

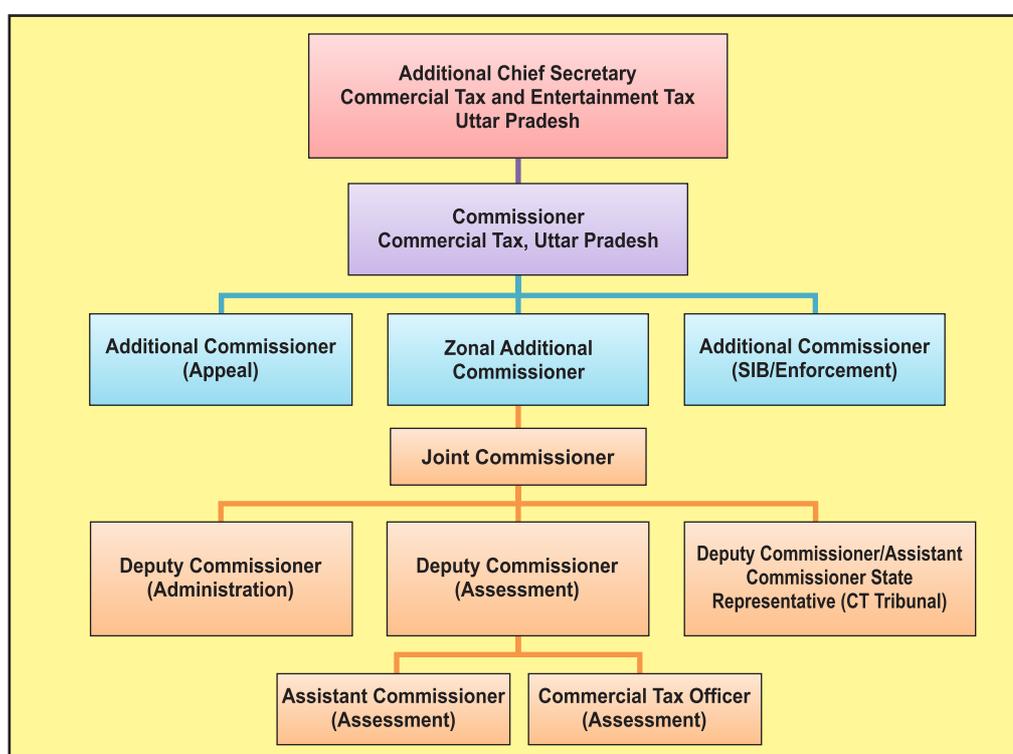
CHAPTER-III: TAX ON SALES, TRADE, ETC.

3.1 Tax administration

The Additional Chief Secretary (Commercial Tax and Entertainment Tax), Uttar Pradesh administers the Sales Tax/ Value Added Tax laws and rules framed thereunder. The Commissioner, Commercial Tax (CCT), Uttar Pradesh is the head of the Commercial Tax Department. He/she is assisted by 100 Additional Commissioners, 157 Joint Commissioners (JCs), 494 Deputy Commissioners (DCs), 964 Assistant Commissioners (ACs) and 1,275 Commercial Tax Officers (CTOs). Since 1 July, 2017, the Department is also administering the Goods and Services Tax (GST) in the State.

The organisational setup of the Department is as depicted below:

Chart 3.1 Organisational setup



3.2 Results of Audit

During 2017-18, Audit test checked 1,05,080 assessment cases (18.40 per cent) out of 5,71,634 assessment cases and noticed irregularities in 2,087 assessment cases (2 per cent) in 256¹ audited units (33 per cent) out of total 772 auditable units of the Commercial Tax Department. The Department collected ₹ 51,882.88 crore revenue during 2016-17 out of which the audited units had collected ₹ 25,111.88 crore (48 per cent). Audit identified irregularities amounting to ₹ 252.99 crore in 2,087 paragraphs as reported to the Department through the Audit Inspection Reports. These are as detailed in **Table - 3.1**.

¹Apar Mukhya Sachiv Vanijya Kar Evam Manoranjan Kar Uttar Pradesh Shasan (01), Commissioner, CT (01), Addl. Commissioner (01), JCs (25), Sectors (208), Mobile Squad Units (14), Administration Units (5) and Tax Recovery Unit (01).

Table - 3.1

Sl. No.	Categories	Number of Paragraphs	Amount (₹ in crore)	Share in per cent to the total objected amount
1	Under-assessment of tax	571	55.47	21.93
2	Acceptance of defective statutory forms	26	6.19	2.45
3	Evasion of tax due to suppression of sale/purchase	40	5.39	2.13
4	Irregular/ Incorrect/ Excess allowance of ITC	261	33.88	13.39
5	Non/short charging of interest	194	18.38	7.26
6	Non imposition of penalty	837	112.73	44.56
7	Other irregularities	158	20.95	8.28
	Total	2,087	252.99	

Source: Information available in the Audit office

The Department accepted (between April 2017 and September 2019) 514 cases amounting to ₹ 44.87 crore pointed out in the year 2017-18. The Department reported (between April 2017 and September 2019) recovery of ₹ 6.49 crore out of which 151 cases of ₹ 2.43 crore is related to the year 2017-18 and the rest of the cases pertain to the earlier years.

This chapter discusses 394 cases worth ₹ 71.91 crore out of the above cases based on their significance. Some of these irregularities continue to persist, despite similar cases having been repeatedly reported during the last five years as detailed in **Table - 3.2**. Most of the audit observations are of a nature that may reflect similar errors/omissions in other units of the concerned State Government department, but were not covered in the test check conducted during the year. The Department/Government may therefore like to internally examine all other units with a view to ensuring that they are functioning as per requirement and rules.

Table - 3.2

Nature of observations	(₹ in crore)											
	2012-13		2013-14		2014-15		2015-16		2016-17		Total	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount
Application of incorrect rate of tax	95	2.36	75	8.49	132	7.49	35	2.72	24	2.00	361	23.06
Irregular concession allowed on goods not covered under the Registration Certificate (RC)	10	1.00	16	1.03	9	0.41	7	0.27	24	3.80	66	6.51
Inadmissible ITC	-	-	15	12.41	21	0.87	15	0.77	20	1.18	71	15.23
ITC on goods sold on lower price than purchase price not reversed	-	-	-	-	4	0.08	6	0.13	-	-	10	0.21
Incorrect claim of ITC on goods purchased which were taxable at lower rates than that claimed by the dealers	10	0.67	-	-	3	0.47	7	0.25	10	1.64	40	3.03

Nature of observations	(₹ in crore)											
	2012-13		2013-14		2014-15		2015-16		2016-17		Total	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount
False/fraudulent claim of ITC	32	3.59	28	8.62	16	7.45	13	1.54	-	-	89	21.20
Interest short/not charged	19	0.60	20	0.42	46	5.85	8	2.17	30	1.53	123	10.57
Concealment of turnover	55	3.27	61	1.98	31	2.66	23	1.02	-	-	170	8.93
Delayed deposit of admitted tax	27	0.99	69	4.95	75	2.37	30	1.45	-	-	201	9.76
Delayed deposit of tax deducted at source	13	2.88	28	8.74	25	8.75	14	2.98	28	8.05	108	31.40

The repetitive nature of irregularities makes it evident that the State Government and the Commercial Tax Department have not taken effective measures to address the persistent irregularities being pointed out year after year by the Audit.

Recommendation:

Given that assessments of legacy VAT cases is underway, the State Government may take steps to prevent recurrence of the reported irregularities before such cases become time barred. There is a high probability that undetected leakages of revenue at this stage would go unaddressed as the system would be totally focussed upon GST administration in the foreseeable future.

3.3 Application of incorrect rate of tax

Assessing Authorities accepted the tax rates on sale of goods worth ₹ 148.62 crore as mentioned by the dealers in tax returns without verifying the rates applicable on such goods as per the schedules. Thus, tax amounting to ₹ 12.36 crore was short/not levied.

Under the Uttar Pradesh Value Added Tax (UPVAT) Act, 2008, tax-free goods are mentioned in Schedule I and taxable goods are mentioned in Schedules II to IV according to the applicable rates of tax on such goods. Goods not mentioned in any of the above schedules are covered under Schedule V and are taxable at the rate of 12.5 *per cent*. In addition to the above tax, additional tax notified by the Government from time to time is also levied.

Audit Reports for the year 2012-13 to 2016-17 had highlighted failure of AAs in observing the aforesaid provisions while finalising the assessments of 361 dealers resulting in short levy of tax of ₹ 23.06 crore. The Department in response to the Audit observations has assured to take appropriate action. Up till now, of the above, Audit Report 2012-13 has been discussed in the PAC in which the Department reported a recovery of ₹ 37.93 lakh.

In the test check of the assessment records of 51 CTOs² (out of 256 CTOs audited), Audit noticed that in the case of 58 dealers (out of 23,247 dealers test checked), the AAs, while finalising the assessments (between December 2013 and March 2017) for the year 2008-09 to 2014-15, accepted tax rates of zero to nine *per cent* on the sale of goods worth ₹ 148.62 crore as mentioned by the dealers in their respective tax returns. The AAs failed to verify and levy the

² Name of CTOs, rate of tax and other details are given in Appendix.

applicable rates of four to 17.5 per cent on such goods as per the schedules. Thus, tax amounting to ₹ 12.36 crore was short/not levied (**Appendix-IV**).

Audit reported the matter to the Department (between November 2016 and April 2018). In their reply (January/May 2019), the Department accepted the Audit observations in 23 cases amounting to ₹ 1.43 crore, out of which in three cases, a recovery of ₹ 19.65 lakh was reported by the Department.

In 20 cases, the Department did not accept the Audit observation. The main contention of the Department in 10 of the 20 cases not accepted by them was that the concerned AAs while passing the assessment orders, had made typographical errors³ in their initial orders, which they subsequently corrected when Audit observations were received by them. Audit urges the Department to fix accountability for such reported lapses. The analysis of Government's replies in these 20 cases is listed in the **Table 3.3 (i)** and **Table 3.3 (ii)**.

Table 3.3 (i)
Cases where the Department has mentioned typographical errors in the assessment orders in the cases pointed out by the Audit

Sl. No.	Audited Unit/ Observation in brief	Department reply in brief	Rebuttal
1	Sec-10 Agra Observation: Sale of canvas footwear was shown in the central sales without the required Form C @ five per cent. As per the Audit, this commodity should have been taxed @ 14 per cent.	Due to typographical error in the assessment order, in place of PVC footwear, canvas footwear was typed in the order, which has been amended u/s 31 dated 15 June 2018.	The reply is not acceptable, as the initial assessment order passed on 30 September 2016 makes a specific mention of canvas footwear in different pages of the order. A typographical error cannot occur on several pages. Further the dealer himself in his annual return has shown the same commodity as shoes which is also taxable @ 14 per cent. Further no supporting documents were given to the Audit to establish the claim of the Department on sale of PVC footwear. As such shoes/canvas footwear should be taxable @ 14 per cent as per UPVAT Act
2	Sec-11 Agra (b) Observation: Sale of Fire extinguisher was taxed @ five per cent. As per the Audit, this commodity should be taxable @ 14 per cent.	Due to typographical error in the assessment order, in place of PVC pipe, hose pipe and fitting, fire extinguishers were mentioned which has been amended u/s 31 dated 31 October 2018.	The reply is not acceptable, as in the initial assessment order passed on 19 September 2016 sale of fire extinguishers was shown in different pages of the assessment order. A typographical error cannot occur on several pages. Further, the dealer himself in his annual return has shown the same commodity fire extinguishers. Further, no supporting documents were given to the Audit to establish the claim of the Department on sale of PVC pipe, hose pipe and fitting. As

³ Errors committed reportedly relate to description of goods in Assessment Orders.

