

**Report of the
Comptroller and Auditor General of India**

on

Revenue Sector

for the year ended 31 March 2015

Government of Jammu and Kashmir
Report No. 3 of the year 2016

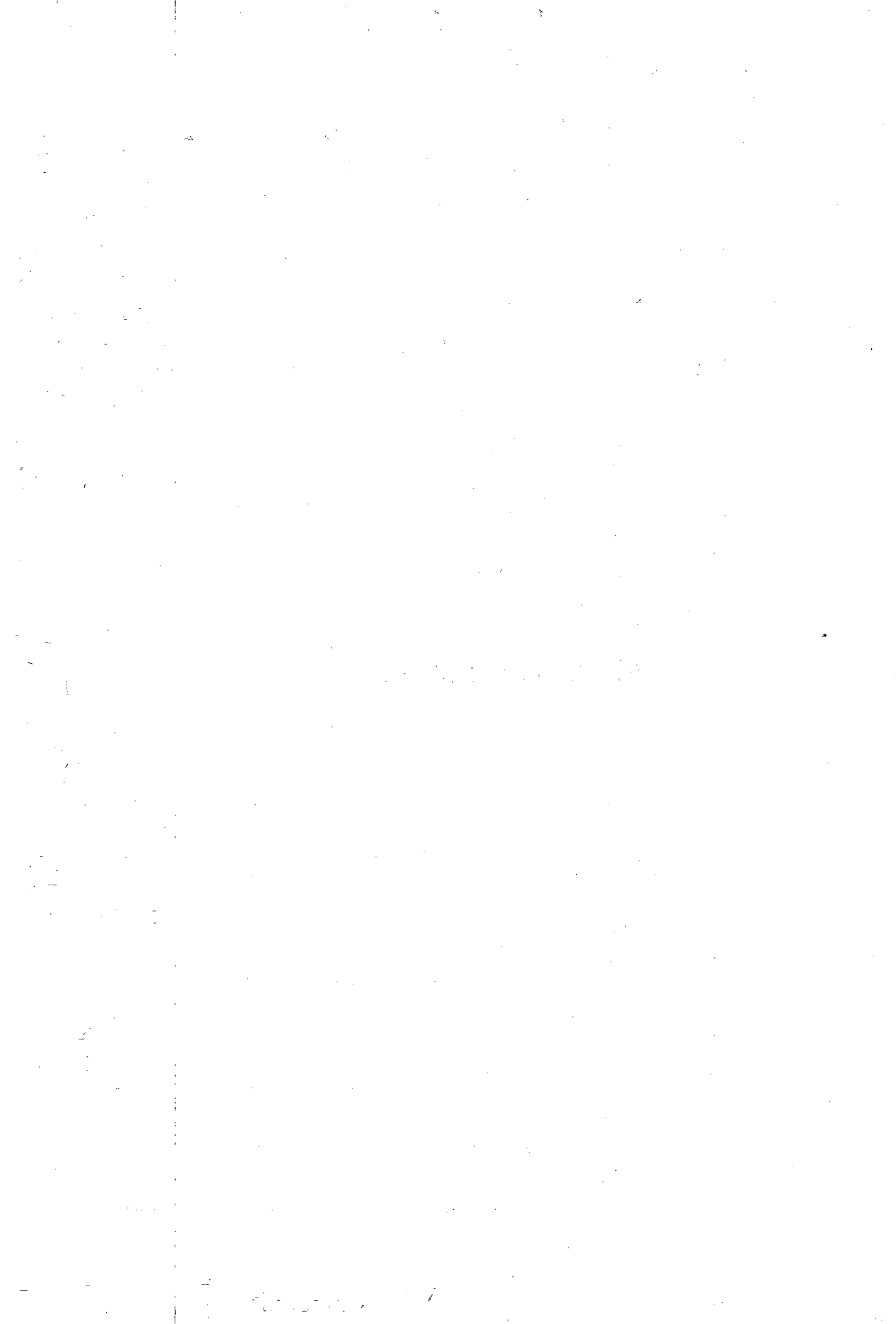


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PREFACE

This Report of the Comptroller and Auditor General of India for the year ended 31 March 2015 has been prepared for submission to the Governor of Jammu and Kashmir under article 151 of the Constitution of India.

The Revenue sector of the State Government is audited as per provisions of the Comptroller and Auditor General's (Duties, Power and Conditions of Service) Act, 1971.

The Report contains significant findings of audit of Receipts and Expenditure of major Revenue earning Departments under Revenue Sector conducted under the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971.

The instances mentioned in this Report are those, which came to notice in the course of test audit done during the period 2014-15 as well as those which came to notice in earlier years, but could not be reported in the previous Audit Reports; instances relating to the period subsequent to 2014-15 have also been included, wherever necessary.

The audit has been conducted in conformity with the Regulations on Audit and Accounts, 2007 and Auditing Standards issued by the Comptroller and Auditor General of India.

Overview

OVERVIEW

This Report comprises of one performance Audit on ‘**Systems of Assessments under VAT**’, one follow-up Audit on Levy and Collection of Electricity Duty and Fee, and three paragraphs relating to non-levy of penalty and short levy of tax due to suppression of stocks, concealment of purchases etc; involving revenue implication of ₹93.66 crore. Some of the major findings are mentioned below:

Revenue Sector

General

The total revenue receipts of the State Government for the year 2014-15 were ₹28938.59 crore as compared to ₹27127.98 crore during the year 2013-14 i.e. an increase of ₹1810.61 crore. Out of this, 29 *per cent* of the total receipt was raised through tax revenue (₹6333.95 crore) and non-tax revenue (₹1978.05 crore) and the balance 71 *per cent* was received from the Government of India as State’s share of divisible Union taxes and duties (₹4477.23 crore) and Grants-in-aid (₹16149.36 crore).

(Paragraph: 1.1)

Test-check of the records of 55 units of Sales tax/ Value Added Tax, State Excise, Transport, conducted during the year 2014-15 showed under assessment/ short levy/ loss of revenue aggregating ₹175.12 crore in 1218 cases. During the year, the Departments concerned accepted under assessment and other deficiencies of ₹13.31 crore involved in 125 cases, which were pointed out in audit during 2014-15 and earlier years. The Departments collected ₹50.10 lakh¹ in 90 cases pertaining to audit findings of previous years as well as of the year 2014-15. A performance Audit on System of assessment under VAT and follow up audit on Levy and Collection of Electricity Duty and Fee was also undertaken during the year.

(Paragraphs: 1.10 and 1.11)

Performance Audit

A Performance Audit on “**System of Assessments under VAT**” showed the following:

- The Department had not maintained any data base on prescribed criteria for

¹ 2014-15: ₹0.09 lakh (Two cases) and prior to 2014-15: ₹50.01 lakh (88 cases)

identification and selection of dealers for tax audit and audit assessments. The percentage of cases selected for tax audit ranged between 0.03 and one during 2009-10 to 2013-14.

(Paragraphs: 2.3.6.1 and 2.3.6.4)

- The Commissioner Commercial Taxes (CCT) selected cases for audit assessment on random basis without applying prescribed criteria which resulted in huge number of cases falling under escaping audit assessments. The Assessing Authorities (AAs) also selected cases for audit assessment in an arbitrary manner.

(Paragraph: 2.3.6.4)

- Out of 4155 cases authorized for audit assessment by CCT during 2011-12 to 2013-14 nil demands were raised in 2668 (64 *per cent*) cases while out of 2251 cases selected for audit assessment by AAs nil demands were raised in 1617 cases (72 *per cent*) in test-checked circles.

(Paragraph: 2.3.6.4 (I))

- Incorrect assessments by AAs led to inadmissible allowances of Input Tax Credit, misclassification/ concealment of turnover, grant of incorrect exemption resulting in tax evasion of ₹88.66 crore in 73 cases.

(Paragraphs: 2.3.6.4 (III to X))

- Arrears of revenue pending realization with Deputy Commissioner (Recovery) were increased from ₹989.46 crore in 2010-11 to ₹1078.31 crore in March 2015. The realisation of arrears was between one *per cent* and seven *per cent* of the arrears during 2010-11 to 2014-15, which shows that sincere efforts were not made by the department to recover the arrears.

(Paragraph: 2.3.7)

Audit of Transactions

Follow up Audit of Levy and Collection of Electricity Duty and Fee

A Performance Audit (PA) of the system of Levy and Collection of Electricity Duty and Fee in the Power Development Department for the period 2005-06 to 2009-10 had featured in the Report of the CAG of India (Government of Jammu and Kashmir) for the year ended 31 March 2010 under Audit paragraph 4.2. The Performance Audit contained four recommendations to address the audit findings, which were agreed to by the Power Development Department. The findings

and the recommendations had not been discussed by the Committee on Public Accounts (November 2015). The Government and Department had not initiated any corrective measures to address the deficiencies pointed out in the Audit Report. The progress of recovery of ED was insignificant as out of a recoverable amount of ₹269.94 crore pointed out previously, an amount of ₹265.50 crore was still pending for recovery (July 2015).

(Paragraph: 2.4)

Suppression of stocks, concealment of purchases including interstate purchases and turnover were not detected by the AAs at the time of assessment of dealers, which resulted in short levy of tax of ₹21.05 lakh.

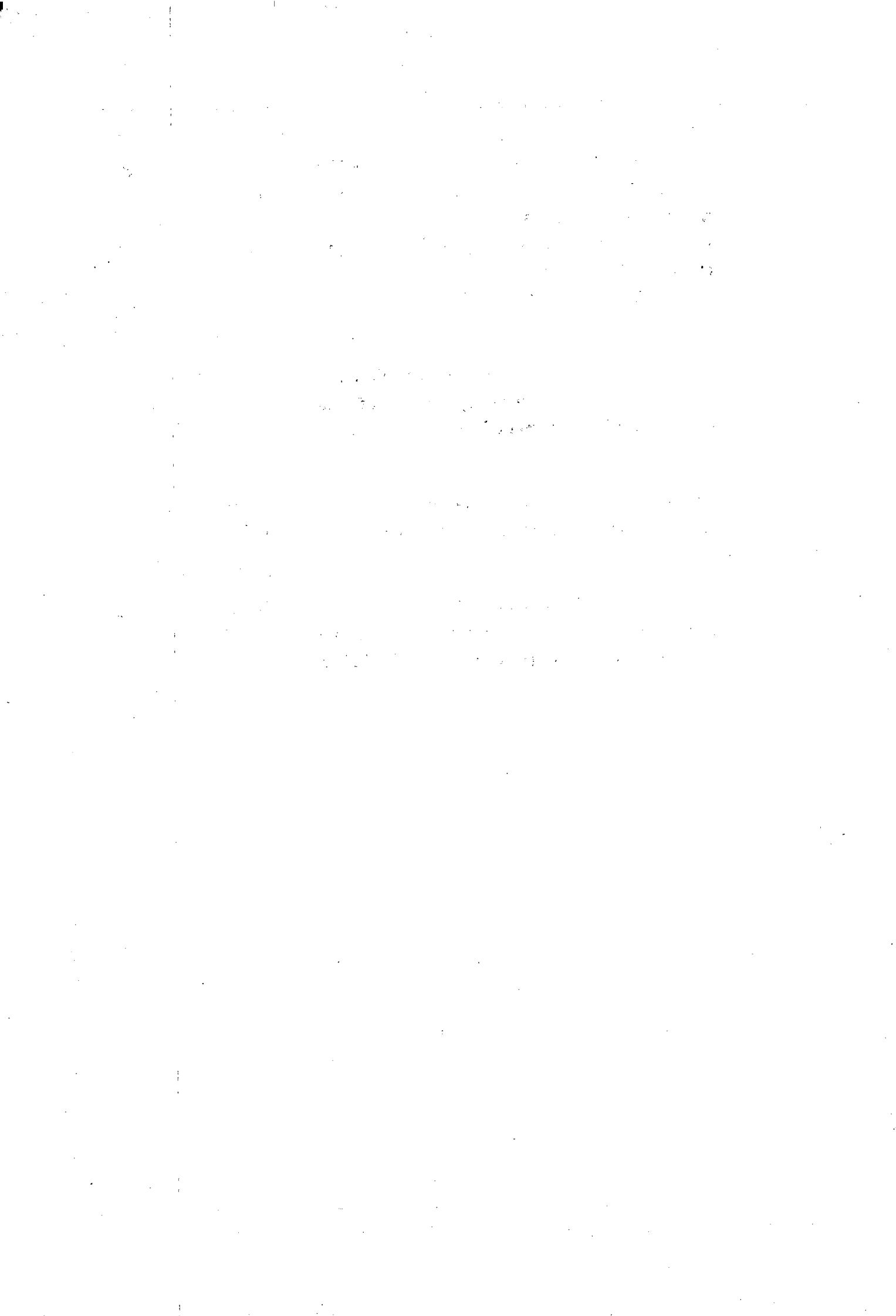
(Paragraph: 2.5)

Assessing Authority did not impose penalty for concealment of turnover by three dealers, which resulted in non-levy of penalty of ₹27.57 lakh.

(Paragraph: 2.6)

Assessing Authority Commercial Taxes Circle 'L' Jammu failed to detect concealment of interstate purchases by the dealer during the year 2008-09, which resulted in short levy of tax to the extent of ₹27.27 lakh.

(Paragraph: 2.7)



Chapter-1
General

CHAPTER - 1

GENERAL

1.1 Trend of revenue receipts

1.1.1 The tax and non-tax revenue raised by the Government of Jammu and Kashmir during the year 2014-15, the State's share of net proceeds of divisible Union taxes and duties assigned to the State and Grant-in-aid received from the Government of India during the year and the corresponding figures for the preceding four years are mentioned in **Table-1.1**.

Table - 1.1
Trend of revenue receipts

(₹ in crore)

Sl. No.	Particulars	2010-11	2011-12	2012-13	2013-14	2014-15
1.	Revenue raised by the State Government					
	• Tax revenue	3482.58	4745.49	5832.43	6272.74	6333.95
	• Non-tax revenue	1093.11	2001.64	2160.19	2869.69	1978.05
	Total	4575.69	6747.13	7992.62	9142.43	8312.00
2.	Receipts from the Government of India					
	• Share of net proceeds of divisible Union taxes and duties	3066.98	3495.11	3870.37	4142.10	4477.23
	• Grants-in-aid	14590.98	14540.72	14353.87	13843.45	16149.36
	Total	17657.96	18035.83	18224.24	17985.55	20626.59
3.	Total revenue receipts of the State Government (1 and 2)	22233.65	24782.96	26216.86	27127.98	28938.59
4.	Percentage of 1 to 3	21	27	30	34	29

The above table indicates that during the year 2014-15, the revenue raised by the State Government (₹8312 crore) was 29 per cent of the total revenue receipts. The balance 71 per cent of the receipts during 2014-15 was from the Government of India. Revenue receipt of the state showed an increasing trend from 2010-11 to 2013-14 but decreased in the year 2014-15. It was mainly due to decrease in the non-tax receipt of the State.

