CHAPTER-II : TAXES ON SALES, TRADE, SUPPLIES, *etc.*

2.1 Tax administration

The receipts from the Goods and Services Tax/Value Added Tax/Central Sales Tax/Entry Tax/Electricity Duty payable under the respective laws relating to state taxpayers are administered at the Government level by the Principal Secretary (Finance). The Commissioner is the head of the Commercial Taxes Department (Department) and is assisted by 23 Additional Commissioners, 46 Deputy Commissioners (DC), 91 Assistant Commissioners (AC), 136 Commercial Taxes Officers (CTO), 405 Assistant Commercial Taxes Officers (ACTO) and a Financial Advisor (FA). They are assisted by Junior Commercial Taxes Officers (JCTO) and other allied staff for administering the relevant tax laws and rules.

2.2 Internal audit

Financial Advisor is the head of the Internal Audit Wing. There were 17 internal audit parties each headed by Assistant Accounts Officer. Planning for internal audit of units is done on the basis of importance and revenue realisation.

The position of units audited by the Internal Audit Wing during the last five years is as under:

Year	Pending units for audit	Units due for audit during the year	Total units due for audit	Units audited during the year	Units remaining unaudited	Shortfall in *per cent*
2013-14	183	414	597	287	310	52
2014-15	310	413	723	471	252	35
2015-16	252	413	665	181	484	73
2016-17	484	468	952	426	526	55
2017-18	526	468	994	526	468	47

Source: Information furnished by Commercial Taxes Department.

There was shortfall in conducting internal audit ranging between 35 and 73 *per cent* during the years 2013-14 to 2017-18.

It was further noticed that 16,453 paragraphs of internal audit were outstanding at the end of the year 2017-18. The year-wise break up of outstanding paragraphs is as under:

Year	Upto 2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	Total
Paragraphs	10,995	758	705	839	894	2,262	**16,453**

Source: Information furnished by Commercial Taxes Department.

Non-settlement of large number of outstanding paragraphs indicates lack of monitoring and effective follow up action by the Department on the observations raised by its own Internal Audit Wing.

2.3 Results of audit

There are 492 auditable units in the Commercial Taxes Department, out of these, audit selected 150 units for test check wherein 1.89 lakhs assessments were finalised. Out of these, audit test checked 27,000 assessments (approximate 14 *per cent*) during the year 2017-18 and noticed 629 cases (approximate 2.3 *per cent* of audited sample) of non/short levy of tax/interest, irregular allowance of Input Tax Credit, non-imposition of penalty for misuse of declaration forms, irregular allowance of investment subsidy, application of incorrect rate of tax and non-observance of provisions of Acts/Rules *etc.* involving an amount of ₹ 152.13 crore. These cases are illustrative only as these are based on test check of records. Audit pointed out some of the similar omissions in earlier years also, not only these irregularities persist; but also remain undetected till next audit is conducted. There is a need for the Government to improve the internal control system including strengthening of internal audit so that recurrence of such cases can be avoided. Irregularities noticed are broadly fall under the following categories:

(₹ in crore)

Sl. No.	Category	Number of cases	Amount
1	Paragraph on 'Preparedness for transition to Goods and Services Tax (GST)'	1	63.35
2	Paragraph on 'Disposal of Appeal cases by Departmental Authorities'	1	-
3	Paragraph on 'System of Levy and Collection of Electricity Duty from Captive Power Plants (CPPs)'	1	12.98
4	Under assessment of tax	109	18.68
5	Acceptance of defective statutory forms	11	3.05
6	Evasion of tax due to suppression of sales/purchase	36	11.37
7	Irregular/incorrect/excess allowance of Input Tax Credit	115	7.76
8	Other irregularities relating to		
	(i) Revenue	346	34.65
	(ii) Expenditure	9	0.29
Total		**629**	**152.13**

During the year 2017-18, the Department accepted underassessment and other deficiencies of ₹ 28.36 crore in 427 cases, of which 73 cases involving ₹ 3.24 crore were pointed out in audit during the year 2017-18 and the rest in the earlier years. During the year 2017-18, the Department recovered/ adjusted ₹ 0.61 crore in 41 cases, of which 9 cases involving ₹ 0.12 crore pertained to the year 2017-18 and the rest to earlier years.

Audit in one case had pointed out that an entity had neither submitted the returns nor paid electricity duty amounting to ₹ 10.04 crore for the period January 2016 to March 2017. After the issue of draft paragraph the Department recovered (November 2018) the entire amount. This has not been discussed in the audit report.

This chapter consists of three paragraphs and a few illustrative cases having revenue impact of ₹ 106.74 crore.

2.4 Preparedness for transition to Goods and Services Tax (GST)

2.4.1 Introduction

Goods and Services Tax (GST) was implemented with effect from 1 July 2017. GST[1] is being levied on intra-State supply of goods or services *(except alcohol for human consumption and five specified petroleum products[2])* separately but concurrently by the Union (CGST) and the States (SGST)/Union territories (UTGST). Further, Integrated GST (IGST) is being levied on inter-State supply of goods or services (including imports) and the Parliament has exclusive power to levy IGST. Prior to implementation of GST, VAT was leviable on intra-State sale of goods in the series of sales by successive dealers as per Rajasthan Value Added Tax (RVAT) Act, 2003 and Central Sale Tax (CST) on sale of goods in the course of inter-State trade or commerce as per CST Act, 1956.

The State Government was empowered to regulate the provisions of RVAT Act whereas provisions relating to GST were being regulated by Centre and State on the recommendation of Goods and Services Tax Council (GSTC) which was constituted with representation from Centre and all the States to recommend on the matters related to GST. The State Government notified (June 2017) the Rajasthan Goods and Services Tax (RGST) Act, 2017 and the Rajasthan Goods and Services Tax Rules, 2017 wherever various taxes[3] were subsumed.

Goods and Services Tax Network (GSTN) was set up by the Government of India as a private company to provide IT services. It provides *Front-end IT services* to taxpayers namely registration, payment of tax and filing of returns. *Back-end IT services i.e*. registration approval, taxpayer detail viewer, refund processing, MIS reports *etc*. are also being provided by GSTN to Model-II[4] States. Rajasthan has opted for Model-II.

2.4.2 Audit objectives

The audit was conducted with a view:

- to evaluate the preparedness of the State Government for implementing the IT solution;
- to assess the capacity building measures undertaken by State Government for its employees for framing/implementing the Rules/Regulations/IT system and
- to analyse the strategy of the State Government in handling the issues of legacy tax regime.

[1] Central GST: CGST and State/Union Territory GST: SGST /UTGST.
[2] Petroleum products: crude, high speed diesel, petrol, aviation turbine fuel and natural gas.
[3] Value Added Tax, Central Sales Tax, Entry Tax, Luxury Tax and Entertainment Tax.
[4] Model-I States: only front-end services provided by GSTN,
Model -II States: both Front-end and Back-end services provided by GSTN.

2.4.3 Audit criteria

The audit criteria was derived from the provisions of the following acts, rules and notifications/circulars issued thereunder:

- Rajasthan GST Act, 2017;
- Rajasthan GST Rules, 2017;
- GST (Compensation to States) Act, 2017;
- Acts relating to subsumed taxes and Rules made thereunder;
  - Rajasthan VAT Act, 2003, Rajasthan Tax on Entry of Goods into Local Areas Act, 1999, Central Sales Tax Act, 1956 and other guidelines issued by Central/State Government and GST Council.

2.4.4 Scope of Audit

The activities of the State Government/Commercial Taxes Department relating to implementation of GST since 101st amendment to the Constitution of India *i.e.* 8 September 2016 to March 2018 were reviewed. Besides, records of the office of the Commissioner, Commercial Taxes (CCT) and data available on the departmental web based application *RajVISTA* regarding legacy issues *i.e.* assessment, recovery/refund, rectifications, submission of declaration forms *etc.* were examined.

Draft Paragraph was sent to the Government in September 2018. A meeting was held on 5 October 2018 with Secretary, Finance (Revenue), Government of Rajasthan and other officers to discuss the findings. Their views have been appropriately considered in the relevant sections of this paragraph.