Sl. No.	Audited Unit/ Observation in brief	Department reply in brief	Rebuttal
			such, fire extinguishers should be taxable @ 14 per cent as per UPVAT Act.
3	Sec-2 Auraiya Observation: Sale of Computers and its parts was shown and taxed @ five per cent. This should have been instead taxed @ 14 per cent and 13.5 per cent.	Due to typographical error in the annexures of purchase and sale list, computer parts were mentioned. Revised annexures of purchase and sale list are being submitted.	The reply is not acceptable. As per the records submitted by the dealer, in both his quarterly return and in the Purchase list & sales list, computer parts have been mentioned and accepted by the AAs at the time of assessment. Further, no provisions were shown to the Audit whereby the AAs can accept the revised annexure after passing the initial assessment order.
4	Sec-2 Ghaziabad (a) Observation: Sale of electronic meter parts was shown in the central sale in the assessment order without the required Form C @ five per cent. As per the Audit, this commodity should have been taxed @ 14 per cent.	Due to typographical error in the assessment order, in place of winding wire and strips etc., electronic meter parts were mentioned, which has been amended u/s 31 dated 1 August 2017.	The reply is not acceptable as in the annual return submitted by the dealer the commodity name was not mentioned. This was clarified by the AA at the time of passing both the assessment orders dated 29 July 2016 and 10 January 2017. Sale of electronic meter parts were mentioned on different pages in the assessment order. A typographical error cannot occur on several pages. Further, no supporting documents were given to audit to establish the claim of the Department on sale of winding wire strips etc. As such, electronic meter parts should be taxable @ 14 per cent as per UPVAT Act.
5	Sec-2 Ghaziabad (b) Observation: Sale of scooter parts was shown in central sale in assessment order without the required Form C @ five per cent. As per the Audit, this commodity should have been taxed @ 14 per cent.	Due to typographical error in the assessment order, in place of HDPE cloth, scooter parts were mentioned, which has been amended u/s 31 dated 19 May 2017.	The reply is not acceptable. As per the records submitted by the dealer in his annual return, the commodity name was not mentioned. This was clarified by the AA at the time of passing the assessment order in several pages. A typographical error cannot occur on several pages. Further, no supporting documents were given to audit to establish the claim of the Department on sale of HDPE cloth. As such, scooter parts should be taxable @ 14 per cent as per UPVAT Act.
6	Sec-29 Kanpur Observation: Sale of varnish was shown in the assessment order @ five per cent. As per the Audit, this commodity should	Due to typographical error in the assessment order, in place of chemical and minerals, varnish was mentioned which has been	The reply is not acceptable. As per the annual return submitted by the dealer, the name of the commodity has not been shown. This was clarified by the AA at the time of passing the

Sl. No.	Audited Unit/ Observation in brief	Department reply in brief	Rebuttal
	have been taxed @ 14 per cent.	amended u/s 31 dated 1 October 2018.	assessment order. The dealer is a trader of paint, varnishes and adhesive as per assessment order. The sale of varnish has been mentioned numerous times in the order. A typographical error cannot occur on several occasions. Further no supporting documents were given to the audit to establish the claim of the Department on sale of chemical and minerals. As such varnish should be taxable @ 14 per cent as per UPVAT Act.
7	Sec-13 Lucknow Observation: Sale of food supplement was shown in the assessment order @ five per cent. As per the Audit, this commodity should have been taxed @ 14 per cent.	Due to typographical error in the assessment order, in place of spices and custard, medicines and food supplements were written which are taxable under Schedules II (four per cent) and V (12.5 per cent) respectively. As such, the dealer is not found to sell food supplements.	The reply is not acceptable. In the initial assessment order passed on 23 January 2017 sale of food supplement was shown in numerous pages. A typographical error cannot occur on several pages. Further, it is also notable that the dealer himself in his annual return has shown the same commodity as food item. Further, no supporting documents were given to the Audit to establish the claim of the Department on sale of spices and custard. As such, food supplement should be taxable @ 14 per cent as per UPVAT Act.
8	Sec-3 Sultanpur(a) Observation: Sale of machinery parts was shown in the assessment order @ five per cent. As per the Audit, this commodity should have been taxed @ 14 per cent.	The dealer had submitted the wrong return in which machinery and plant was depicted in place of mono block submersible pump, etc. Therefore, machinery and plant was shown in the assessment order which has been amended u/s 31 after the dealer submitted the correct return.	The reply is not acceptable. As per the records submitted by the dealer, plant and machinery have been mentioned and the same has been accepted by the AA at the time of assessment. Further, no provisions were shown to the Audit whereby the AAs can accept a revised return after passing the initial assessment order.
9	Sec-3 Sultanpur(b) Observation: Sale of set top box was shown in the assessment order @ five per cent. As per the Audit, this commodity should have been taxed @ 13.5 per cent and 14 per cent.	Due to typographical error in the assessment order, in place of set top box user charges, sale of set top box was written. The dealer is not selling set top box but paying tax on set top box user charges under right to use.	The reply is not acceptable. Audit noted that in a series of assessment orders dated 1 July 2014, 31 July 2014 and 29 December 2016 specific reference to sale of set top box had been recorded. A typographical error cannot occur across assessment orders spreading over the period 2014 to 2016. Further, the dealer himself in his annual

Sl. No.	Audited Unit/ Observation in brief	Department reply in brief	Rebuttal
			return has shown the same commodity as set top box. Further, no supporting documents were given to the Audit to establish the claim of the Department on paying tax on set top box user charges under right to use. As such, set top box should be taxable @ 13.5 per cent and 14 per cent as per UPVAT Act.
10	Sec-8 Varanasi Observation: Sale of Furniture was shown in the assessment order @ five per cent. As per the Audit, this commodity should have been taxed @ 14 per cent.	Due to typographical error in the assessment order, in place of plywood, furniture was mentioned. The dealer has submitted a revised return in which sale of plywood and furniture have been shown separately. A revised assessment order was passed.	The reply is not acceptable. As per the records submitted by the dealer, sale of furniture has been mentioned in the return and accepted by the AA at the time of passing the assessment order. Further, no provisions were shown to Audit whereby the AA can accept a revised return after passing the initial assessment order. As per the notification dated 11 October 2012, plywood is also taxable @ 14 per cent under UPVAT Act.

Table 3.3(ii)
Cases where the Department reply is not acceptable

Sl. No.	Audited Unit/ Observation in brief	Department reply in brief	Rebuttal
1	Sec-11 Agra (a) Observation: Sale of computer parts was shown in the assessment order @ five per cent. As per the Audit, this commodity should have been taxed @ 13.5 per cent.	The Department stated that computer parts are taxable @ five per cent under Schedule-II-Part-II B at Sl. no.22.	The reply is not acceptable. The computer parts are taxable @ five per cent with effect from 20 December 2014. The Audit observation is related to the assessment year 2013-14, when computer parts were taxable @ 12.5 per cent plus additional tax in that period.
2	JC (CC) Allahabad Observation: Sale of copper conductor was shown in the assessment order @ five per cent. As per the Audit, this commodity should have been taxed @ 14 per cent.	The Department has stated that the dealer is engaged in manufacturing of contact wire made from copper.	The basis of reply of the Department that the item is contact wire is not clear to the Audit in light of the fact that the dealer himself in his annual return stated that the item is copper conductor. Further, the assessing officer while passing the assessment order has specifically stated that the item is copper conductor. As such, the copper conductor is taxable @ 14 per cent as per UPVAT Act.
3	Sec 4 Ghaziabad Observation: The dealer has received a payment of ₹ 390.28 lakh against the value of soil upon which	The Department, in its reply, has stated that all the payments received by the dealer relates to labour and	The reply is not acceptable as in the assessment order, it is clearly mentioned that the dealer has received a payment of ₹ 390.28 lakh from the sale

Sl. No.	Audited Unit/ Observation in brief	Department reply in brief	Rebuttal
	no tax was imposed. As per the Audit, it should be taxed @ five per cent.	freight. As such no purchase of soil was made by the dealer.	of soil, on which the tax was not imposed. Soil is taxable @ five per cent as per UPVAT Act.
4	Sec-6 Ghaziabad Observation: Sale of machinery and machinery parts was shown in assessment order @ five per cent. As per the Audit, this commodity should have been taxed @ 14 per cent.	The Department, in its reply, has stated that the V-belt (machinery part) has been classified under Schedule-II according to the commodity code @ five per cent.	The reply is not acceptable as both in the return submitted by the dealer and in the assessment order of the assessing officer there is specific mention of machinery parts. Machinery parts are taxable @ 14 per cent as per UPVAT Act.
5	Sec-8 Ghaziabad (a) Observation: Sale of Mill Board was shown in the assessment order @ five per cent. As per the Audit, this commodity should have been taxed @ 13.5 per cent.	The Department stated that as per the Commissioner's decision u/s 59, Mill Board is taxable @ five per cent.	The reply is not acceptable as any levy of tax on goods must be based on the authority of law. Decision of the Commissioner has to be in conformity with the statutory provision under the UPVAT Act. Therefore, Mill Board is taxable @ 13.5 per cent as per UPVAT Act.
6	Sec-8 Ghaziabad (b) Observation: Sale of Starch Based Adhesive Powder was shown in the assessment order and taxed @ 5 per cent. As per the Audit, this commodity should have been taxed @ 14 per cent.	The Department has stated that the dealer did not sell Starch Based Adhesive Powder. Instead, it sold chemicals only.	The reply is not acceptable as both in the return submitted by the dealer and in the assessment order of the assessing officer there is specific mention of Starch Based Adhesive Powder. Starch Based Adhesive Powder is taxable @ 14 per cent as per UPVAT Act.
7	Sec-10 Ghaziabad (b) Observation: Sale of scrap was shown in assessment order @ four per cent. As per audit, this commodity should have been taxed @ five per cent.	The Department has stated that the dealer is selling MS Scrap which is taxable @ four per cent.	The reply is not acceptable as both in the return submitted by the dealer and in the assessment order of the assessing officer there is specific mention of scrap. Further, the dealer is a manufacturer of plant & machinery. As such, dealer is selling scrap of the above product. Therefore, the product is taxable @ five per cent as per UPVAT Act.
8	Sec-21 Kanpur Observation: Sale of toffee was shown in the assessment order @ five per cent. As per the Audit, this commodity should have been taxed @ 14 per cent.	The Department stated that Toffee is classified under schedule-II-A, Sl. No. 137.	The reply is not acceptable as the dealer is engaged in selling of Perfetti Brands toffee such as Mentos, Alpenliebe etc. These branded toffees contains sugar less than 70 per cent. Only those toffees which contain minimum 70 per cent sugar, 25 per cent liquid glucose and five per cent essence colour combination will fall under the said schedule such as lemonchoos, lollypop etc. Sale of Perfetti Brands toffee is therefore taxable @ 14 per cent as per UPVAT Act.

Sl. No.	Audited Unit/ Observation in brief	Department reply in brief	Rebuttal
9	Sec-2 Kasganj Observation: Sale of toffee was shown in the assessment order @ five per cent. As per the Audit, this commodity should have been taxed @ 13.5 per cent.	The Department stated that the Commissioner judgement under Sec-59 Candy (Toffee) contain 70 per cent sugar will fall under Schedule-II such as Lemonchoos, lollypop etc.	The reply is not acceptable as the dealer is engaged in selling of ITC Ltd products such as <i>Candyman, Eclairs, Jelimals</i> , etc. These branded toffees contain sugar less than 70 per cent. Only those toffees which contain minimum 70 per cent sugar, 25 per cent liquid glucose and five per cent essence colour combination will fall under the said schedule such as <i>lemonchoos, lollypop</i> etc. Sale of ITC Ltd. Products such as <i>Candyman Eclairs, Jelimals</i> etc. is taxable @ 13.5 per cent as per UPVAT Act.
10	Sec-17 Lucknow Observation: Sale of scrap was shown in the assessment order @ four per cent. As per the Audit, this commodity should have been taxed @ five per cent.	The Department stated that reassessment was made on 16 November 2018 u/s 28 read with Sec 32 in which the dealer was found to have sold MS Scrap of ₹ 229.83 lakh at four per cent and scrap of ₹ 2.21 lakh at five per cent out of the total sale of scrap of ₹ 235.93 lakh.	The reply is not acceptable as both in the return submitted by the dealer and in the assessment order of the assessing officer there is specific mention of scrap of plastic and glass. Sale of scrap of plastic and glass is taxable @ five per cent as per UPVAT Act.

In the remaining 15 cases, amounting to ₹ 59.30 lakh, the Department stated that action is under process (August 2019).

Recommendation:

CTD should consider instituting enquiry from vigilance angle in cases where typographic errors have been stated as reasons for application of incorrect rate of tax.

3.4 Central Sales Tax (CST)

3.4.1 Irregular exemption of tax

Assessing Authorities allowed the irregular exemption of ₹ 2.80 crore on stock transfer of ₹ 55.97 crore as the dealer failed to submit the required declaration Form 'F' along with the proof of dispatch.

Under CST⁴ Act, where any dealer claims that he is not liable to pay tax, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal,

⁴ Section 6A (1).

containing the prescribed particulars in the prescribed form, along with the evidence of dispatch of such goods. If the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale. The Hon`ble Supreme Court had also stated that the Form 'F' is required for all transfer of goods which are otherwise than by way of sale (M/s Ambika Steels Ltd. v/s State of U.P. and others in Civil Appeal No. 4970 of 2008 decided on 31st March 2009).

In the test check (June 2017) of assessment records of Sector-1 Firozabad, Audit noticed that in the case of one dealer (out of 803 dealers test checked), the AA, while finalising the assessments (between February 2016 and March 2017) for the year 2012-13 to 2013-14, allowed irregular exemption of ₹ 2.80 crore on stock transfer of ₹ 55.97 crore to another State, as the dealer had failed to submit the required declaration Form 'F' along with the proof of dispatch before the AA to substantiate his claim as per provisions of the Act. The details are mentioned in the **Table-3.4**.