1.1.2 The details of the tax revenue raised during the period 2010-11 to 2014-15 are given in **Table-1.2**.

Table-1.2
Details of Tax Revenue raised

(₹ in crore)

Sl. No	Head of revenue	2010-11		2011-12		2012-13		2013-14		2014-15		Percentage of increase (+) or decrease (-) in	
		Budget Estimate	Actual	Budget Estimate	Actual	Budget Estimate	Actual	Budget Estimate	Actual	Budget Estimate	Actual	Actual over Budget Estimate during 2014-15	Actual in 2014-15 over 2013-14
1	Taxes on sales, trade etc.	2572.69	2424.52	3419.32	3414.01	4218.57	4174.39	4799.00	4578.81	4530.00	4601.52	1.58	0.50
2	Taxes on Goods & Passengers	358.10	337.16	439.00	457.93	474.40	504.91	559.00	565.53	562.00	557.81	(-) 0.75	(-) 1.37
3	State excise	307.00	337.24	383.00	385.47	413.00	421.28	442.00	440.06	462.00	466.08	0.88	5.91
4	Taxes and duties on electricity	214.00	147.50	262.00	179.12	423.36	277.86	504.00	276.94	466.02	313.40	(-) 32.75	13.17
5	Stamps Duty	72.73	78.58	133.27	170.97	270.55	240.14	321.93	260.68	215.16	247.98	15.25	(-) 4.87
6	Motor Vehicles Tax	113.10	115.33	128.50	104.52	139.00	117.89	153.00	134.23	160.40	132.34	(-) 17.49	(-) 1.41
7	Land revenue	5.22	42.03	25.00	33.00	35.60	95.45	40.80	15.97	42.22	14.58	(-) 65.47	(-) 8.70
8	Others ¹	0.20	0.22	0.51	0.47	0.54	0.51	0.54	0.52	0.60	0.24	(-) 60.00	(-) 53.85
	Total	3643.04	3482.58	4790.60	4745.49	5975.02	5832.43	6820.27	6272.74	6438.40	6333.95		

There was huge variation between the budget estimates and actuals ranging between (+) 15.25 and (-) 65.47 per cent. The reasons for decrease in actuals as compared to budget estimates though called for were not provided. Tax receipts in all the heads except land revenue, shows an increasing trend from 2010-11 to 2014-15. Receipt under Land Revenue has shown a decreasing trend from the year 2012-13 to 2014-15 and it decreased from ₹95.45 crore in 2012-13 to ₹14.58 crore in 2014-15. The reasons for the decrease were not provided by the department.

The details of the non-tax revenue raised during the period 2010-11 to 2014-15 are indicated in **Table-1.3**.

¹ Taxes and Duties on Commodities and Services (Entertainment tax)

Table-1.3
Details of Non-tax revenue raised

(₹ in crore)

Sl. No	Head of revenue	2010-11		2011-12		2012-13		2013-14		2014-15		Percentage of increase (+) or decrease (-) in	
		Budget Estimate	Actual	Budget Estimate	Actual	Budget Estimate	Actual	Budget Estimate	Actual	Budget Estimate	Actual	Actual over Budget Estimate during 2014-15	Actual in 2014-15 over 2013-14
1.	Power	1208.61	822.09	1486.22	1006.93	2387.29	1588.62	2840.60	1533.09	2629.90	1427.73	(-) 45.71	(-) 6.87
2.	Forestry and wild life	52.63	47.47	55.57	55.20	68.07	59.31	67.53	67.90	70.80	70.85	0.07	4.34
3.	Police	15.05	10.99	17.60	24.91	24.50	28.34	65.00	56.75	87.75	19.97	(-) 77.24	(-) 64.81
4.	Non-ferrous, Mining & metallurgical Ind.	28.15	34.51	43.00	41.18	50.35	54.02	60.18	53.35	60.40	48.50	(-) 19.70	(-) 9.09
5.	Water supply & Sanitation	26.20	15.97	34.50	20.56	37.00	31.92	43.57	38.03	49.50	36.90	(-) 25.45	(-) 3.97
6.	Public works	20.68	23.58	22.29	25.94	24.97	27.19	26.49	23.57	27.80	23.13	(-) 16.80	(-) 1.87
7.	Medical and Public Health	14.61	9.40	17.38	14.55	20.25	18.08	22.63	15.70	23.77	22.69	(-) 4.54	44.52
8.	Interest receipts	21.32	10.33	22.30	33.06	21.94	16.38	21.50	12.80	23.19	13.58	41.44	6.09
9.	Other Non-tax receipts*	87.48	118.76	152.58	779.31	184.40	336.33	252.36	1068.50	180.55	314.70	74.30	(-) 70.55
	Total	1474.73	1093.10	1851.44	2001.64	2818.77	2160.19	3399.86	2869.69	3153.66	1978.05		

*0050-Dividends and Profits, 0051-Public Service Commission, 0056-Jails, 0058-Stationery and Printing, 0070-Other Administrative services, 0071-Contributions and Recoveries towards Pension and Other retirement benefits, 0075-Miscellaneous General services, 0202-Education, Sports Art and Culture, 0211-Family Welfare, 0216-Housing, 0217-Urban Development, 0220-Information and Publicity, 0230-Labour & Employment, 0235-Social Security and Welfare, 0250-Other Social Services, 0401-Crop Husbandry, 0403-Animal Husbandry, 0405-Fisheries, 0425-Cooperation, 0435-Other Agriculture Programmes, 0506-Land Reforms, 0515-Other Rural Development Programmes, 0575-Other Special Area Programmes, 0701-Major and Medium Irrigation, 0702-Minor Irrigation, 0851-Village and Small Industries, 0852-Industries, 1054-Roads and Bridges, 1452-Tourism, 1475-Other General Economic Service.

The variations between budget estimates and actual realisation of non-tax under various heads was between (+) 74.30 and (-) 77.24 per cent during 2014-15. There was an increase ranging between 4.34 and 44.52 per cent in actual collections from Forestry/ Wild Life, Medical and Public Health and Interest Receipts over the previous year whereas the receipt under the Power, Police, Non-ferrous mining and metallurgical industries, Water supply and sanitation, Public works and Other non-tax receipts were respectively decreased by 6.87, 64.81, 9.09, 3.97, 1.87 and 70.55 per cent.

The decrease in Police receipts was mainly due to less collection of revenue under minor head of revenue accounts viz. Fees, Fines and Forfeitures while the increase in Medical and Public Health was due to increase in collection under the head 'Urban Health Services'.

There was collection of ₹1427.73 crore against the Budgeted Estimates of ₹2629.90 crore in respect of Power during 2014-15. Reasons for less collection though called for were not intimated (December 2015) by the Department.

1.2 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2015 on some principal heads of revenue amounted to ₹1326.23 crore of which ₹849.49 crore was outstanding for more than five years, as detailed in the **Table-1.4**.

Table-1.4
Arrears of revenue

(₹ in crore)

Sl. No.	Head of revenue	Total Amount outstanding as on 31 March 2015	Amount outstanding for more than five years as on 31 March 2015	Replies of Department
1.	Taxes on Sales/ VAT Trade etc	1243.89	790.95	The process of recovery is initiated through Collector (Dy. Commissioner Commercial Taxes, Recovery) who initiates recovery proceedings under the J&K VAT Act, 2005, the J&K GST Act, 1962 read with the J&K Land Revenue Act Samvat, 1966. Action has been taken under Land Revenue Act for recoverable arrears in 125 cases (₹7.07 crore). In 155 cases (₹40.80 crore) recovery has been stayed by the Hon'ble High Court and recovery notices have been issued in 15 cases involving ₹0.04 crore.
2.	Passenger tax	34.43	26.64	
3.	Entertainment tax	0.21	0.21	
4.	Toll Tax	28.69	27.06	
5.	State Excise	19.01	4.63	
Total		1326.23	849.49	

1.3 Arrears in assessments

The details of cases pending at the beginning of the year, cases becoming due for assessment, cases disposed of during the year and number of cases pending for finalization at the end of the year as furnished by the Commercial Taxes Department in respect of Sales Tax/ VAT and Taxes on Works contracts are given in **Table-1.5**.

Table-1.5
Arrears in assessments

Head of revenue	Opening balance	New cases due for assessment during 2014-15	Total assessments due	Cases disposed of during 2014-15	Balance at the end of the year	Percentage of disposal (col. 5 to 4)
1	2	3	4	5	6	7
Sales Tax/VAT	6102	12394	18496	11572	6923	63
Tax on Works contract	36497	13513	50010	15942	34068	32

The assessments completed to the total cases due for assessment was 63 per cent

in respect of Sales Tax/ VAT and 32 *per cent* in the case of Taxes on Works contract. Moreover, the cases disposed of by the Commercial Taxes Department under Sales Tax/ VAT were slightly lower than new cases which had become due for assessment.

1.4 Evasion of tax detected by the department

The details of cases of evasion of tax detected by the Commercial Tax Department, cases finalised and the demands for additional tax raised as reported by the Department are given in **Table-1.6**.

Table-1.6
Evasion of Tax

(₹ in crore)

Head of revenue	Cases pending as on 31 March 2014	Cases detected during 2014-15	Total	Number of cases in which assessment/ investigation completed and additional demand with penalty etc. raised		Number of cases pending for finalization as on 31 March 2015
				Number of cases	Amount of demand	
Sales Tax/VAT	457	1626	2083	1521	18.60	562
Total	457	1626	2083	1521	18.60	562

(Source: Data furnished by the Department)

Against the total demand of ₹18.60 crore raised in 1521 cases during 2014-15, an amount of ₹75.06 lakh had been recovered which is only 4 *per cent* of the total recoverable amount. The reasons for slow pace of recovery and latest status of recovery have not been furnished by the Department (December 2015).

1.5 Pendency of Refund Cases

The number of refund cases pending at the beginning of the year 2014-15, claims received during the year, refunds allowed during the year and the cases pending at the close of the year 2014-15 as reported by the Department is given in **Table-1.7**.

Table-1.7
Details of pendency of refund cases

(₹ in crore)

Sl. No.	Particulars	Sales tax / VAT	
		No. of cases	Amount
1.	Claims outstanding at the beginning of the year	7	0.13
2.	Claims received during the year	6	1.77
3.	Refunds made during the year	10	0.17
4.	Balance outstanding at the end of the year	3	1.73

(Source: Data furnished by the Department)

1.6 Response of the Government/ departments towards audit

The Accountant General (Audit), Jammu and Kashmir, conducts periodical inspection of the Government Departments to test-check the transactions and verify the maintenance of important accounts and other records as prescribed in the rules and procedures. These inspections are followed up with the inspection reports (IRs) incorporating irregularities detected during the inspection and not settled on spot, which are issued to the heads of the offices inspected with copies to the next higher authorities for taking prompt corrective action. The heads of the offices/ Government are required to promptly comply with the observations contained in the IRs, rectify the defects and omissions and report compliance through initial reply to the AG within four weeks from the date of receipt of the IRs. Serious financial irregularities are reported to the heads of the Department and the Government.

Inspection reports issued upto December, 2014 in respect of Commercial Taxes, State Excise and Motor Vehicles Department disclosed that 2870 paragraphs involving ₹1186.05 crore relating to 643 IRs remained outstanding at the end of June 2015 as mentioned below alongwith the corresponding figures for the preceding two years in **Table-1.8**.

Table-1.8
Details of pending Inspection Reports

	June 2013	June 2014	June 2015
Number of IRs pending for settlement	550	609	643
Number of outstanding audit observations	2392	2725	2870
Amount of revenue involved (₹ in crore)	1011.30	1172.99	1186.05

1.6.1 The Department-wise details of the IRs and audit observations outstanding as on 30 June 2015 and the amounts involved in respect of Finance, State Excise and Transport Department (Revenue Sector) are mentioned in the **Table-1.9**.

Table-1.9
Department-wise details of IRs

Sl. No	Name of the Department	Nature of receipts	Numbers of outstanding IRs	(₹ in crore)	
				Numbers of outstanding audit observations	Money value involved
1.	Finance	Taxes on Sales, Trade etc.	398	2175	1035.49
		Passenger & Goods Tax	14	60	31.91
2.	Excise	State Excise	133	294	96.12
3.	Transport	Taxes on Motor Vehicles	98	341	22.53
Total			643	2870	1186.05

Audit did not receive even the first replies from the heads of offices within four weeks from the date of receipt for 49 IRs out of 51 IRs issued during 2014-15. This large pendency of the IRs due to non-receipt of the replies is indicative of the fact that the heads of offices and the Departments did not initiate action to rectify the defects, omissions and irregularities pointed out by the AG in the IRs. Further, no Audit committee was constituted by the State Government for discussion of pending objections relating to tax revenue (Commercial Taxes, State Excise and Motor Vehicles).

The Government may consider to have an effective system for prompt and appropriate response to audit observations.

1.7 Position of Inspection Reports

The summarized position of the Inspection Reports of Departments of Finance, Excise and Transport (Revenue Sector) issued during the last five years, paragraphs included in these Reports and their status as on 31 March 2015 are tabulated below in **Table-1.10**.

Table-1.10
Position of Inspection Reports

(₹ in crore)

Sl. No.	Year	Opening Balance			Addition during the year			Clearance during the quarter			Closing balance during the year		
		IRs	Para-graphs	Money value	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value
1.	2010-11	540	1891	1625.48	65	280	132.61	6	118	31.21	599	2053	1726.88
2.	2011-12	599	2053	1726.88	72	341	57.14	20	107	41.66	651	2287	1742.36
3.	2012-13 ²	515	2296	972.26	67	389	277.20	7	213	225.70	575	2472	1023.77
4.	2013-14	575	2472	1023.77	56	515	180.29	14	157	15.77	617	2830	1188.29
5.	2014-15	617	2830	1188.29	59	553	67.00	08	194	24.93	668	3189	1230.36

Since the Government of J&K had not constituted any Audit Committee for settlement of old paragraphs, with the result, the position of outstanding IRs, Paras with corresponding money value (Commercial Taxes, State Excise and Motor Vehicles) increased as is evident from the above table. This indicates that adequate steps were not taken by the department resulting in increase of the outstanding IR's and Paragraphs.

² Figures worked out after restructuring (April 2012) of the Organisation on Sectoral basis

1.8 Follow up on Audit Reports

1.8.1 Non-submission of Suo-motu Action Taken Notes

To ensure accountability of the executives to the issues dealt with in various Audit Reports, the State Government (Finance Department) issued instructions in June 1997 to the administrative departments to furnish to Public Accounts Committee (PAC)/ Committee on Public Undertakings (COPU), *suo-motu* Action Taken Notes (ATNs) on all the audit paragraphs featuring in the Audit Reports irrespective of the fact that these are taken up for discussion by these Committees or not. These ATNs are to be submitted to these Committees duly vetted by the Accountant General (Audit) within a period of three months from the date of presentation of Audit Reports in the State Legislature.

It was, however, noticed that out of 98 audit paragraphs featuring in the Chapter of Revenue Sector of Audit Reports from 2000-01 to 2013-14³, *suo-motu* ATNs in respect of 76 audit paragraphs had not been received upto 31 March 2015.