2.4.5 Trend of Revenue from 2013-14 to 2017-18

GST was implemented from July 2017 and total receipts under GST including non-subsumed/subsumed taxes from July 2017 to March 2018 were ₹ 23,599.29 crore (including IGST advance ₹ 751 crore) against ₹ 22,570.26 crore under pre-GST taxes during the same period of previous year 2016-17 *i.e.* an increase of 4.56 *per cent*. Actual receipts under pre-GST taxes[5] and GST are given below:

(₹ in crore)

Year	Budget Estimate (RE)	Receipts under pre-GST taxes[6]	Receipts under GST		Total receipts under pre-GST taxes and GST	Increase in *per cent*	Compens-ation received	Total receipts
			SGST	IGST apportion-ment				
2013-14	22,105.01	21,571.89	-	-	21,571.89	-	-	21,571.89
2014-15	26,084.99	25,240.11	-	-	25,240.11	17.00	-	25,240.11
2015-16	30,221.79	27,363.45	-	-	27,363.45	8.41	-	27,363.45
2016-17	29,945.00	29,581.78	-	-	29,581.78	8.11	-	29,581.78
2017-18*	31,590.00[7]	7,950.68	-	-	7,950.68	6.65	2,598.00	34,147.97
2017-18#		11,462.27	6,260.21	5,876.81	23,599.29			

** April to June 2017. # July 2017 to March 2018*

[5] Value Added Tax, Central Sales Tax, Entry Tax, Luxury Tax and Entertainment Tax.

[6] There is a difference in budget estimate (RE) and actual receipts figures provided by the Department and figures shown in Finance Account (Budget Head 0040, 0042 and 0045) due to receipts relating to Registrar, Revenue Department, Ajmer and Deputy Secretary Finance (Ways and Means) being included in Finance Account as intimated by the Department.

[7] Budget estimate (RE) for pre-GST taxes ₹ 19,890 crore and GST ₹ 11,700 crore.

The above table indicates that there was an increasing trend in receipts during the last four years.

2.4.6 Legal/statutory preparedness

The State Government notified (June 2017) the Rajasthan Goods and Services Tax Act, 2017 and the Rajasthan Goods and Services Tax Rules, 2017. E-way bill system was implemented in the State on inter-State transactions with effect from 1 April 2018 and on intra-State transactions with effect from 20 May 2018. Further, necessary notifications were issued by the State Government from time to time for facilitating implementation of GST in the State. The State Government/Commercial Taxes Department had issued 219 notifications/circulars/orders regarding GST from June 2017 to June 2018.

2.4.7 IT preparedness and capacity building efforts by the Department

GSTN was to provide three *front-end services* to the taxpayers namely registration, payment of tax and filing of returns. As Rajasthan had opted model-II for implementation of GST, *back-end applications* like registration approval, taxpayer detail viewer, Letter of Undertaking (LUT) processing, refund processing, management information system (MIS) reports *etc*. for GST administration were being developed by GSTN. As per information provided by the Department, the access for *back-end application* was available to State through Multi-Protocol Level Switching (MPLS) connectivity at State Data Centre.

Under the overall supervision of National Academy of Customs, Excise and Narcotics (NACEN), Faridabad, training programme for officers (upto the level of Junior Commercial Taxes Officer) in four phases was organised. IT training of selected Master Trainers (officers) had been organised in Chennai at *Infosys* campus under the supervision of GSTN. Further, IT training programmes were organised in State Tax Academy, Jaipur for the officers upto the level of Junior Commercial Taxes Officer and Tax Assistants. IT training was also provided to ministerial officials. More than 1,000 workshops were organised across the State wherein more than one lakh stake holders/taxpayers participated. *'GST Corner'* tab was also started on departmental website *'Rajtax'* to provide GST related information such as Act/Rules, notifications/circulars/orders, help/FAQ, important dates, GST Service Provider (GSP) E-mitra kiosk, GST rate finder App, taxpayer division, e-Way bill *etc*. A 'centralised call center' was also established to attend to the problems/queries of taxpayers.

Further, the Department informed that the present availability of desktops is quite sufficient for the present user base of Commercial Taxes Department staff created on GSTN portal.

2.4.8 Implementation of GST

Audit noticed that the major issues/challenges faced by the Department in implementation of GST were in registration, migration, allocation of taxpayers, filing of returns, payment of tax, transitional credit, refund *etc*.

These issues alongwith the changes in Rules and Regulations made since 1 July 2017 by the State Government were analysed in audit and are briefly discussed as follows:

2.4.8.1 Registration of taxpayers

Every person registered under any of the pre-GST laws and having a valid Permanent Account Number (PAN) was to be issued a certificate of registration on provisional basis. Thereafter, final certificate of registration was to be granted on completion of prescribed conditions. Further, taxpayers having turnover of more than the threshold limit of ₹ 20 lakh were required to be registered under GST.

- **Migration of existing taxpayers of Commercial Taxes Department**

As per Rule 24 of Rajasthan GST Rules, 2017, every person registered under any existing law of subsumed taxes and having a PAN shall enroll on common portal by validating his e-mail address as well as mobile number. Such person shall be granted registration on a provisional basis. Every person who has been granted a provisional registration shall submit an application alongwith the information and documents specified in the application on common portal. A certificate of registration shall be made available to the registered person electronically if the information and the particulars furnished in the application are found to be correct and complete. As per information provided by the Department, position of provisional registration and final registration of existing registered dealers in the Commercial Taxes Department is given below:

Total number of existing registered dealers with valid PAN	**Total number of provisional ID received from GSTN (*percentage w.r.t.* column 1)**	**Number of dealers primary enrolled (*percentage w.r.t.* column 1)**	**Complete enrollment done (*percentage w.r.t.* column 1)**
(1)	**(2)**	**(3)**	**(4)**
5,41,472	5,36,078 (99 *per cent*)	4,97,170 (92 *per cent*)	4,34,077 (80 *per cent*)

Source: Information furnished by Commercial Taxes Department.

It would be seen from the above table that 92 *per cent* of the existing dealers completed the primary enrollment but 80 *per cent* of the existing dealers completed the migration process and were finally registered under GST.

The Government stated (October 2018) that migration process was to be completed by the dealer and it was voluntary on his part. Some of the reasons for non-migration were that the dealer did not have registration liability as they were below threshold limit, having duplicate PAN, closure of business in VAT *etc*. Further, the Government intimated that out of the 63,093 dealers who have not completed their secondary enrollment, reasons in respect of 52,785 VAT dealers under the jurisdiction of the State have been analysed and these are nil turnover, short turnover, closing of business, business started with new registration *etc*.

- **Allocation of taxpayers between Centre and State**

(a) **Existing registered taxpayers of Commercial Taxes Department and Central Excise Department:** As per recommendation of GST Council, 90 *per cent* of existing registered taxpayers having turnover upto ₹ 1.50 crore and 50 *per cent* of existing registered taxpayers having

turnover of more than ₹ 1.50 crore were allotted to the State. Accordingly, State was allotted the jurisdiction of 4,64,007 existing registered taxpayers (November 2017) as detailed below:

Existing registered taxpayers			
	Turnover above ₹ 1.50 crore	**Turnover below ₹ 1.50 crore**	**Total**
State	30,954	4,33,053	4,64,007
Centre	30,969	48,135	79,104
Total	61,923	4,81,188	5,43,111

Source: Information furnished by Commercial Taxes Department.

(b) **New taxpayers:** Jurisdiction of newly registered taxpayers is being allotted to the State and Centre by GST portal electronically during submission of application for registration by the taxpayers. Position of new registration under the jurisdiction of State as on 12 June 2018 is given below:

Applications received upto 12 June 2018	**Number of applications rejected**	**Number of applications approved**	**Number of applications pending**
1,25,423	18,754	1,05,509	1,160

Source: Information furnished by the Commercial Taxes Department.

Thus 1,160 applications were pending at various stages of registration as on 12 June 2018. These include the cases received from date of framing rules *viz*. 22 June 2017.

2.4.8.2 Filing of returns

As per Rule 59 to 61 of Rajasthan GST Rules, 2017, taxpayers other than composition taxpayers were required to furnish details of outward supplies of goods or services in Form GSTR-1[8], details of inward supplies of goods or services in Form GSTR-2[9] and a return in Form GSTR-3 (electronically generated by system on the basis of information furnished through GSTR-1 and GSTR-2) monthly, whereas composition taxpayers were required to file a quarterly return GSTR-4.

The prescribed process of return filing was amended to address the difficulties faced by the taxpayers in the initial period of the new tax regime. The filing of GSTR-2 and GSTR-3 was postponed and all taxpayers were mandated to submit a simple monthly return in Form GSTR-3B[10] with payment of tax by 20th of the succeeding month. Further, taxpayers having turnover below ₹ 1.50 crore were to file GSTR-1 on quarterly basis.