Table - 3.4
Irregular exemption of tax

(₹ in crore)							
Sl. No	Name of unit	No. of dealer	Assessment year (month and year of assessment)	Name of goods	Value of goods	Rate of tax leviable (per cent)	Tax
1	DC Sec 1 Firozabad	1	2012-13 (February-2016)	Jackets, trousers etc.	29.23	5	1.46
			2013-14 (March-2017)	Jackets, trousers etc.	26.74	5	1.34
	Total	1			55.97		2.80

Audit reported the matter to the Department (July 2017). In its reply (January/May 2019), the Department stated that under Section 17, the dealer had no liability of tax and the goods manufactured were only for defence purposes. No purchase/sale is being done by the dealer. Therefore, it does not fall under the category of business defined under Section 2. The requirement of producing the form 'F' for the above transaction had been waived off on the basis of the certificate issued by the Ministry of Defence and a letter issued by Finance Department. The reply of the Department is not acceptable as Section 17 is for registration of the dealer under the VAT Act. This section does not provide for any exemption to be allowed to the dealer. The dealer is engaged in trading of goods as is evident from the assessment order. Therefore, for claiming exemptions for the stock transfer, the dealer had to produce form 'F' as it is also evident from the above quoted Hon`ble Supreme Court Judgement.

Recommendation:

CTD should carefully examine all such cases where such exemptions are being allowed by the AAs.

3.4.2 Irregular concession allowed on goods not covered under the Registration Certificate (RC)

The dealers had purchased goods valued at ₹ 6.81 crore which were not covered under the RC at concessional rates of tax against the declaration in form 'C'. This fact was not scrutinised at the time of assessment and a penalty of ₹ 1.05 crore was not imposed.

Under Central Sales Tax (CST) Act, 1956⁵, a registered dealer may purchase any goods from outside the State at concessional rate of tax against the declaration in form 'C'. If his respective registration certificate does not cover such goods, the dealer is liable to for persecution under the CST Act.⁶ However, if the Assessing Authority deems it fit, he, in lieu of prosecution, may impose a penalty up to one and a half times the tax payable on the sale of such goods.

The Audit Reports for the year 2012-13 to 2016-17 had highlighted failure of AAs in observing the aforesaid provisions while finalising the assessments of 66 dealers resulting in non-levy of penalty of ₹ 6.51 crore. The Department in response to the Audit observations has assured to take appropriate action. Up till now, of the above, Audit Report 2012-13 has been discussed in the PAC in which the Department had reported a recovery of ₹ 21.56 lakh.

Audit test checked (between February 2017 and December 2017) the assessment records of 13 CTOs (out of 256 CTOs audited). It noticed that 14 dealers (out of 3,710 dealers test checked) had purchased goods valued at ₹ 6.81 crore during the year 2010-11 to 2013-14 at a concessional rate of tax against declaration in Form 'C'. However, the goods purchased were not covered by their respective RCs due to which they were liable to pay penalty at one and half times of the tax payable on the sale of such goods, in lieu of prosecution. The AAs, while finalising the assessment between October 2015 and March 2017, did not scrutinise the relevant RCs and the utilisation details of forms 'C' of the dealers in question, and consequently penalty of ₹ 1.05 crore could not be imposed (**Appendix-V**).

Audit reported the matter to the Department (between March 2017 and January 2018). In their replies (January/May 2019), the Department stated that a penalty of ₹ 92.29 lakh had been imposed in 11 cases out of which, in two cases, a recovery of ₹ 4.49 lakh had been reported. In two cases, the reply of the Department has been reviewed and not found acceptable as per analysis detailed in the **Table 3.5**.

⁵ Section 8 of the Central Sales Tax (CST) Act, 1956.

⁶ Section 10 of the CST Act.

Table 3.5
Cases where the Department reply is not acceptable

Sl. No	Audited Unit/ Observation in brief	Department reply in brief	Rebuttal
1	Sec-9 Ghaziabad Observation: The dealer is not authorised to purchase bitumen at a concessional rate against the Form C as per the RC. As such, he is liable to pay 1.5 times of the tax due.	The Department stated that the dealer is authorised for the purchase of bitumen in his Registration Certificate (RC).	The reply is not acceptable, since as per the RC details seen in audit, the dealer was not authorised for the purchase of bitumen at concessional rate. Hence, penalty should have been imposed.
2	Sec-2 Shahjahanpur Observation: The dealer is not authorised to purchase Generator, machinery, compressor plate and elevator at a concessional rate against Form C as per the RC. As such, he is liable to pay 1.5 times of the tax due.	The Department stated that the dealer is registered for the purchase of electrical goods in his Registration Certificate (RC). As such, purchase of Generator, machinery, compressor plate and elevator comes under electrical goods.	The reply is not acceptable, as goods such as Generator ⁷ , machinery, compressor plate and elevator do not fall under the category of electrical goods. These goods fall under the category of machinery.

In the remaining one case, reply of the Department is awaited (August 2019).

Recommendation:

The CTD may ensure that while the assessment orders are being passed, the RCs and utilization certificates, where such concession are being considered by the AAs, should be carefully examined.

3.5 Irregularities relating to Input Tax Credit (ITC)

Our scrutiny of records of the Department revealed several cases of irregularities regarding ITC claims such as inadmissible ITC allowed to dealers, excess claims, ITC not reversed, penalties not imposed and interest not charged thereon, etc. amounting to ₹ 14.32 crore in respect of 66 dealers in 54 CTOs for the period from 2009-10 to 2014-15. These cases are mentioned in the following paragraphs.

3.5.1 Inadmissible ITC allowed to dealers

The dealers had wrongly claimed ITC amounting to ₹ 64.88 lakh which was irregularly allowed by the AAs. This resulted in non-reversal of ITC alongwith interest totalling ₹ 1.01 crore.

Under UPVAT Act, 2008⁸, tax paid on purchases of goods from registered dealers against tax invoices within the State or cash deposited on purchase of goods from the unregistered dealer, ITC to the extent provided under the relevant clauses of the said Act is allowed to the dealers subject to certain conditions and restrictions for resale or use in manufacture of goods intended for sale. Further⁹, if any dealer has wrongly claimed ITC in respect of any

⁷ Decision of High Court Allahabad in the case of Commissioner Trade Tax vs Elmech Engineers.

⁸ Section 13 of UPVAT Act, 2008.

⁹ Section 14 (2).

goods, benefit of ITC to the extent it is not admissible, shall stand reversed along with simple interest at the rate of 15 per cent per annum.

The Audit Reports for the year 2013-14 to 2016-17 had highlighted failure of AAs in observing the aforesaid provisions while finalising the assessments of 71 dealers resulting in non-reversal of ITC of ₹ 15.23 crore. The Department in response to the Audit observation has made assurance to take appropriate action.

Audit test checked (between January 2017 and March 2018) the assessment records of 24 CTOs (out of 256 CTOs audited). It noticed that 27 dealers out of 9,855 dealers test checked, had wrongly claimed ITC of ₹ 64.88 lakh during the year 2009-10 to 2013-14 which was not admissible to them. The AAs while finalising the assessment between March 2015 and March 2017 were required to reverse this inadmissible ITC and direct the dealers to pay such amount of reverse ITC along with simple interest, which was not reversed. This resulted in non-reversal of ITC along with interest together totalling ₹ 1.01 crore (ITC ₹ 0.65 crore and interest ₹ 0.36 crore) (**Appendix-VI**).

Audit reported the matter to the Department (between February 2017 and April 2018). In their replies (January/May 2019), the Department accepted the Audit observation in 13 cases amounting to ₹ 36.32 lakh, out of which, in seven cases, a recovery of ₹ 15.35 lakh was reported by the Department. In seven cases the Department did not accept the Audit observation. The main contention of the Department in five of the seven cases not accepted by them was that the concerned AAs while passing the assessment orders, had made typographical errors¹⁰ in their initial orders, which they subsequently corrected when Audit observations were received by them. Audit urges the Department to fix accountability for such lapses. The analysis of Government/ Department's replies in these seven cases is listed in the **Table 3.6 (i) and Table 3.6 (ii)**.

Table 3.6 (i)
Cases where the Department has mentioned typographical errors in the assessment orders in cases pointed out by the Audit

Sl. No.	Audited Observation brief	Unit/ in	Department reply in brief	Rebuttal
1	Sec-15 Observation: ITC is being claimed on the exempted (no tax) item i.e. cloth as per purchase list submitted by the dealer. Hence, ITC claimed by the dealer on the purchase of exempted item cloth should be reversed.	Agra	Due to typographical error in his monthly returns, purchase of cloth was shown in his purchase list, however, ITC is being claimed on the taxable items by the dealer.	Cloth is a exempted item entailing no levy of VAT. Hence, basis of giving the excess benefit of ITC on the purchase of cloth is not clear. Examination of the records of the dealer indicates/ refer to 'cloth' in his purchase list in each month of his return. Hence, the reply regarding typographical error is not acceptable.

¹⁰ Wrong purchase list was submitted, high rate of admissible ITC was shown at lower amount, false ITC was carry forwarded, etc.

Sl. No.	Audited Unit/ Observation in brief	Department reply in brief	Rebuttal
2	Sec-18 Agra (b) Observation: Due to the calculation mistake, while allowing ITC as per the ITC admissible on the purchase, more ITC was allowed.	Due to typographical error, purchase of juice was shown at ₹ 60.54 lakh instead of ₹ 25.76 lakh and Purchase of cold drink was shown at ₹ 25.76 lakh instead of ₹ 60.54 lakh which has been amended u/s sec 31 dated 16 October 2018.	The reply is not acceptable as the dealer, in his annual return, has not given any bifurcation of his purchases. Bifurcation of purchase is mandatorily required under UPVAT Rules. Bifurcation of purchase has been clarified by the assessing authority at the time of finalising and passing the assessment order dated 28 October 2015.
3	Sec-3 Gorakhpur Observation: Due to the calculation mistake, while allowing ITC as per the ITC admissible on the purchase, more ITC was allowed.	Due to typographical error, purchase of cement sheet was shown at ₹ 46.60 lakh instead of at ₹ 77.05 lakh and Purchase of iron sheet was shown ₹ 1630.74 lakh instead of ₹ 1600.30 lakh. That was amended u/s sec 31.	The reply is not acceptable. The dealer, in his annual return, has not given any bifurcation of his purchases. Bifurcation of purchase is mandatory as per sub-rule (7) of Rule-45 of UPVAT Rules. Bifurcation of purchase has been clarified by the assessing authority at the time of finalising and passing the assessment order dated 11 January 2017.
4	Sec-20 Lucknow Observation: Due to the calculation mistake, while allowing ITC as per the ITC admissible on the purchase, more ITC was allowed.	Due to typographical error ₹ 6.09 lakh ITC was made admissible and ITC of ₹ 2.89 lakh was carried forward as per annual return in assessment order, which has been amended u/s 31 dated 6 March 2017 by making admissible ITC of ₹ 3.20 lakh and nil ITC was carried forward.	While the Department has accepted the facts pointed out by audit, the reply does not specify why the RITC along with interest has not been done. The amendment in the assessment order has been made u/s 31 dated 6 March 2017 for the assessment year 2012-13. Up till now the dealer has submitted the annual return for succeeding assessment year and had claimed excess ITC assessed by the AA at the time of assessment order for the assessment year 2012-13. The UPVAT Act/ Rules requires raising demand for excess ITC benefit given to the dealer along with interest at the time of assessment.
5	Sec-6 Meerut Observation: Due to the calculation mistake, while allowing ITC as per the ITC admissible on the purchase, more ITC was allowed.	Due to typographical error Gas Stove was not shown in the detail purchase list of ₹ 16.98 lakh which has been amended u/s 31 dated 21 May 2018.	The reply is not acceptable. The dealer, in his annual return, has not given any bifurcation of his purchases. Bifurcation of purchase is mandatory required under UPVAT Rules. Bifurcation of purchase has been clarified by the assessing authority at the time of finalising and passing the assessment order dated 20 August 2016. Further, in the reply given by the Department, the purchase value of Gas Stove is still not disclosed.

Table 3.6 (ii)
Cases where the Department reply is not acceptable

Sl. No	Audited Unit/ Observation in brief	Department reply in brief	Rebuttal
1	Sec-13 Agra Observation: ITC was allowed on discount.	Purchase which have been shown in annual return and accounts submitted by the dealer only that purchase have been incorporated in the assessment while passing the assessment order. As such no discount and credit note has been deducted from the purchase submitted by the dealer.	The reply of the Department is not convincing as the discount which has been shown in the Audited Balance Sheet has not been taken into account, at the time of passing the assessment order in allowing admissible ITC. Rule 21 of UPVAT Rule specifically states that ITC is not admissible on discount.
2	Sec-4 Jhansi Observation: Due to the calculation mistake, while allowing ITC as per the ITC admissible on the purchase, more ITC was allowed.	The Department stated that u/s 14 all the tax invoices of purchase have been verified and found to be correct. As such no Reverse Input Tax Credit (RITC) is required to be done.	The reply of the Department is not according to the facts submitted by the dealer in his return. The calculation mistake is self-evident, made in the assessment order while allowing ITC to the dealer.

In the remaining four cases, the Department stated that action is under process (August 2019).

Recommendation:

CTD should carefully examine and verify the transections where ITC are being claimed by the dealers and benefit of ITC are being allowed by the AAs.

3.5.2 ITC on goods sold on lower price than purchase price not reversed

The AAs had not reversed the ITC alongwith interest of ₹ 1.40 crore claimed by the dealers in respect of those goods which were sold by the dealers at a price lower than the purchase price.