1.8.2 Action taken on recommendations of the PAC

Action Taken Notes, duly vetted by the Accountant General (Audit) on the observations/recommendations made by the PAC/ COPU in respect of the audit paragraphs discussed by them are to be furnished to these Committees within six months from the date of such observations/ recommendations. Out of 93 audit paragraphs featuring in the Revenue Sector Chapter of Audit Reports for the years from 2000-01 to 2012-13, only 15 audit paragraphs have been discussed by the PAC up to 31 March 2015. Recommendations in respect of 14 audit paragraphs including nine discussed partly have been made by the PAC, however, ATNs on the recommendations of the Committees is pending from the State Government in respect of 11 paragraphs.

1.8.3 Recovery of accepted cases

The position of paragraphs included in the Audit Reports of the last five years, those accepted by the Department and the amount recovered are mentioned in **Table-1.11**.

³ Audit Report 2013-14 presented in the Jammu and Kashmir State Legislature on 27 March 2015

Table-1.11

(₹ in crore)

Year of Audit Report	Number of paragraphs included	Money value of the paragraphs	Number of paragraphs accepted	Money value of accepted paragraphs	Amount recovered during the year 2014-15	Cumulative position of recovery of accepted cases as of 31 March 2015
2009-10	6	1.80	6	1.80	Nil	Nil
2010-11	10	39.90	10	31.41	Nil	0.002
2011-12	7	80.10	7	80.10	Nil	0.42
2012-13	6	244.53	6	244.53	0.01	0.10
2013-14	5	09.28	5	1.11	Nil	0.04
Total		375.61		358.95	0.01	0.562

It would be seen from the above that in respect of paragraphs featured in the Audit Reports 2009-10 to 2013-14, the Department/Government accepted audit observations involving ₹358.95 crore, of which only ₹0.56 crore was recovered upto 2014-15, which is only 0.15 per cent of the accepted amount. This shows that the Department/ Government could not recover the dues fully even in the cases where the audit observations had been accepted.

The Department may ensure prompt recovery of dues involved in the accepted cases.

1.9 Audit Planning

The unit offices under various Departments are categorised into high, medium and low risk units according to their revenue position, past trends of the audit observations and other parameters. The annual audit plan is prepared on the basis of risk analysis which inter-alia include critical issues in government revenues and tax administration i.e. budget speech, white paper on state finances, reports of the Finance Commission (State and Central), recommendations of the Taxation Reforms Committee, statistical analysis of the revenue earnings during the past five years, factors of the tax administration, audit coverage and its impact during past five years etc.

During the year 2014-15, there were 130 auditable units, of revenue receipts (Commercial Taxes, State Excise & Transport) out of which 50 units were planned and 55 units had been audited.

1.10 Results of audit

Position of local audit conducted during the year

Test-check of the records of 55 units of Sales tax/ Value Added Tax, State Excise, Transport, conducted during the year 2014-15 showed under assessment/ short levy/ loss of revenue aggregating ₹175.12 crore in 1218 cases. During the year, the Departments concerned accepted under assessment and other deficiencies of ₹13.31 crore involved in 125 cases which were pointed out in audit during 2014-15 and earlier years. The Departments collected ₹50.10 lakh⁴ in 90 cases pertaining to audit findings of previous years as well as of the year 2014-15.

1.11 Coverage of this Report

This Report contains one performance Audit on “**System of Assessments under VAT**”, one follow-up audit on Levy and collection of Electricity Duty and Fee and three paragraphs involving revenue implication of ₹93.66 crore relating to inadmissible allowances of ITC, misclassification/ concealment of turnover/ purchases, grant of incorrect exemption of tax, non-levy of penalty, non-levy of electricity duty and non-conducting of statutory inspections etc. The Departments/ Government have accepted audit observations involving ₹1.67 crore in 16 cases, out of which ₹15.37 lakh have been recovered in four cases.

⁴ 2014-15: ₹0.09 lakh (Two cases) and prior to 2014-15: ₹50.01 lakh (88 cases)

Chapter-2
Performance and Compliance Audit

CHAPTER - 2

A. GENERAL

2.1 Tax administration

2.1.1 Sales Tax/ Value Added Tax

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

2.1.2 State Excise

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

2.1.3 Taxes on Vehicles, Goods and Passengers

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

2.2 Results of audit

Test-check of the records of 55 units of sales tax/ Value Added Tax, State Excise, Motor Vehicles, conducted during the year 2014-15 showed under assessment/

short levy/ loss of revenue aggregating ₹175.12 crore in 1218 cases as detailed in Table-2.1

Table-2.1

(₹ in crore)

Sl. No.	Categories	Number of cases	Amount
Taxes/ VAT on Sales, Trade etc.			
	PA on “ <i>System of Assessments under VAT</i> ”	1	92.90
1.	Under-assessment of tax	72	6.75
2.	Acceptance of defective statutory forms	3	0.72
3.	Evasion of tax due to suppression of sales/ purchase	317	23.61
4.	Irregular/ incorrect/ excess allowance of Input Tax Credit	75	4.28
5.	Other irregularities	113	13.89
	Total	581	142.15
State Excise			
1.	Non/ short realization of excise duty	1	0.02
	Non/ short recovery of license fee/ interest/ penalty	1	0.08
2.	Other irregularities	20	11.10
	Total	22	11.20
Taxes on Vehicles, Goods and Passengers			
1.	Non/ short realization of • Token tax and composite fee • Passenger and goods tax	547	0.25
2.	Other irregularities • Vehicle tax	68	21.52
	Total	615	21.77
	Grand Total	1218	175.12

During the course of the year, the Department accepted underassessment and other deficiencies as under:

- ₹1330.44 lakh in 123 cases of Taxes/ VAT on Sales, Trade etc. were pointed out in audit during the earlier years as well as in 2014-15. An amount of ₹50.01 lakh was realised in 88 cases during the year 2014-15.
- ₹0.09 lakh in two cases relating to Taxes on Vehicles, goods and passengers taxes were recovered during the year 2014-15 for the observations of earlier years.

B. PERFORMANCE AUDIT

FINANCE DEPARTMENT

2.3 System of Assessments under VAT

Highlights

- The Department had not maintained any data base on prescribed criteria for identification and selection of dealers for tax audit and audit assessments. The percentage of cases selected for tax audit ranged between 0.03 and one during 2009-10 to 2013-14.

(Paragraphs: 2.3.6.1 and 2.3.6.4)

- The CCT selected cases for audit assessment on random basis without applying prescribed criteria which resulted in huge number of cases falling under escaping audit assessments. The AAs also selected cases for audit assessment in an arbitrary manner.

(Paragraph: 2.3.6.4)

- Out of 4155 cases authorized for audit assessment by CCT during 2011-12 to 2013-14 nil demands were raised in 2668 (64 per cent) cases while out of 2251 cases selected for audit assessment by AAs nil demands were raised in 1617 cases (72 per cent) in test checked circles.

(Paragraph: 2.3.6.4 (I))

- Incorrect assessments by AAs led to inadmissible allowances of ITC, misclassification/ concealment of turnover, grant of incorrect exemption resulting in tax evasion of ₹88.66 crore in 73 cases.

(Paragraphs: 2.3.6.4 (III to X))

- Arrears of revenue pending realization with Deputy Commissioner (Recovery) were increased from ₹989.46 crore in 2010-11 to ₹1078.31 crore in March 2015. The realisation of arrears was between one per cent and seven per cent of the arrears during 2010-11 to 2014-15, which shows that no sincere efforts were made by the department to recover the arrears.

(Paragraph: 2.3.7)

2.3.1 Introduction

Jammu and Kashmir Value Added Tax (VAT) Act, 2005 was introduced with effect from 1 April, 2005. In order to implement the provisions of the Act, the Jammu and Kashmir Value Added Tax Rules were also notified in the year 2005. VAT is a system of taxation in which tax is paid at each stage of exchange till sale to final consumer with a provision to allow input tax credit (ITC) on tax paid at earlier stage. The main provisions under the VAT Act and Rules relating to system of assessments are given in *Appendix-2.1*.

2.3.2 Organizational Set up

Under the administrative control of the State Finance Department, Commissioner Commercial Taxes (CCT) is responsible for overall superintendence. The CCT is assisted by three Additional Commissioners of Taxes (one each in Jammu and Kashmir divisions and one for tax planning) and 13 Deputy Commissioners of Commercial Taxes (six in Jammu and five in Kashmir, one each for headquarter and Judicial). The State is divided into 52 commercial taxes circles (25 in Jammu and 27 in Kashmir) each headed by a Commercial Taxes Officer.

2.3.3 Audit Objectives

The Performance Audit was conducted to assess:-

- the adequacy of statutory provisions in the Act, rules made thereunder and notifications issued by the Government;
- extent to which provisions of the Act and notifications were complied with;
- the criteria prescribed for selection of cases for audit assessment and selection made as per the prescribed criteria;
- effectiveness and correctness of assessments made; and
- adequacy of monitoring and control mechanism in the Department

2.3.4 Scope of Audit and methodology

The Performance audit covering the period from 2009-10 to 2013-14 was carried out by collection of information/ data and test check of records of Commissioner Commercial Taxes, Additional Commissioners (Commercial Taxes) Kashmir/ Jammu, Deputy Commissioners (Recovery) Srinagar/ Jammu and 14 circles¹

¹ Seven circles in Jammu Division and seven circles in Kashmir Division

(30 per cent) out of 45 Commercial Taxes Circles (dealing with the assessment of returns) during December 2014 and May 2015. The selection of Commercial Taxes Circles was made on the basis of criteria of high revenue realization, adequate geographical representation and among the circles dealing with assessments of industrial units availing tax exemptions.

The audit objectives, criteria and methodology were discussed with the Financial Commissioner, Finance Department by the Accountant General in an entry conference held on 19 December 2014. The audit findings were discussed by the Accountant General (Audit) with the Commissioner/ Secretary Finance Department in an exit conference held on 30 July 2015. The replies received from the departmental authorities have been incorporated at appropriate places in the Report. We acknowledge the co-operation of Commercial Taxes Department extended to Audit during the course of performance audit.

2.3.5 Audit criteria

The audit objectives were benchmarked against the following criteria:

- Jammu and Kashmir Value Added Tax Act, 2005
- Jammu and Kashmir Value Added Tax Rules, 2005
- CST Act, 1956 and the Rules framed there under;
- Notifications/ orders and clarifications issued by the Government/ Department.

2.3.6 System of assessments under the Act

Under Value Added Tax, more reliance is given on payment of tax by the dealers voluntarily by way of self assessment and as such all the dealers are not being assessed by the Assessing Authorities (AAs). Sections 36 to 39 of the Jammu and Kashmir Value Added Tax Act, 2005 together with Rules 32 to 34 of Jammu and Kashmir Value Added Tax Rules, 2005 empowers Commercial Taxes Department for ensuring correctness of payment of taxes and to plug leakages of revenue.

2.3.6.1 Tax Audit

Section 36 of the Act read with Rule 33 provide that Commissioner or any other tax officer shall undertake tax audit of records, stock-in-trade and related documents of the dealers selected by the Commissioner after seeking a report

from jurisdictional Assessing Authority (AA) regarding all such dealers falling under three² categories.

Audit check of records showed that except for the year 2009-10, the CCT had not sought report under Rule 33 from the AAs during the period 2010-11 to 2013-14. The test checked AAs had not prepared any database of identified dealers based on the prescribed criteria for recommendation for tax audit to the CCT. In absence of this data base, the AAs recommended cases for selection of tax audit to the CCT in a non-transparent manner.

The position of authorization accorded by CCT for conducting tax audit of dealers during the period 2009-10 to 2013-14 was as follows:

Table-2.3.1

Year	No of registered dealers			No of dealers selected for tax audit			Percentage of selection
	Jammu Division	Kashmir Division	Total	Jammu Division	Kashmir Division	Total	
2009-10	25676	18763	44439	286	193	479	1
2010-11	26790	18909	45699	134	61	195	1
2011-12	27856	18618	46474	34	45	79	0.17
2012-13	29031	19038	48069	04	10	14	0.03
2013-14	30292	19205	49497	15	07	22	0.04

The percentage of dealers selected for tax audit ranged between 0.03 and one during 2009-10 to 2013-14. The Department had almost stopped conducting tax audit since 2012-13 thereby defeating the purpose of the Act to detect cases of tax evasion during tax audit. The position of authorization accorded by CCT for conducting tax audit of dealers in respect of 14 selected circles during the period 2009-10 to 2013-14 was as follows:

² (i) The quantum of sales are not commensurate with the quantum of purchases and stock held in trade
(ii) There is substantial increase or decrease in taxable turnover of sales in any tax period as compared to previous tax period (iii) Nil returns are being received in case of dealers who hitherto have been returning taxable sales.

Table-2.3.2

Year	No of registered dealers in selected circles			No of dealers selected for tax audit in selected circles			Percentage of selection
	Jammu Division (7 circles)	Kashmir Division (7 circles)	Total	Jammu Division (7 circles)	Kashmir Division (7 circles)	Total	
2009-10	13011	10339	23350	119	24	143	0.61
2010-11	13876	10486	24362	77	19	96	0.39
2011-12	14749	10819	25568	15	16	31	0.12
2012-13	15793	11432	27225	03	02	05	0.02
2013-14	16707	11792	28499	09	04	13	0.05

The percentage of dealers selected for tax audit in the selected circles ranged between 0.02 and 0.61 during 2009-10 to 2013-14.

Out of 45 Commercial Taxes circles, the number of circles which had not recommended any case for tax audit had increased from nine (20 per cent) during 2009-10 to 34 (76 per cent) during 2013-14 while the revenue contributed by these circles ranged between 56 per cent and 81 per cent of total revenue receipts under VAT in the State. Further, 20 circles which had not recommended any case for tax audit during 2011-12 to 2013-14 had also reported shortfall in achievement of revenue targets during these years. Audit found that 1311 cases in 12 test-checked circles³ which were due for tax audit as per provisions of section 36 of the Act read with Rule 33, had not been recommended for such audit.

The above position indicated that tax audit had almost been ignored by the Department and even cases recommended by the AAs for selection of tax audit were not based on the prescribed criteria.

(I) Non-conducting of tax audit

The CCT authorized (between July 2009 to January 2013) to conduct tax audit of 31 dealers on the basis of recommendations of CTOs of four circles⁴. The tax audit was however conducted in respect of six dealers (Circle P Jammu) only. The Government reported (September 2015) that tax audit of authorized cases in Circles P, Jammu and Udhampur-II was conducted but tax audit reports of these cases were not traced out at the time of audit.

³ Circles E, G, J, P (Jammu), Udhampur-II, Kathua, F, G, I, K (Srinagar), Anantnag-I and Baramulla

⁴ P, Jammu (20); I, Srinagar (1); Kupwara (3) and Udhampur-II (7)

(II) Delay in conducting tax audit

Under Section 36 of the Act, AAs are required to recommend to the CCT names of dealers for conducting tax audit, where AAs notice any discrepancy in quarterly returns filed by the dealers. No time frame has been specified in the Act for conducting tax audit after authorization. Audit noticed that tax audit was conducted with delay ranging between three months and 18 months in respect of 27 dealers. The delay in conducting tax audit gives the dealer an opportunity to rectify the accounts.

