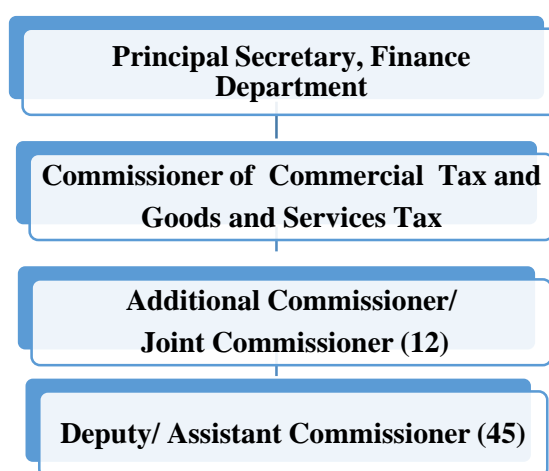


## CHAPTER II

### VALUE ADDED TAX, ENTRY TAX AND GOODS AND SERVICES TAX, *etc.*

#### 2.1 Tax Administration

Assessment and collection of Value Added Tax, Entry Tax, Central Sales Tax, Professional Tax, Entertainment Tax and Goods & Services Tax (implemented from 01 July 2017) are regulated under Odisha Value Added Tax (OVAT) Act, 2004, Odisha Entry Tax (OET) Act, 1999, Central Sales Tax (CST) Act, 1956, Professional Tax Act, Entertainment Tax, 2006 and Odisha Goods and Services Tax (OGST) Act, 2017 and Rules framed thereunder, respectively. The organisational setup for administration of Value Added Tax, Entry Tax and Goods & Services Tax is as under:



#### 2.2 Internal Audit

The Internal Audit Wing (IAW) of the Department which is responsible for evaluating the Internal Control measures in the department has been defunct since 2002-03. The Department had not taken steps to revive IAW despite this deficiency being pointed out in the Audit Reports (Revenue Sector) of the previous years. The Department stated (August 2018) that steps are being taken to revive the same.

#### 2.3 Audit Methodology and Results of Audit

The Government of Odisha's VATIS (Value Added Tax Information System) provides services for filing returns, apply for refund and payment to the registered dealers (VAT, CST and ET). The Commissioner of Commercial Taxes and various Ranges and Circles of Commercial Tax offices are connected to VATIS through dedicated network. The registered dealers access these services through a web based application.

Audit does not have access to the data dump in the VATIS database. The audit units under CCT are selected based on risk parameters such as number of assessments etc., based on consolidated data<sup>1</sup> provided by CCT on an annual basis. During the field audit of the selected audit unit, the audit party places a requisition for data on the returns of the dealers relating to different tax periods, deposit of tax, gross turnover of the dealers, Registration Certificate of dealers and any other information. The requested data is extracted from the VATIS database by the auditee by running an SQL query and the data is provided as Excel

<sup>1</sup> Off-line data containing number of assessments ,revenue generated etc., of all the Circles and Ranges

files. The information collected is used by the audit team to cross verify the selected Assessment Orders and applying audit checks.

During the year 2017-18, audit was conducted in 48 out of 58 units (83.76 per cent) of the CT wing of Finance Department. Revenue collected in the test checked 48 units was ₹ 15,119.95 crore, which constitutes 98.38 per cent of the total revenue collected in 58 units of ₹ 15,368.98 crore. Test check of assessment and other records showed underassessment of tax and other irregularities involving ₹ 83.26 crore in 215 cases. This related to OVAT, CST, Odisha Entry Tax, Odisha Entertainment Tax and Professional Tax which fall under the categories as given in **Table 2.1**.

**Table – 2.1**

**Category of Audit observations on revenue**

Sl. No.	Categories	No. of cases	Amount (₹ in crore)
<b>Sales Tax/ OVAT(including CST)</b>			
1	Under-assessment of tax	25	16.28
2	Irregular/ incorrect/ excess allowance of input tax credit	15	30.28
3	Other Irregularities	120	17.97
	<b>Total</b>	<b>160</b>	<b>64.53</b>
<b>Entry Tax</b>			
4	Under-assessment of tax	13	2.02
5	Irregular/ incorrect/ excess allowance of set off	2	0.49
6	Other Irregularities	34	15.84
	<b>Total</b>	<b>49</b>	<b>18.35</b>
<b>Professional Tax</b>			
7	Other Irregularities	6	0.38
	<b>Total</b>	<b>6</b>	<b>0.38</b>
	<b>Grand Total</b>	<b>215</b>	<b>83.26</b>

During 2017-18, the Department accepted audit findings regarding underassessment and other irregularities of ₹ 9.39 crore in 40 cases relating to current year and realised an amount of ₹ 1.32 crore in six cases pointed out in earlier years.

There are three broad categories of audit observations under Sales Tax/ VAT and CST Act and two broad categories of audit observations under OET Act, which are detailed below. There may be similar irregularities, errors/omissions in other Commercial Taxes units under the department but not covered in the test audit.

Department may, therefore, like to internally examine all the CT units with a view to ensure that the taxes are levied as per provisions of the Act and rules.

**2.4 Audit observations**

Audit test checked assessment records relating to OVAT, CST and OET Acts in CT Range/ Circle offices of the State and found several cases of non-observance of provisions of the Acts and Rules made thereunder. Audit also observed many cases of non-levy and short levy of tax and penalty as mentioned in the succeeding paragraphs in this chapter. Audit points out similar omissions by Assessing Authorities (AAs) year after year. Many of the irregularities, however, persisted and remained undetected till the next audit was conducted. This indicated that the internal control system in the Department was weak and ineffective.