Under UPVAT Act, 2008,¹¹ where goods purchased are resold or goods manufactured or processed by using or utilising such goods are sold, at the price which is lower than the purchase price of such goods in case of resale or cost price in case of manufacture, the amount of input tax credit shall be claimed and be allowed to the extent of tax payable on the sale value of goods or manufactured goods. If the dealer claims full amount of ITC, the ITC in excess of tax payable on the sale value of goods, will be reversed with simple interest at the rate of 15 *per cent* per annum.

The Audit Reports for the year 2014-15 to 2015-16 had highlighted failure of the AAs in observing the aforesaid provisions while finalising the assessments of 10 dealers resulting in non-reversal of ITC of ₹ 0.21 crore. The Department, in response to the Audit observations, has assured to take appropriate action.

¹¹ Section 13(1)(f) of UPVAT Act, 2008.

Audit test checked (between January 2017 and February 2018), the assessment records of 13 CTOs (out of 256 CTOs audited). It noticed that 13 dealers (out of 3,507 dealers test checked), had purchased goods worth ₹ 90.25 crore during the year from 2011-12 to 2013-14, had claimed an ITC of ₹ 4.86 crore and sold the said goods for ₹ 69.68 crore. The dealers availed ITC on the purchase price of the goods instead of to the extent of ₹ 3.98 crore, the tax payable on the sale value of goods. The AAs, while finalising the assessments between March 2015 and March 2017, neither reversed this inadmissible ITC nor created any demand with simple interest. Thus ITC along with interest together totalling ₹ 1.40 crore was not reversed (ITC ₹ 0.88 crore and interest ₹ 0.52 crore) (**Appendix-VII**).

Audit reported the matter to the Department (between March 2017 and April 2018). In their replies (January/May 2019), the Department accepted the Audit observation in four cases amounting to ₹ 1.18 crore. Out of these, in three cases, ₹ 8.95 lakh had been recovered. One accepted case with a total financial implication of 0.73 crore was still to be acted upon. In two cases the Department did not accept the Audit observation. The main contention of the Department in one out of the two cases not accepted by them was that the concerned AAs while passing the assessment orders, had made typographical errors¹² in their initial orders, which they subsequently corrected when Audit observations were received by them. Audit urges the Department to fix accountability for such lapses. The analysis of Government's replies in these two cases is listed in the **Table-3.7(i) and Table-3.7(ii)**.

Table-3.7 (i)

Cases where the Department has mentioned typographical errors in the assessment orders in the cases pointed out by the Audit

Sl. No.	Audited Unit/ Observation in brief	Department reply in brief	Rebuttal
1	Sec-10 Varanasi Observation: Less sale is shown in comparison to purchase hence Reverse Input Tax Credit (RITC) on loss of sale is required.	Due to typographical error in the closing stock in the assessment order, purchase of goods @ 14 per cent was mentioned in place of goods purchased @ five per cent and vice-versa which have been amended u/s 31. Due to this revised assessment order sale of goods, as a result, sale of goods taxable @ five per cent was found to be less by ₹ 1.70 lakh on which RITC of ₹ 0.09 lakh was done and was deposited by the dealer later on 1 May 2018.	The reply is not acceptable. The assessing authority at the time of passing the assessment order had accepted the trading account of the dealer while finalising the assessment order. After being pointed out by Audit, the dealer has submitted a revised return in which the goods @ five per cent was shown in place of goods @ 14 per cent and vice versa in the closing stock. This is not a typographical error as the dealer has submitted a revised return after the assessment has been passed. Further, no provisions were shown to the Audit whereby the AAs accepted the revised returns after passing the initial order.

¹² Figures of different commodity of rate of tax was wrongly mentioned in the assessment orders.

Table-3.7 (ii)
Cases where Department reply is not acceptable

Sl. No.	Audited Observation in brief	Department reply in brief	Rebuttal
1	Sec-1 Faizabad Observation: Less sale is shown in comparison to purchase, hence Reverse Input Tax Credit (RITC) on loss of sale is required.	The Department stated that u/s 31, account of the dealer has been verified and accepted. Therefore, no Reverse Input Tax Credit (RITC) is required.	The reply of the Department is not according to the facts submitted by the dealer in his annual return. The less sale in comparison to purchase in the assessment order as well as in the annual return submitted by the dealer is self-evident. Hence, due to loss in sale as is evident from the assessment order RITC needs to be done.

In the remaining seven cases, the Department stated that action is in process (August 2019).

Recommendation:

CTD should carefully examine and verify the cases where ITC are being claimed by the dealer.

3.5.3 Incorrect claim of ITC on goods purchased which were taxable at lower rates than that claimed by the dealers

The AAs had not reversed the ITC alongwith interest of ₹ 2.20 crore claimed by the dealers in respect of goods which were taxable at lower rates than that claimed by the dealers.

Under UPVAT 2008, ITC to the extent provided under the relevant clauses of the said Act and Rules, is allowed on tax paid or payable by a registered dealer on purchase of taxable goods from within the State subject to certain conditions and restrictions for resale or use in manufacturing of goods intended to resale. Further¹³, if any dealer has wrongly claimed ITC in respect of any goods, benefit of ITC to the extent it is not admissible, shall stand reversed along with simple interest at the rate of 15 *per cent* per annum.

The Audit Reports for the year 2012-13 and for the period from 2014-15 to 2016-17 had highlighted failure of AAs in observing the aforesaid provisions while finalising the assessments of 40 dealers resulting in correct claim of ITC of ₹ 3.03 crore. The Department in response to the Audit observations has assured to take appropriate action. Up till now, of the above, Audit Report 2012-13 has been discussed in the PAC in which the Department reported a recovery of ₹ 5.33 lakh.

Audit test checked (between February 2017 and September 2017), of the assessment records of five CTOs (out of 256 CTOs), revealed that five dealers (out of 1,330 dealers test checked), had purchased goods worth ₹ 18.06 crore during the year 2012-13 to 2014-15 and had claimed an ITC of ₹ 2.53 crore at the rate of 13.5 to 14 *per cent* instead of ₹ 90.28 lakh at the rate of five *per cent*. Goods purchased by the dealers were mentioned in Schedule II of UPVAT Act and rate of tax applicable was five *per cent*. The AAs, while finalising the assessments between March 2016 and January 2017, did not

¹³ Under Section 14(2).

notice this fact, and without carrying out any cross verification and thorough examination, allowed an excess inadmissible ITC of ₹ 1.62 crore to the dealers. This incorrect claim attracts reversal of ITC along with interest of ₹ 2.20 crore (ITC ₹ 1.62 crore and interest of ₹ 0.58 crore) which was not done by the AAs. The details are mentioned in the **Table-3.8**.

Table-3.8
Incorrect claim of ITC on goods purchased which were taxable at lower rates than claimed by dealers

(₹ in lakh)									
Sl. No.	Name of the unit	Number of dealers	Assessment year (month and year of assessment)	Name of goods	Value of goods	ITC claimed by the dealer	ITC admissible to the dealer	Amount of RITC not done by AAs	Interest leviable
1	Sec. 1 Agra	1	2013-14 (December 2016)	Foam and fabrics	28.22	3.95	1.41	2.54	1.23
2	JC (CC) Gorakhpur	1	2012-13 (March 2016)	Wooden drum	25.43	3.52	1.27	2.25	1.18
3	DC Sec. 1 G B Nagar	1	2013-14 (January 2017)	Centrifugal mono block pump sets, hose collar and spare parts	21.74	3.04	1.09	1.95	0.97
4	DC Sec. 2 Kanpur	1	2014-15 (January 2017)	Multimedia, speaker, head phones	1,645.95	230.43	82.30	148.13	51.20
5	DC Sec. 6 Noida	1	2013-14 (July 2016)	Digital video camera	84.21	11.79	4.21	7.58	3.17
Total		5			1,805.55	252.73	90.28	162.45	57.75

Audit reported the matter to the Department (between March 2017 and September 2017). In their replies (January/May 2019), the Department accepted the Audit observation in three cases amounting to ₹ 17.10 lakh. In remaining two cases, Department did not accept the observation. The reply of the Department in these cases has been reviewed and not found acceptable as per analysis detailed in the **Table 3.9 (i) and Table 3.9 (ii)**.

Table 3.9(i)
Cases where Department has mentioned typographical errors in the assessment orders in cases pointed out by the Audit

Sl. No	Audited Unit/ Observation in brief	Department reply in brief	Rebuttal
1	Sec-1 Agra Observation: Purchase of foam and fabrics was shown in assessment order @ 14 per cent. As per Audit, ITC admissible @ five per cent.	The Department stated that the dealer had actually purchased adhesive which, by mistake, was mentioned as foam and fabrics in the assessment order which has been amended u/s 31 dated 17 March 2018	The reply is not acceptable, as in the initial assessment order passed on 20 December 2016 purchase of foam and fabrics has been specifically shown. A typographical error cannot occur on several pages. Further, the dealer himself in his annual return has shown the purchase of same commodity. Further no supporting documents were given to audit to establish the claim of the Department on purchase of adhesive. Hence, ITC claimed at higher rates on foam and fabrics needs to be reversed.

Table3.9 (ii)
Cases where Department reply is not acceptable

Sl. No	Audited Observation brief	Unit/ in	Department reply in brief	Rebuttal
1	Sec-2 Kanpur Observation: ITC on speakers, microphone, etc. is admissible as per Schedule II instead of Schedule V.		The Department stated that the dealer trades in the public address systems such as speaker, microphone etc. which is taxable @ 12.5 per cent plus additional tax.	The reply of the Department is not acceptable. UPVAT Schedule –II –Part-II- B -Sl. No. 2 unambiguously stipulates that speakers, microphone, etc. are classified under this entry, and as such, ITC @ five per cent is admissible on these items. Hence, ITC claimed at higher rates on speakers, microphone, etc., needs to be reversed.

Recommendation:

The CTD should ensure periodic and randomised reviews of all ITC claims to ensure that ITC is being claimed as per prescribed rates.

3.5.4 False/fraudulent claim of ITC

On cross verification undertaken by the Department, ITC amounting to ₹ 1.94 crore claimed by the dealers was found false. Though it was reversed by the AAs, penalty amounting to ₹ 9.71 crore was not imposed against the defaulters.

Under UPVAT 2008¹⁴, if the purchased goods are resold, ITC is allowed to the extent of the tax paid or payable by the dealer on such sale or purchase. Further,¹⁵ if the AA is satisfied that any dealer falsely or fraudulently claims an amount as ITC, he may direct such dealer to pay a penalty of a sum equal to five times of amount of ITC, in addition to the tax.

The Audit Reports for the year 2012-13 to 2015-16 had highlighted failure of AAs in observing the aforesaid provisions while finalising the assessments of 89 dealers resulting in non-imposition of penalty of ₹ 21.20 crore. The Department in response to the Audit observations has assured to take appropriate action. Up till now, of the above, Audit Report 2012-13 has been discussed in the PAC in which ₹ 11.13 lakh was recovered by the Department.

Audit test checked (between October 2016 and March 2018), the assessment records of 20 CTOs (out of 256 CTOs), revealed that in the case of 21 dealers (out of 5,727 dealers test checked), the AAs had cross verified the ITC claim of the dealers and found that the dealers had falsely/fraudulently claimed ITC amounting to ₹ 1.94 crore during the year 2009-10 to 2014-15. Though the AAs, while finalising the assessments (between April 2013 and March 2017), reversed the ITC, they chose not to impose the penalty due amounting to ₹ 9.71 crore (**Appendix-VIII**).

Audit reported the matter to the Department (between December 2016 and April 2018). In their replies (January/May 2019), the Department accepted the Audit observation in 18 cases amounting to ₹ 5.05 crore. In two cases, ₹ 41.46

¹⁴ Section 54(1) (19) of the VAT Act.

¹⁵ Section 13 of UPVAT Act, 2008 read with Rule 24 of UPVAT Rules, 2008.

lakh had been recovered. In remaining three cases, the Department stated that action is in process (August 2019).

Recommendation:

CTD should carefully examine and verify the cases where ITC is being claimed falsely or fraudulently by the dealer.

3.6 Interest short/not charged

The dealers had deposited the admitted tax of ₹ 5.56 crore with delay, on which interest was chargeable. However, the same was not charged at the time of assessment resulting in non-levy of interest amounting to ₹ 2.56 crore.

Under UPVAT Act 2008, and Entry of Goods into Local Areas Act, 2007¹⁶, every dealer liable to pay tax is required to deposit the amount of tax into the Government Treasury before the expiry of due date failing which simple interest at the rate of one and quarter *per cent* per month from 1 January 2008 shall become due and be payable on unpaid amount with effect from the day immediately following the last date prescribed till the date of payment.

The Audit Reports for the year 2012-13 to 2016-17 had highlighted failure of AAs in observing the aforesaid provisions while finalising the assessments of 123 dealers resulting in non/short levy of interest of ₹ 10.57 crore. The Department in response to the Audit observations has assured to take appropriate action. Up till now, of the above, Audit Report 2012-13 has been discussed in the PAC in which ₹ 33.24 lakh was recovered by the Department.