2.4.8.3 Payment of tax

Monthly return GSTR-3B and quarterly return GSTR-4 were required to be filed after payment of due tax. Therefore, monitoring of these returns was important to ensure timely deposit of due tax by the taxpayers. Scrutiny of the

[8] GSTR-1: (a) Invoice wise details of all inter-State and intra-State supplies made to the registered persons and inter-State supplies with invoice value more than ₹ 2.50 lakh made to the unregistered persons, (b) consolidated details of all intra-State supplies made to unregistered persons and State wise inter-State supplies with invoice value upto ₹ 2.50 lakh made to the unregistered persons and (c) debit and credit notes, if any, issued during the month.

[9] GSTR-2: (a) Invoice wise details of all inter-State and intra-State supplies received from the registered persons or unregistered persons, (b) Import of goods and services made and (c) Debit and credit notes, if any, received from supplier.

[10] GSTR-3B: A monthly return required to be filed by all taxpayers other than composition taxpayers.

information provided (September 2018) by the Department for the period July 2017 to March 2018 revealed that taxpayers ranging between 3,29,244 and 3,92,416 had filed their monthly return GSTR-3B against taxpayers ranging between 3,84,815 and 4,62,794 required to file GSTR-3B. The remaining tax payers had not filed their 5,68,302 monthly returns in GSTR-3B for the period July 2017 to March 2018. There was a possibility of evasion of tax by the defaulters and claiming of ITC by the recipients against the tax paid to the defaulters. Further, 71 to 85 *per cent* of the composition taxpayers had filed their quarterly return GSTR-4.

The Government replied (October 2018) that e-mails had been sent to 93,666 taxpayers who did not file their GSTR-3B returns. Out of these, 30,482 taxpayers have submitted the returns GSTR-3B and declared tax liability amounting to ₹ 2,452.46 crore. However, details of GSTR-4 return defaulters were still awaited from GSTN. Audit is of the view that the Department needs to take concrete steps to ensure that remaining 63,184 taxpayers[11] file their returns expeditiously.

2.4.8.4 Transitional credit

As per Rule 117 of Rajasthan GST Rules read with Section 140 of Rajasthan GST Act, the registered taxpayers were entitled to carry forward and claim un-availed amount of ITC[12] of the pre-GST regime (as per VAT returns) in the GST regime. This included un-availed input tax credit in respect of capital goods not carried forward in the VAT returns. Further, the taxpayers were also entitled to take credit of VAT in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on which credit was not claimed in earlier law and the taxpayer is eligible for input tax credit on such inputs under the RGST Act. The registered taxpayers were required to file a return in prescribed form TRAN-1. However, the taxpayers shall not be allowed to take credit where all the returns required under the pre-GST law for the period of six months immediately preceding the appointed date were not furnished.

Scrutiny of relevant dump data[13] provided (May 2018) by the Department and cross verification with VAT returns (VAT-10) for the quarter ending 30 June 2017 filed by taxpayers revealed that 61,517 taxpayers had filed TRAN-1 and claimed transitional credit of ₹ 4,758.66 crore. Out of 61,517 taxpayers, 51,209 taxpayers claimed transitional credit amounting to ₹ 1,161.71 crore as SGST. Audit test checked 90 cases (each of more than ₹ one crore) where transitional credit was claimed as SGST.

Cross verification of transitional credit (SGST) claimed as per dump data with ITC carried forward shown in VAT returns (VAT-10) submitted for the period from April to June 2017 revealed that there was difference in case of 16 taxpayers. These cases are discussed as follows:

- Eight taxpayers had irregularly claimed transitional credit of ₹ 56.87 crore in TRAN-1 in excess of ITC shown carried forward in VAT returns.

[11] 63,184 taxpayers: 93,666-30,482
[12] ITC: Input tax credit.
[13] Dump data *i.e.* database provided (31May 2018) by the Department in softcopy regarding information of registration, returns (TRAN-1 and GSTR 3B) and refunds.

- Six taxpayers claimed transitional credit of ₹ 8.34 crore as *input held in stock* which could not be scrutinised by Audit as annual VAT returns (VAT-10A or VAT-11) along with trading accounts for the year 2017-18 (upto 30 June 2017) were yet to be submitted by these dealers. The Department extended the date of submission of annual VAT returns for the year 2017-18 from time to time and last extension was allowed upto 31 October 2018. Out of these six, two taxpayers irregularly claimed transitional credit of ₹ 1.50 crore in TRAN-1 in excess of ITC shown carried forward in VAT returns.
- Two taxpayers who claimed transitional credit of ₹ 4.98 crore in TRAN-1 not filed the VAT returns for the period of 2016-17 and 2017-18.

Thus, results of preliminary examination showed that all cases of transitional credit should be cross verified with the returns filed under earlier tax laws and other relevant records. After this being pointed out the Government stated (October 2018) that:

- Three cases were under jurisdiction of CGST Authorities and they have been informed accordingly.
- Action have been taken in 11 cases by reversing/blocking the ITC amounting to ₹ 42.84 crore.
- Investigation was under progress in remaining 2 cases.

The Government also stated that in 563 cases differences between information under VAT and TRAN-1 was found. Out of these, 34 cases were under jurisdiction of Centre. The Department examined 505 cases under its jurisdiction. Action of ITC reversion/blocking was taken in 112 cases, investigation was under progress in 24 cases and ITC claimed was found correct in remaining cases. However, the system put in place for verification of input tax credits in respect of the dealers transferred to and from the jurisdiction of Central and State was not intimated to audit.

2.4.8.5 Refund under GST

Refund module under GSTN was not operational hence the refunds are being allowed through manual system to the applicants. Specific procedures were prescribed for refund of the balance amount in the electronic cash ledger or unutilised input tax credit at the end of particular tax period. Refund of unutilised input tax credit was allowed in case of zero-rated supplies made without payment of tax or when the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. As per information provided by the Department position of refunds was as under:

(₹ in crore)

Applications received for refund upto 31 March 2018		**Refunds allowed within prescribed period**		**Refunds allowed after prescribed period**		**Number of applications rejected**
Number of taxpayers	**Amount**	**Number of taxpayers**	**Amount**	**Number of taxpayers**	**Amount**	
962	131.88	776 (81 *per cent*)	119.15	28 (3 *per cent*)	0.13	158

It could be seen from the above table that the Department allowed refunds to 81 *per cent* of the registered taxpayers within the prescribed period and

158 applications were rejected. As filing of GSTR-2 was postponed (till further orders), match/mismatch report of ITC could not be generated from the IT system. Therefore, possibility of claim of refund in case of unutilised input tax credit showing incorrect ITC amount in GSTR-3B cannot be ruled out.

The Government replied (October 2018) that circulars were issued (12 December 2017, 9 January 2018 and 21 March 2018) for manual processing of refunds and to ensure that no amount of unavailable ITC may be refunded to taxpayers. The Government further stated that the taxpayers applying for refunds are required to submit an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case of non-compliance of provisions.

Legacy issues

Audit assessed the legacy issues regarding assessment, recovery of arrears and other related matters and our observations are as follows:

2.4.9 Assessment of dealers

Dealers were registered under RVAT Act, 2003, CST Act, 1956 and other minor taxes *i.e.* entry tax, luxury tax, entertainment tax, *etc.* prior to implementation of GST. Therefore, assessments of the dealers registered under old tax regime for the year 2015-16, 2016-17 and 2017-18 (upto 30 June 2017) were to be completed by the Department within the prescribed period of two years after the relevant year. The Department introduced (31 May 2017) a *'Deemed Assessment Scheme for the assessment of the year 2015-16'*. Directions were also issued (11 August 2017) to the Assessing Authorities for early disposal of deemed assessments and other assessments. As a result, all assessments for the 2015-16 had been completed except 10 cases (March 2018). The Department extended the date of submission of annual returns for the year 2016-17 and 2017-18 from time to time and last extension was allowed upto 31 May 2018 for 2016-17 and 31 October 2018 for 2017-18. Further, the Department introduced (11 June 2018) a *'Deemed Assessment Scheme for the assessment of the year 2016-17'*. The Department, however, has not prescribed any timeline for early disposal of the assessments of the year 2016-17.

Scrutiny of *deemed assessment scheme* disclosed that there is a risk of revenue leakage while finalising assessments under the Scheme in those cases where the dealers claimed ITC for the purchases of taxable goods and used these goods for manufacturing of exempted goods/consigned outside the State or claimed ITC on purchase of goods (plants and machinery *etc.*) which were not covered under the definition of the capital goods. Further, there are possibilities of misuse of declaration forms, non-payment of tax on goods purchased on declaration forms but not included in returns, short payment of tax due to application of incorrect rate of tax, *etc.* in deemed assessed cases.