Government needs to improve the internal control system including reviving the internal audit wing to prevent occurrence of such cases.

## Odisha Value Added Tax

### 2.5 Non-observance/ Non-compliance of provisions of the Act and Rules read with Government notifications

The OVAT Act, 2004, the OVAT Rules, 2005 made there under, OET Act, 1999, CST Act, 1956 and CST Rules, 1957 provide for:

- completion of audit assessments by the AAs on the basis of Audit Visit Reports (AVRs);
- levy of tax on the correctly assessed Taxable Turnover (TTO) of outputs after giving due credit/ adjustment of admissible Input Tax Credit (ITC);
- imposition of penalty at prescribed rates in addition to the tax assessed at the audit assessment stage by the AAs;
- demand and collection of tax/ interest/ penalty as per the prescribed procedures; and
- imposition of penalty for non-submission of Certified Annual Audited Accounts (CAAA) within the prescribed date.

The AAs, while finalising the audit assessments of the dealers did not observe some of the aforesaid provisions as mentioned in the following paragraphs:

#### 2.5.1 Short levy of tax due to application of incorrect tax rate

**The Assessing Authorities while finalising the assessment under the Odisha Value Added Tax Act, levied tax at lower rate than the taxable rate for goods not specified in Schedule B and Schedule C like Dolochar, biscuits, waffles and wafers. Misclassification of goods resulted in short levy of tax and penalty worth ₹ 64.07 lakh.**

As per Section 14 (1) of the OVAT Act, 2004, the tax payable by a dealer under the Act shall be levied on his taxable turnover in respect of different goods at the rates specified in Schedule B and Schedule C of the Act. Goods not specified under Part-I and II of Schedule B and Schedule C shall be taxable at the rate of 13.5 *per cent* under Part-III of Schedule B. Further, as per Section 42(5) of the Act, if any tax is assessed during the audit assessment, a penalty equal to twice the amount of tax assessed shall be imposed.

(A) Scrutiny of records in Joint Commissioner of Commercial Taxes (JCCT), Angul Range office (December 2017) revealed that a dealer was engaged in the manufacturing of sponge iron, MS ingot and billets. The dealer sold Dolochar<sup>2</sup> of ₹ 2.23 crore during the assessment period from 01 April 2012 to 31 March 2014 and paid tax of ₹ 11.15 lakh (5 *per cent*). Dolochar being an unspecified item ought to have been taxed at 13.5 *per cent*. The AA assessed (September 2016) the balance tax payable as *nil* on the basis of Audit Visit Report (AVR) which concluded that the dealer had discharged the due tax liability. Tax payable at the rate of 13.5 *per cent* on the unspecified item, however, worked out to ₹ 30.09 lakh. This resulted in short levy of tax of ₹ 18.94 lakh (₹ 30.09 lakh *minus* ₹ 11.15 lakh) due to misclassification of the goods. Besides, as per Section 42(5) of OVAT Act, 2004, penalty of ₹ 37.88 lakh was also leviable. It is pertinent to mention here that while disposing off an appeal of the dealer for an earlier tax period,<sup>3</sup> the Appellate

<sup>2</sup> Dolochar: Produced as a by-product of coal when coal undergoes manufacturing process

<sup>3</sup> April 2010 to December 2011

Authority<sup>4</sup> had upheld (November 2017) that Dolochar was taxable at the rate of 13.5 *per cent* as an unspecified item. AA, however, did not take this decision into account while assessing the dealer for the above assessment period.

In reply, Government stated (September 2018) that a demand of ₹ 87.95 lakh has been raised (July 2018) considering Dolochar as an unspecified item under OVAT Act.

**(B)** Biscuits, waffles and wafers are unspecified items and are taxable at the rate of 13.5 *per cent* under Part-III of Schedule B. Audit scrutinised records of Cuttack-I City Circle office in February 2018. It was noticed that a dealer was engaged in selling biscuits, waffles and wafers valued ₹ 32.50 lakh during 01 April 2013 to 31 March 2015. The AA while finalising the assessment under the OVAT Act (April 2016), levied tax at a rate of five *per cent* on ₹ 28.44 lakh out of the total turnover of ₹ 32.50 lakh. The goods were unspecified under the Schedules appended to the Act and therefore was taxable at the rate of 13.5 *per cent*. As such, the tax payable at the differential rate of 8.5 *per cent* (13.5 *minus* 5) works out to ₹ 2.42 lakh which was short levied. Besides, penalty of ₹ 4.83 lakh *i.e.* twice the amount of tax short levied was also leviable. Thus, there was a short levy of tax due to misclassification of goods.

In reply, Government stated (August 2018) that there was an underassessment of tax. Accordingly, the AA had re-opened the case and raised demand of ₹ 7.25 lakh (June 2018). Further development in this regard is awaited (February 2019).

## **2.5.2 Interest and penalty not levied for delayed payment of tax**

**Assessing Authorities did not detect delayed payment of admitted tax during scrutiny of returns. This led to non-levy of interest worth ₹ 73.73 lakh and penalty thereon.**

As per Section 34 of the OVAT Act, if a dealer, required to file return under the Act, fails without sufficient cause to pay the amount of tax due as per the return, such dealer shall be liable to pay interest in respect of the tax which he fails to pay according to the return at a rate of one *per cent* per month from the due date of filing return to the date of its payment or to the date of order of assessment, whichever is earlier. Further, if the dealer fails to pay the amount of tax due and interest payable thereon, the Commissioner may after giving the dealer a reasonable opportunity of being heard, direct him to pay a penalty at the rate of two *per cent* per month on the tax and interest so payable.