According to Rule 33(3), the AAs are required to submit reports of tax audit to the CCT within 30 days. Audit noticed that tax audit reports in respect of seven cases in two circles out of 14 selected circles, were not submitted by the AAs within the prescribed time and delay was ranging between seven and 58 days.

2.3.6.2 Self Assessment

Section 37 of the Act and Rule 32 envisage that every registered dealer other than a casual dealer who had filed a return and paid tax due thereon within prescribed time is deemed to have been assessed on the basis of such return, if such return is found to be in order by the AA.

Audit scrutiny of records showed that no guidelines had been issued for the AAs to check returns filed by dealers under self assessment. Audit noticed in test checked circles that AAs were only checking arithmetical calculations of the returns filed under self assessment by the dealers and ignoring other factors such as variation in opening stock *vis-a-vis* closing stock of previous years (annual returns), availing of input tax credit during period of suspension of registration certificate and variation of interstate purchases in returns of dealers. In the absence of prescribed guidelines, the AAs had not exercised these checks and audit noticed cases of evasion of tax in selected circles as instanced in the succeeding paragraphs:

(I) Irregular availment of input tax credit

Section 21(9)(viii) of the Act provides that no Input Tax Credit (ITC) shall be claimed or allowed to a registered dealer in respect of goods purchased by him for the period of suspension of certificate of registration. Further, provision to Section 27(8) of the Act provides that during the period, the certificate of registration of a dealer remains suspended, he shall not be entitled to any of the benefits that a dealer whose certificate of registration is in force, is entitled to. Section 69 (1)(m)(xii) of the Act stipulates that if any person claims input tax

credit in respect of goods purchased by him during the period of suspension of certificate of registration, appropriate authority shall direct that such person shall pay in addition to the fee or tax, by way of penalty, a sum equal to double the amount of tax leviable on such goods.

(i) Audit check (January 2015) of records of the Commercial Taxes circle 'J' Jammu showed that the registration of a dealer⁵ was suspended for the period from 02 July 2010 to 03 August 2010 for non-furnishing of quarterly return and non-payment of tax for the accounting year 2006-07. The dealer claimed ITC of ₹40.52 lakh during the year 2010-11 which included credit of ₹4.38 lakh on purchases of goods valuing ₹94.50 lakh made during the period of suspension. The AA, while finalising the assessment (March 2014) failed to disallow ITC of ₹4.38 lakh. This resulted in short levy of tax of ₹4.38 lakh, besides interest of ₹4.38 lakh and penalty of ₹8.77 lakh was also leviable.

On this being pointed out (March 2015), the AA reassessed (March 2015) the case and raised a demand of tax of ₹9.03 lakh which included interest of ₹4.65 lakh. However, penalty of ₹8.77 lakh in accordance with section 69(1) (m) (xii) of the Act had not been imposed on the dealer. The dealer had preferred an appeal before the Appellate Authority against the order of the Assessing Authority. Further progress of recovery was awaited (December 2015).

(ii) Audit noticed in Circle E Jammu that the registration certificate of a dealer was suspended from 13 October 2011 to 3 November 2011 for non-filing of return for the period from April 2011 to 30 June 2011. The dealer had claimed ITC of ₹4.16 lakh on purchases made during the period of suspension of registration certificate. The AA while accepting return of the dealer for the quarter from October 2011 to December 2011 as self assessed had failed to notice the irregular claim of ITC which resulted in evasion of tax of ₹4.16 lakh. The dealer was also liable to pay interest of ₹3.08 lakh and penalty of ₹8.32 lakh.

On this being pointed out, CTO Circle 'E' Jammu stated (March 2015) that notices had been issued to the dealer. Final outcome of the case is still awaited (December 2015).

(iii) AA, circle Udhampur-II at the time of accepting returns for the year 2012-13 had failed to disallow ITC of ₹3.84 lakh availed by two dealers during the period of suspension of registration. This had resulted in recoverable demand of ₹12.60 lakh, against these dealers which included interest and penalty of ₹8.76 lakh.

⁵ M/s Suresh Kumar Gupta and Sons, Paloura, Jammu

On this being pointed out, the AA Circle Udhampur-II stated (February 2015) that assessment of dealer would be taken up. Further, Government reported (September 2015) that CTO Circle 'E' Jammu and Circle Udhampur-II had been directed to examine the issue and that outcome would be communicated to audit. Final outcome of the case is still awaited (December 2015).

(II) Evasion of tax due to reduction of stock

A dealer in Circle 'L' Jammu had reduced turnover/closing stock by ₹3.04 crore in his profit and loss account filed alongwith annual return for the year 2009-10. Though the closing stock of ₹1.14 crore at the end of the year 2009-10 was correctly reflected as the opening stock for the year 2010-11, the variation of ₹3.04 crore was not reconciled. Audit noticed that return filed by the dealer was accepted by the AA without seeking reasons for variation/ reduction of turnover/ stock. This resulted in evasion of tax of ₹85.35 lakh, including tax and interest.

On this being pointed out, the AA stated (April 2015) that the case was under process and the outcome would be communicated. Further progress in the matter was awaited (November 2015).

(III) Short accountal of stock

Two dealers in Circles L and E Jammu had carried forward closing stock from previous years (2008-09 and 2010-11) short by ₹12.46 lakh⁶ as opening stock of next years (2009-10 and 2011-12). The omission was not detected by the AAs at the time of accepting annual returns. This had resulted in tax evasion of ₹4.85 lakh including interest and penalty.

On this being pointed out, AA Circle L Jammu raised (March 2015) demand of ₹3.68 lakh against the dealer which was referred to Dy. Commissioner (Recovery) Jammu in June 2015 for further recovery. The AA Circle E Jammu stated (November 2014) that matter would be looked into. Further progress in the matter was awaited (December 2015).

2.3.6.3 Provisional Assessment

According to Section 38 of the Act, where a registered dealer fails to furnish return in respect of any tax period within the prescribed time, the AA shall proceed to assess the dealer provisionally for the period of such default.

⁶ L Circle: ₹6.91 lakh; E Circle: ₹5.55 lakh

Out of 6032 cases in seven test-checked circles of Kashmir Division due for provisional assessment during first and fourth tax periods of 2011-12 to 2013-14, only 20 cases were provisionally assessed by the AAs. Further, out of 21272 cases in seven test-checked circles of Jammu Division due for provisional assessment during first and fourth tax periods of 2011-12 to 2013-14, only 12 cases were taken up for provisional assessment. No action was taken by the Department to ensure conducting of provisional assessments under the Act though number of cases due for provisional assessment during each tax period was submitted to the higher authorities by the concerned CTOs.

2.3.6.4 Audit Assessment

Section 39 of the Act authorises the Commissioner or the AA or any other Tax Officer (authorized by the Commissioner) to assess the dealers (i) who have failed to furnish any return, (ii) dealers selected for audit assessment by the Commissioner on the basis of any criteria or on random basis, (iii) the Assessing Authority is not satisfied with correctness of any return filed and (iv) the Commissioner has reason to believe that detailed scrutiny of the case is necessary. Further, Rule 34 provide for taking up audit assessment of dealers falling under ten categories⁷ prescribed therein.

Audit noticed that except for the year 2009-10, lists of dealers submitted by the Circles to the CCT for authorization of audit assessment during the years 2010-11 to 2013-14 were not based on any of the identified categories. The AAs of selected circles had not maintained any data bank of dealers for facilitating identification of dealers according to the categories prescribed in the Act. From the lists submitted by the circles, the CCT had not applied any other prescribed criteria except selection of 10 *per cent* of cases for audit assessment on random basis as provided under section 39(1)(b) of the Act. In addition, the AAs had selected and assessed cases under Section 39 (1)(c) of the Act which empowers the AA to assess such dealers where he is not satisfied with correctness of any return filed by the dealers etc. The records regarding criteria adopted by the AAs for selection of dealers for audit assessment was not maintained in the selected circles. This indicated

⁷ (i) Cases where gross turnover exceeds, twenty lakh rupees in a year (ii) cases where claim of input tax credit exceeds two lakh rupees in a year (iii) cases where amount of refund exceeds one lakh rupees in a year (iv) cases where claim of sales made in the course of inter-state trade and commerce etc; (v) cases where there is a decrease in gross turnover compared to previous year (vi) cases where payment of tax is lesser compared to the previous year (vii) cases where claim of sales, purchases or consignment of goods does not match with the accounts of other parties to the transaction (viii) cases in which the ratio between purchases and sales or between input tax and output tax etc; is not commensurate or way out of general trend of the trade or industry (ix) cases based on definite intelligence about evasion of tax and (x) cases of any particular trade which the Commissioner may select

that selection of cases was done in an *ad hoc* manner resulting in escaping of high turnover cases for audit assessments as instanced below:

The data of assesses who had never been selected for audit assessment though called for from the selected circles was not furnished to audit. However, during test check of records of CCT it was noticed that due to non inclusion of prescribed criteria for selection of cases for audit assessment, 411 cases in six test-checked circles⁸ had escaped selection for audit assessment upto 2013-14 since inception of VAT Act. Even 140 dealers registered with Circle P Jammu having annual turnover of over ₹60 lakh had never been selected for audit assessment under section 39 of the Act. Similarly 101 dealers registered with Circles Kathua, Kupwara, K and I (Srinagar) having annual turnover of over ₹20 lakh had escaped audit assessment. The records relating to selection of cases for audit assessments was not made available in eight circles.

The position of cases selected for audit assessment under Section 39 of the Act during the period 2009-10 to 2013-14 is given in **Table-2.3.3**.

Table-2.3.3

Year	Kashmir Division				Jammu Division			
	Total No. of registered dealers	No of dealers selected for audit assessment by CCT	No of dealers selected for audit assessment by AAs	Total dealers selected for audit assessment (Percentage of selected dealers)	Total No. of registered dealers	No of dealers selected for audit assessment by CCT	No of dealers selected for audit assessment by AAs	Total dealers selected for audit assessment (Percentage of selected dealers)
2009-10	18763	2566	3172	5738 (31)	25676	2516	3014	5530 (22)
2010-11	18909	2364	2960	5324 (28)	26790	2713	1872	4585 (17)
2011-12	18618	1786	2170	3956 (21)	27856	2421	1460	3881 (14)
2012-13	19038	78	2026	2104 (11)	29031	856	1161	2017 (7)
2013-14	19205	5975	2766	8741 (46)	30292	6742	574	7316 (24)

- The percentage of dealers selected for audit assessment vis-a-vis total number of registered dealers ranged between 11 and 46 in Kashmir Division while it ranged between seven and 24 in Jammu Division during 2009-10 to 2013-14.
- The percentage of dealers selected for audit assessment was higher in Kashmir Division as compared to Jammu Division during the period 2009-10 to 2013-14. This was despite the fact that 60 per cent of total registered dealers contributing over 65 per cent of the revenue under VAT were from Jammu Division.

⁸ Circles P and L (Jammu), Kathua, Kupwara, K and I (Srinagar)

- Of the total dealers selected for audit assessments, cases selected for audit assessments by the AAs ranged between 32 and 96 per cent in Kashmir Division and between eight and 58 per cent in Jammu Division.

Non-inclusion of prescribed criteria for selection of cases for audit assessment and injudicious exercise of powers by AAs resulted in large number of cases getting selected without authorization of CCT.

(I) Results of audit assessments by AAs

The position of assessments made and additional demand raised as result of audit assessments during the period 2009-10 to 2013-14 is given in **Table-2.3.4**.

Table-2.3.4

Year	No of registered dealers		No of dealers in respect of whom audit assessment completed		Additional demand raised as a result of audit assessment (₹in crore)		Average additional demand raised per dealer (₹in lakh)	
	Kashmir Division	Jammu Division	Kashmir Division	Jammu Division	Kashmir Division	Jammu Division	Kashmir Division	Jammu Division
2009-10	18763	25676	5455	5198	33.93	81.62	0.62	1.57
2010-11	18909	26790	5028	4253	24.73	238.08	0.49	5.60
2011-12	18618	27856	4175	4187	22.24	131.47	0.53	3.15
2012-13	19038	29031	3971	3462	13.12	53.10	0.33	1.53
2013-14	19205	30292	5511	3253	11.99	96.80	0.22	2.98

The average additional demand raised per dealer after audit assessment by the AAs ranged between ₹0.22 lakh and ₹0.62 lakh in Kashmir Division and between ₹1.53 lakh and ₹5.60 lakh in Jammu Division during 2009-10 to 2013-14. The average additional demand declined from ₹0.62 lakh (2009-10) to ₹0.22 lakh (2013-14) in Kashmir Division and from ₹5.60 lakh (2010-11) to ₹2.98 lakh (2013-14) in Jammu Division.

Audit check of assessment records in 5 circles out of 7 selected circles of Kashmir Division showed that out of 1489 cases selected for audit assessments by the AAs during 2011-12 to 2013-14, 'Nil' demands were raised in 1280 cases (86 per cent) and demands exceeding ₹0.50 lakh were raised in only 52 cases (3 per cent). Also out of 1477 cases selected for audit assessment by the CCT in these circles during 2011-12 to 2013-14, 'Nil' demands were raised in 713 cases (48 per cent) and demands exceeding ₹0.50 lakh were raised in 156 cases (11 per cent).

Further, in Jammu Division, out of 762 cases selected for audit assessments by the AAs in 5 circles out of 7 selected circles, 'Nil' demands were raised in 337 cases (44 per cent) and demands exceeding ₹0.50 lakh were raised in 133 cases (17 per cent). Out of 2678 cases selected for audit assessment by the CCT in these circles during the period 2011-14, 'Nil' demands were raised in 1955 cases (73 per cent) and demands exceeding ₹0.50 lakh were raised in only 124 cases (5 per cent). This indicated improper selection of cases for audit assessments as the lists of dealers were furnished without identifying them on the basis of categories prescribed under section 39 of the Act.

(II) Inadequate mechanism for audit assessments

For ensuring audit assessment by the AAs in an efficient manner, the CCT had not issued any guidelines prescribing mandatory checks and cross-verification of records of dealers with related records of the Department/other agencies. Audit observed in selected circles that AAs had restricted their scrutiny to check of books of accounts produced by the dealers including copies of purchase and sale bills. The verification of Bank transactions in support of declared sale/ purchases made by the dealers, cross check of records with consumption statement of declaration forms/ records of bills of lading had not been made by the AAs. Also genuineness of claims of ITC was not verified. Audit scrutiny of assessment records of 3482 cases of 14 selected circles showed the following shortcomings:

(III) Inadmissible availment of Input Tax Credit

Output Tax liability is liquidated by the dealers by payment of tax in cash as well as availment of ITC. While tax paid in cash by the dealers was verified by the AAs with reference to Treasury challans/ Bank scrolls, the AAs did not verify correctness of ITC claimed by the dealers from the records of other Commercial Tax circles of the Department. This verification was more important in absence of on-line interlinking of Commercial Taxes Circles in the State.