Therefore, the Department needs to evolve a system to detect such cases before finalising the assessments under *deemed assessment scheme.* During discussion, Commissioner Commercial Taxes stated that directions were

issued (September 2018) to the Assessing Authorities for proper scrutiny of the returns while finalising the assessments.

The Government replied (October 2018) that 2,14,529 assessments for the year 2016-17 were finalised upto 3 October 2018 and the Department would make efforts to finalise most of the assessments upto December 2018. Further, the Department would also make efforts to finalise assessments for the year 2017-18 during the year 2018-19 itself.

2.4.10 Recovery of arrears

As per information furnished by the Department, arrears (VAT and CST) aggregating to ₹ 16,072.68 crore were pending as on 1 April 2018. The Department had classified the arrears in different categories. More than 50 *per cent* of total arrears were locked up in two categories *i.e*. arrears due to non-submission of declaration forms (VAT/CST) amounting to ₹ 7,891.46 crore and arrears due to non-verification of ITC amounting to ₹ 1,186.93 crore. Audit observations on these two categories are discussed in succeeding paragraphs:

2.4.10.1 Arrears due to non-submission of declaration forms

Various type of declaration forms were prescribed under RVAT Act, 2003 and CST Act, 1956 for partial or full exemption from tax. As per Rule 12(7) of CST (Registration and Turnover) Rules, 1957, declaration forms shall be furnished to the prescribed authority within three months after the end of the period to which the declaration forms relates. Provided that if prescribed authority is satisfied that the person concerned was *prevented by sufficient cause* from furnishing such declaration forms within the aforesaid time, that authority may allow such declaration forms to be furnished within such further time as that authority may permit. Further, relevant provisions for submission of VAT declaration forms were prescribed in Rule 21 of RVAT Rules, 2006.

Audit noticed that where the dealers did not furnish the declaration forms upto the time of assessments, the Assessing Authorities levied the tax at prescribed rates[14] and demands were raised accordingly. The Assessing Authorities, however, did not initiate action for recovery of these demands after the assessments were complete. The Department waited for the dealers to voluntarily submit the details of the forms. The demands were being reduced subsequently by the same Assessing Authorities whenever the dealer submitted the pending declaration forms. Audit findings on monitoring of submission of declaration forms, recovery of these demands and verification of declaration forms submitted after assessments were discussed below:

- **Incomplete information regarding pending declaration forms in the returns**

As per Rule 19 of RVAT Rules the dealers were required to mention the details of pending declaration forms *i.e.* name of purchasing dealer, TIN, name of commodity, amount of transaction, *etc.* in their annual returns (VAT-10A). The Government had clarified that providing of information in

[14] Tax rate prescribed for sale of goods without support of declarations form.

prescribed columns of annual return (VAT-10A) was mandatory for the dealers.

Scrutiny of the dump data provided by the Department disclosed that the dealers were either not providing the details of pending declaration forms in their annual returns or were depicting it short. Audit called for the details regarding pending declaration forms mentioned by the dealers in their annual returns (VAT-10A) for the year 2015-16 and assessed by the Assessing Authorities. Details furnished by the Department are given below:

(₹ in crore)

Relevant Act/ Rules	As per annual return VAT-10A submitted by dealers		As per assessments done by the Assessing Authorities	
	Number of dealers	Amount of pending declaration forms	Number of dealers	Amount of pending declaration forms
VAT	344	681.75	3,694	4,392.85
CST	2,449	10,129.02	34,231	1,36,092.10
Total	**2,793**	**10,810.77**	**37,925**	**1,40,484.95**

Source: Information furnished by the Commercial Taxes Department.

It would be seen from the above table that more than 90 *per cent* of the dealers did not submit the details of pending declaration forms in their returns. The details of pending declaration forms are essential to levy correct rate of tax and to check the genuineness of the transactions shown by the dealers in their returns.

The Department, therefore, needs to introduce an IT system to monitor that Assessing Authorities collect the details of pending declaration forms at the time of assessments or at the time of providing extension of time for submission of the pending declaration forms.

During discussion, the Secretary, Finance (Revenue) agreed with the audit observation but expressed constraint in introducing the system to collect the details of all pending declaration forms before finalisation of the assessments.

- **Non-recovery of demands raised for non-submission of declaration forms**

RVAT declaration forms were required to be furnished prior to the date of filing of annual return. The Government, however, amended the RVAT Rules from time to time and provided successive extensions of time to the defaulting dealers for submission of RVAT declaration forms. As per amended Rules, the dealers could furnish the declaration forms upto 31 March 2018 for the assessments completed upto June, 2017.

It was noticed that recovery process was not being initiated by the Assessing Authorities for the tax levied for non-submission of declaration forms. As a result, arrears due to non-submission of declaration forms relating to assessments completed upto June, 2017 reached upto ₹ 3,110.86 crore against 97,706 dealers although the extended period allowed was over. Further, the arrears due to non-submission of declaration forms relating to assessments completed upto March, 2018 increased upto ₹ 7,891.46 crore. Thus, delay in recovery of old demands may hamper the possibility of recovery.

The Government replied (October 2018) that recovery proceeding of the demands raised for pending declaration forms was being initiated after expiry of time for submission of declaration forms. The Government further stated that no period was prescribed in Rule 12(7) of CST (Registration & Turnover) Rules for submission of declaration forms. The Assessing Authority may accept declaration forms any time on the basis of sufficient cause. However, instructions were issued to recover the demands of pending declaration forms in absence of sufficient cause.

The reply indicates that though the assessment were finalised but the recovery proceedings in such cases were not initiated and the dealers were allowed to submit their CST declaration forms even after the date of raising demand. This rendered the process of the assessment less effective and delayed the process of recovery particularly, in those cases where dealers had closed their business or had become non-traceable.

- **Verification of declaration forms-submitted after five years**

As per Section 71(5) of RVAT Act the accounts, registers and other documents relating to a particular year were to be preserved by a dealer for five years excluding the year to which they relate. Therefore, genuineness of the transactions mentioned in declaration forms which related to more than five years old cases could not be verified from the books of accounts of the dealers. Evasion of tax on submission of false declaration forms in such cases cannot be ruled out.

Secretary, Finance (Revenue) accepted the audit contention and stated that cases pending for more than five years will be prioritised.

2.4.10.2 Verification of Input Tax Credit

Section 18(2) of RVAT Act provides that the input tax credit shall be allowed only after verification of deposit of tax payable by the selling dealer in the manner as may be notified by the Commissioner. Further, the Commissioner notified (September 2009, October 2014 and June 2017) the manner for verification of deposit of tax for the purpose of allowing the input tax credit. Audit observed that demands amounting to ₹ 1,186.93 crore were pending as on 1 April 2018 due to non-verification of ITC, earliest being for the year 2006-07. This reduced to ₹ 741.10 crore as on 1 July 2018, out of which demands amounting to ₹ 192.95 crore were pending for more than five years. Cross check of invoices related to more than five years old cases submitted by the purchasing dealers would be difficult as matching records would not be verified from the books of accounts of the selling dealers due to legal provision to keep the accounts by a dealer for five years only.

The Department would not be able to verify whether the selling dealer had shown the transaction in their returns and deposited the tax in State exchequer in cases which are more than five years old. As significant amount was involved in these cases, the Department needs to verify ITC on priority basis.

During discussion, Secretary, Finance (Revenue) accepted the audit contention and stated that cases pending for more than five years will be prioritised.

2.4.11 Refunds of pre-GST period

Provisions were not available in the RVAT Act/Rules for processing the refunds as a result of assessment made without submission of refund application by the dealers as is provided in Income Tax Act.

As per information provided by the Department, position of refunds claimed in quarterly returns for the quarter ending 30 June 2017 by the dealers under RVAT Act is given below:

(₹ in crore)

Dealers who mentioned refund in quarterly return VAT-10 (quarter ending on 30 June 2017)		Dealers who applied refund in prescribed form VAT-20/20A/20AA/21		Refund sanctioned	
Number of dealers	**Amount**	**Number of dealers**	**Amount**	**Number of dealers**	**Amount**
8,886	300.69	441	79.50	356	75.44

Source: Information furnished by Commercial Taxes Department.