Audit test checked the tax payment details in VAT Information System (VATIS) with the self-assessed returns filed by 1,54,932 dealers in 35 Circles for the tax period 2016-17. It was observed that 3,333 dealers pertaining to 33 Circles<sup>5</sup> had paid tax of ₹ 115.33 crore admitted in their returns relating to 5,113 tax periods<sup>6</sup> with delays ranging from 01 to 508 days. AAs, however, neither issued notice to the dealers nor imposed interest of ₹ 73.73 lakh. Besides, AAs also did not initiate any action for levy of penalty prescribed under the Act.

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<sup>4</sup> Additional Commissioner of Commercial Taxes (Appeal), Odisha, Cuttack

<sup>5</sup> ACCT-Bhanjanagar, DCCT-Angul, Balangir, Balasore, Barbil, Bargarh, Bhadrak, Bhubaneswar-I, Bhubaneswar-II, Bhubaneswar-III, Bhubaneswar-IV, Cuttack-I (Central), Cuttack-I (City), Cuttack I (East), Cuttack-I (West), Cuttack-II, Dhenkanal, Ganjam-II, Jagatsinghpur, Jajpur, Jatni, Jharsuguda, Kalahandi, Keonjhar, Koraput, Mayurbhanj, Puri, Rayagada, Rourkela-I, Rourkela-II, Sambalpur-I, Sambalpur-II and Sundargarh

<sup>6</sup> Tax period denotes one quarter/ one calendar month during the year 2016-17

Thus, improper scrutiny of returns by AAs for delayed payment of tax led to non-levy of interest and penalty. Also, such delay in submission of returns could not be detected in VATIS.

In reply, Government stated (September 2018) that demand notices for ₹ 33.59 lakh have been issued in 728 cases and penalty, out of which ₹ 3.45 lakh have been realised. In the remaining cases, show-cause notices were issued.

### 2.5.3 Non-initiation of action against dealers for non-submission of Certified Annual Audited Accounts

**As many as 17,146 dealers with gross turnover exceeding rupees one crore for the year 2015-16 had not submitted the copies of Certified Annual Audited Accounts. Penalty of ₹ 5.01 crore as prescribed for delayed submission was, however, not levied.**

Under Section 65(1) of the OVAT Act, 2004 read with Notification<sup>7</sup> dated 11 February 2015 of the CCT, if in respect of any particular year the gross turnover (GTO) of a dealer exceeds rupees one crore, then such dealer shall get his accounts audited by an Accountant within a period of six months from the date of expiry of that year. The dealer should also furnish a true copy of the Certified Annual Audited Accounts (CAAA) duly certified by the Accountant along with the statement of closing stock held at the end of the year to the concerned AA by the end of the month following the expiry of the said period of six months.

Further, Section 65(2) of the Act provides that if a dealer, liable to get his account audited, fails to furnish a true copy of the CAAA accompanied with a statement showing the closing stock in trade held at the end of the year in the prescribed manner, the AA shall, after giving such dealer a reasonable opportunity of being heard, impose upon him a penalty of rupees one hundred per day of default subject to a maximum limit of rupees ten thousand. The CCT in an earlier circular<sup>8</sup> of September 2009, had also prescribed for maintenance of a register to monitor timely receipt of such accounts at the Circle level and to use it as a reference at the time of tax audit and assessment.

Audit scrutinised (between April 2017 and March 2018) records relating to receipt of CAAA in 32 circles<sup>9</sup>. It was observed that 17,146 dealers had GTO exceeding rupees one crore for the year 2015-16. Out of these, 5,014 dealers had not submitted the copies of CAAA for that year within the prescribed date. The delay in submission of CAAAs ranged between 181 to 496 days for which penalty amount of ₹ 5.01 crore was leviable.

The AAs did not monitor timely receipt of the CAAA through the prescribed registers, nor was any action initiated against the defaulting dealers by levying penalty. The objective of the CAAA being a reference document, at the time of tax audit and assessment of the dealers was also not achieved.

In reply, Government (August 2018) stated that most of the cases relating to imposition of penalty above ₹ 10,000 are pending before the Revisional Authorities<sup>10</sup> as the dealers are not willing to pay penalty amount in excess of ₹ 10,000 citing latest amendment. The fact,

<sup>7</sup> Notification No. III (III) 14/ 2012/ 2250/ CT, dated 11 February 2015

<sup>8</sup> Circular No. 18755, dated 22 September 2009

<sup>9</sup> Angul, Balangir, Balasore, Barbil, Bhadrak, Bhanjanagar, Bhubaneswar-I, Bhubaneswar-II, Bhubaneswar-III, Bhubaneswar-IV, Cuttack-I (Central), Cuttack-I (City), Cuttack-I (East), Cuttack-I (West), Cuttack-II, Dhenkanal, Ganjam-I, Ganjam-II, Jagatsinghpur, Jajpur, Jatni, Jharsuguda, Kalahandi, Keonjhar, Koraput, Mayurbhanj, Puri, Rourkela-I, Rourkela-II, Sambalpur-I, Sambalpur-II and Sundargarh

<sup>10</sup> Revisional Authority: Commissioner of Commercial Tax is empowered with revisional power under section 79 of OVAT Act

however, was that the cases pointed out in audit were not exceeding the maximum penalty amount of ₹ 10,000 and were calculated taking into account the amended provision (September 2015).