Audit test checked (between March 2017 and March 2018), the assessment records of 25 CTOs (out of 256 CTOs) revealed that 28 dealers (out of 13,651 dealers test checked) had deposited the admitted tax of ₹ 5.56 crore during the year 2008-09 to 2013-14 with delays ranging from 32 days to 2,610 days without paying the due interest on account of the delay. The belated payment of admitted tax attracted interest of ₹ 2.60 crore up to the date of deposit of tax, whereas the dealers deposited ₹ 4.02 lakh only. The AAs while finalising the assessment between July 2013 and March 2017 did not charge interest of ₹ 2.56 crore (**Appendix-IX**).

Audit reported the matter to the Department (between April 2017 and April 2018). In their replies (January/May 2019), the Department accepted the Audit observation in 23 cases amounting to ₹ 55.74 lakh, out of which ₹ 28.05 lakh was reported as recovered in 13 cases. In the cases accepted by the Department, there is however no indication of action proposed to be taken against the AAs for their failure to levy of interest in the cases of delayed deposit of admitted tax, as per the law. The Department did not accept the finding in one case where it stated that the dealer has opted for compounding scheme and compounding fees was deposited on various dates as per applicable rules and as such interest of ₹ 0.11 lakh and of ₹ 0.06 lakh had been deposited on 2 February 2018 and 25 January 2018 respectively. The reply of the Department is not acceptable. The dealer has deposited the interest after the delay was pointed by the audit. Further, the dealer had not deposited the

¹⁶ Section 33(2) of the UPVAT Act 2008 read along with Section 13 of Uttar Pradesh Tax on Entry of Goods into Local Areas Act, 2007.

full interest i.e. ₹ 1.07 lakh (1 October 2013 to 5 October 2016). In remaining four cases, Department stated that action is in process (August 2019).

Recommendation:

CTD should carefully calculate the interest amount in cases where there is delay in payment of due taxes by the dealers.

3.7 Penalties not imposed

Tax related legislations carry penal provisions are made to discourage malafide practices by the dealers. The AAs, while finalising the assessments, disregarded various offences committed by the dealers i.e. transactions not recorded in the accounts books, delayed deposit of tax, transactions against the provisions of the UPVAT Act and Rules made thereunder, etc. Though there are clear cut provisions for imposition of penalties in the Act, the AAs concerned chose not to impose penalty amounting to ₹ 33.52 crore in the case of 218 dealers in respect of 125 CTOs for the period from 2007-08 (VAT) to 2015-16 as mentioned in the following paragraphs:

3.7.1 Concealment of turnover

The Assessing Authorities did not impose penalty amounting to ₹ 3.66 crore on concealed turnover amounting to ₹ 20.44 crore.

Under UPVAT Act¹⁷, where a dealer has concealed particulars of his turnover or has deliberately furnished inaccurate particulars of such turnover, or submitted a false tax return under this Act or evaded payments of tax which he is liable to pay under this Act, the AA may direct that such dealer shall, in addition to the tax, if any, payable by him, pay by way of penalty, a sum equal to three times the amount of tax concealed or avoided.

The Audit Reports for the year 2012-13 to 2015-16 had highlighted failure of AAs in observing the aforesaid provisions while finalising the assessments of 170 dealers resulting in non-imposition of penalty of ₹ 8.93 crore. The Department in response to the Audit observations has assured to take appropriate action. Up till now, of the above, Audit Report 2012-13 has been discussed in the PAC in which ₹ 9.58 lakh was recovered by the Department.

Audit test checked (between January 2017 and March 2018), the assessment records of 56 CTOs (out of 256 CTOs) revealed that 69 dealers (out of 25,491 dealers test checked) had concealed purchases and sales turnover amounting to ₹ 20.44 crore during the year from 2007-08 to 2015-16. As the dealers had wrongfully concealed their turnover, they were liable to pay penalty of a sum equal to three times the tax concealed. However, the AAs, while finalising the assessments (between September 2012 and March 2017), chose to levy a tax amounting to only ₹ 1.22 crore on this concealed turnover. The concerned AAs neither imposed penalty amounting to ₹ 3.66 crore nor recorded any reason for not imposing the penalty (**Appendix-X**). This was despite the fact that in 40 cases falling under 32 sectors, the Appellate Authorities had confirmed (between June 2014 and November 2017) that the dealers had concealed the turnover/evaded payment of liable tax or the dealers had

¹⁷ Section 54(1) (2).

themselves accepted the same and deposited the tax due on the concealed turnover.

Audit reported the matter to the Department (between March 2017 and April 2018). In their replies (January/May 2019), the Department accepted the Audit observation in 56 cases amounting to ₹ 2.81 crore, out of which in 15 cases, ₹ 49.25 lakh had been recovered. In three cases, the Department did not accept the finding. The reply of the Department is not acceptable, as in these three cases, concealment has been confirmed by the Appellate Authority as brought out in the following **Table 3.10**.

Table 3.10
Cases where Department reply is not acceptable

Sl. No.	Audited Unit	Department reply in brief	Rebuttal
1	JC(CC) Gorakhpur	The Department stated that if the concealment is not intentional penalty cannot be imposed.	In all the three cases the dealers filed an appeal regarding concealment of turnover. In all these cases, the Appellate Authority upheld the contention of Assessing Officer, thereby confirming the fact of concealment. In these circumstances, the reply of the Department that the concealment is not intentional, is not acceptable.
2	Sec. 3 Gorakhpur		
3	Sec. 2 Kanshiramnagar (Kasganj)		

In the remaining 10 cases, the Department stated that the action is in process. (August 2019).

Recommendation:

CTD should carefully examine all the cases where concealment of turnover by the dealers is detected and ensure that due penalty is imposed for ensuring tax compliance.

3.7.2 Delayed deposit of admitted tax

The AAs, while finalising the assessments, did not impose penalty amounting to ₹ 3.06 crore and an interest of ₹ 55.30 lakh on delayed deposit of admitted tax amounting to ₹ 15.31 crore.

Under UPVAT Act¹⁸, if the AA is satisfied that any dealer has, without reasonable cause, failed to deposit the tax due for any tax period within prescribed or extended time, he may direct the dealer to pay, by way of penalty in addition to tax, if any payable by him, a sum equal to 20 *per cent* of the tax due.

The Audit Reports for the year 2012-13 to 2015-16 had highlighted failure of AAs in observing the aforesaid provisions while finalising the assessments of 201 dealers resulting in non-imposition of penalty of ₹ 9.76 crore. The Department in response to the Audit observations has assured to take appropriate action. Up till now, of the above, Audit Report 2012-13 has been discussed in the PAC in which ₹ 8.82 lakh were recovered by the Department.

Audit test check (between September 2015 and March 2018), the assessment records of 60 CTOs (out of 256 CTOs) revealed that 80 dealers (out of 26,519 dealers test checked) had not deposited their admitted tax of ₹ 15.31 crore for the period 2008-09 to 2014-15 in time. The delays ranged between five days to 1,397 days. As the tax was deposited late, penalty amounting to a sum equal to

¹⁸ Sec 54(1) (1) (a).

20 per cent of the tax due in addition to the tax levied, was payable by the dealers in question. However, the AAs, while finalising the assessments (between May 2012 and March 2017), chose not to impose the penalty amounting to ₹ 3.06 crore along with interest of ₹ 55.30 lakh nor recorded any reason for not imposing the penalty and the interest (**Appendix-XI**).

Audit reported the matter to the Department (between April 2017 and April 2018). In their replies (January/May 2019), the Department accepted the Audit observation in 58 cases amounting to ₹ 2.14 crore, out of which in 10 cases, ₹ 17.92 lakh had been recovered. In four cases, the Department did not accept the audit finding. The reply of the Department is not acceptable as in all the four cases, admitted tax was deposited without interest/after being pointed out by the Audit which is contrary to the provision of the VAT Act, as per the analysis detailed in the following **Table 3.11**.

Table 3.11
Cases where the Department reply is not acceptable

Sl. No.	Audited Unit/ Observation in brief	Department reply in brief	Rebuttal
1	Sec-12 Allahabad Observation: Admitted tax for the month of 03/14 was deposited with a delay of 278 to 887 days. As such, penalty is leviable as per the VAT Act.	The Department stated that the dealer has opted for compounding scheme and various compounding fees of ₹ 9.64 lakh was deposited on various dates with interest. As such, penalty is not leviable.	The Department reply is not according to the facts submitted by the dealer. The challan copy of the admitted tax submitted by the dealer in his return indicate that the admitted tax was deposited without interest at the time of audit. Hence, the reply of the Department that the dealer has deposited the admitted tax with interest is not correct. As such, penalty should have been imposed.
2	Sec-5 Bareilly Observation: Admitted tax for the month July 2012 and August 2012 was deposited with delay ranging from six to nine days. As such penalty is leviable as per UPVAT Act.	The Department stated that admitted tax was deposited with interest of ₹ 2,000/- and ₹ 4,000/-dated 4 August 2017 and penalty will not be imposed if delay is for 10 days and the admitted tax was deposited with interest as per Commissioner's circular.	The reply of the Department is not acceptable. As per the Commissioner's Circular, if the delay of the admitted tax is up to 10 days and the admitted tax was deposited with interest with justified reasons by the dealer, penalty will not be imposed. In the instant case the dealer has deposited the admitted tax with delay and without interest. As such, the above Circular of the Commissioner is not applicable in the instant case. Hence, penalty should have been imposed.
3	Sec-8 Lucknow Observation: Admitted tax for the month of December 2013 and January 2014 was deposited with delay ranging from five to seven days. As such penalty is leviable as per VAT Act.	The Department stated that if the admitted tax is deposited with interest penalty will not be imposed as per Hon. High Court decision dated 26 October 2004.	The Department reply is not according to the facts submitted by the dealer. The challan copy of the admitted tax submitted by the dealer in his return indicate that the admitted tax was deposited without interest at the time of audit. Hence, the reply of the Department that the dealer has deposited the admitted tax with interest is not correct. As such, penalty should have been imposed.

Sl. No.	Audited Unit/ Observation in brief	Department reply in brief	Rebuttal
4	Sec-14 Varanasi (b) Observation: Admitted tax for the month of May 2011 and June 2011 was deposited with delay ranging from 50 to 77 days. As such, penalty is leviable as per VAT Act.	The Department stated that the interest for the delay was deposited on 29 September 2018. As such, penalty will not be imposed.	The reply of the Department that the interest for the delay deposit of admitted tax has been deposited by the dealer is not acceptable as at the time of the Audit the dealer has deposited the admitted tax without interest and this was accepted by the assessing officer at the time of finalising and passing the assessment order. Since after being pointed out by the audit the dealer has deposited the interest, therefore penalty should have been imposed.

In the remaining 18 cases, the Department stated that action is in process (August 2019).

Recommendation:

CTD should carefully examine the cases where admitted tax is not being deposited within the prescribed time limit and without due interest.

3.7.3 Delayed deposit of tax deducted at source

The Assessing Authorities had not imposed penalty amounting to ₹ 26.80 crore alongwith interest of ₹ 14.26 lakh on dealers for not depositing the tax deducted at source amounting to ₹ 13.40 crore within the prescribed time.

Under UPVAT Act, 2008¹⁹, a person responsible for making payment to a contractor for the use of goods in pursuance of works contract, shall deduct a tax equal to four *per cent* of such sum, payable under the Act, on account of such works contracts. In case of failure to deduct the tax or deposit the tax so deducted into the Government treasury before the expiry of 20th day of the month following the month in which the deduction was made, the AA may direct that such person to pay, by way of penalty, a sum not exceeding twice the amount so deducted.

The Audit Reports for the year 2012-13 to 2016-17 had highlighted failure of AAs in observing the aforesaid provisions while finalising the assessments of 108 dealers resulting in non-imposition of penalty of ₹ 31.40 crore. The Department in response to the Audit observations has assured to take appropriate action. Up till now, of the above, Audit Report for Financial Year 2012-13 has been discussed in the PAC in which ₹ 24.00 lakh was recovered by the Department.

Audit test checked (between March 2017 and March 2018), the assessment records of 47 CTOs (out of 256 CTOs) revealed that 69 dealers (out of 17,490 dealers test checked) had deducted tax amounting to ₹ 13.40 crore at source while making the payment to contractors during the year 2008-09 to 2014-15 but did not deposit the same into the Government treasury within the time frame prescribed. The delays ranged from five days to 349 days. The AAs, while finalising the assessments (between April 2013 and March 2017) chose not to impose the due penalty amounting to ₹ 26.80 crore along with due

¹⁹ Section 34(8) read with 34(1).

interest of ₹ 14.26 lakh nor recorded any reason for not imposing the penalty and the interest (**Appendix-XII**).

Audit reported the matter to the Department (between April 2017 and April 2018). In their replies (January/May 2019), the Department accepted the Audit observation in 53 cases amounting to ₹ 18.71 crore, out of which, in two cases, ₹ 2.35 lakh was recovered. Replies of the Department are not acceptable in four cases as detailed in the **Table 3.12**.