It would be seen from the above that 8,445 cases[15] of refund involving amount of ₹ 221.19 crore would be decided after submission of application of refund by the dealers in prescribed form.

The Government replied (October 2018) that refunds were being sanctioned by the tax officials after submission of applications of refund by the dealers in prescribed form, however, changes could not be done in RVAT Act as it has been repealed.

The Department may consider sensitising the dealers to apply for refunds. This is in the interest of the revenue of the State as the shortfall in revenue, if any, due to allowing refunds would be compensated by the Central Government during the transitional period of five years only and refunds allowed after the transitional period would adversely affect the revenue of the State.

2.4.12 Conclusion

The Government/Department was prompt in its preparedness for implementation of GST as can be seen with reference to enactment of the Act and Rules as per model law approved by GST Council, primary enrollment of existing taxpayers, capacity building efforts *etc.* Audit noticed that frequent changes were made in the rules/regulations since 1 July 2017 on the recommendations of the GST Council by the State Government which have resulted in non-implementation of many of the procedures laid down in SGST. Further, the GSTN has not been able to provide the complete IT solution and thus the problems regarding filing of returns GSTR-2 and GSTR-3 have not been resolved. The Government of Rajasthan was hamstrung in implementing the provisions of GST as it had limited role in these matters. Further, the Department needs to sort out the legacy issues like assessments of pre-GST cases, recovery of arrears and refund of tax relating to pre-GST regime expeditiously in a time bound manner through focused arrangements.

[15] 8,445 cases: 8,886 cases (-) 441 cases.

2.5 Disposal of Appeal cases by Departmental Authorities

2.5.1 Background

According to the Section 82 of the Rajasthan Value Added Tax (RVAT) Act and Section 23 of the Rajasthan Tax on Entry of Goods into Local Areas (RET) Act, 1999, any dealer or person aggrieved by an order passed by an Assistant Commissioner, a Commercial Taxes Officer, an Assistant Commercial Taxes Officer or Junior Commercial Taxes Officer or Incharge of a check–post or barrier under this Act, may file an appeal to the First Appellate Authority (the Deputy Commissioner authorised as such by the State Government) against such order in the prescribed form and manner along with a prescribed percentage of the disputed tax amount[16]. Further, under Section 83, any person or dealer and the Commissioner/Deputy Commissioner or any authorised officers, if aggrieved by any order of first Appellate Authorities, may file an appeal before the Rajasthan Tax Board (second appeal).

The audit was carried out between January 2018 and May 2018 to examine the efficiency of the system of filing and disposal of appeals by the first Appellate Authority from 1 April 2014 to 31 March 2017 in selected five[17] out of nine appeal offices. We examined records in the offices of the first Appellate Authority to assess whether the provisions/procedures prescribed for filing, acceptance and disposal of appeals were scrupulously followed. We test checked 4,318 cases (37.38 *per cent*) out of 11,442 appeal cases disposed off during 2014-15 to 2016-17.

2.5.2 Disposal of appeal cases by the first Appellate Authority

As per information furnished by the Department 4,396 appeal cases were pending for finalisation as on 1 April 2014, 10,471 cases were added during the period 2014-15 to 2016-17. Of these, 11,242 cases were disposed of during the period and 3,625 cases (24 *per cent* of the total cases) were pending as on 31 March 2017. Out of these, 1593 cases involving amount of ₹ 913.20 crore pertained to entry tax and were pending with the first Appellate Authority. Of these 1,069 cases (67.11 *per cent*) were pending for more than three years.

The Government intimated (November 2018) that validity of the RET Act was sub-judice at the Supreme Court, therefore, to avoid any legal complication cases were not disposed of. Thereafter, in the light of the Supreme Court's decision (March 2017), pending appeal cases are being disposed of. Further, it was also stated that directions to decide the pending matter (beyond one year) have already been issued (5 September 2018) to the authorities.

[16] In case of an appeal for an *ex-parte* assessment order, five *per cent* and in other cases ten *per cent* of the disputed tax amount.

[17] Ajmer, Bikaner, Jaipur-I, Jaipur-III and Udaipur.

2.5.3 Inadequate pleading in appeal cases by Departmental Representatives

According to Section 82(6) of the RVAT Act, the Appellate Authority may, before disposing of any appeal, make such further enquiry from the Assessing Authority concerned as it deems fit. The authority or officer against whose order the appeal has been preferred either in person or by a representative shall have the right to be heard at the hearing of the appeal. Further, under Section 82(7) the Appellate Authority may, in the case of an order of assessment, interest or penalty, confirm, enhance, reduce or annul the assessment, interest or penalty; or set aside the order of assessment, interest or penalty and direct the Assessing Authority to pass fresh order after such further enquiry as may be directed. According to existing procedure a departmental representative (DR) is posted in each Appellate Office to represent the Department at the time of hearing of appeal.

Audit observed that in selected offices, 132 out of 4,318 cases involving a disputed sum of ₹ 128.13 crore were disposed of between April 2014 and March 2017 and demand of ₹ 100.04 crore were set aside in 110 cases. Analysis of these 132 cases disclosed that, in 82 cases appellate orders had a single line mention of the role of the DRs as '*the departmental representative has supported the assessment order and requested to reject appeal filed by the appellant*' which shows that DRs did not argue indicating reasons for refuting the appeal. In 36 cases the DRs were not present at the time of hearing and in 14 cases the posts of DRs were stated to be vacant in the respective Appellate Authority offices.

The Government intimated (November 2018) that the DRs argued on the basis of comments mentioned in the assessment orders and majority of the appeal cases were decided in favour of the Department. However, the fact remains that out of 132 test checked cases, 50 cases were not argued while in 82 cases one line stereotype sentence was repeated in orders which shows effective defence was lacking. Further analyses of the appeals decided (2014-15 to 2016-17) by the first Appellate Authorities disclosed that there was decreasing trend (54.47, 46.22 and 36.80 *per cent*) of appeals being decided in favour of the Department.

The above fact indicates that the Department needs to strengthen its mechanism to ensure effective pleading in each case.

2.5.4 Utilisation of IT system for appeal process

The State Government through a notification dated 9 March 2015 (effective from 1 October 2015), decided that the appeal to first Appellate Authority shall be submitted electronically through the official website of the Department. The Appellate Authority shall forward the memorandum of appeal electronically to the Assessing Authority for submission of his comments through the official website of the Department.

During the audit of selected Appellate Offices, it was noticed that the appellants submitted memorandum of appeal and relevant documents electronically on website with application for condonation, if appeal was delayed. However, the Appellate Authorities did not forward the

memorandum of appeal electronically to the Assessing Authority for their comments and the Assessing Officers also did not submit their comments electronically. This resulted in non-inclusion of the Assessing Authorities views during hearing of cases which would have weakened the Department's case.

The Government intimated (August and November 2018) that IT system had limited capacity of uploading documents whereas the supporting documents along with the memorandum of appeal were of larger size. Hence, complete memorandum of appeal could not be forwarded electronically to the Assessing Authorities. Hard copies of memorandum of appeals were sent to the Assessing Authorities. The Assessing Authorities sent assessment record and their comments.

This indicates that there is need for improvement in the IT system and the Department may make efforts for enhancing the capacity of IT system so that the prescribed procedure is followed.

2.5.5 Delays in passing of Appeal orders

The CCT issued directions *vide* circular dated 1 April 2010 to all the first Appellate Authorities to compulsorily dispose of all appeals within one year and disposal of appeals pending on 1 April 2010 by 31 March 2011. The directions specified that in case of non-disposal of the appeals within one year the concerned Appellate Authority would be held responsible.

During scrutiny of records of appeal orders passed by the selected first Appellate Authorities, Audit observed that 266 appeal cases filed during 2008-09 to 2016-17 were finalised (between April 2014 and November 2017) with delays ranging from 6 to 2,510 days beyond the stipulated period of one year.

The Government intimated (November 2018) that directions have been issued to decide the pending cases (beyond one year) upto March 2019. The Government also reiterated its instructions to decide the appeal cases within the period of one year.

There is a need for early finalisation of appeal cases as after the introduction of GST, with the passage of time it will be difficult to monitor the recoveries in respect of the taxes subsumed under the GST.

2.5.6 Control registers

Control registers were not prescribed in Departmental manual and RVAT rules. Information such as date of demand notices served, disputed amount, depositable amount for filing of appeal case, date of disposal of appeal, *etc.*, was necessary for monitoring the efficiency of appeal process. These records were not maintained either manually or electronically.