#### **2.5.4 Short levy of tax due to excess adjustment of Input Tax Credit against Central Sales Tax payable**

**During assessment under Odisha Value Added Tax Act, the Assessing Authority allowed Input Tax Credit (ITC) of ₹ 70.36 lakh to be adjusted against Central Sales Tax payable of ₹ 79.82 lakh. This resulted in excess allowance of Input Tax Credit and short levy of tax of ₹ 9.46 lakh and penalty of ₹ 18.92 lakh.**

As per Rule 7(3)(c) of CST (Odisha) Rules, 1957, where, in case of a dealer, registered under this Act and OVAT Act, 2004, the ITC under the OVAT Act in respect of a month or quarter, as the case may be, exceeds his tax liability under the said Act for that period, the excess ITC shall be set off against the tax payable under this Act and these Rules in the return for the same month or quarter, as the case may be. Further, Rule 12 (3) (g) of the CST (Odisha) Rules, penalty equal to twice the amount of tax so assessed shall be imposed.

Audit scrutinised the assessment records under JCCT, Sambalpur Range (November 2017) and observed that assessment of a dealer was completed (May 2016) under the OVAT Act for the tax period from 01 April 2013 to 31 March 2015. During assessment under OVAT Act, AA allowed ITC of ₹ 70.36 lakh to be adjusted against CST payable. It was, however, noticed that while finalising the assessment of the dealer under the CST Act for the same period, AA allowed adjustment of ITC of ₹ 79.82 lakh<sup>11</sup> against CST payable. This resulted in excess adjustment of ITC of ₹ 9.46 lakh (₹ 79.82 lakh *minus* ₹ 70.36 lakh) which consequently led to short levy of CST of ₹ 9.46 lakh. Besides, Penalty of ₹ 18.92 lakh was leviable as per the prescribed provisions.

Thus, the AA did not correlate the assessment under CST Act and OVAT Act to work out the tax amount which resulted in short levy of tax.

In reply, Government stated (September 2018) that the case has been re-assessed and the amount of ₹ 28,38,621 towards tax and penalty has been demanded from the dealer.

### **Entry Tax**

#### **2.6 Non-observance/ Non-compliance of the provisions of Odisha Entry Tax Act/ Rules read with Government notifications**

The OET Act, 1999 and Rules made there under read with Government notifications issued from time to time provide for levy of tax on the entry of scheduled goods into a local area for consumption, use or sale therein at the prescribed rates and imposition of penalty at prescribed rates for the tax levied in audit assessment.

It was observed that while finalising the assessments, the AAs did not observe the above provisions in some cases as mentioned in the following paragraphs.

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<sup>11</sup> (2013-14: ₹ 66.67 lakh *plus* ₹ 13.15 lakh for 2014-15)



### 2.6.1 Entry Tax on minor minerals not levied

**Assessing Authorities during assessment under Odisha Entry Tax Act exempted payment of tax on minor minerals treating those as non-scheduled goods. This resulted in non-levy of Entry tax of ₹ 18.84 lakh and penalty thereon.**

Section 3(1) of the OET Act 1999 provides that scheduled goods entered into a local area<sup>12</sup> for consumption, use or sale therein are taxable at the rates prescribed in the Schedule appended to the Act. As per Section 9 C (3) of the OET Act, a dealer is assessed for Entry Tax based on the materials available in the Advance Ruling Authority (AVR). The Advance Ruling Authority, Odisha Sales Tax Tribunal had clarified (February 2016) that minerals appearing at Sl. No. 59 of Part I of Schedule to the OET Act is a broad one covering minor minerals within its ambit. Therefore, minor minerals are taxable at the rate of one *per cent*.

Further, Section 9 C (5) of the Act provides for imposition of penalty equal to twice the amount of tax assessed in audit assessment.

As per Section 3 of Mines and Minerals (Development and Regulation) Act, 1957, minor minerals include ordinary clay, sand, morrum and chips, *etc.*

Audit scrutinised the assessment records in two Circles<sup>13</sup> and one Range<sup>14</sup> (between May 2017 and February 2018) relating to three registered dealers. The dealers had purchased chips, metals, sand, boulders, *etc.*, of ₹ 18.84 crore during the period from 2009-10 to 2014-15 from unregistered dealers of Odisha for utilisation in various works related to works contracts. The dealers did not pay entry tax of ₹ 18.84 lakh at the rate of one *per cent* on the purchases. The AAs finalised the assessment (August 2015 to October 2016) of the dealers and treated the goods as non-scheduled goods under the OET Act and exempted from payment of tax. The goods purchased were minor minerals and were classified under the entry “minerals” appearing at Sl. No. 59 of Part I of Schedule to the OET Act. Entry tax of ₹ 18.84 lakh should have been levied at the rate of one *per cent*. Thus, misclassification of goods in assessment of entry tax resulted in non-levy of entry tax. Besides, penalty of ₹ 37.68 lakh equal to twice the amount of tax short-assessed was also leviable.

In reply, Government stated (August 2018) that the cases have been re-opened by the concerned AAs and demands have been raised and ₹ 0.33 lakh has been realised.

## 2.7 Preparedness for transition to Goods and Services Tax (GST)

### 2.7.1 Introduction

Goods and Services Tax (GST) was implemented with effect from 01 July 2017. GST<sup>15</sup> is being levied on intra-State supply of goods and services (*except alcohol for human consumption and five petroleum products*<sup>16</sup>), separately but concurrently by the Union (CGST) and the States (SGST)/ Union Territories (UTGST). Further, Integrated GST (IGST) is being levied on inter-State supply of goods or services (including imports) and

<sup>12</sup> Local area: Local area means the area within the limits of any municipality constituted under the Odisha Municipal Act, 1950, Grama Panchayat constituted under the Odisha Grama Panchayats Act, 1964 and other local authority by whatever name called, constituted or continued any law for the time being in force

<sup>13</sup> DCCT, Cuttack-II and Keonjhar

<sup>14</sup> JCCT, Ganjam Range

<sup>15</sup> Central GST: CGST and State/ Union Territory GST: SGST/ UTGST

<sup>16</sup> Petroleum products : petrol, high speed diesel, crude oil, natural gas and aviation turbine fuel

the Central Government has exclusive powers to levy IGST. Prior to the implementation of GST, Value Added Tax (OVAT) was being levied on Intra State sale of goods in the series of sales by successive dealers as per Odisha VAT Act, 2004 and Central Sales Tax (CST) was being levied on sale of goods in course of inter-State trade or commerce as per CST Act, 1956.