Audit observed that 269 dealers assessed under section 39 of the Act were allowed ITC of ₹22.52 crore against total output tax liability of ₹34.84 crore by the AAs without cross verification of genuineness of ITC claim. Instances of inadmissible availment of ITC by the dealers and allowed by the AAs noticed in audit are discussed in succeeding paragraphs:

(i) A dealer registered in circle L Jammu (TIN 01961151433) for trading in sale and purchase of Mosquito coils, packing material and

Toilet cleaner during 2009-10 had returned sales of ₹70.74 crore. The dealer had liquidated his output tax liability of ₹5.63 crore by utilizing ITC. Audit observed that out of total purchases of ₹71.82 crore during 2009-10, purchases of ₹2.03 crore only (four *per cent* category: ₹1.02 crore and 12.5 *per cent* category: ₹1.01 crore) were made from industrial units (TIN 01741070753, TIN 01451070767 & TIN 01821071000) registered with circle G Jammu. The remaining purchases of ₹69.79 crore on which ITC of ₹5.56 crore had been availed were made from traders registered in circle K Jammu (TIN 01301030941) and circle P Jammu (TIN 01261200221). Cross verification of records of dealers in circle P, circle K and also circle A Jammu (where a dealer (TIN 01151011180) also formed link) showed that output tax liability of ₹16.77 crore during 2009-10 had been liquidated by these four dealers against adjustment of input tax credit of ₹16.77 crore, availed by them on purchases from one another. Out of ITC of ₹16.77 crore, the dealers were eligible for claim of ITC of ₹16.68 lakh only, on purchase of ₹2.03 crore made from the industrial units. The balance ITC of ₹16.61 crore claimed by these four dealers was incorrect as no output tax had been paid by any of these four dealers in the State. Interest of ₹20.81 crore was also recoverable on unpaid tax. Further for availing incorrect ITC, these four dealers were liable to levy of penalty of ₹33.22 crore under provisions of the Act. The wrong claim of ITC by these four dealers resulted in recoverable demand of ₹70.64 crore.

(ii) A dealer registered in Circle L Jammu for trade in mineral water, packaged drinking water, aerated water, non-alcoholic beverages, soft drinks and juices had availed ITC of ₹1.97 lakh during the year 2009-10 against the purchases made from manufacturer, which was not registered for manufacturing these items in commercial taxes circle G Jammu. Thus, the dealer was not eligible for availment of ITC of ₹1.97 lakh on purchases made from manufacturer. Failure of AA to cross-verify the records resulted in inadmissible availment of ITC of ₹1.97 lakh. This resulted in short realization of revenue of ₹8.03 lakh including interest and penalty of ₹6.06 lakh.

On this being pointed out, the AA accepted (August 2015) audit observation.

(iii) Nine dealers in four circles had availed ITC of ₹20.35 lakh on purchase of items valuing ₹1.83 crore during the years 2006-07 to 2011-12, which were not covered by their certificate of registration. This had resulted in grant of inadmissible ITC of ₹20.35 lakh, besides interest and penalty of ₹63.32 lakh was also leviable. The AAs at the time of finalizing assessments between March 2011

to December 2013 had failed to disallow the ITC on unregistered items. Audit also observed that in one case the AA circle E Jammu had even ignored report of Inspector regarding availment of ITC for items not covered by the registration certificate of the dealer.

(iv) A dealer assessed in circle Udhampur-II had availed ITC of ₹2.77 lakh on value of discount and stock transfer recorded in purchase statement. As there is no provision in the Act for availment of ITC on value of discount or stock transfer receipts, ITC of ₹2.77 lakh availed was irregular and was required to be disallowed by the AA at the time of assessment. Inadmissible availment of ITC had resulted in short realization of revenue of ₹11.53 lakh, including interest and penalty of ₹8.76 lakh.

On this being pointed out, the Government reported (September 2015) that statutory notice had been issued to the dealer whose reply was awaited.

(IV) Non-reversal of Input tax credit on purchase returns

(i) Two dealers assessed in circle-I Srinagar and circle Anantnag-I for the accounting years 2009-10 and 2010-11 respectively had availed ITC on local purchases valuing ₹9.26 crore. Out of these purchases, the dealers had claimed purchase returns of ₹31.43 lakh but had not reversed the ITC of ₹4.17 lakh, thereof. AAs had failed to disallow the ITC on purchase returns thereby resulting in revenue loss of ₹8.55 lakh, including interest of ₹4.38 lakh.

(ii) A dealer in Udhampur-II had reduced turnover in trading account for the year 2009-10 by reflecting credit entry of ₹30.41 lakh. The AA had failed to disallow ITC of ₹3.80 lakh availed on the amount of credit at the time of assessment under section 39(5) of the Act. The omission resulted in short levy of tax of ₹15.81 lakh, including interest and penalty.

On this being pointed out, the Government reported (September 2015) that statutory notice had been issued to the dealer and proceedings had been initiated in the case.

(V) Misclassification of turnover

(i) According to section 16 of the Act, tax shall be levied on the taxable turnover of a dealer registered under the Act, at such rates as the Government may, by notification in the government gazette, specify from time to time.

As per entry No 163 of schedule "D" of the Act, appetizers, pill, powder

forms among other items whether prepared according to pharmacopial standards or otherwise are subject to levy of tax at rate of 13.5 *per cent*. Audit noticed that a dealer in Circle-L Jammu misclassified purchases of appetizers, digestive tablets (goli) valuing ₹19.02 lakh under five *per cent* tax category during the year 2010-11 against the applicable rate of 13.5 *per cent*. This resulted in misclassification of corresponding turnover of ₹20.92 lakh and consequent tax evasion of ₹2.89 lakh, including interest of ₹1.11 lakh.

On this being pointed out, the AA raised (March 2015) demand of ₹3.49 lakh against the dealer and had referred the case to Dy. Commissioner (Recovery) Jammu for recovery of demand. Further progress of recovery was awaited (December 2015).

(ii) Sales Tax on inter-State transactions is levied under the Central Sales Tax (CST) Act, 1956 and rules framed thereunder. The registered dealers are eligible to certain concessions and exemptions from payment of tax on inter-State transactions on submission of prescribed declarations Form 'C'. The interstate sales not supported by C Forms were subjected to levy of tax at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State. The CCT had clarified (2005) that duplex board is liable for tax at the rate of 12.5 *per cent* which was revised to 13.5 *per cent* in April 2010.

In circle Kathua, a unit holder registered for manufacture and sale of Kraft paper and duplex board was assessed under section 39 of the Act for 2010-11. Audit observed that interstate sale of duplex board valuing ₹5.18 crore not supported by C Forms were charged to tax at a rate of five *per cent* instead of 13.5 *per cent*. This resulted in short levy of tax of ₹87.23 lakh, including interest of ₹43.24 lakh.

(iii) Six dealers assessed (between April 2010 and September 2014) in Circle Udhampur-II, Circle P Jammu and Circle Kathua had misclassified turnover of ₹29.20 lakh under lower tax category. The AAs while finalizing assessment under Section 39 of the Act had failed to notice misclassification of turnover. This resulted in tax evasion of ₹6.70 lakh, including interest of ₹3.55 lakh.

(VI) Concealment of turnover

Section 31 of the Act envisages that a registered dealer shall furnish return of his turnover to his jurisdictional AA disclosing therein the turnover of sales and amount of tax paid on such sales. Further under section 39 of the Act, the AA after receiving authorization from CCT may assess the dealer notwithstanding the fact that the dealer has already been assessed under section 38 of the Act.

Cross verification of records⁹ showed that purchases to the tune of ₹7.42 crore had not been accounted for by 40 dealers in their books of accounts in 10 selected circles. This had resulted in suppression of turnover of ₹7.70 crore (after adding profit element) with consequential tax evasion of ₹0.62 crore, besides interest and penalty of ₹1.87 crore was also leviable.

The Government reported (September 2015) that objections would be looked into and factual position communicated to audit. Further progress in the matter was awaited (December 2015).

(VII) Short/ Non-raising of Demand

A demand of ₹4.68 lakh was worked out (March 2014) against the dealer in Circle Kupwara by the AA. However demand notice for ₹0.28 lakh only was issued against the dealer which was paid by him. This resulted in short realization of revenue of ₹4.40 lakh, besides interest of ₹0.43 lakh was also leviable. Further while assessing another dealer in the same circle under section 39 of the Act, the AA determined a tax liability of ₹0.92 lakh to be payable by the dealer for accounting year 2010-11. However, no demand notice was issued to the dealer by the AA.

On this being pointed out, the Government reported (September 2015) that objection raised in the first case was being examined while demand of ₹0.92 lakh in the second case had been recovered (April 2014 to January 2015) from the dealer.

(VIII) Incorrect grant of tax exemption

To promote employment and industrial growth, the State Government has authorized exemption on interstate sales (February 2004) and tax remission on intrastate sale (March 2006) of goods manufactured by industrial units in the State, subject to fulfillment of prescribed conditions which *inter alia* are (a) that the industrial unit shall maintain correct and regular account of purchases of goods including machinery, plant and equipment, raw material etc. and production and sale of goods (b) that the industrial unit shall in no case procure finished product from outside the State and shall not dispose of the raw material in any manner whatsoever except as provided in the certificate of registration.

⁹ Consumption statement of C-forms/ VAT-65 form/ F-forms/ Departmental bills of lading with purchase statement of goods

(i) An industrial unit registered in circle Kathua for manufacture of Aluminium alloys was allowed tax exemption on sales turnover of ₹17.43 crore during 2010-11. Audit noticed that the unit holder had not disclosed purchase of raw materials valuing ₹25.65 lakh in his accounts. While assessing the dealer, the AA failed to detect concealment and for violation of the condition of exemption notification, the dealer was not entitled for benefit of tax exemption of ₹86.84 lakh.

The Government reported (September 2015) that matter was being examined in the light of relevant records and necessary action taken report would be intimated in due course of time.

(ii) The AA while assessing a dealer for accounting year 2010-11 in Circle 'G' Jammu allowed exemption from payment of tax on interstate sales of ₹38.14 crore. The dealer furnished 32 declaration form (C Forms) in support of interstate sales and it was noticed that two Forms for ₹47.65 lakh and ₹25.86 lakh were repeated in the list. The AA had failed to detect these discrepancies and incorrectly allowed tax exemption of ₹9.92 lakh to the dealer. The dealer had also shown collection of tax of ₹15.14 lakh¹⁰ on sale of ₹6.96 crore against 13 C Forms carried out during the period 2008-11 but had not deposited the same. The AA, instead of demanding tax collected by the dealer had incorrectly exempted this turnover from payment of tax.

(iii) In commercial taxes circle Kathua, a dealer registered for manufacture of Lead and Lead alloy, Tin and Tin alloy had returned sales of ₹6.24 crore of Calcium alloy during 2010-11 for which he was not registered. The dealer also used F Forms for stock transfer of unauthorized/ unregistered items viz copper rod, optical emission spectrometer, CCR Line Furn, System (NOS) and sputtering target, valuing ₹32.63 crore. While assessing (March 2014) the dealer, the AA had failed to levy tax on unauthorized items sold/ transferred by the unit holder. Sale/stock transfer of unregistered items was liable to levy of tax of ₹1.94 crore.

The Government reported (September 2015) that matter was being examined in the light of relevant records and necessary action taken report would be intimated in due course of time.

¹⁰ ₹1.56 lakh on sales of ₹78.03 lakh, ₹10.89 lakh on sales of ₹544.68 lakh and ₹2.69 lakh on sales of ₹73.51 lakh

(IX) Non-payment of tax on trading activity

(i) Audit noticed that a unit under Circle P Jammu, had shown sale of corrugated cartoons, detergent cake, detergent powder and toilet cleaner amounting to ₹80.12 crore for the years 2007-08 and 2009-10 but the dealer was not registered for corrugated cartoons, detergent cake and detergent powder and was registered for trading of Toilet cleaner bottles and mosquito coils. The AA at the time of finalizing assessment for accounting years 2007-08 and 2009-10 in November 2010 and January 2013 had failed to notice this. This resulted in short levy of tax of ₹10.01 crore.

The matter was brought (March 2015) to the notice of the Department and action taken thereof was awaited (December 2015).

(ii) Another industrial unit registered in circle G Jammu had collected tax of ₹6.84 lakh on turnover of ₹3.42 crore realised from trading activity during 2009-10. The AA at the time of finalizing assessment had incorrectly exempted turnover of ₹3.42 crore resulting in non-levy of tax of ₹6.84 lakh besides interest of ₹8.68 lakh was also leviable.

(X) Non-obtaining of additional security

Section 29 (1) of the Act envisaged that the prescribed authority may at the time of grant of registration to the dealer for good and sufficient reasons to be recorded in writing, require the dealer to furnish in the prescribed manner such security or such additional security (after the dealer has been registered) as may be specified by it for securing proper and timely payment of tax or any other sum payable by him under the Act. Further Rule 27 (2) (a) provides that security to be demanded by the Registering Authority shall be equivalent to 2 *per cent* of the estimated annual taxable turnover of the dealer and additional security equivalent to 0.5 *per cent* of the actual taxable turnover returned by the dealer (after being registered).

(i) In circle L Jammu, a dealer in his application (February 2010) for registration for trading in packing material, mosquito coils had projected an estimated annual turnover of ₹two lakh. The dealer was issued registration certificate as non- importer and security of ₹twenty five thousand was obtained from the dealer in the form of FDR pledged in favour of the Department.

After obtaining registration, the dealer returned turnover of ₹70.74 crore for the period 4 February 2010 to 31 March 2010 (59 days) in the first return filed by him. The dealer subsequently reported a turnover of ₹43.19 crore during the

year 2010-11. No action was taken by the AA to obtain additional security of ₹35.37 lakh and ₹21.60 lakh, respectively for the two years as envisaged in the VAT Rules.

On this being pointed out, the AA stated (April 2015) that it was upto satisfaction of the AA that he may fix the additional security as required under Rules. The reply was not tenable as obtaining of additional security was mandatory under VAT Rules.

(ii) Further non-levy of additional security of ₹79.87 lakh was noticed in 66 cases in 10 circles during the period 2009-14. On this being pointed out, the AA circle Udhampur-II stated (February 2015) that by charging nominal security, a large number of dealers had been motivated to take registration under the Act thereby increasing revenue of the circle. The reply is not tenable as the AAs were required to levy additional security in accordance with provisions of the Act.