The Government intimated (November 2018) that a circular has been issued (October 2018) to get the desired results by prescribing a format of appeal register having all necessary information. Further, it intimated that a revised monthly status reports is being prescribed for effective monitoring.

2.5.7 Recommendations

The Department needs to ensure speedy disposal of appeal cases and may instruct the authorities to make proper use of the IT system available for the purpose. The Department should introduce an IT based solution for maintaining necessary information by the first appellate authorities. The DRs should represent the Departmental view in an effective manner during appeal.

2.6 Levy and Collection of Electricity Duty from Captive Power Plants (CPPs)

Levy and collection of Electricity duty is governed by the Rajasthan Electricity Duty Act, 1962 (RED Act) and Rajasthan Electricity Duty Rules, 1970 (RED Rules) along with the notifications issued thereunder. Electricity Duty (ED) is a consumption tax, levied by the State Government on the consumption of electricity by a consumer[18] either for commercial or for domestic purpose within the State.

ED is payable to the State Government irrespective of the fact whether the energy is supplied to a consumer by a licensee, by a board or by the State Government or the Central Government. The 'owners of the captive power plants' (entity) have to pay the ED to the Government as per their actual monthly consumption. Rule 3B(1) of the RED Rules prescribes that every person (other than a supplier) who intends to generate energy for his own use or consumption or supplies the same to others free of charge shall be assigned a registration within a period of 30 days from the date of receipt of his application for registration.

The Government of Rajasthan's notification dated 9 March 2015 (effective from 16 March 2015) under Section 3 of the RED Act fixed the rate of electricity duty payable on consumption of self-generated energy for any purpose in respect of energy generated by captive power generating at ₹ 0.40 per unit (Kilo Watt Hour). Revenue collected as electricity duty from Captive Power Plants during 2014-15, 2015-16 and 2016-17 amounted to ₹ 0.82 lakh, 252.40 crore and ₹ 271.41 crore respectively[19]. System of levy and collection of electricity duty[20] is administered by the Commercial Taxes Department of the Government of Rajasthan.

Audit called (August 2017) for the information regarding registration of CPP entities registered with the Department. The CCT collected and furnished (October 2017) a list of 18 entities registered in 14 Circles.

On cross checking this list with the list of entities paying electricity duty through *e-treasury*, Rajasthan, Audit found that there were 31 entities that were paying ED. Thus 13 entities were not found in the list supplied by the Department. Of these 31 units Audit selected 10 entities for detailed scrutiny and found the following deficiencies.

[18] A person who is supplied with energy by a supplier or by any other person who generates energy and includes a supplier in respect of the energy consumed by him in or upon premises used by him for his commercial or residential purposes.

[19] As intimated by the Department.

[20] 0043 Sub-head 101: Taxes on Consumption and Sale of Electricity.

2.6.1 Non-registration of CPP

Audit found that no register relating to the registration of the CPP was maintained. The units were allotted registration number on the basis of the files maintained by the CTO. As a result the monitoring of the registration of entities could not be ascertained.

Audit found in Circle Special-1, Jaipur from the returns submitted by an entity for the period from March 2015 to September 2016 that it had paid ED amounting to ₹ 12.37 lakhs during this period but was not assigned any registration number by the Department. There was nothing on record to indicate that the entity had applied for registration. After this was reported (June 2018), the Government intimated (October 2018) that Registration certificate has been issued to the entity.

In view of such a case, the Department should evolve a system to ensure that timely registration is being granted to every eligible CPP.

2.6.2 Non-submission of Returns by the CPP

Rule 6 of the RED Rules, prescribes that every CPP shall furnish to the CCT a quarterly return in duplicate in Form XII within 30 days from the date of expiry of the quarter to which the return pertains. However an entity[21] of Circle Special-I, Jaipur did not submit its returns during 2014-15 to 2016-17 but the concerned Authority had not taken any action for non-submission of returns. In the absence of returns, it could not be ensured whether the entity paid the electricity duty correctly. There was no register to monitor timely submission of the returns and collection of the duty payable by the CPP.

After this being pointed out the Government intimated (August 2018) that the defaulted entity has submitted all the returns due on 26 June 2018 after issue of a notice for non-submission of returns and has also deposited the due electricity duty.

The fact remains that the Department does not have a monitoring mechanism to ensure timely submission of returns by the entities. Therefore, submission of returns may be checked in all of the cases and a system may be devised for watching the returns for all the entities.

2.6.3 Returns not submitted in prescribed format

Audit observed that one entity[22] of Circle Special-II, Udaipur had not submitted the returns in the prescribed Form-XII. The entity had four CPPs for production of energy and was required to submit a consolidated return in Form-XII for all the CPPs. However, the entity submitted CPP-wise details of units consumed and showed consumption of 184.67 crore units during the year 2015-16. The Assessing Authority incorrectly assessed ED at 181.57 crore units of only three CPPs and omitted to levy duty of ₹ 62 lakh[23] on the remaining 3.10 crore units generated by the fourth CPP despite the fact the company had paid entire amount of the duty payable by it. The Government accepted the audit observation and stated (August 2018) that the

[21] M/s HSB Agro Industries.
[22] M/s Hindustan Zinc Limited.
[23] Concessional rate at ₹ 0.20 under Rajasthan Investment Promotion Scheme.

unit had submitted the return in incorrect format, therefore, a penalty of ₹ 800 was imposed (July 2018) under Section 9(1) of RED Act for non-submission of returns in prescribed format and a revised assessment order was passed on 19 July 2018 to rectify the omission.

2.6.4 Non-inclusion of opening and closing meter readings in Returns

Two entities[24] did not record the opening and closing meter readings in the 18 returns submitted by them, though there were specified columns in the return form. Thus, it could not be ensured that the consumption of units was correctly recorded in the returns and consequent payment of ED by these entities was correct. The Government accepted the fact and assured (August 2018) that the concerned Authorities will accept the forthcoming returns in proper format only.

2.6.5 Absence of the provisions in the RED Act

2.6.5.1 Provision for conducting assessment

RVAT Act, 2003, Rajasthan Tax Entry on Goods into Local Area Act, 1999 provide a time limit for completion of an assessment, however, no such provision existed for assessment of electricity duty under the RED Act. Audit observed that the two authorities (Special-I, Kota and Special-II, Udaipur) assessed three entities. The remaining seven entities out of selected 10 entities were not assessed by the three concerned authorities *i.e.* Special-Rajasthan, Jaipur; Special-I, Jaipur and Special-Pali. Therefore, it could not be ascertained whether the entities were paying the electricity duty correctly.

A provision for fixation of a time limit for finalisation of the assessments would have prompted the Department for early finalisation of the assessments and correct payment of the duty.

2.6.5.2 Provision for on-line submission of returns

Audit observed that there was no IT platform for submission of the returns for the electricity duty and these were submitted manually. Further, the competent authority did not keep a track of returns received by maintaining receipt-dispatch Register for returns.

2.6.5.3 Provision for submission of annual returns by entities

According to Rule 6 of the RED Rules, the Electricity Distribution Companies (DISCOMs) are mandated to submit annual returns, however, there is no provision for submission of an annual return by an entity (CPP owners). As a result, consolidated figures of generation of electricity by the CPPs and payment of electricity duty were not readily available with the Department.

The Government stated (August 2018) that a request was being submitted by the Department for insertion of provisions in RED Act/Rules regarding assessment, submission of annual return and online submission of returns. Further progress is awaited (February 2019).

[24] M/s Hindusthan Zinc Limited and M/s Nirma Limited.

2.6.5.4 Penal provisions

There was no specific penal provision for non/delayed submission of the return under the RED Act. Consequently penalty could not be imposed for non/delayed filing of return. Scrutiny of returns submitted by the selected 10 entities disclosed that three entities[25] of Circle Special-II, Udaipur and Special Pali submitted their quarterly returns with delays ranging between 4 and 247 days, but no action was taken by the concerned Authorities for delay in submission of returns.

The Government replied (August 2018) that a request was being submitted by the Department for insertion of provisions in RED Act/Rules for imposition of penalty for non/delayed filing of return.

2.6.6 Irregular exemption of Electricity Duty on auxiliary consumption

'Auxiliary consumption[26]' has not been defined under RED Act. As per Section 3(2) of the Karnataka Electricity (Taxation on Consumption or Sale) Act, 1959 electricity duty at a lower rate is leviable on auxiliary consumption, however, RED Act does not provide any such exemption/concession clause. The State Government *vide* notification dated 9 March 2015 fixed the rate of electricity duty at ₹ 0.40 per unit payable on consumption of self-generated energy for any purpose by CPP.