The State Government was empowered to regulate the provisions of OVAT Act whereas provisions relating to GST are being regulated by Centre and State on the recommendation of Goods and Services Tax Council (GSTC) which was constituted with representation from Centre and all the States to recommend on the matters related to GST. The State Government notified (June 2017) the Odisha Goods and Services Tax (OGST) Act, 2017 and the Odisha Goods and Services Tax Rules, 2017, in lieu of various taxes<sup>17</sup> which were subsumed.

Goods and Services Tax Network (GSTN) was set up by the Government of India as a private company to provide IT services. It provides *Front-end IT services* to taxpayers namely registration, payment of tax and filing of returns. *Back-end IT services, i.e.,* registration, approval, taxpayer detail viewer, refund processing, MIS reports, *etc.* are also being provided by GSTN to Model-II<sup>18</sup> States. Odisha has opted for Model-II.

### **2.7.2 Audit objectives**

The audit was conducted with a view:

- to evaluate the preparedness of the State Government for transition to GST;
- to assess the implementation of the provisions regarding migration/ registration of taxpayers, disposal of claims of transitional credits and refunds; and
- to analyse the strategy of the State Government in handling the issues of legacy tax regime.

### **2.7.3 Audit criteria**

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

- Odisha GST Act, 2017;
- Odisha GST Rules, 2017;
- GST (Compensation to States) Act, 2017;
- Acts relating to subsumed taxes and Rules made thereunder;
  - i. Odisha VAT Act, 2004,
  - ii. Central Sales Tax Act, 1956 and
- Other guidelines issued by Central/ State Government and GST Council.

### **2.7.4 Scope of Audit**

The activities of the State Government/ Commercial Taxes Department pertaining to implementation of GST since 101<sup>st</sup> amendment to the Constitution of India upto 31 March 2018 were reviewed. Detailed information regarding 'Registration, Transitional Credit and Refunds' available in the database of GST was sought for from Commissioner, Commercial Taxes and GST (CCT and GST), Odisha for conducting audit. The required information was, however, not provided by the CCT and GST. In the absence of the detailed database, the audit was conducted mainly on the basis of the hard copies of reports of return,

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<sup>17</sup> Value Added Tax, Central Sales Tax, Entry Tax, Luxury Tax and Entertainment Tax

<sup>18</sup> Model-I States: only front-end services provided by GSTN, Model-II States: both Front-end and Back-end services provided by GSTN



reports of refund, non-filers etc., available with Circle Authorities. Besides, records/ information provided by the Commissioner, Commercial Taxes and GST, Odisha relating to migration of dealers, claims of transitional credits and refunds as well as the issues relating to legacy tax regime were examined.

### 2.7.5 Status of data sharing

With automation of the collection of GST having taken place, it is essential for Audit to have access to GST data to transition from sample checks to a comprehensive check of all transactions. Principal Accountant General (Economic and Revenue Sector Audit) has written to Commissioner of CT & GST, Odisha to provide access to GST data (April 2018 and June 2018). However, access to data is yet to be provided. A stand was taken by the State that a clarification had been sought from GST Council regarding guidelines and procedures to be followed in providing access to the data to maintain uniformity with other states.

The reply is not acceptable as Section 18 of the CAG's DPC Act, 1971 provides CAG with the mandate to access any record, accounts and other documents that are relevant to his inquiry. Further, as per Section 16 of the DPC Act, it shall be the duty of the CAG to audit all receipts which are payable into the Consolidated Fund of India and each State. Thus, not having access to the data pertaining to all GST transactions is violation of the provisions of CAG's DPC Act and has come in way of comprehensively auditing the GST receipts.

### 2.7.6 Trend of Revenue

The total receipts under GST regime *i.e.*, from July 2017 to March 2018 were ₹ 8,421.71 crore which comprised of GST (₹ 6,609.27 crore), taxes on non-GST goods (₹ 1,812.44 crore) and advance apportionment of integrated GST ₹ 482.00 crore against ₹ 10,881.55 crore under pre-GST taxes during the same period of the previous year 2016-17.

Actual receipts during 2017-18 under pre-GST taxes<sup>19</sup> and GST including compensation were as follows:

Year	Budget Estimate (BE)	Receipts under pre-GST taxes and Taxes on Non-GST goods	Receipts under GST			Total receipts under pre-GST taxes and GST	Increase in Per cent	Compensation received	Total receipt
			SGST	Advance apportionment of integrated GST	Total				
2013-14	12,595.00	12,342.01	-			12,342.01		-	12,342.01
2014-15	14,175.28	13,527.60	-			13,527.60	9.61	-	13,527.60
2015-16	14,355.00	14,759.98	-			14,759.98	9.11	-	14,759.98
2016-17	15,486.00	15,162.86	-			15,162.86	2.73		15,162.86
2017-18*	22,956.00 <sup>20</sup>	5,040.32				5,040.32	3.71	2,264.00	15,726.03
2017-18#		1,812.44	6,127.27	482.00	6,609.27	8,421.71			

Source: Finance Accounts and information furnished by Commissioner of Commercial Taxes and GST

\* April to June 2017, # July 2017 to March 2018

<sup>19</sup> Value Added Tax, Central Sales Tax, Entry Tax, Luxury Tax and Entertainment Tax

<sup>20</sup> Budget estimate (BE) for pre-GST taxes ₹ 17,006 crore and SGST ₹ 5,950 crore

There was an overall increase of 3.71 *per cent* in pre-GST and GST revenue during 2017-18 as compared to pre-GST revenue of 2016-17 as noted above.

