh (₹0.87 lakh for 2009-10 and ₹4.58 lakh from 2010-11) including interest and penalty was raised. Commercial Taxes Circle-K Srinagar intimated (June 2016) that the demands had been referred to D.C Commercial Taxes (Recovery), Kashmir for effecting recovery under land revenue Act.

The Deputy Commissioner Taxes (Judicial), Srinagar stated (September 2016) that ₹50,000 had been recovered by the Collector and recovery of the balance amount was under process.

The matter was reported to the Government in May 2016; its reply was awaited (October 2016).

## **2.9 Irregular grant of remission of tax**

### **Irregular grant of remission of tax to two dealers by the Assessing Authorities resulted in short levy of tax and interest of ₹2.96 crore.**

Government notification issued (August 1998 and January 2004) under Section 8 (5) of the General Sales Tax Act and under Section 79 A of the Jammu and Kashmir Value Added Tax Act (March 2006) provide for grant of remission of tax to an industrial unit registered with the Industries and Commerce Department on the sale of finished goods manufactured by the industrial unit. The industrial unit is, however, required to maintain correct and regular account of purchase of goods including raw material and also file return of sales. Section 69 (1)(f) of the Act stipulates that any dealer found guilty of concealing his turnover or furnishing inaccurate particulars thereof is not entitled to any remission for the year/quarter in which such offence is committed.

(A) Audit check of records (March 2015) of Commercial Taxes Circle 'E' Srinagar, revealed that a dealer dealing with corrugated sheets disclosed turnover of ₹801.48 lakh in his trading account during the year 2010-11 and claimed exemption of ₹1.08 crore during the year being an industrial unit which was allowed by the Assessing Authority while accepting his returns under Section 37 of J&K VAT Act, 2005. Cross check of purchases shown in Form 'C' and Form VAT 65 filed by the dealer showed that the dealer had concealed purchases of ₹69.15 lakh during the four quarters of the year 2010-11 and was as such not entitled to remission of ₹1.08 crore as claimed by him.

On this being pointed out (March 2015) by audit, the Assessing Authority re-assessed (March 2016) the case under Section 42 of VAT Act 2005 disallowed the remission claim of ₹1.08 crore and raised demand of ₹2.69 crore on determined turnover of ₹8.81 crore against the dealer which includes interest of ₹1.50 crore.

The Deputy Commissioner Taxes (Judicial) Srinagar stated (September 2016) that the demand stood referred to the Collector for necessary action.



**(B)** Records of Commercial Taxes Circle-II, Anantnag revealed (February 2015) that a dealer dealing with fabrication of aluminum doors, windows and manufacturing of glass had disclosed (2010-11) turnover of ₹58.63 lakh and claimed exemption of ₹7.92 lakh which was allowed by the Assessing Authority while accepting his returns under Section 37 of the VAT Act. Cross check of purchases shown in Form C and Form VAT 65 with purchase statement filed by the dealer showed that the dealer had concealed purchases of ₹11.36 lakh in his accounts for first three quarters of 2010-11. The dealer was as such not entitled to remission of ₹5.67 lakh claimed by him for the period and liable to pay tax of ₹20.17 lakh<sup>30</sup> including interest and penalty.

The Deputy Commissioner Commercial Taxes, Judicial Srinagar stated (June 2016) that the concerned Assessing Authority while disallowing the claim of ₹7.92 lakh had created a demand of ₹26.87 lakh for short levy of tax and the demand stood referred (4 June 2016) to the Deputy Commissioner Commercial Taxes, Recovery Srinagar for necessary action and that the outcome would be intimated in due course.

The matter was reported to the Government in June 2016; its reply was awaited (October 2016).

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<sup>30</sup> Tax/Interest/Penalty: ₹8.68 lakh; Remission withdrawn: ₹5.67 lakh; Interest on remission: ₹5.82 lakh