2.3.7 Recovery of tax demands

Sub-Section (6) of Section 44 of the Act envisages that the amount that remains unpaid after the due date of payment in pursuance of the notice issued under sub-section (4) or sub-section (5) shall on the issue of certificate in the prescribed form to the Deputy Commissioner (Recovery) be recoverable as arrears of land revenue. The position of arrears referred to the Deputy Commissioner (Recovery), arrears recovered and arrears pending recovery during 2010-11 to 2014-15 was as follows:

Table-2.3.5

(₹ in crore)

Deputy Commissioner (Recovery) Kashmir					
Year	Opening Balance	Additions during the year	Arrears reduced by rectification/ Appeal effect/ withdrawal of RC/ stayed by HHC/Tribunal	Arrears realized during the year	Arrears Pending realization at the close of the year
2010-11	592.93	54.15	11.62	10.45	625.01
2011-12	625.01	36.73	82.89	4.53	574.32
2012-13	574.32	76.07	69.35	10.17	570.87
2013-14	570.87	44.46	29.65	42.11	543.57
2014-15	543.57	28.17	17.39	23.29	531.06

Table-2.3.6

(₹ in crore)

Deputy Commissioner (Recovery) Jammu					
Year	Opening Balance	Additions during the year	Arrears reduced by rectification/ Appeal effect/ withdrawal of RC/ stayed by HHC/Tribunal	Arrears realized during the year	Arrears Pending realization at the close of the year
2010-11	396.53	105.45	75.91	6.77	419.30
2011-12	419.30	431.98	187.88	5.08	658.32
2012-13	658.32	177.87	177.28	19.45	639.46
2013-14	639.46	50.12	76.54	11.47	601.57
2014-15	601.57	133.11	177.75	9.68	547.25

The percentage of arrears realized to realizable arrears ranged between one to seven during the years 2010-11 to 2014-15, in Kashmir division. Although total arrears pending realization had decreased to ₹531.06 crore ending March 2015 but realization of arrears was very low. In Jammu Division arrears pending realization had increased from ₹396.53 crore as on April 2010 to ₹547.25 crore ending 31 March 2015. The arrears realized to total realizable arrears was between one and three *per cent* during 2010-11 to 2014-15. The low recovery of arrears indicated that no efforts were made to ensure recovery of revenue.

2.3.7.1 Non-levy of interest on tax demands

VAT Rule 47 provides that there shall be recoverable in the proceedings in execution of every certificate (i) interest at rate of 2 *per cent* per month from the date of default till payment of such tax (ii) all charges incurred in respect of the service of notice on dealer to pay the arrears, warrants and other processes; besides all other proceedings taken for realizing the arrears. Accordingly Deputy Commissioner (Recovery), at the time of execution of every certificate had to recover interest at the rate of two *per cent* on tax component from the date of issue of demand.

Audit check of records of Deputy Commissioners (Recovery) Kashmir as well as Jammu showed that no interest on late payment of tax from date of referral by AAs to date of actual recovery of demand had been levied resulting in non-levy of interest to the tune of ₹77.46 lakh as detailed in the **Table-2.3.7**.

Table-2.3.7

	Deputy Commissioner (Recovery) Kashmir	Deputy Commissioner (Recovery) Jammu
Number of cases closed	37	113
Amount of recoverable tax in demand (₹in lakh)	58.12	173.63
Interest due upto payment of tax (₹in lakh)	15.98	61.48

A few instances of short recovery of tax demand and non-levy of interest thereon noticed in audit are discussed as follows:

(i) The AA circle L Jammu had referred¹¹ tax demands of ₹1.71 crore of a dealer for the accounting years 2005-06 to 2008-09 to the Deputy Commissioner (Recovery) Jammu for effecting recovery under section 44(6) of the Act. Recovery of ₹1.51 crore was made from the dealer between September 2009 and November 2014 leaving ₹20.31 lakh unrecovered which was not reflected in the recovery notice issued to the dealer. Further interest of ₹10.97 lakh chargeable on late payment of tax was also not recovered from the dealer.

On this being pointed out (April 2015), Deputy Commissioner (Recovery) Jammu stated (April 2015) that interest had been included in respective cases and recovery proceedings initiated.

(ii) The AA circle J Jammu had referred¹² tax demands of ₹1.05 crore¹³ of a dealer for the accounting years 2005-06 to 2007-08 to the Deputy Commissioner (Recovery) Jammu for effecting recovery. Out of this, ₹84.22 lakh only was paid by the dealer between October 2008 and November 2012 leaving ₹19.53 lakh unrecovered as of November 2012. Audit noticed that recovery proceedings were stopped and the case was closed by the Department. Interest of ₹23.17 lakh due on late payment of tax was also not recovered from the dealer.

On this being pointed out, the Deputy Commissioner (Recovery) Jammu raised (April 2015) demand of ₹42.70 lakh out of which ₹6.18 lakh was paid (June 2015) by the dealer.

2.3.8 Monitoring mechanism

Working of Commercial Taxes Circles is monitored by Additional Commissioners of Commercial Taxes Kashmir and Jammu through quarterly performance indicators submitted by the Circles. The consolidated performance indicator was not being submitted regularly to the CCT. Audit observed that cognizance of performance indicators was not taken by higher authorities as no instructions had been issued to CTOs who had not done provisional assessments and had failed to achieve revenue targets.

¹¹ May 2009 (₹28.85 lakh), December 2009 (₹26.90 lakh), April 2011 (₹17.72 lakh) and December 2011 (₹97.57 lakh)

¹² July 2008 (₹18.61 lakh), October 2009 (₹49.19 lakh) and July 2011 (₹36.83 lakh)

¹³ Includes VAT: ₹103.75 lakh and CST: ₹0.88 lakh

2.3.9 Conclusion and Recommendations

- The Department had not maintained data base of dealers on the basis of prescribed criteria for tax audit and audit assessments resulting in selection of cases in non-transparent manner and escaping of large number of cases for audit assessments. The selection of dealers was made by AAs in an arbitrary manner with the result nil demands were raised in large number of assessed cases.

The Department may like to consider maintaining database of dealers on the basis of prescribed criteria, ensuring selection of dealers for tax audit and audit assessments in transparent manner and prescribing time limit for conducting tax audit after authorization by CCT.

- Incorrect assessments by AAs resulted in tax evasion on account of incorrect claim of ITC, misclassification/ concealment of turnover, grant of incorrect tax exemption.

The Department may ensure that AAs cross-verify records to ascertain genuineness of ITC claimed by dealers and to prevent tax evasion due to concealments, misclassification of turnover etc.

- The percentage realization of arrears was very low and there was no proper monitoring of working of AAs.

The Department may like to consider taking effective measures for early recovery of arrears of revenue and ensure strict monitoring of working of AAs.

C. AUDIT OF TRANSACTIONS

Power Development Department

2.4 Follow up Audit on Levy and Collection of Electricity Duty and Fee

2.4.1 Introduction

A Performance Audit (PA) of the system of Levy and Collection of Electricity Duty and Fee in the Power Development Department for the period 2005-06 to 2009-10 had featured in the Report of the CAG of India (Government of Jammu and Kashmir) for the year ended 31 March 2010 under Audit paragraph 4.2. The Performance Audit contained four recommendations to address the audit findings, which were agreed to by the Power Development Department. The findings and the recommendations had not been discussed by the Committee on Public Accounts (PAC) (December 2015).

2.4.2 Summary of previous recommendations

The recommendations and observations focused on improving internal controls, demonstrating efficient enforcement for proper realization of Energy Charges (EC) and Electricity Duty (ED) etc. A summary of recommendations is given as under:-

- Establishing a system for maintenance of records in respect of levy and collection of EC and ED indicating therein the category/ age-wise position of arrears of EC and ED separately from Sub-divisional level to State level.
- Setting up of Internal Audit Wing or strengthening of existing Revenue Cells for an effective internal audit system
- Introducing a penal clause in the agreement executed with J&K Bank Limited for delayed remittance of energy charges collected by the Bank
- Framing of Electricity duty rules providing therein the manner of calculation, collection, payment and recovery aspects.

2.4.3 Follow-up Audit

Follow-up audit on above review was conducted between May and June 2015. For this, questionnaires were issued to two Chief Engineers Electric Maintenance and Rural Electrification (EM&RE) wing to obtain their views and responses on the matter. The status of action taken on audit findings involving various system and compliance issues are commented in the following paragraphs.

2.4.4 Overall assessment/ Implications

The Para wise status of compliance with regard to the observations made previously along with their updated position as of June 2015 are given in the **Table-2.4.1**.

Table - 2.4.1

Para-graph No.	Title of paragraph	Observation in previous report	Current status	Further reply on the paragraph furnished by the department.
4.2.7	Trend of revenue	Actual realization during the review period was significantly less than the estimates of the year with a shortfall ranging between 6 and 33 per cent.	The actual realization of revenue is still significantly less than the Budget estimates. During the period 2010-11 to 2014-15, the shortfall ranged between 19 per cent and 34 per cent.	The CE, EMRE Jammu stated (July 2015) that estimates had been prepared on the basis of previous realizations. The fact remains that variation between Budget estimates and actual realization continued to persist over the years indicating that either the Budget estimates were faulty and were prepared on <i>ad hoc</i> basis or the Department failed to enforce recovery of the revenue or there were large scale leakages or a combination of all.
4.2.8.1	Arrears of energy charges including electricity duty	Arrears of unrecovered energy charges stood at ₹986.45 crore ending March 2010	Lack of any serious measures for recovery of arrears can be gauged from the fact that the arrears of EC including ED accumulated from ₹1220.18 crore in April 2011 to ₹2092.41 crore at the end of March 2015. Of these arrears, ₹1015.63 crore pertaining to State Government Departments (other than Corporations and Autonomous Bodies) had been waived off by the State Government pursuant to a cabinet decision (March 2013), thereby leaving ₹1076.78 crore recoverable as of March 2015.	The CE, EMRE Jammu stated (June 2015) that the Department had initiated steps to recover the arrears and special drive would be launched to recover long pending arrears. The CE, EMRE Kashmir stated (July 2015) that mass disconnections drive had been put in place for speedy recovery of arrears from the consumers.

Para-graph No.	Title of paragraph	Observation in previous report	Current status	Further reply on the paragraph furnished by the department.
4.2.8.2	Internal Audit	There was no procedure for preparation of annual plans for conducting internal audit. Number of audits had decreased from 11 in 2006-07 to 2 in 2009-10	The lapse continued to persist and had grown even worse after computerization of revenue records, as the Internal Audit wing had not carried out any IT audit of billing system and was restricted to check of GRs and limited manual records. This is attributed to lack of trained personnel and was limited to checking of manual records. The IT Audit and Vigilance wing created belatedly in September 2014 had also not conducted any IT Audit since its creation.	Management has accepted (July 2015) the audit contention of need for strengthening both Internal Audit and IT audit of the system.
4.2.8.3	Delayed deposit of revenue	Delay ranging from 7 days to 28 days had been observed in transfer of revenue from bank to Government Accounts. As a deterrent against belated transfer of revenue, audit had recommended introduction of a penal clause in the agreement signed with the J&K Bank	Delay in transfer of money had been substantially reduced owing to online transfers. Nominal delay was observed in nine out of a total of 45 cases test-checked in Audit.	The CE EM&RE Jammu stated (June 2015) that matter regarding introduction of penal clause had been taken up with the higher authorities as well as with commercial wing of J&K Bank Limited.
4.2.8.4	Levy of Electricity duty on energy generating sets	Out of 216 generators permitted by the Department, ED had been paid by eight generator owners only.	No serious efforts were taken by the Department to overcome this deficiency and despite addition of 416 generators during the period 2010-15, number of generator owners paying ED stood at 13 including eight paying previously also. A loss of ₹6.99 crore had been quantified for 619 DG sets considering the fact that for 13 DG sets, ₹14.69 lakh had been realised over a period of five years.	The CE, EMRE Jammu while admitting (July 2015) that ED had not been levied on regular basis, stated that instructions regarding levy of ED on energy generated by DG sets had been issued to the concerned Divisions. The CE, EMRE wing Kashmir however stated (July 2015) that no such generating units were registered in the region and attributed non-levy of ED to non-framing of Rules.

Para-graph No.	Title of paragraph	Observation in previous report	Current status	Further reply on the paragraph furnished by the department.
4.2.9.1	Non-levy of ED on sale of electricity	Non-levy of ED of ₹259.13 crore on energy sold by the Power Development Corporation to the State PDD and Power Trading Corporation had been pointed out in audit. In response, the CE Generation had stated that the ED was not being levied as the decision to that effect had not been taken by the Government.	Five years down the line, neither had any exemption been granted to PDD from payment of electricity duty to the Power Development Corporation nor any ED been charged on sale of power during 2010-15 resulting in further loss of ₹1194.13 crore. The Department had also not initiated steps for recovery of ED of ₹259.13 crore pointed out previously.	The GM, PDC stated (July 2015) that there was no provision in the Act for levy of electricity duty on energy sold to PDD and Power Trading Corporation (PTC). The Act however envisages levy of duty on sale or consumption of electricity in respect of all consumers, unless specifically exempt and had been accepted by CE Generation during previous audit.
4.2.9.2	Non-levy of ED	ED of ₹7.55 crore on cost of energy supplied to SHEP Jyotipuram had remained unpaid	Out of outstanding ED of ₹7.55 crore payable by Salal Hydroelectric Power Station (SHEP) Jyotipuram for the cost of energy supplied (1998-2010), ₹4.44 crore had been recovered between 2011 and 2014, leaving a balance of ₹3.11 crore recoverable as of March 2015.	While intimating the position of recovery, it was stated (July 2015) that the ED was being charged regularly.
4.2.9.3	Non-levy of ED	ED of ₹65.87 lakh had not been recovered in 57 cases from BSNL, Doordarshan, IOC etc.	Recovery of ₹65.87 lakh had not been effected, though in 42 cases correction had been made by applying correct rate codes. In respect of remaining 15 cases irregularity still persists. During the period 2010-15, however 63 cases of non levy of ED with a financial implication of ₹2.27 crore was observed, which included 15 cases objected during previous PA.	In reply it was stated (June 2015) that as per SERC tariff rates, the tariff for Central Government/ State Government being higher than the rates applicable to commercial consumers, excess payment had already been made by the consumers.

Para-graph No.	Title of paragraph	Observation in previous report	Current status	Further reply on the paragraph furnished by the department.
4.2.10	Shortfall in Electrical inspection and levy of fee	Out of 1.63 lakh consumers due for inspection only 139 inspections had been conducted resulting in loss of ₹88.03 lakh.	The deficiency had not been addressed during the period 2010-15. No periodical inspection had been carried out resulting in further loss of ₹1.25 crore for about 12.66 lakh installations existing at the end of March 2010.	The Executive Engineer, Inspection Division while admitting (July 2015) the Audit contention, attributed the shortfall in inspection to shortage of staff and manifold expansion in electric infrastructure.
4.2.11	Irregular adjustment of ED incentive	An amount of ₹10 crore received from Industries and Commerce Department as ED incentive on non-cash basis was adjusted without any prudent formula/ guidelines.	It was a one time incentive for disbursement to industrial units in the State against ED payable on non-cash basis received during 2008-09. An amount of ₹5 crore had been adjusted against ED payable by CE EM&RE Jammu whereas ₹5 crore had been contra credited to revenue head by CE EM&RE Kashmir in absence of any guidelines.	Chief Engineer EM&RE Jammu stated that it was adjusted against ED payable on the basis of prescribed percentage (22 per cent to 14 per cent).
4.2.12	Non-recovery of energy charges and ED	914 Installations disconnected without recovering the outstanding arrears had resulted in non-recovery of energy charges of ₹7.84 crore and ED of ₹1.72 crore thereon. None of the cases had been referred to the land revenue authorities for recovery of arrears as land revenue though envisaged in the Act.	The information was neither readily available with the provincial Chief Engineers, nor could it be generated from the IT Audit Wing. As per information collected from seven subdivisions, the number of disconnected installations stood at 977 with an outstanding power charges of ₹31.94 crore with an ED implication of ₹7.02 crore, which was recoverable as of July 2015. None of the cases had been referred to Land revenue authorities for recovery.	The Chief Engineer EM&RE Jammu sought (May 2015) the status from the concerned Divisions which was awaited as of July 2015. The Chief Engineer EM&RE Kashmir stated (July 2015) that chronic cases of defaulters were referred to Mobile Magistrate.