Table 3.12
Cases where the Department reply is not acceptable

Sl. No.	Audited Unit/ Observation in brief	Department reply in brief	Rebuttal
1	Sec-16 Agra(a) Observation: TDS for the month of March 2014 was deposited with a delay of eight days without interest. Hence, the penalty was leviable as per the VAT Act.	The Department stated that the delay was of eight days, and as per Commissioner's circular, if the period of delay is less than 10 days, penalty will not be leviable. Interest of ₹ 1,305/- was deposited by the dealer for the delay.	The reply of the Department is not acceptable. As per the Commissioner's Circular, if the delay of the admitted tax is up to 10 days and the admitted tax was deposited with interest with justified reasons by the dealer, penalty will not be imposed. In the instant case, the dealer has deposited the admitted tax with delay and without interest. As such, the above Circular of the Commissioner is not applicable in the said case. Hence, penalty should have been imposed on the dealer.
2	Sec-16 Agra (b) Observation: Various TDS for the month of April 2013 and March 2014 was deposited with a delay ranging from eight to nine days without interest. Hence, the penalty was leviable as per VAT Act.	The Department stated that the delay was of eight days, and as per Commissioner's circular, if the period of delay is less than 10 days, penalty will not be leviable. Interest of ₹ 1,9743/- was deposited by the dealer for the delay.	The reply of the Department is not acceptable. As per the Commissioner's Circular, if the delay of the admitted tax is up to 10 days and the admitted tax was deposited with interest with justified reasons by the dealer, penalty will not be imposed. In the instant case the dealer has deposited the admitted tax with delay and without interest. As such, the above Circular of the Commissioner is not applicable in the said case.
3	Sec-8 Ghaziabad (b) Observation: TDS for the month of January 2012 was deposited with a delay of 11 days without interest. Hence the penalty was leviable as per UPVAT Act.	The Department stated that tax was deducted on 8 February 2012 which was deposited on 2 March 2012 as such TDS was deposited in due time.	The reply of the Department is not according to the facts submitted by the dealer at the time of the assessment. The return of the dealer states that the TDS for the month of January 2012 which was to be deposited on or before 20 February 2012 was deposited on 2 March 2012 with a delay of 11 days. Hence, penalty should have been imposed on the dealer.

Sl. No.	Audited Unit/ Observation in brief	Department reply in brief	Rebuttal
4	Sec-17 Varanasi Observation: TDS for the month of February 2013 was deposited with a delay of 11 days without interest. Hence the penalty was leviable as per VAT Act.	The Department stated that there was no deduction in the month of February 2013. February 2013 was erroneously mentioned in place of May 2013 in the challan form. As such, there was no delay.	The reply of the Department is not according to the facts submitted by the dealer at the time of assessment. It is not clear to the Audit how the TDS for the month of May 2013 was deposited on 31 March 2013 even before the TDS was deducted. The return of the dealer states that the TDS for the month of February 2013 which was to be deposited on or before 20 March 2013 was deposited on 31 March 2013 involving a delay of 11 days. Hence, penalty should have been imposed on the dealer.

In the remaining 12 cases, the Department stated that action is in process (August 2019).

Recommendation:

CTD should ensure timely deposit of TDS by the dealers/contractors.

3.8 Non-forfeiture of amount wrongly realised by the dealers as tax

The dealers had collected tax of ₹ 4.61 crore in excess of their tax liability. However, the AAs did not forfeit this amount wrongly realised by the dealers.

Under UPVAT Act²⁰, where any amount has been realised from any person by a dealer, purporting to do so by way of realisation of tax on the sale or purchase of goods, in contravention of the provisions of the Act, such amount deposited by any dealer, shall to the extent is not a due tax be held by the State Government.

Audit test checked (between April 2017 and March 2018) records of eight CTOs²¹(out of 256 CTOs). Audit noticed that nine dealers (out of 2,824 dealers test checked) had charged/realised an excess amount of ₹ 4.61 crore as tax in contravention of the provisions of the Act for the period from 2011-12 and 2013-14 to 2014-15. The AAs while finalising the assessment between April 2015 and March 2017 did not forfeit this amount so realised by the said dealers. **(Appendix-XIII)**.

Audit reported the matter to the Department (between May 2017 and April 2018). The reply of the Department is still awaited (August 2019).

²⁰ Section 43(2).

²¹ JC(CC) Range-B, GB Nagar-1; ₹ 138.75 lakh, Sec-2 Kanpur-1; ₹ 293.55 lakh, Sec-16 Kanpur-1; ₹ 0.88 lakh, Sec-3 LKheri-1; ₹ 16.67 lakh, Sec-1 Lalitpur-2; ₹ 2.77 lakh & ₹ 2.17 lakh, Sec-1 Noida-1; ₹ 5.33 lakh, Sec-2 Pilibhit-1; ₹ 0.67 lakh, Sec-3 Sultanpur-1; ₹ 0.53 lakh.

Recommendation:

CTD should carefully examine the cases where the dealers have wrongly realised an amount as tax from other dealers in contravention of the provisions of the Act.

3.9. Preparedness for transition to Goods and Services Tax

3.9.1 Introduction

Goods and Services Tax (GST)²², implemented with effect from 1 July 2017, is levied on intra-State supply of goods or services (except alcohol for human consumption and upon five specified petroleum products²³) separately but concurrently by the Union (CGST) and the States (SGST)/Union territories (UTGST). Further, under the provisions of the new taxation regime, Integrated GST (IGST) is being levied on inter-State supply of goods or services (including imports). The Parliament has the exclusive power to levy IGST. GST has replaced a plethora of state and central taxes. The main taxes replaced include the Value Added Tax (VAT) on intra-State sale of goods in the series of sales by successive dealers as per Uttar Pradesh Value Added Tax (UPVAT) Act, 2008, and the Central Sales Tax (CST) levied on the sale of goods in the course of inter-State trade or commerce as per the CST Act, 1956.

Under the previous VAT regime, the State Government was empowered to regulate the provisions of UPVAT Act. The provisions related to GST on the other hand are regulated by the Centre and the State on the recommendations of the Goods and Services Tax Council (GSTC), constituted with representation from both the Centre as well as all the States to recommend on the matters related to GST. The State Government notified (May 2017) the Uttar Pradesh Goods and Services Tax Act, 2017 and the Uttar Pradesh Goods and Services Tax Rules 2017 (June 2017) subsuming various local and central taxes²⁴. Goods and Services Tax Network (GSTN) was set up by the Government of India as a private company to provide IT services to the State and Central tax authorities. GSTN manages the entire IT system of the GST portal. It is used by the Government to track every financial transaction, and provides the taxpayers with all services-from registration to filing taxes and maintaining all tax details. It comprises Front-end IT services intended for use by the taxpayers such as registration, payment of tax and filing of returns, and back end IT services including registration approval, taxpayer detail viewer, refund processing, MIS reports, etc. for use by the taxation authorities. Back end services are available to only Model-II²⁵ States, of which Uttar Pradesh is one.

3.9.2 Audit objectives

The audit was conducted with a view:

- to evaluate the preparedness of the State Government for implementing the IT solution;

²² Central GST: CGST and State/Union Territory GST: SGST/UTGST.

²³ Petroleum Products: crude, high speed diesel, petrol, aviation turbine fuel and natural gas.

²⁴ Value Added Tax, Central Sales Tax, Entry Tax, Luxury Tax and Entertainment Tax.

²⁵ Model I States: Only front end services provided by GSTN.

Model II States: Both front end and back end services provided by GSTN.

- 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.

3.9.3 Audit criteria

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

- Uttar Pradesh Goods and Services Tax Act, 2017;
- Uttar Pradesh Goods and Services Tax Rules, 2017;
- GST (Compensation to States) Act, 2017;
- The Taxation Laws Amendment Act, 2017;
- Integrated Goods and Services Tax Act, 2017;
- Acts relating to subsumed taxes and Rules made thereunder:
 - Uttar Pradesh VAT Act, 2008, Uttar Pradesh Tax on Entry of Goods into Local Areas Act, 2007, Central Sales Tax Act, 1956 and other guidelines issued by Central/State Government and GST Council.

3.9.4 Scope of Audit

The activities of the State Government/Commercial Taxes Department relating to implementation of GST since the 101st amendment to the Constitution of India i.e. with effect from 8 September 2016 to 31 March 2018, were reviewed in the course of audit. Besides, information / data obtained from the Office of the Commissioner, Commercial Tax, Uttar Pradesh regarding Migration of Dealers in GST, Transitional Credit and GST Refunds. Action taken with respect to Legacy issues i.e. assessment, recovery/refund etc. was also examined.

The State Commercial Taxes Department did not provide Audit with either access to the GSTN or to any data dump related to the GST data in its possession despite persistent persuasion. As GST data was not shared, we were unable to audit and therefore, this section of the report is derived largely from the information provided to Audit with respect to its queries and requisitions, but without any independent verification vis-à-vis actual databases or documents.

An entry conference with the Commissioner, Commercial tax was held on 18 March 2019. The observations were sent to the Department on 11 June 2019. A meeting in this regard was held with the Department on 14 June 2019 to discuss the findings. The final observations were forwarded to the State Government on 16 July 2019. The replies of the Department were received on 12 September 2019. The Exit Conference was held on 1 October 2019 with the Commissioner, Commercial Tax and the Government to discuss the findings.

3.9.5 Access to the GSTN Database

With the introduction of IT Platform for GST implementation, access to GSTN IT system and its data becomes necessary for Audit so that necessary assurance regarding robustness of the system could be derived. With respect

to CAG's requirement for Complete Access to the GSTN IT systems and data, GSTN had recommended (October 2016) to the Government of India to create login credentials for the CAG teams.

The State Government was informed by this office²⁶ (April 2018) that GST data could be shared with the C&AG of India subject to relevant protocols. The Department responded²⁷ (May 2018) that the issue of providing access to GSTN portal and creating role script was possible only through the GST Council.

The Department further replied (September 2019) that the issue of data sharing protocol with the Comptroller and Auditor General of India has been referred to GST Council. Until the matter is decided, it will be proper, to wait for access to GSTN and data dump.

The reply is not acceptable as Section 18 of the CAG's DPC Act, 1971 provides that CAG has the mandate to access any record, accounts and other documents that are relevant to his inquiry. Further, as per Section 16 of the CAG's DPC Act, 1971, it shall be the duty of the CAG to audit all receipts which are payable into the Consolidated Fund of India and of each State. It has been further clarified in Regulation 181 of the Regulations on Audit and Accounts, 2007 that every Department or entity shall establish and implement a mechanism to ensure that data, information and documents that are required by Audit are made available to CAG. Thus, not providing access to GST data to CAG is violation of the provisions of CAG's DPC Act. The fact that some other states, viz., Bihar and Chhattisgarh, have started sharing the GST data with the Audit indicates that sharing of data did not require the approval of GST Council or GoI.

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

Receipts under VAT/CST including non-subsumed/subsumed taxes during the year 2017-18 were ₹ 31,436.89 crore and SGST receipts (including IGST apportionment including advance apportionment) were ₹ 25,373.96 crore. Total Receipts during the year 2017-18 were ₹ 56,810.85 crore against ₹ 52,664.47 crore of previous year 2016-17 i.e. an increase of 7.87 per cent. The tax base also increased from 6,97,457 migrated dealers to 13,30,281 dealers²⁸. This explains the increase in revenue during this period. Actual receipts during the last five years are mentioned in **Table-3.13**.

Table-3.13: Trend of Revenue

Year	₹ in crores)						
	Receipts under VAT & CST	Receipts under other subsumed taxes in GST ²⁹	Receipts under SGST	Total Receipts	Increase in receipt from previous years (in per cent)	Compensation Received GST	Total Receipts
2013-14	39,645.45	509.36		40,154.81			40,154.81
2014-15	42,931.54	541.68		43,473.22	8.26		43,473.22
2015-16	47,692.40	745.76		48,438.16	11.42		48,438.16
2016-17	51,882.88	781.59		52,664.47	8.73		52,664.47
2017-18	31,112.52	324.37	25,373.96	56,810.85	7.87	2,124.00	58,934.85

Source: Finance Accounts of the Government of Uttar Pradesh

²⁶ Vide letter no. AG(E&RSA), UP/Sectt/2018-19/03 dated 05.04.2018.

²⁷ Vide letter no. Joint Commissioner (Audit)// 2018-19/431/Vaniya Kar dated 21.05.2018.

²⁸ Till 11.06.2018.

²⁹ Figures included from Major Head 0023-Hotel Receipts, 0045-Other Taxes and Duties on Commodities and Services.

In their reply the Department (September 2019) stated that as on 11 June 2018 the total dealers were 13.30 lakh³⁰ of which the migrated dealers of GSTN were 6.97 lakh and new dealers were 6.33 lakh. Thus, clearly accepting that tax base has increased.

3.9.7 Establishment of the Department

3.9.7.1 Shortage of Staff

For efficient performance of an organisation, it is necessary that there are sufficient number of officers for operation and for monitoring and administering the relevant Tax laws and rules with the assistance of allied staff. In this connection, audit focussed upon the extent of availability of human resources at the disposal of the Department.

It was observed that there were huge shortages in the cadre of officers and supporting staff as depicted in the **Table-3.14**.