### **2.7.7 Legal/ statutory preparedness**

The State Government notified (June 2017) the Odisha Goods and Services Tax Act, 2017 and the Odisha Goods and Services Tax Rules, 2017. E-way bill system was implemented in the State on inter-State transactions with effect from 01 April 2018 and on intra-State transactions with effect from 01 June 2018. Further, necessary notifications were issued by the State Government from time to time for facilitating implementation of GST in the State. The State Government/ Commercial Taxes Department had issued 150 notifications/ circulars/ orders till September 2018 to facilitate implementation of GST in the State.

Since Odisha had opted model-II for implementation of GST, back-end applications like registration, return scrutiny, audit, assessment, appeal, enforcement, MIS reports, etc. for GST administration were being developed by GSTN. As per information provided (March 2019) by the Department, all these modules have been developed by GSTN partly. For access to the back-end applications, leased line connectivity has been provided by GSTN from their Data Centre to Odisha State Data Centre. All the field offices are connected to the Odisha State Data Centre through State-wide Multi-Protocol Level Switching (MPLS) Network.

### **2.7.8 Implementation of GST**

#### **2.7.8.1 Filing of returns**

As per Rule 59 to 61 of Odisha GST Rules, 2017, taxpayers other than composition taxpayers<sup>21</sup> were required to furnish details of outward supplies of goods or services in Form GSTR-1<sup>22</sup>, details of inward supplies of goods or services in Form GSTR-2<sup>23</sup> and a return in Form GSTR-3 (electronically generated by system on the basis of information furnished through GSTR-1 and GSTR-2) monthly, whereas composition taxpayers were required to file a quarterly return GSTR-4.

The prescribed process of return filing has been amended to address the teething troubles in initial period of the new tax regime. Therefore, filing of GSTR-2 and GSTR-3 was postponed and all taxpayers were mandated to submit a simple monthly return in Form GSTR-3B<sup>24</sup> with payment of tax by 20<sup>th</sup> of the succeeding month. Further, taxpayers having turnover below ₹ 1.5 crore were to file GSTR-1 on quarterly basis.

#### **2.7.8.2 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. Final certificate of registration was to be granted on completion of prescribed conditions.

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<sup>21</sup> As per section 10 of the GST Act, a registered person whose aggregate turnover in the preceding financial year does not exceed ₹ 1 crore may opt to pay tax under composition scheme

<sup>22</sup> GSTR-1: (a) Invoice wise details of all inter-State and intra-State supplies made to the registered persons and inter-State supplies with invoice value more than ₹ 2.50 lakh made to the unregistered persons, (b) consolidated details of all intra-State supplies made to unregistered persons and State wise inter-State supplies with invoice value up to ₹ 2.50 lakh made to the unregistered persons and (c) debit and credit notes, if any, issued during the month

<sup>23</sup> GSTR-2: (a) Invoice wise details of all inter-State and intra-State supplies received from the registered persons or unregistered persons, (b) Import of goods and services made and (c) Debit and credit notes, if any, received from supplier

<sup>24</sup> GSTR-3B: A monthly return required to be filed by all taxpayers other than composition taxpayers

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

### 2.7.8.3 Migration of existing taxpayers

As per Rule 24 of the OGST Rules, 2017, every person registered under any of the existing laws and having a valid PAN 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. The final certificate of registration shall be made available to the registered person electronically, if the information and the particulars furnished in the application are found to be correct and complete.

As per information provided (January 2019) by the Department, the position of provisional registration and final registration of existing registered dealers in the Commercial Taxes Department were as given below:

Sl. No.	Details	Number	Percentage
1	Total number of existing registered dealers as on 30 June 2017 under pre-GST laws having valid PAN and provided with provisional Id	1,83,442	-
2	Provisional Registration		
	(a) No. of dealers registered provisionally	1,80,291	98.28
	(b) No. of dealers did not enrol	3,151	1.72
3	Final Registration		
	(a) No. of dealers issued final registration certificate	1,25,996	69.88
	(b) remaining dealers provisionally registered but not allotted final registration certificate due to non-completion of registration process	54,295	30.12

Source: Information furnished by the Commissioner of Commercial Taxes and GST

The above table shows that 98.28 *per cent* of the existing dealers completed the preliminary enrolment. Out of the dealers enrolled, 69.88 *per cent* completed the migration process and were finally registered under GST.

In respect of the remaining 54,295 dealers, who were provisionally registered but not allotted final registration certificate, the Commissioner stated (January 2019) that 13,136 dealers were issued with GST Identification Number (GSTIN) through fresh registration or migration of the registration granted under Service Tax and Central Excise. The remaining 41,159 dealers (54,295 *minus* 13,136) were assumed to be dealing in non-GST goods such as liquor, exclusive petroleum products and GST exempted goods such as paddy, rice, pulses, wheat and false flour (non-branded), hence, did not migrate to GST. Similarly, some dealers having turnover below the threshold limit of ₹ 20 lakh preferred not to migrate and the remaining dealers who did not migrate to GST were assumed to be non-serious dealers and hence were not pursued.

Department, however, did not provide the data that supported the above assumptions. Audit, therefore, could not provide an assurance that all dealers due for registration under GST were actually registered.