Para-graph No.	Title of paragraph	Observation in previous report	Current status	Further reply on the paragraph furnished by the department.
4.2.13	Non-reconciliation of energy charges	Banks collecting revenue on behalf of PDD are required to send the details of individual payments to the Sub-Divisional/ Divisional Officers concerned of the EM&RE Divisions who in turn has to maintain the Receipt-Cum-Remittance register. Neither had any such register been maintained nor any reconciliation got conducted.	The para has lost its relevance owing to computerisation and on-line transfers.	It was stated (July 2015) that at the close of each day banks issue daily scrolls along with copy of bills to concerned sub-Divisions wherein all receipt entries against the bills of consumers were posted which automatically reconcile the figures of revenue on daily basis. It was further stated that all entries were being posted in the computers of Sub-Division level as the system is fully online.

The Government and Department had not initiated any corrective measures to address the deficiencies pointed out in the Audit Report. The progress of recovery of ED was insignificant as out of a recoverable amount of ₹269.94 crore pointed out previously, an amount of ₹265.50 crore was pending for recovery (July 2015).

Due to non implementation of audit recommendations, several lapses continued to persist with an additional revenue implication of ₹1204.67 crore over the period 2010-15, primarily on account of non levy of ED on electricity Generation sets, sale of power by the Power Development Corporation, non-carrying out of statutory inspections and non levy of ED on Autonomous bodies like Prasar Bharti Corporation (Doordarshan), BSNL etc. Out of ₹1204.67 crore, ₹1.25 crore pertained to loss on account of non-conducting of statutory inspections, ₹1196.40 crore on account of non-levy of ED on sale of power and non-recovery of ED from Autonomous bodies and ₹7.02 crore represents outstanding against the disconnected installations which had not been referred as arrears of land revenue for recovery.

2.4.5 Department Compliance on recommendations

Audit scrutinized the records (between May and June 2015) maintained in the office of the Chief Engineers, (CE) EM&RE Kashmir as well as Jammu and in eleven out of 29 Divisions in the State with regard to levy and collection of electricity duty and fee for the period 2010-11 to 2014-15. Audit observed

that none of the four recommendations had been implemented by the Department even after lapse of five years. The deficiency underlying one of the recommendations, had however, been overtaken by technological developments (online fund transfer) thereby considerably reducing the delay in remitting the energy charges collected by branches of the J&K Bank Limited to the Government account.

Key audit findings substantiating the insignificant progress in implementation of all four recommendations along with management response is given as under:

2.4.5.1 Over the years, no system for maintenance of separate records in respect of levy and collection of energy charges (EC) and electricity duty (ED) had been evolved. Out of 29 Divisions in the State, test-check of records of 11 Divisions showed that there was no provision in the software or no alternative system whereby position of arrears on account of ED could be generated as part of a robust MIS. As a result, the Department was not aware of the position of arrears of ED separately which had been clubbed with EC.

The Chief Engineer EM&RE Jammu stated (June 2015) that instructions had been issued to the implementing agencies to ensure implementation of the recommendation. The reply reaffirms the audit contention that robust mechanism for collection of ED separately had not been put in place. The CE, EM&RE Kashmir stated (July 2015) that Department had shifted entire billing to computerized system and category wise position of ED and EC were being monitored separately by Sub-Divisions. However, test-check by audit in the selected divisions revealed that there was no provision in the software whereby arrears on account of ED could be generated separately.

2.4.5.2 Though a Revenue cell functioning as an Internal Audit wing was in operation in the Department, the efficacy of the wing was impaired in the absence of any audit plans, manuals/ guidelines for conduct of internal audit and mechanism for follow up on internal audit findings etc. Further, after computerization of revenue records, the internal audit wing had not carried out any IT audit. This is attributed to lack of trained personnel and was limited to checking of manual records. After digitization of revenue records and shift to computerized billing system since 2007, an IT wing was also in operation in the Department (renamed as IT Audit and Vigilance Department since September 2014). However, no audit of billing records in the computerized environment had been carried out.

The CE, EM&RE Jammu stated (June 2015) that three Revenue officers were working under the administrative control of the wing, however for further strengthening of the Wing, the matter stands referred to the Administrative Department. It was further stated (July 2015) that a post of Executive Engineer (IT Audit and Vigilance) had been created to take care of internal audit in the IT environment. Two of the three revenue officers attributed (June/ July 2015) shortfall in audit to lack of IT trained personnel and shortage of staff. The Management accepted the audit contention that there was an urgent need for strengthening both internal audit and IT audit of the system.

2.4.5.3 No penal clause with regard to delay in remittance of proceeds by J&K Bank Limited as recommended by Audit had been introduced in the agreement executed with the Bank. The penal clause was to act as a deterrent against the delay in transfer of revenue proceeds to Government accounts by the collecting branches of the Bank beyond the stipulated time period of 72 hours. Scrutiny of records, however, revealed that delays in transfer of money had been substantially reduced. Transfer of revenue proceeds in respect of 36 out of 45 bank scrolls analyzed in test-checked Divisions were remitted within the stipulated time period and there was a delay ranging between three to 28 days in respect of nine cases which constituted 20 *per cent* of the total test-checked cases. The improvement in timely remittance of revenue proceeds could be attributed to later developments such as online transfer of money from Banks to designated Bank accounts of the Department.

The CE, EM&RE Jammu stated (June 2015) that matter regarding introduction of penal clause in the agreement had been taken up with the higher authorities as well as with commercial wing of J&K Bank Limited. Notwithstanding the reduction in the delay-time in transfer of money to Government account by the branches of the Bank, as a matter of statutory deterrent and for ensuring timely receipt of Government revenue, penal clause should be introduced in the agreement.

2.4.5.4 No steps had been initiated by the Department for framing of Electricity Duty Rules for enforcement of various provisions of the Act (July 2015). The Development Commissioner (Power) stated (June 2015) that ED was being recovered by the Department without any difficulty, which might be the reason for non formulation of Rules. However, the matter regarding framing of Rules in consultation with Law Department had been referred to the Administrative Department.

The matter was referred to the Government/ Department in July 2015. Reply thereof was awaited (December 2015).

Finance Department

(Commercial Taxes Department)

(Value Added Tax)

2.5 Short-levy of tax due to suppression of stocks

Failure of the Assessing Authorities, to detect suppression of stocks, concealment of purchases including interstate purchases and turnover at the time of assessment of dealers resulted in short levy of tax of ₹21.05 lakh.

Section 42 (1) of the Jammu and Kashmir Value Added Tax Act, 2005 provide that where after a dealer is assessed under sections 37 to 40 of the Act for any year or part thereof, the Assessing Authority has reason to believe that whole or any part of the turnover of the dealer in respect of any period has escaped assessment the Assessing Authority may serve a notice on the dealer and after giving the dealer a reasonable opportunity of being heard and making such enquiries as it considers necessary, proceed to assess to the best of its judgement, the amount of tax due from the dealer in respect of such turnover and the provisions of the Act shall, so far as may be, apply accordingly. Further, Section 69 (1)(f) of the Act stipulates that if any person conceals his turnover or furnishes inaccurate particulars thereof, the appropriate authority shall direct that such person shall pay in addition to the fee or tax by way of penalty, a sum equal to double the amount of tax attempted to be evaded. Also Section 69 (i) (c) of the Act stipulates that if any person without reasonable cause fails to comply with the terms of any notice issued under the Act, such person shall be directed to pay in addition to fee or tax, by way of penalty a sum of rupees five thousand.

Further Section 69 (1)(f) of the Jammu and Kashmir Value Added Tax Act, 2005 stipulates that if any person conceals his turnover or furnishes inaccurate particulars thereof, the appropriate authority shall direct, that such person shall pay in addition to the fee or tax by way of penalty, a sum equal to double the amount of the tax attempted to be evaded.

Audit noticed concealment of turnover/ purchases in the following instances which resulted in short levy of tax of ₹21.05 lakh.

(i) Audit check (August 2013) of assessment records of a dealer in Commercial Taxes Circle 'D' Srinagar showed that dealer had not accounted for the closing stock of ₹27.54 lakh for the year 2007-08 in the purchase side of the profit and loss account for the year 2008-09. The Assessing Authority did not notice the discrepancy while assessing (December 2011) the dealer. This resulted in concealment of turnover of ₹28.91 lakh (after adding profit element of ₹1.37 lakh) and consequent short levy of tax of ₹4.69 lakh¹⁴.

On this being pointed out (August 2013), the Assessing Authority reassessed (January 2014) the dealer and charged the concealed turnover of ₹28.91 lakh to tax and raised (January 2014) a demand of ₹4.76 lakh¹⁵ against the dealer.

The matter was referred to the Government/Department in January 2015. The Department reported (March 2015) that out of demand of ₹4.76 lakh raised by the AA an amount of ₹2.27 lakh had been recovered from the dealer. Further progress of recovery of balance amount was awaited (December 2015).

(ii) Audit during the course (August 2014) of cross-verification of 'F'¹⁶ forms with the consumption statements¹⁷ thereof submitted by two dealers¹⁸ in the office of Commercial Taxes, Circle Udhampur-I noticed concealment of interstate purchases of ₹24.56 lakh during the year 2009-10 as against goods valuing ₹19.74 crore shown in 'F' forms, the value of goods purchased by the dealers as per the consumption statement was ₹19.50 crore. This escaped notice of the Assessing Authority (AA) while assessing the dealers under section 39 (6) of the Act for the said year. The concealed purchases resulted in suppression of turnover of ₹25.79 lakh with tax effect of ₹4.09 lakh¹⁹.

On this being pointed out (August 2014), the Assessing Authority re-assessed (November 2014) both the dealers under section 42 of the Act and raised demands of ₹4.50 lakh²⁰ on the concealed turnover.

¹⁴ Tax: ₹1.16 lakh; Interest: ₹1.22 lakh and Penalty: ₹2.31 lakh

¹⁵ Tax: ₹1.16 lakh; Interest: ₹1.29 lakh and Penalty: ₹2.31 lakh

¹⁶ Form of declaration issued by the transferee to the transferor of goods in the course of inter-state trade.

¹⁷ Statement of Bill-wise/ date-wise transfer of goods against 'F' form by the transferor to the transferee.

¹⁸ M/s Girja Shankar Ram Kumar & Co Udhampur and M/s Sangam Lal Banwari Lal & Co. Udhampur

¹⁹ Tax: ₹1.03 lakh, Interest: ₹0.99 lakh and Penalty: ₹2.07 lakh

²⁰ Tax: ₹1.06 lakh; Interest: ₹1.22 lakh; Penalty u/s 69 (i)(f) : ₹2.12 lakh and Penalty u/s 69 (i)(c): ₹0.10 lakh

The matter was referred to Government/ Department in March 2015. The Commissioner Commercial Taxes stated (April 2015) that for effecting recovery under Land Revenue Act the case was referred to the Dy. Commissioner Commercial Taxes (Recovery) Jammu (Collector) who had issued demand notices to the dealers. Further progress of recovery was awaited (December 2015).

(iii) Audit check (September 2013) of records of Commercial Taxes Circle Pulwama, Kashmir showed that a dealer²¹ dealing in the business of weedicides, pesticides, insecticides, fertilizers and Agriculture equipments had concealed interstate purchases valuing ₹15.40 lakh during the year 2008-09. This escaped notice of the Assessing Authority (AA). The concealment of purchases had resulted in suppression of turnover of ₹16.98 lakh with tax effect of ₹2.77 lakh (Tax: ₹0.68 lakh, interest: ₹0.73 lakh and penalty: ₹1.36 lakh).

On this being pointed out (September 2013), the AA re-assessed (March 2014) the dealer and raised a demand of ₹3.02 lakh (Tax: ₹0.68 lakh; Interest: ₹0.98 lakh and Penalty: ₹ 1.36 lakh).

The matter was referred to Government/ Department in March 2015. The Commissioner Commercial Taxes stated (April 2015) that the dealer had preferred an appeal before the Appellate Authority (Dy. Commissioner Commercial Taxes Appeals, Kashmir). Further progress of recovery was awaited (December 2015).

(iv) Audit check (July 2013) of records of Commercial Taxes Circle Anantnag-I, showed that a dealer dealing in the business of readymade garments, hosiery and cosmetics, had made inter-state purchases during the year 2008-09. A comparison of inter-state purchases included in the Import Bill information (₹42.96 lakh) with the annual return and trading account (₹28.25 lakh) for the year 2008-09 filed by the dealer revealed variation of ₹14.71 lakh. This resulted in short account of purchases valuing ₹14.71 lakh with consequent short levy of tax of ₹2.61 lakh²².

On this being pointed out (July 2013), the Assessing Authority re-assessed (November 2014) the dealer and determined concealment of purchases to the extent of ₹18.21 lakh on the basis of variation of purchases disclosed by the

²¹ M/s Shopian Apple Pesticides, Imam Saib Shopian

²² Tax: ₹ 0.65 lakh; Interest: ₹0.66 lakh and Penalty: ₹1.30 lakh

dealer in his quarterly returns and the annual return/ trading account for the year 2008-09. A demand of ₹3.56 lakh²³ was accordingly raised (November 2014) against the dealer by the Assessing Authority.

The matter was referred to Government/ Department in April 2015; reply had not been received (December 2015).

(v) Audit during the course of cross-verification (January 2012) of statement of lading bills with the purchase statement in Commercial Taxes Circle Baramulla, found that a dealer²⁴ had concealed interstate purchases of ₹11.05 lakh during the accounting year 2007-08. This had escaped the notice of Assessing Authority while assessing (May 2010) the dealer for the said year. The concealment of purchases resulted in suppression of turnover to the extent of ₹12.75 lakh with tax effect of ₹4.82 lakh besides interest (₹1.15 lakh) and penalty (₹2.45 lakh).

On this being pointed out (January 2012), the Assessing Authority re-assessed the dealer (March 2013) and raised (March 2013) a demand of ₹5.21 lakh (Tax: ₹1.22 lakh; Interest: ₹1.54 lakh and Penalty: ₹2.45 lakh) against the dealer.

The matter was referred to the Government/ Department in May 2015. The **Additional Commissioner Commercial (Tax Planning) Srinagar stated (June 2015) that for effecting recovery, the Assessing Authority had referred the matter to the Dy. Commissioner Commercial Taxes (Recovery) Srinagar.** Further, progress of recovery was awaited (December 2015).

²³ Tax: ₹0.80 lakh; Interest: ₹1.16 lakh and Penalty: ₹1.60 lakh

²⁴ M/s Wazir Traders Baramulla dealing with business of readymade hosiery, detergents, toilet soap, confectionery, cosmetics and plastic goods

2.6 Non-levy of penalty

Failure of the Assessing Authority to impose penalty for concealment of turnover by three dealers, resulted in non-levy of penalty of ₹27.57 lakh.