Table-3.14 -Status of manpower

Sl. No.	Cadre	Sanctioned Post	Men in position (2018-19)	Shortage	Shortage (in per cent)
1	Officers	3,033	2,433	600	20
2	Clerical	5,328	3,096	2,232	42
3	Stenographers	1,302	722	580	45
4	<i>Shankhya</i> Cadre	111	77	34	31
5	Auditors	91	26	65	71
6	Accounts Cadre	131	31	100	76
7	Collection Cadre	481	309	172	36
8	Computer Operator	235	173	62	26

Source: Information provided by the Commercial Tax Department

It can be seen from the above that there was a huge shortage of six hundred officers in the Department which works out to 20 *per cent* of the sanctioned strength of 3,033. Likewise, for effective Internal Controls and analytical works, the cadres of *Shankhya*, Audit and Accounts are critical. However, these cadres have shortages to the extent of 31, 71 and 76 *per cent* respectively. Similarly, 26 *per cent* posts of Computer Operators are lying vacant.

In GST regime, the work involved is technology driven and the working environment is intended to be paper-less. In the GST scenario, requirement of IT trained officers and analysts assumes importance for the purposes of tax administration. There is a need to restructure the cadres and recruit IT skilled staff for developing necessary Business Intelligence models for administration and enforcement purposes.

The Department in its reply (September 2019) stated that the Cadre restructuring was being done in GST as per requirement. But, they have not provided any documents to Audit to substantiate their statement.

3.9.7.2 Deployment of Entertainment Tax Staff

Entertainment Tax has been subsumed in GST. As a consequence, the Entertainment Tax Department, which administered the tax, has also been

³⁰ Till 11 June 2018.

merged³¹ (April 2018) with the CTD. Audit observed that the mergers could be notified only after a lapse of nine months, with retrospective effect, from the implementation of GST. Even thereafter, the Department failed to deploy 131 officers of the erstwhile Entertainment Tax Department to their new duties in the CTD as District Magistrates had delegated miscellaneous work to Entertainment Tax officers. ₹ 21.15 crore had been spent on the establishment of these 131 officers between July 2017 and February 2019. The Department was deprived of their services, which could have come handy given shortages in the Officer cadre.

The Department in its reply (September 2019) accepted the audit finding and stated that the Cadre restructuring of officers and officials of the erstwhile Entertainment Tax Department was still in process and stated that the staff was engaged in miscellaneous work of Entertainment Tax.

3.9.7.3 Capacity building efforts by the Department for GST regime

CTD had started training its offices along with the implementation of GST. During the year 2017-18, a total of 2,920 officers were trained, out of which 2,537 were trained in GST. In 2018-19, a total of 815 officers were trained, out of which 393 officers were trained in GST at Commercial Tax Officers Training Institute, Lucknow. Besides, the Department established helpdesks at 82 places and conducted 5,494 seminars wherein 3,71,329 persons participated.

3.9.8 Legal/Statutory preparedness

The State Government notified (May 2017) the Uttar Pradesh Goods and Services Tax Act, 2017 and Uttar Pradesh Goods and Services Tax Rules, 2017. 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 189 notifications, 66 Circulars regarding GST from June 2017 to March 2019.

3.9.9 E-Way bill system

Before the enactment of GST Act, under the older regime, the Mobile Squad Units (MSUs) were deployed to check evasion of tax not covered by prescribed documents/information and purportedly belonging to unregistered dealers, during the movement of such goods within and/or transiting through the State. Assistant Commissioners (Mobile Squad) were in-charge of such MSUs. Their main responsibility was to check the movement of goods being transported with fake documents within the State, and prevent tax evasion with reference to goods imported by rail and roads through effective search work. The National Informatics Centre (NIC), Lucknow had developed necessary software for issuing /downloading transit passes/Transit Declaration Form (TDF) for transporting goods from one State to another State via Uttar Pradesh. This software provided enhanced Management Information System (MIS) and reporting capabilities to the MSUs for smarter decision making, thereby helping in arresting tax evasion and resulting in greater revenue mobilisation.

³¹ Notification no. 624/11-3-2018-103/2017 dated 24.04.2018 and 520/11-3-2018-13/2017 dated 24.04.2018.

After the enactment of GST Act, system of TDF automatically became obsolete. Further, no alternate arrangement was brought into force by GST Council up to 31 March 2018 at an all India level. The State Government commenced³² (16 August 2017) its own E-way bill system to strengthen the monitoring of transportation of goods. However, the system could not be stabilised till March 2018. In this period (July 2017- March 2018), the system was suspended on two occasions³³ and for overall duration of 52 days. Thus, between July 2017 and March 2018, the system for monitoring the movement of vehicles carrying taxable goods at the All India level, which was to detect tax evasions, was not very effective. National E-way bill system has commenced from 1 April 2018.

3.9.10 IT preparedness of the Department

3.9.10.1 IT preparedness by GSTN

The IT platform of GSTN is divided into two parts namely “Front end” and “Backend”. The front end provides services to the taxpayers viz~ registration, payment of tax and filing of returns etc. Backend consists of IT system to be used by tax officials to process administration functions such as registration approval, assessment, audit and enforcement, adjudication, recovery and analytics. For States opting Model-I and Central Board of Excise and Customs (CBEC), development of Backend application was to be done by them. For Model-II States, Backend application is being developed by GSTN. As Uttar Pradesh has opted for Model-II, for implementation of GST, backend applications like registration approval, taxpayer detail viewer, refund processing and Management Information System (MIS) reports, etc. for the purposes of GST administration are developed by GSTN.

GSTN has created a portal on intranet wherein login credentials have been created for officers and staff of Commercial Tax Department (CTD) to enable them to perform their duties by working directly on it. Modules available on GST Portal for the CTD are Registration and Payments, Services related Taxpayers Account. MIS reports such as Enrolment reports, Registration reports, Payment reports and Return report are also available. Officers access GSTN portal through intranet i.e. on the Department’s own private secure network.

Assessing Authorities have to perform certain duties as per the SGST Act. To perform their duties, they have been allocated roles on GSTN portal to view Jurisdictional Record, Refund Processing, Registration, Registration-Approval, Registration Site Visit, Adjudicating/Authority, View Dashboard, MIS user, LUT (Letter of Undertaking) Processing, Grievance processing.

As per the roles provided by GSTN, Assessing Officers had access to dealers under their jurisdiction only.

Audit obtained information from the CTD on the status and functionality of the GSTN and IT system and observed the following gaps /shortcomings:

- (i) **Mapping of Dealers with Assessing Authorities:** Mapping of migrated dealers with Assessing Authorities, was completed by

³² Circular no. 1028 dated 27.07.2017.

³³ From 01.07.2017 to 15.08.2017 & 02.02.2018 to 08.02.2018.

February 2019, which itself reveals the delay in process of mapping. In the absence of demarcated jurisdiction over dealers, the day to day working of the Assessing Authorities was adversely affected.

The Department (September 2019) has accepted the audit observation.

- (ii) **Delay in adding the offices of Joint Commissioner (Corporate Circle) in the GSTN system:** JC(Corporate Circle) had been entrusted with the duty of assessment of top level dealers in the specific area. But these offices had been provided in master of GSTN system for this State by GSTN only in December 2018. This means that officers of these offices, did not had access to GSTN portal and were able to perform their duties only from December 2018.

The Department (September 2019) has accepted the audit observation.

- (iii) **Non stabilisation of GSTN and IT initiative by the Department:** GSTN is still developing applications and has not stabilised even after a lapse of 22 months³⁴ since the implementation of GST. Since, Uttar Pradesh is Model II State, GSTN was required to develop all the backend modules (assessment, refund, enforcement, etc). Initially GSTN had started providing data in the consolidated form and department had to develop the reports as per its requirement. Refund module is still not operational. Therefore, to further the implementation of GST, IT wing of the department had developed some systems and modules³⁵.

The Department accepted audit observation and stated (September 2019) that during the initial stages several changes were made by GST Council, resulting in delay in stabilising of modules, application and solution being developed, which is natural. Applications/solutions are being developed and made live as per the provisions of the Act and Rules. GST Administration is a dynamic process. From time to time MIS reports are made available on Bob web portal. Till now 51 MIS reports have been made available by GSTN. At present refund processing is not available online and HSN wise report of Tax payers has still not been provided by GSTN.

The reply of the Department confirms that GSTN has not stabilised.

- (iv) **Roles as per Statutory Duties:** In the initial stage the Department did not reply to the specific query as to whether the allotted roles suffice the requirements of the Departmental officers in performing their Statutory duties.

The Department in its final reply (September 2019) stated that implementation of different types of roles on GSTN portal may take time.

³⁴ Till April 2019.

³⁵ (i) Dealer Monitoring System: The application provides, via a single window with multiple dashboards, the Registration Status, Dealer Profile, Filer/Non filer status, Refund Status, and Recovery Status, allowing generation of Notices/orders. (ii) Online Mobile Management System: The system allows for monitoring the real time activity of Department's mobile units. Special Investigation Branch (SIB) management system is in place for close monitoring of SIB cases.

The Department in its reply did not indicate a timeframe within which necessary action will be taken in this regard.

Thus, due to delay in mapping of dealers with Assessing Authorities, non-creation of office of JC(Corporate) till December 2018 and not providing separate roles for different level of Assessing Authorities during the initial period of implementation of GST, it was not possible for CTD authorities to perform their day to day duties effectively.

3.9.10.2 Availability of Hardware and Network Security

As per the information made available (30 April 2019) by the Department, the Department has allotted 2,433 terminals to all available 2,433 officers³⁶, and 3,051 terminals amongst 4,064 subordinate staff³⁷ for performing their duties. All the terminals/computers connected with GSTN are connected via intranet i.e. department's private secure network. They are, however, also connected with an open Internet line which compromises the security of the network and leaves ample scope for threat/vulnerability to data.

In reply to specific query the Department stated that Terminals/ Computers are connected through UTM³⁸ firewall gateway device with required security policy and restrictions. The Department has also applied Access control list to restrict and filter unwanted data and traffic and issued guidelines for data security policy, taken steps to block external drives and developed Antivirus, DLP³⁹ solution and File encryption on such Terminals/Computers for ensuring data security.

In spite of above steps taken by the Department, connectivity of the Computers/terminals with GSTN secured lines and simultaneously with open internet lines makes the network vulnerable to attack.

The Department in its reply (September 2019) stated that this is related to policy matter and hence needs no comments.

The Department needs to keep in view the fact that the IT systems on which the GSTN database is accessed should be secure. The GSTN data being confidential and critical in nature, exposure of the IT systems handling GSTN data to insecure networks can pose serious risks to data integrity, confidentiality and availability.

3.9.11 Implementation of GST

Major issues/challenges faced by the Department in implementation of GST were in the areas of registration, migration, allocation of taxpayers, filing of returns, payment of tax, transitional credit, refunds, etc. These issues along with the changes in rules and regulations made since 1 July 2017 by the State Government were analysed in Audit, and are briefly discussed in the following paragraphs:

³⁶ All Executive Authorities and Assessing Authorities.

³⁷ Sr. Administrative Officer/Administrative Officer, *Pradhan Sahayak, Varisth Sahayak, Kanishth Lipik, Vyaktik Sahayak, Ashulipik, Sahayak Sankhyaki Adhikari, Lekhakar*, Computer Operator.

³⁸ Unified Threat Management.

³⁹ Data Loss Prevention.

3.9.11.1 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 the prescribed conditions. Further, taxpayers having turnover of more than the threshold limit of ₹ 20 lakh were required to be registered under GST.

(i) Migration of existing taxpayers of the Commercial Taxes Department

As per rule 24 of the Uttar Pradesh Goods and Services Tax Rules, 2017, every person, other than a person deducting tax at source or an Input Service Distributor, registered under an existing law and having a Permanent Account Number shall enrol on the common portal by validating his email address and mobile number, either directly or through a Facilitation Centre notified by the Commissioner. Upon enrolment, the said person shall be granted registration on a provisional basis.

Every person who has been granted a provisional registration shall submit an application electronically, duly signed or verified through electronic verification code, along with the information and documents specified in the said application, on the common portal within a period of three months. If found to be correct and complete, a certificate of registration shall be made available.

Every person registered under any of the existing laws, who is not liable to be registered under the Act may, within a period of thirty days from the appointed day, at his option, submit an application for the cancellation of registration granted to him and the proper officer shall, after conducting such enquiry as deemed fit, cancel the said registration.

As per the information provided by the Department, position of provisional registration and final registration of the existing registered dealers in Commercial Taxes Department is given in **Table-3.15**.

Table-3.15
Migration of dealers

Total Number of Existing VAT dealers	Total number of Provisional ID received from GSTN	Number of dealers primarily enrolled. (per cent with respect to Column-2)	Number of dealers in whose case Complete Enrolment was carried out (per cent with respect to Column-3)	Number of dealers who finally did not migrate
1	2	3	4	5
8,31,694	9,84,206	9,09,323 (92.39%)	7,23,978 (79.62%)	1,85,345 (20.38%)

Source: Information furnished by the Commercial Taxes Department

The provisional IDs received from the GSTN were more than the existing VAT dealers by 1,52,512 which indicates that this number included dealers from VAT as well as other subsumed taxes. Out of this aggregate, 92.39 per cent of the existing dealers completed the primary enrolment. Even from those who were primarily enrolled, only 79.62 per cent completed the migration process and were finally registered under GST. 20.38 per cent dealers did not migrate.