#### Recommendation

**The Department may need to analyse case-wise details in respect of 41,159 dealers who did not migrate to GST to ensure that no eligible tax payers are left out of GST.**

#### **2.7.8.4 Allocation of taxpayers between Centre and State**

##### **(A) Existing registered taxpayers of Commercial Taxes and Central Excise Departments:**

As per recommendation of GST Council, 90 per cent of existing registered taxpayers having turnover up to ₹ 1.5 crore and 50 per cent of existing registered taxpayers having turnover of more than ₹ 1.5 crore were to be allotted to the State. Accordingly, 1,37,310 dealers<sup>25</sup> migrated to GST in the State were allocated between the Central Tax Authorities and State Tax Authorities (in two phases, 1,31,791 in November 2017 and 5,519 in May 2018). The details are as under.

	Centre	State	Total
Dealers having turnover > ₹ 1.5 crore (50:50 ratio)	8,576	8,590	17,166
Dealers having turnover < ₹ 1.5 crore (10:90 ratio)	12,064	1,08,080	1,20,144
<b>Total</b>	<b>20,640</b>	<b>1,16,670</b>	<b>1,37,310</b>

Source: Portal of the website of the Commercial Taxes Department

Thus, out of total 1,37,310 dealers (taxpayers) allocated up to 26 May 2018, the State was allotted the jurisdiction over 1,16,670 taxpayers.

##### **(B) New taxpayers:**

Jurisdiction of newly registered taxpayers is being allotted to the State and Centre by GST portal electronically during submission of application for registration by the taxpayers. Position of new registration under the jurisdiction of State as on 19 November 2018 is as under:

Taxpayers under Regular Scheme	Taxpayers under Composition <sup>26</sup> Scheme	Total
45,968	8,111	54,079

Source: Data furnished by the Commissioner of Commercial Taxes and GST

#### **2.7.8.5 Transitional credit**

As per Rule 117 of Odisha GST Rule read with Section 140 of Odisha GST Act, the registered taxpayers were entitled to take credit of amount of input tax credit carried forward in the VAT return filed under the pre-GST law and credit of un-availed input tax credit in respect of capital goods not carried forward in the returns. Further, the taxpayers were also entitled to take credit of VAT in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on which credit was not claimed in earlier law and the taxpayer is eligible for input tax credit on such inputs under the OGST Act. The registered persons were required to apply in prescribed form TRAN-1. The taxpayers, however, shall not be allowed to take credit where all the returns required under the pre-GST law for the period of six months immediately preceding the “appointed date”<sup>27</sup> were not furnished.

Department stated (August 2018 and January 2019) that 6,212 applications were received towards claim of transitional credit worth ₹ 275.88 crore. Out of the same, in 5,823 cases, the taxpayers had filed returns under the existing laws for last six months prior to the appointed date and in 389 cases, returns for last six months were not filed by the taxpayers.

<sup>25</sup> Dealers migrated under State Tax Authorities: 1,25,996 and under Central Tax Authorities :11,314

<sup>26</sup> As per Section 10 of the GST Act, a registered person whose aggregate turnover in the preceding financial year does not exceed ₹ 1 crore may opt to pay tax under composition scheme

<sup>27</sup> The term ‘appointed date’ is 01 July 2017 i.e. the date from which the GST was introduced

Out of 5,823 cases, the amount of claim in 453 cases, however, matched with the balances carried forward in the last returns and in 3,510 cases, the amount claimed was in excess of the balances carried forward. The taxpayers who have claimed excess credit without valid reasons have been asked by the Department to either reverse the excess credit amount or to deposit the said amount under intimation to the concerned Circles. The remaining 1,860 taxpayers<sup>28</sup> had claimed transitional SGST credit less than the credit available in the VAT return of June 2017 and verification of such cases were not taken up.

During local audit of 11<sup>29</sup> out of total 45 Circles taken up during April to October 2018, Audit analysed the status of verification of claims of transitional credit and examined the records relating to the cases disposed off. It was observed that in eight Circles, 339 taxpayers filed transitional ITC claims amounting to ₹ 42.24 crore. Out of these, 251 cases involving ₹ 39.71 crore were verified. Thus, 88 cases (26 per cent) remained un-verified in these eight Circles. Three Circles<sup>30</sup> stated that no data relating to transitional ITC claim was available with them.

### Recommendation

**The Department may take effective steps for early disposal of cases which are yet to be scrutinised.**

#### 2.7.8.6 Refund under GST

As per Section 54 of the OGST Act, 2017, any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed.

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

As per the information furnished (January 2019) by the Commissioner of Commercial Taxes and GST, Odisha, 2,436 applications for refund of ₹ 619.69 crore<sup>31</sup> were received during the period from July 2017 to November 2018. Out of these, 2,198 applications involving refund of ₹ 562.87 crore have been disposed off. The remaining 238 applications involving refund claims for ₹ 56.82 crore were pending for disposal. The details are given below:

#### Status of disposal of GST refunds

Sl. No.	Details	No. of applications	Amount (₹ in crore)
1	Claims received	2,436	619.69
2	Claims allowed	1,661	556.05
3	Claims disallowed	537	6.84
4	Total claims disposed off	2,198	562.87
5	Claims pending for disposal	238	56.82

Source: Commissioner of Commercial Taxes and GST, Odisha

<sup>28</sup> 5,823 - (3,510 + 453) = 1,860

<sup>29</sup> Bhubaneswar-I, Boudh, Cuttack-I (East), Deogarh, Dhenkanal, Jajpur, Jatni, Kendrapara, Keonjhar, Phulbani and Sonepur  
Bhubaneswar-I, Boudh and Phulbani

<sup>31</sup> SGST: 948 applications (₹ 244.45 crore), CGST: 985 applications (₹ 47.19 crore), IGST: 388 applications (₹ 112.72 crore) and Cess: 115 applications (₹ 215.34 crore)

During local audit in 11 out of total 45 Circles taken up during April to October 2018, Audit analysed status of verification of refund claims and examined the records relating to cases disposed off. It was observed that out of 15 cases of refund claims involving ₹ 36.91 crore received in four Circles, two claims involving ₹ 0.15 crore had been disposed of by one Circle and 13 claims involving ₹ 36.76 crore had not been disposed of by the remaining three Circles. No refund claims was received in seven Circles.