During the scrutiny of returns (for the years 2014-15 to 2016-17) submitted by the 10 selected entities, Audit observed that four entities[27] claimed deduction on account of auxiliary consumption of units from their total units generated and paid electricity duty accordingly. The concerned Authorities[28] however, allowed the deduction without any provision in the Act/Rules. Thus, exemption from payment of electricity duty amounting to ₹ 12.36 crore was allowed to the four entities on 33.15 crore consumed units.

The Government intimated (August 2018) that auxiliary consumption means electricity consumed by captive power plant itself and for machinery related to CPP and it also includes transmission losses of electricity. Further, it was also mentioned that as per Section 3 of the RED Act, electricity duty was leviable on the energy consumed by a consumer/person other than a supplier generating energy for his own use, therefore, electricity duty was not leviable on the auxiliary consumption.

The fact however, remains that neither auxiliary consumption has been defined nor the extent and system of measurement of self-consumed electricity has been specified by the Government. The entities had not installed any separate meter for measuring the consumption declared as exempted by them.

There was no uniform system for claiming such exemption. Out of ten selected entities six entities had not claimed exemption on account of

[25] M/s Hindusthan Zinc Limited, M/s Nirma Limited and M/s Binani Cement Limited.

[26] According to Section 2(1) of the Karnataka Electricity (Taxation on Consumption or sale) Act, 1959 (KE Act) it is defined as electricity consumed by any electrical apparatus situated in a generating station, for generating electricity, including Captive Generating Plant, Co-Generating Plant.

[27] M/s Mangalam Cement Limited, M/s Nirma Limited, M/s JK Laxmi Cement Limited and M/s DCM Shriram Limited.

[28] Authorities: Special-Rajasthan, Jaipur; Special-II, Udaipur; Special-Pali and Special-I, Kota.

auxiliary consumption, only four entities mentioned in this para had deducted the auxiliary consumption. The notification dated 9 March 2015 stipulated electricity duty payable on self-generated energy for any purpose.

The Government may consider to define the auxiliary consumption in the Act/Rules and to prescribe a system to monitor the auxiliary consumption and other consumption.

2.6.7 Monitoring System

2.6.7.1 Installation of suitable meter

Rule 3B(3) of RED Rules provided that every entity generating energy for his own use or consumption shall install a suitable meter (duly tested) by an Electrical Inspector or by an officer authorised by the Commissioner.

During scrutiny of records (2014-15 to 2016-17) Audit observed that except in one case certificate regarding installation of a suitable meter was not available in the assessment records of the concerned Assessing Authorities. After being pointed out, the Government intimated (August 2018) that concerned authorities were being directed to ensure installation of suitable meter (duly tested) and if already installed to collect and keep on records a certificate to that effect.

2.6.7.2 Non-verification of records and returns *i.e.* meter readings *etc.*

It was noticed that there was no procedure for taking meter readings as done by DISCOMs during levy and collection of electricity charges and other dues from the consumers. The Commercial Taxes Department may adopt such system to prevent any revenue leakage.

The Government intimated (August 2018) that Audit recommendations to evolve/create a system for checking and verifying the particulars of the returns to levy correct electricity duty are worth considering and directions are being issued in this regard to the field authorities.

2.6.8 Conclusion and Recommendations

Absence of provisions regarding on-line submission of returns and for conducting of assessment of returns resulted in lack of monitoring of the returns submitted by the entities which led to non-levy and short levy of duty. The periodic inspection for checking of the meter reading and verification of the particulars required for calculation of the amount of electricity duty was not done. There were no specific penal provisions for non/delayed submission of returns in the Act/rules.

The Government may consider to:

- *evolve a system to ensure that every entity liable to pay electricity duty in the State is registered under the RED Act;*
- *monitor the submission of returns by entities and it should introduce specific penal provisions in the Act/Rules for defaulting entities;*
- *make specific provision for on-line submission of returns and the time bound assessment should be introduced in the rules;*
- *follow the provisions relating to periodic inspection for checking of the meter reading and verification of the particulars required for calculation of the amount of electricity duty; and*
- *take timely action to ensure recovery of arrears from the defaulting entities.*

2.7 Compliance audit observations

Audit observed during test-check of the assessment records of CST/VAT/entry tax several cases of non/short levy of tax/interest, irregular allowance of Input Tax Credit, non-imposition of penalty for misuse of declaration forms, irregular allowance of investment subsidy, application of incorrect rate of tax and non-observance of provisions of Acts/Rules. Audit pointed out some of the similar omissions in earlier years also, but not only the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system including strengthening of internal audit so that occurrence of such cases can be avoided. A few cases involving ₹ 30.41 crore are discussed in the succeeding paragraphs. These cases are illustrative only as these are based on a test check of records.

Sl. No.	Number of AAs (Date of assessment)	Particulars of irregularities	Reply of Government/ remarks
1	16 AAs[29] (between July 2014 and March 2017)	**Non-levy of Entry Tax** Audit collected information from *RajVISTA* regarding goods received/purchased using declaration forms in respect of few evasion prone notified goods for the financial years 2012-13 to 2014-15 during audit of 16 Circles and cross checked it with the assessment records of 45 dealers. It was noticed that Assessing Authorities did not utilise the information regarding inter-State purchases available in the *RajVISTA* and omitted to levy the taxes on these goods. *This resulted in non-levy of entry tax and interest amounting to ₹13.68 crore.*	The Government replied (August 2018) that in 48 cases demand of ₹ 11.84 crore has been raised of which ₹ 0.72 crore has been recovered.
2	4 AAs[30] (between March 2014 and March 2017)	**Application of incorrect rate of Entry Tax** Assessing Authorities applied incorrect rate of tax and thus levied entry tax of ₹ 35.30 lakh only instead of ₹ 66.32 lakh on the goods *i.e.* pet coke, furnace oil, electronic goods, packing material brought into the State by seven dealers. *This resulted in short levy of entry tax of ₹31.02 lakh besides leviable interest of ₹13.87 lakh.*	
3.		**Irregular allowance of Input Tax credit**	
3(i)	11 AAs[31] (between December 2015 and January 2017)	Audit analysed the information available on *RajVISTA* and observed 13 cases[32] where ITC was allowed to dealers of VAT exempted goods. ITC was not to be allowed to these dealers as their entire sales were exempted. These dealers irregularly claimed ITC of ₹ 24.91 lakh. The Assessing Authorities, however, while finalising the assessment disallowed ITC of ₹ 0.89 lakh only according to mismatch report of	The Government replied (September 2018) that in these cases ITC amounting to ₹ 24.30 lakh has been reversed/rejected and demand of ₹ 16.14 lakh has been

[29] Circle: Special-I, Ajmer; Special-I, Bhilwara; Special-II, Bhilwara; Special-I, Bhiwadi; Special-Rajasthan, Jaipur; Special-IV, Jaipur; Special-XI, Jaipur; I-Jaipur; K-Jaipur; O-Jaipur; Q-Jaipur; C-Jodhpur; E-Jodhpur; Special-I, Kota; B-Sikar and Special-II, Udaipur.

[30] Circle: Special-I, Bhilwara; Special-I, Bhiwadi; I-Jaipur and C-Jodhpur.

[31] Circle: B-Beawar; B-Bharatpur; A-Bhiwadi; Bundi; B-Hanumangarh; H-Jaipur; K-Jaipur; P-Jaipur; C-Jodhpur; A-Kota and E-Phalodi.

[32] Out of 243 cases checked wherein ITC of more than ₹ one lakh was allowed by Assessing Authorities.