According to Section 42 of Jammu and Kashmir Value Added Tax Act 2005, where after a dealer is assessed under sections 37 to 40 of the Act for any year or part thereof, the Assessing Authority has reason to believe that whole or any part of the turnover of the dealer in respect of any period has been under-assessed, the Assessing Authority may proceed to assess to the best of its judgement, the amount of tax due from the dealer in respect of such turnover. Further section 69(1)(f) of the Act provide that if any dealer who conceals his turnover or furnishes inaccurate particulars thereof shall have to pay in addition to the fee or tax, by way of penalty a sum equal to double the amount of tax attempted to be evaded.

Audit scrutiny (October/ November 2012) of records of Commercial Taxes Circle 'E' Srinagar showed that Assessing Authority while assessing (November 2009/ May 2010) three dealers dealing in sale of timber for accounting years 2007-08, 2008-09 and 1st two quarters of the year 2009-10 under section 39(5)(b) of the Act noticed concealment of turnover of ₹1.11 crore (2007-08: ₹1.79 lakh; 2008-09: ₹80.68 lakh; 2009-10: ₹28.70 lakh) by these dealers. Accordingly, these suppressed sales were charged to tax by the Assessing Authority but penalty proceedings as required under section 69 (1) (f) of the Act were not initiated. This resulted in non-levy of penalty of ₹27.57 lakh in these cases.

On this being pointed out, the Assessing Authority imposed (March 2014) penalty of ₹27.77 lakh upon these dealers u/s 69 (1) (f) of the Act.

The matter was reported to the Government/ Department in January/March 2015. **The Commissioner Commercial Taxes stated (January/ March 2015) that the arrear demand had been referred to the Dy. Commissioner Commercial Taxes (Recovery) Kashmir for recovery and ₹6 lakh had been recovered from one dealer.** Further, progress of recovery of balance amount was awaited (December 2015).

2.7 Short-levy of tax due to concealment of interstate purchases

Failure of the Assessing Authority Commercial Taxes Circle 'L' Jammu to detect concealment of interstate purchases by the dealer during the year 2008-09 resulted in short levy of tax to the extent of ₹27.27 lakh.

Section 42 (1) of the Jammu and Kashmir Value Added Tax Act, 2005 provide that where after a dealer is assessed under sections 37 to 40 of the Act for any year or part thereof, the Assessing Authority has reason to believe that whole or any part of the turnover of the dealer in respect of any period has escaped assessment, the Assessing Authority may serve a notice on the dealer and after giving the dealer a reasonable opportunity of being heard and making such enquiries as it considers necessary, proceed to assess to the best of its judgement, the amount of tax due from the dealer in respect of such turnover and the provisions of the Act shall, so far as may be, apply accordingly. Further, Section 69 (1)(f) of the Act stipulates that if any person conceals his turnover or furnishes inaccurate particulars thereof, the appropriate authority shall direct that such person shall pay in addition to the fee or tax by way of penalty, a sum equal to double the amount of the tax attempted to be evaded.


Audit check (May 2013) of records of Commercial Taxes Circle 'L' Jammu showed that a dealer²⁵ dealing with the business of excavators and spare parts had concealed inter-state purchases valuing ₹41.69 lakh during the Accounting Year 2008-09. This escaped notice of the Assessing Authority (AA) while assessing the dealer (November 2011). The concealed purchases resulted in suppression of turnover of ₹50.03 lakh (after adding profit element of ₹8.34 lakh) with tax effect of ₹6.25 lakh in addition to interest and penalty.

On this being pointed out (May 2013), the AA re-assessed (March 2014) the dealer and raised (March 2014) a demand of ₹27.27 lakh (Tax: ₹6.25 lakh; Interest: ₹8.51 lakh and Penalty: ₹12.51 lakh) on the concealed turnover of ₹50.03 lakh.

²⁵ M/s Nitin Engineering Company, Sidhra, Jammu

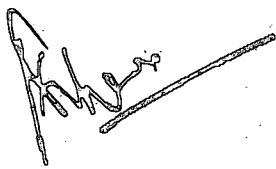
The matter was reported to the Government/ Department in February 2015. The Department reported (March 2015) that dealer filed an appeal before Appellate Authority, Dy. Commissioner Commercial Taxes (Appeals) Jammu who had granted (February 2015) stay to the disputed demand. The Department further reported (April 2015) that stay granted had been vacated on 28 February 2015 and that report would be submitted after recovery of arrears. Further progress in the matter was, however, awaited (December 2015).

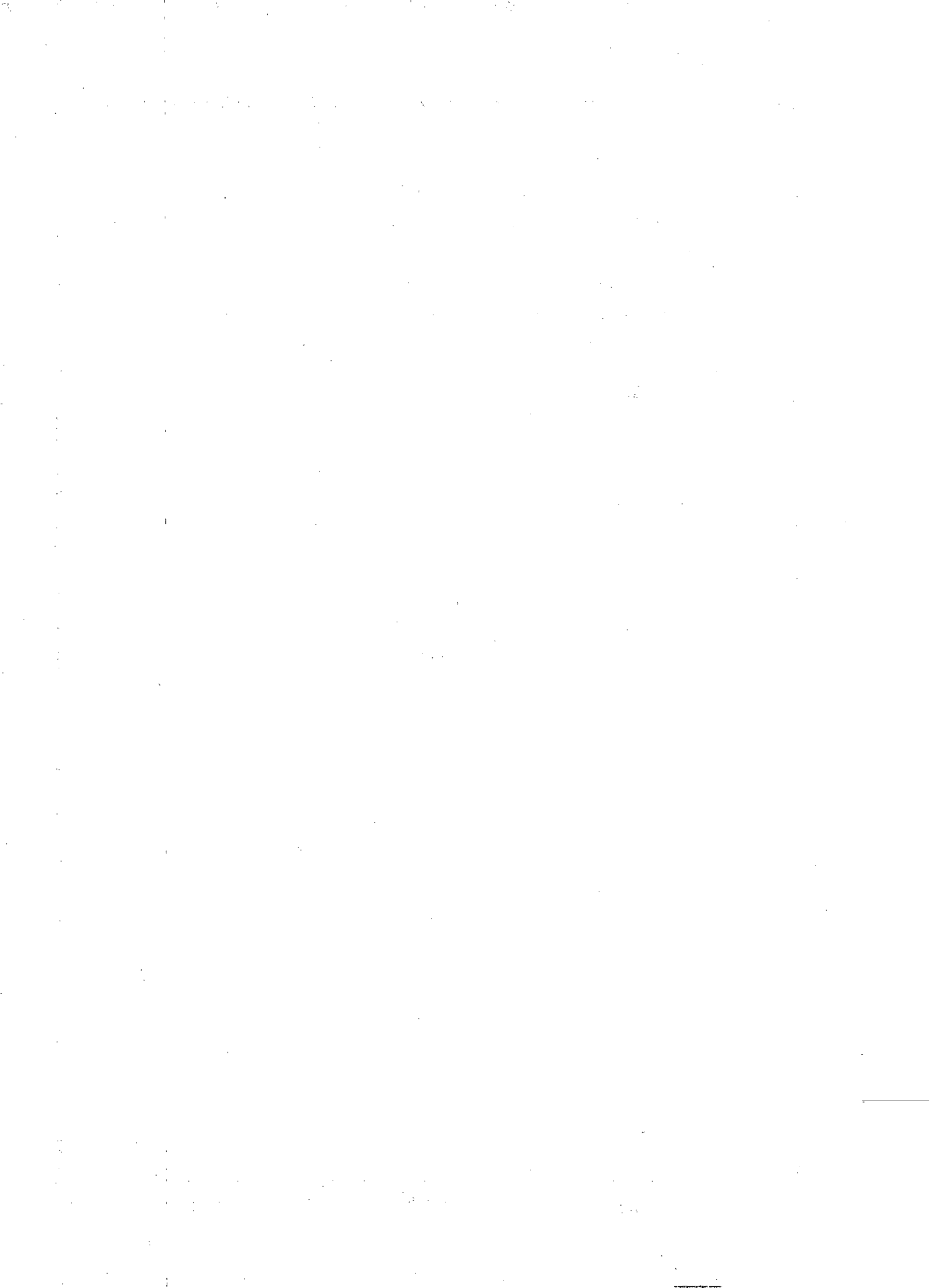
Srinagar/ Jammu
The 29th March 2016


(Hoveyda Abbas)
Accountant General (Audit)
Jammu and Kashmir

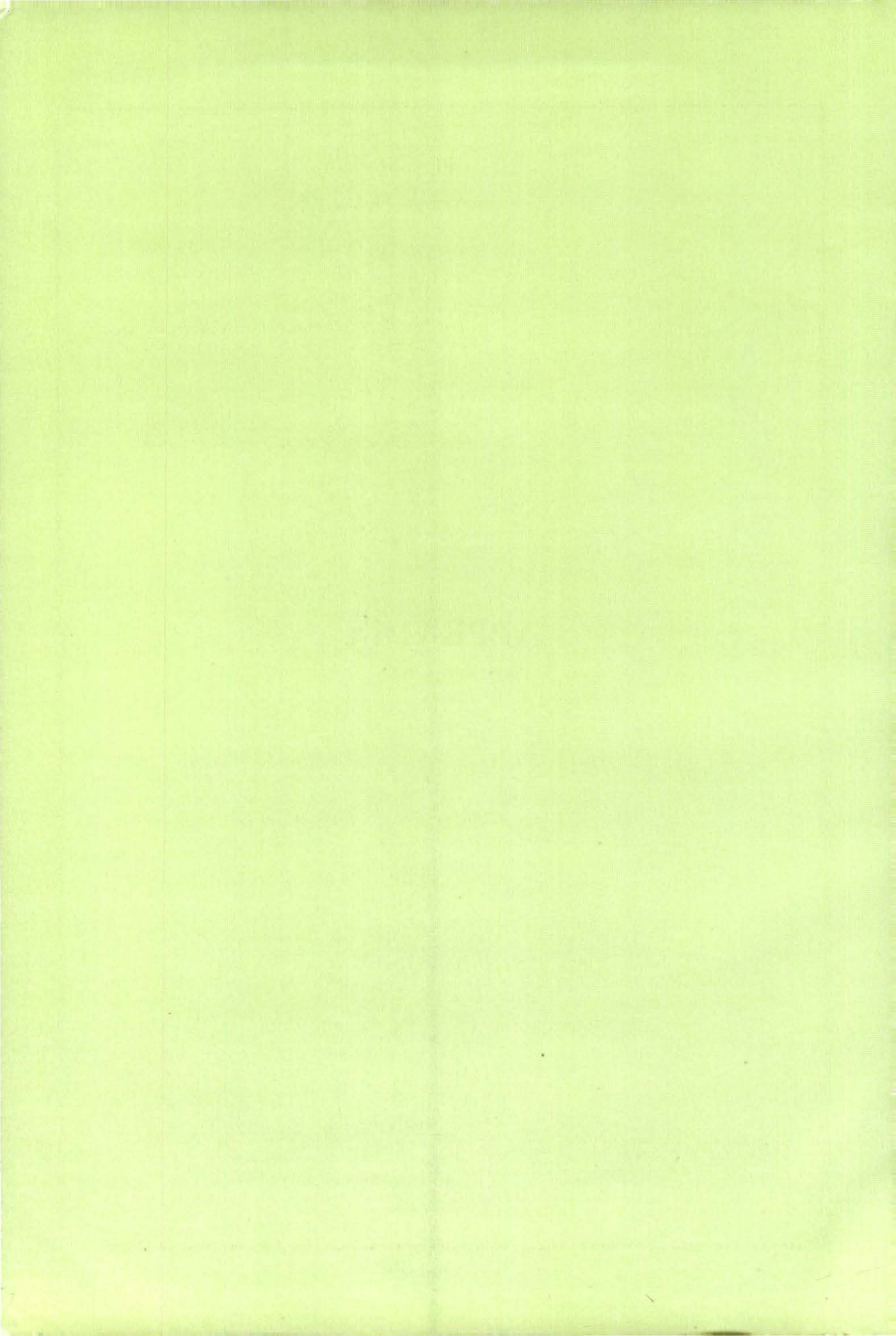
Countersigned

New Delhi
The 31st March 2016


(Shashi Kant Sharma)
Comptroller and Auditor General of India



APPENDIX



Appendix-2.1

(Reference Paragraph No. 2.3.1; Page 14)

Main provisions for System of assessments under Jammu and Kashmir Value Added Tax Act and Rules

Registration of dealers	Section 27 of J&K VAT Act, 2005 provide that no dealer shall while being liable to pay tax under this Act, carry on business as a dealer unless he has been registered and possesses a certificate of registration.
Furnishing of security	Section 29 of J&K VAT Act, 2005 read with Rule 27 of J&K VAT Rules, 2005 provide for obtaining security or additional security (after the dealer has been registered) equivalent to 2 <i>per cent</i> of the estimated annual taxable turnover of the dealer or 0.5 <i>per cent</i> of the actual annual taxable turnover returned by the dealer in the shape of cash deposits, Fixed Deposit Receipt, etc.
Periodical returns and payment of tax	Section 31 of J&K VAT Act, 2005 read with Rule 28 of J&K VAT Rules, 2005 requires a registered dealer to furnish quarterly return of his turnover accompanied by proof of full payment of any tax due to the Jurisdictional Assessing Authority within one month from the expiry of each tax period.
Scrutiny of returns filed by the dealers	Section 35 of the J&K VAT Act, 2005 provide that each and every return furnished by a registered dealer shall be scrutinized by the Assessing Authority within a period of three months of filing of such return to verify the correctness of calculation, application of correct rate of tax and interest and input tax credit claimed therein; and full payment of tax and interest payable by the dealer during such period.
Notification for rate of tax.	Section 16 of J&K VAT Act, 2005 envisages that there shall be levied on the taxable turnover of a dealer registered under the Act, a tax at such rates as the Government may, by notification in the Government Gazette, specify from time to time.
Audit assessment / detailed scrutiny	Section 39 of J&K VAT Act, 2005 read with Rule 34 of J&K VAT Rules, 2005 provide for Audit assessment of such cases where a registered dealer has failed to furnish any return or the Assessing Authority is not satisfied with the correctness of any return filed or the Commissioner has reason to believe that detailed scrutiny of the case is necessary and also on the basis of prescribed categories of cases. Rule 35 of J&K VAT Rules, 2005 provides for issue of notice in the prescribed form to the dealer selected for audit assessment.

Deemed assessment of cases	Section 41 of J&K VAT Act, 2005 provide that no assessment shall be made after the expiry of three years from the end of the tax period to which the assessment relates and every return filed shall be deemed to have been accepted if not taken up for scrutiny within three years from the due date prescribed for its filing.
Tax demand notice and payment	Section 44 of J&K VAT Act, 2005 read with Rule 39 of J&K VAT Rules, 2005 provide that notice of demand shall be in prescribed form and accompanied by the challan duly filled in and signed by the Assessing Authority.
Assessment and imposition of penalty	Section 69 of J&K VAT Act, 2005 prescribes the procedure relating to assessment and imposition of penalty provided that no order of penalty shall be passed after the expiry of two years from the close of the financial year in which such penalty proceedings were initiated. Further before passing an order the authority concerned shall give the person in default an opportunity of being heard.