The Department was not able to provide any segregated figures of dealers who did not migrate due to various factors like

- (a) increase in threshold limit,
- (b) due to incomplete/incorrect information,
- (c) were not liable to be taxed or were wholly exempt from tax in GST,
- (d) were eligible for migration but did not apply for the same
- (e) those who did not migrate due to any other reasons.

The Department in its reply (September 2019) stated that segregated data for dealers who did not migrate is not available. Due to increase in threshold limit up to ₹ 20 lakhs, there was difference between pre GST period dealers and migrated dealers which was natural. Migration was also affected due to certain goods getting tax free in GST which were earlier taxable and vice versa. Tax base was increased due to efforts by the Department. It was stated that the total number of GST dealers till 31 August 2019 has increased to 14.88 lakhs.

The reply of the Department indicates that they are not able to fully reconcile the reasons for non-migration of 20.38% of existing tax-payers of the erstwhile Act to GST regime.

(ii) Allocation of taxpayers between the Centre and the State

(a) Existing registered taxpayers of the Commercial Taxes Department and the Central Excise Department:

As per the recommendation of the GST Council, 90 per cent of the existing registered taxpayers having turnover up to ₹ 1.5 crore, and 50% of the existing registered taxpayers having turnover more than ₹ 1.5 crore, were allotted to the State. Accordingly, State was allotted the jurisdiction over 6,31,521 existing registered taxpayers (April 2019) as detailed in **Table-3.16**.

Table-3.16
Allocation of taxpayers between the Centre and the State

	Existing registered taxpayers		Total
	Turnover above ₹ 1.5 crore	Turnover below ₹ 1.5 crore	
State	41,619	5,89,902	6,31,521
Centre	41,621	65,547	1,07,168
Total	83,240	6,55,449	7,38,689

Source: Information furnished by the Commercial Taxes Department updated till April 2019

(b) New taxpayers:

Jurisdiction over newly registered taxpayers is being allotted to the State and Centre by GST portal electronically during the submission of applications for registration by the taxpayers. The position of new registrations under the jurisdiction of the State as on 31 March 2018 is given in **Table 3.17**.

Table 3.17
New taxpayers

Application received up to 31 March 2018	Number of Applications rejected	Number of Applications approved	Number of Applications pending
6,05,924	18,068	5,58,312	29,544

Source: Information furnished by the Commercial Taxes Department updated till April 2019

Overall, 29,544 applications were pending at various stages of registration as on 31 March 2018.

3.9.11.2 Filing of returns and payment of tax

As per Rules 59 to 61 of the Uttar Pradesh GST Rules, 2017, every registered person, required to furnish the details of outward supplies of goods and services or both, shall furnish such details in form GSTR-1, details of inward supplies of goods and services or both in form GSTR-2 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. Further, taxpayers having turnover below ₹ 1.5 crore were to file GSTR-1 on quarterly basis.

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 with payment of tax by 20th of the succeeding month.

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

Information provided (April 2019) by the Department for the period July 2017 to March 2018 revealed that out of 8,07,861 dealers registered in the State, 5,72,002 (96.03 *per cent*) had filed their monthly return GSTR-3B against 5,95,631 taxpayers required to file GSTR-3B for the period from July 2017 to March 2018. The remaining 23,629 tax payers had not filed their GSTR-3B. Further, only 1,96,738 (92.70 *per cent*) composite dealers had filed their quarterly return GSTR-4 against 2,12,230 required to file their return. Thus, 15,492 composite dealers had not filed their GSTR-4.

The Department in its reply (September 2019) stated that their Headquarter is regularly issuing instructions to its subordinate officers to take action against non-filers of returns. It further stated that field officers are regularly monitoring non-filers, because of which return filing position is comparatively better in the State of Uttar Pradesh. They also stated that return filing of GSTR-3B and GSTR-4 was above the national average. The main reason stated by the Department for not attaining hundred *per cent* filing was that the dealers were still coming to terms with the new system of GST. The problems in user interface of GST portal also affected the *per cent* of return filing. The problems faced by dealers were being tackled after it was brought to the notice of the Department. To increase the return filing, the officers and employees of the Department pursued with the dealers personally to solve their problems. Action was being taken against non-filers in accordance with the provisions of the GST Acts and Rules.

The reply confirms that gaps exist in filing of returns by dealers, which needs to be addressed.

3.9.11.3 No system of Verification of Inter-State ITC on GSTN

A registered person shall be entitled to take credit of tax charged to him on supply of goods or services taken by him and used in the course of his business. That amount is credited to the electronic credit ledger of the registered person.

The ITC credit is availed on the basis of invoice issued by the supplier of goods/services. In case of inter-State transactions of the registered person with a supplier being registered in another State, access to such inter-State transactions is not available to the Assessing Authorities of the State. Independent verification of the ITC claimed by the registered person is essential to keep watch on correctness of ITC claims availed.

It is notable that the Assessing Authorities have no option but to rely upon the information furnished by the GST authorities of other States in response to the occasional requests made by Assessing Authorities for such ITC verification.

CTD has not framed any guidelines regarding regulating inter-State ITC verification by its officers in the absence of access to such inter-state transactions on the GSTN portal.

Thus, non-verification of inter-State ITC may result in possibility of incorrect claims of ITC, its utilisation against tax due and refund of incorrectly depicted unutilised input tax credit. Thus, loss to State exchequer cannot be ruled out.

The Department in its reply (September 2019) stated that GSTR-01 is being filed by the dealers. Though, GSTR-2 is postponed, the entries of GSTR-01 of the seller are auto-populated on GSTR-2A of the recipient, which are verified by the Assessing Authorities before allowing ITC.

The reply of the Department is not acceptable, as the information required to be added by dealers in GSTR-2 are essential for calculating the admissibility of correct ITC. Once, the admissibility of the ITC is verified only then correct refund can be made. Further, from the circular⁴⁰ dated 26 June 2019 it is clear that earlier GSTN had not given access to the State Authorities to view the records of other State dealers. Even, now, only from June 2019, senior officers⁴¹ will be provided roles to “View All India Records” by sub-State Admin, for the purpose of investigation of tax evasion cases, verifications and preliminary enquiries before registering new cases.

Recommendation:

Department may frame suitable methods and guidelines for regulating ITC verification.

3.9.12 Legacy Issues

Audit assessed the legacy issues regarding assessment, recovery of arrears and other related matters. Audit observations are summarised in the following sections:

⁴⁰ IT-Sub State Admn/2019-20/678/1920028/*Vaniya Kar* dated 26 June 2019.

⁴¹ Additional Commissioner, Gr.I and II, JC(Executive), JC(Tax Audit), JC(SIB), JC(Corporate Circle), Mobile Squad, SIB and Sector Officers.

3.9.12.1 Assessment of VAT cases

Dealers were registered under UPVAT Act, 2008 and CST Act, 1956 and other minor taxes i.e. luxury tax, entertainment tax, etc. prior to implementation of GST.

All the pre-GST tax related assessments and other matters are being handled online by the officers of the CTD on VYAS⁴² Central Software. According to a circular issued by the CTD⁴³ (April 2019) regarding settlement of cases pertaining to the year 2016-17, the last date for online identification of deemed cases for the year 2016-17 was 31 March 2019. Cases of dealers having turnover of less than ₹ 50 lakh were to be identified online for tax assessment on the basis of risk parameters. This was required to be completed by 31 May 2019. The last date for completing tax assessment of all other pending cases for the year 2016-17 has since been extended by the CTD to 31 October 2019. No instructions have been issued for completing the VAT assessments of the year 2017-18 (VAT period- April 2017 to June 2017).

The Department in its reply (September 2019) stated that as per provisions of VAT Act, the due date for completing the VAT Assessment cases for the assessment year 2017-18 is up to March 2021 but instructions have been issued to the Assessing Authorities to complete the Assessment cases of 2016-17 and 2017-18 in the year 2019-20.

3.9.12.2 No System of Monitoring of Declaration forms

As per Section 6 and Section 8 of Central Sales Tax Act (CST), 1956, a registered dealer may purchase goods from outside the State of Uttar Pradesh at concessional rate of tax of two *per cent* of such turnover by issuing to the selling dealer a declaration in form 'C'.

Further, as per Section 6A of Central Sales Tax Act (CST), 1956, a registered dealer may receive goods from any other place of business outside the State or from his agent or principal in other states without paying tax against issue of declaration in form 'F'.

Form 'C' and 'F' are obtained from the Department.

After the enactment of GST, provisions of CST Act are now applicable only on Non-GST goods for which forms can be obtained from the Department.

As both these declaration forms provide a huge amount of concessional tax/exemption from tax, it is necessary to ensure that these forms may not be used beyond the authorisation provided under the provisions of the Act.

Audit called for the information regarding stock of declaration forms lying with the Department, forms issued to the VAT dealers and balance of forms available with the VAT dealers after the date of implementation of GST. The Department stated that though these forms were still being issued to the dealers for pre-GST transactions, it was not possible for them to provide consolidated information regarding Forms 'C' and 'F' available with the VAT registered dealers after the post GST period.

⁴² Vanija Kar Automation System- There is time barring of Annual Assessment of VAT cases so presently assessment of pre-GST (VAT) cases and other related works such as recovery, refund etc. are being done on VYAS.

⁴³ No. CCT/Nirikshan Anubhag/(2019-20)/1920006/54/Vanija Kar dated 11 April 2019.

Scrutiny of two sectors in Allahabad⁴⁴ revealed that

- (i) no database was maintained for remaining forms with the VAT dealers.
- (ii) Assessing Authorities accepted that post GST dealers were not giving utilisation details to the sectors.
- (iii) The use of forms by the dealers is checked from the details declared by the dealer at the time of assessment only.

Thus, there is no verification of utilisation of forms by dealers at the level of the Assessing Authority.

It clearly indicates lack of any mechanism to verify the number of forms available with the dealers, or their utilisation. This, may result in incorrect utilisation of declaration forms which may further, result in a huge amount of incorrect concessional tax/ exemption from tax.

The Department in its reply (September 2019) stated that there is solid and old system of maintaining stock and database of Declaration forms. Details of form issued earlier are obtained while issuing new forms. Further, for dealers, within prescribed limit of turnover, there is a system for online issue of forms.

The reply of the Department is very general and does not provide specific details for example:

- (i) the Department does not have any database that, how many forms were available with the printing press at the end of June 2017, March 2018 and March 2019⁴⁵.
- (ii) the Department does not have any database that, how many forms were still available with the registered VAT dealers of Uttar Pradesh⁴⁶.
- (iii) the Department was not able to tell whether all the remaining forms available with the VAT dealers at the end of June 17 have been surrendered by the them⁴⁷.
- (iv) regarding misuse of forms, the Department had stated⁴⁸ that during Assessment details of forms are obtained and compared and ensured that these are not misused.

The reply is not acceptable as only on the basis of the details submitted by the dealer, non-misuse of the forms cannot be ensured. Verification of the forms is required before Assessment for the value and commodity it is issued, from the returns of dealers (recipient of forms) of other States.

- (v) the Department does not have any database that, number of forms utilised by the dealers for VAT period after June 2017⁴⁹.
- (vi) the Department does not have any database that, number of forms issued for GST period transaction for goods covered under new definition of goods under CST Act post GST⁵⁰.

⁴⁴ Sector 7 and 10, Allahabad.

⁴⁵ Departments letter dated 30.04.2019.

⁴⁶ Departments letter dated 30.04.2019.

⁴⁷ Departments letter dated 30.04.2019.

⁴⁸ Departments letter dated 30.04.2019.

⁴⁹ Departments letter dated 30.04.2019.

⁵⁰ Departments letter dated 30.04.2019.

The Department was not able to provide information on the above, it clearly vindicates the stand of Audit that the Department lacks mechanism for proper verification and monitoring of the forms.

3.9.13 Conclusion

To sum up, the 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 the model laws approved by GST Council, and rules governing primary enrolment of existing taxpayers, capacity building efforts, etc. Audit however, 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.

The GSTN has not been able to provide the complete IT solution, resulting in Assessing Authorities not being able to perform their duties effectively.

As GSTN had not provided CTD with access to the records of the inter-state dealers, the verification of inter-state ITC could not be verified online by the Department. There is possibility of claims of incorrect ITC, its utilisation against tax due and settlement of claims of refunds in cases of incorrect depiction of unutilised input credit and thus, loss to State exchequer cannot be ruled out.

Legacy issues like Assessments of pre-GST cases needed to be sorted out expeditiously in a time bound manner so that pending revenue of pre-GST regime may be collected expeditiously and officers may concentrate on GST work only.

Day to day working of the officers was hampered due to delayed mapping of dealers and incomplete solution from GSTN.

From the above it is evident that CTD was not yet fully prepared to implement GST in the state.