		RajVISTA and did not levy any penalty for irregular claim of ITC. *This resulted in irregular allowance of ITC of ₹ 24.02 lakh and non-imposition of penalty of ₹ 49.82 lakh, besides leviable interest of ₹14.74 lakh.*	raised. Reasons for short levy[33] of demand was called for but reply is awaited (February 2019).
3(ii)	AA Circle C, Bikaner (17 February 2017)	A dealer, purchased goods worth ₹ 21.48 crore within the State and availed ITC of ₹ 0.78 crore on entire purchase of taxable goods during 2014-15. The dealer disclosed sale of ₹ 31.64 crore of which the dealer consigned goods amounting to ₹ 24.54 crore outside the State. Since the part of the purchased goods was consigned outside the State, the dealer could have availed the ITC only to the extent[34] as prescribed by notification dated 31 March 2006. The Assessing Authority, however, while finalising the assessment could not detect the irregularity and allowed ITC as claimed by the dealer. *This resulted in non-reversal of ITC of ₹ 0.55 crore and non-imposition of penalty of ₹1.11 crore.*	The Government replied (August 2018) that recovery of ₹ 0.40 crore against the demand of ₹ 1.20 crore (reverse tax amount ₹ 0.40 crore and penalty ₹ 0.80 crore) has been made. The Government further replied (January 2019) that the Appellate Authority has quashed the penalty imposed and remanded the case to the Assessing Authority. The Department has sent the matter to the Additional Commissioner (Legal) for filing appeal against the decision of the Appellate Authority.
3(iii)	Two AAs[35] (between May 2015 and July 2016)	Two dealers availed ITC of ₹ 23.78 lakh on purchases of motorcycles/parts and hydraulic excavator/dumpers. The dealers were traders/manufacturers of the wooden/stone articles, *etc.* In one case the dealer availed the ITC as purchases of capital goods (hydraulic excavator/dumpers). Hydraulic excavators/dumpers are meant for excavation and transportation of minerals, therefore, these could not be defined as capital goods. In other case the dealer availed the ITC as trade articles (motorcycles/parts), however, the dealer did not show sale of motorcycles/parts in his returns. Thus, ITC in both cases was not allowable. The Assessing Authorities could not detect the irregularities which resulted in irregular allowance of ITC and non-imposition of penalty and interest. *This resulted in irregular allowance of ITC of ₹ 23.78 lakh and non-imposition of penalty of ₹47.56 lakh, besides interest of ₹16.55 lakh.*	The Government replied (September 2018 and January 2019) that in one case demand of ₹ 23.55 lakh (tax amount ₹ 14.80 lakh and interest ₹ 8.75 lakh) has been raised but penalty was not leviable since the dealer had shown the goods in his audited trading accounts. In another case demand of ₹ 32.52 lakh has been raised.
4	Two AAs[36] (between April 2015 to	Six dealers (purchasing dealers) purchased taxable goods from a dealer (selling dealer) and availed ITC of ₹ 24.75 lakh. The selling dealer had not deposited	The Government intimated (September 2018 and January

[33] Short demand ₹ 48.14 lakh: leviable 88.58 lakh (24.02 +49.82+14.74) (-) levied ₹ 40.44 lakh (24.30+16.14).

[34] A dealer can claim ITC, in excess of four *per cent* of tax paid in the State on purchase of goods which are used as raw material in manufacture of goods and such manufactured goods are consigned outside the State by way of branch transfer.

[35] Circle: K- Jaipur and Special-III, Kota.

[36] Circle: Special-III, Jaipur and Special-VIII, Jaipur.

	January 2017)	the tax payable. The purchasing dealers, therefore, were not eligible to avail ITC. The Assessing Authorities did not verify whether the selling dealer had deposited the tax and allowed ITC to these purchasing dealers. *This resulted in irregular allowance of ITC of ₹ 24.75 lakh besides interest of ₹ 14.62 lakh is also to be levied.*	2019) that demand of ₹ 37.38 lakh has been raised and ₹ 13.90 lakh was recovered. However, stay was granted by the Appellate Authority in two cases. In another case Appellate Authority passed an order for reassessment. In reassessment demand was not raised against the dealer in the light of a decision passed (April 2018) by the High Court of Rajasthan in a similar case. Notices have been issued in the remaining two cases for recovery.
5	Four AAs[37] (between June 2015 to February 2017)	**Non-imposition of penalty for misuse of declaration forms** Five dealers purchased goods worth ₹ 34.13 crore against declaration forms 'C' for the specified purposes[38] as defined in the CST Act. Scrutiny of records disclosed that these purchased goods were not used for the specified purposes. The Assessing Authorities, however, failed to impose penalty for non-compliance with the provisions of the Central Sales Tax Act, 1956. *This resulted in non-imposition of penalty of ₹ 6.86 crore.*	The Government intimated (between May 2018 and February 2019) that demand of ₹ 7.92 crore had been raised. In two cases Appellate Authorities had stayed the recovery proceedings after recovery of ₹ 6.94 lakh. Recovery proceedings have been initiated in the remaining three cases.
6	Two AAs[39] (2 July 2016 and 5 July 2016)	**Non-levy of tax on goods purchased on 'C' forms** Two dealers had shown purchases of goods *i.e. mobile phones, furniture, electric items, sanitary items, diesel generating sets, etc.* amounting to ₹ 18.57 crore against declaration forms 'C' during the year 2013-14. The dealers, however, did not submit their annual returns. The assessing authorities finalised the assessments on nil turnover basis and only imposed a penalty of ₹ 5,000 in each case for non-filing of returns. *This resulted in non-levy of tax of ₹ 1.14 crore and non-imposition of penalty of ₹0.23 crore besides interest of ₹0.74 crore.*	The Government intimated (September 2018) that demand of ₹ 1.73 crore has been made. Demand of ₹ 0.14 crore was adjusted with the deposits. Reasons for demand of ₹ 1.73 crore instead of ₹ 2.11 crore were called for by Audit. The Government intimated (November 2018) that demand was raised as per the initial audit observations. Reply is not tenable as

[37] Circle: I-Jaipur; Q-Jaipur; C-Jodhpur and Special-II, Kota.

[38] Re-sale by him or use by him in the manufacture or processing of goods for sale or in the telecommunications network or in mining or in the generation of electricity or any other form of power.

[39] Circle: K-Jaipur and A- Jodhpur.

			the Department was required to calculate the interest upto the date of assessment instead of date of audit observation and penalty was also leviable.
7	AA Circle Special-I, Ajmer (between April 2016 to February 2017)	**Irregular allowance of investment subsidy** A cement manufacturing dealer claimed investment subsidy of ₹ 44.32 crore for the period January 2016 to December 2016 under *Rajasthan Investment Promotion Scheme*. The subsidy was admissible only on the sale of cement. Scrutiny of records, however, disclosed that the dealer had claimed that subsidy of ₹ 23.93 lakh on account of taxes paid on goods other than cement *i.e*. clinker, used motor vehicles, scrap *etc.* during the period which was irregular. The AA, however, did not detect the irregularity and allowed investment subsidy on ineligible goods. *This resulted in irregular allowance of investment subsidy of ₹23.93 lakh besides recoverable interest of ₹4.88 lakh.*	The Government intimated that demand of ₹ 28.81 lakh has been raised and ₹ 4.39 lakh recovered. The Appellate Authority partially accepted (August 2018) the appeal, therefore, the Department is filing second appeal.
8	AA Circle Special-IV, Jaipur (27 January 2017)	A selling dealer had shown goods returned by two dealers amounting to ₹ 23.15 crore in VAT returns. The dealer had not paid tax on these returned goods. Cross verification of this with the VAT returns of the two purchasing dealers disclosed that there was a difference of ₹ 6.17 crore in the amount of goods returned shown by the selling dealer and the purchasing dealers. Therefore, either selling dealer claimed the sales return irregularly or these purchasing dealers did not correctly reverse the input tax credit on purchase returns. *The Assessing Authority failed to cross check the returns which resulted in short realisation of tax amounting to ₹30.92 lakh and interest amounting to ₹15.13 lakh*.	Government intimated (September 2018 and January 2019) that tax including interest (₹45.42 lakh) was levied on the purchasing dealers, out of which entire demand (₹ 34.86 lakh) of a dealer has been adjusted/recovered. In respect of another dealer demand of ₹ 3.32 lakh has been adjusted with the ITC available. Further progress for recovery of pending demand of ₹ 7.24 lakh is awaited (February 2019).
9	Three AAs[40] (between June 2015 to February 2017)	**Application of incorrect rate of tax** Three dealers had shown sale of taxable goods *i.e. mobile charger, cooked food served and laminated automobile textile fabrics* amounting to ₹ 89.91 crore at incorrect rate of tax. The Assessing Authorities, however, while finalising the assessments did not detect the irregularity and applied incorrect rate of tax. *This resulted in short levy of tax of ₹ 1.82 crore besides interest of ₹92.45 lakh.*	The Government intimated (between July 2018 and November 2018) that demand of ₹ 2.76 crore had been raised and ₹ 1.80 crore had been recovered. It was also intimated that the Appellate Authority had stayed the recovery of remaining demand in two cases.

Further progress is awaited in these cases (February 2019).

[40] Circle: C-Bhilwara; Special-IV, Jaipur and Special-IX, Jaipur.