### **2.7.9 Legacy issues**

GST is a revolutionary step which is set to replace a significant part of the State tax system. It will involve the entire manpower of the Department, hence, it is necessary that proper steps are taken so as to resolve the pending issues of the legacy system and effectively implement the new system.

Commissioner of Commercial Taxes and GST issued (March 2018) a work plan and instructed all the field offices for clearance of legacy issues like processing of refund, tax audit, assessment, recovery of arrears, etc. under the subsumed Acts. Further, the Odisha Finance Service cadre has also been restructured and additional posts have been created at higher management level in statutory functions like appeal, revision, etc. pertaining to legacy issues.

#### **2.7.9.1 Assessment pending under the subsumed Acts**

As per the provisions of the OVAT Act, 2005, every dealer shall be deemed to have been assessed to tax based on the return filed by him if no assessment is made within a period of seven years from the date of filing the return. Assessment under the Central Sales Tax (CST) Act are to be completed within four years.

As per the information furnished (August 2018) by the Commissioner, 3,191 assessments under the subsumed Acts were pending at the end of the year 2017-18. The details are given below:

Head of revenue	Opening balance	Addition during 2017-18	Total	Assessments finalised during 2017-18	Balance at the end of the year	Percentage of disposal
0040- Taxes on Sales, Trade, etc. (which includes OVAT, CST).	5,202	2,285	7,487	4,370	3,117	58.37
0042- Taxes on Goods and Passengers (which includes OET).	653	790	1,443	1,369	74	94.87
<b>Total</b>	<b>5,855</b>	<b>3,075</b>	<b>8,930</b>	<b>5,739</b>	<b>3,191</b>	<b>-</b>

**Source: Commissioner of Commercial Taxes and GST**

It can be seen from the above table that though the disposal of assessments under the Odisha Entry Tax Act was reasonable, the disposal under the OVAT and CST Acts were slow.

This indicated that the Department had not taken effective steps to clear the legacy issues till the issue of work plan in March 2018.

The Commissioner of Commercial Taxes and GST, Odisha stated (January 2019) that assessment of 1,962 cases under OVAT, CST and OET Acts have been taken up as of 30 November 2018. He further stated that after introduction of GST from 01 July 2017, the entire Commercial Tax administration was involved in handholding of stakeholders,



conducting GST trainings and awareness campaigns. The officers are working on eliminating the legacy issues including assessments under the erstwhile Acts after getting prepared for implementation of GST.

#### Recommendation

**The Department needs to finalise the assessments timely under the subsumed Acts in order to focus on the administration of GST only.**

#### 2.7.9.2 Recovery of arrears

Tax arrears (VAT, CST and Entry Tax) of ₹ 9,689.46 crore as on 01 April 2017 increased by ₹ 243.81 crore to ₹ 9,933.27 crore as on 31 March 2018. Out of these, ₹ 5,700.53 crore outstanding under three categories<sup>32</sup> was pending with the Department. Rest were pending in courts of law or amount was to be written off.

The Commissioner of Commercial Taxes and GST replied (January 2019) that tax recovery proceedings were being monitored by him every month.

#### Recommendation

**The Department needs to expedite the cases stayed by the Departmental authorities and vigorously pursue the cases covered under show cause notices and tax recovery proceedings for early recovery of arrears.**

#### 2.7.9.3 Refunds relating to pre-GST period

As per Section 142 (3) of GST Act, 2017, every claim for refund filed by any person before, on or after the appointed day for refund of any amount of input tax credit, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be refunded to him in cash in accordance with the provisions of the said law:

The pending refund cases under the pre-GST taxes as of 31 March 2018 were as follows:

Sl. No.	Particulars	Sales Tax/ VAT/ Entry Tax	
		No. of cases	Amount (₹ in crore)
1	Claims outstanding at the beginning of 2017-18	865	118.69
2	Claims received during 2017-18	1,222	312.50
	<b>Total</b>	<b>2,087</b>	<b>431.19</b>
3	Refunds made during the year		
	(a) Refunds granted	1,061	133.98
	(b) Refunds rejected/ adjusted	439	131.75
	<b>Total (a+ b)</b>	<b>1,500</b>	<b>265.73</b>
4	Balance outstanding at the end of the year	587	165.46

Source: Commissioner of Commercial Taxes and GST

#### Recommendation

**The Department may take effective steps for clearance of all the pending refund cases under the subsumed Acts to focus on the GST administration only.**

<sup>32</sup> (i) Amount covered under show cause notices: ₹ 2,348.13 crore, (ii) Amount stayed by Departmental authorities: ₹ 2,697.27 crore and (iii) Amount covered under tax recovery proceedings: ₹ 658.13 crore

### **2.7.10 Conclusion**

The Department completed the migration of 69.88 *per cent* of the existing taxpayers to GST and the reasons for non-migration of the remaining 30.12 *per cent* of existing taxpayers were not analysed. Verification of claims of transitional credits were not completed. There were arrears in assessments and arrears in collection of tax demanded under the subsumed Acts. Disposal of claims of refunds under the subsumed Acts were also in arrears.