Chapter II

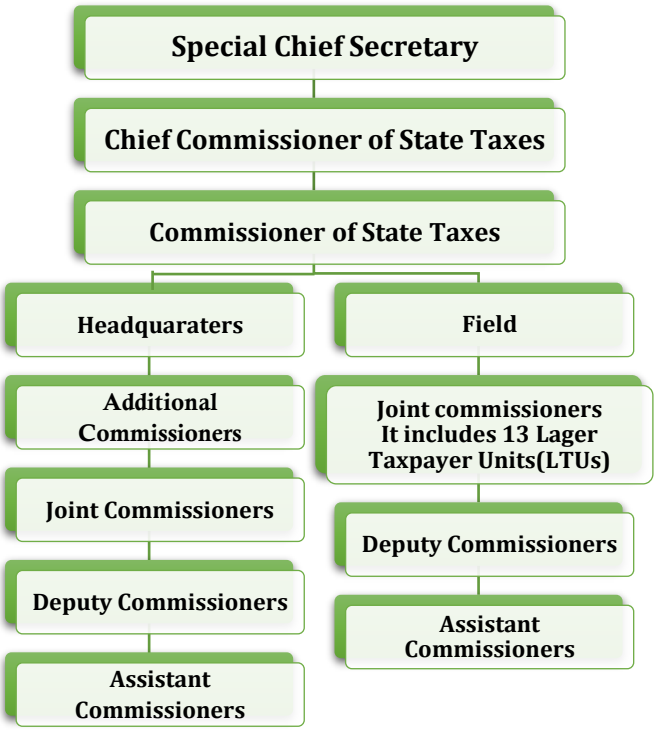
Value Added Tax, Central Sales Tax and Goods & Services Tax

2.1 Tax Administration

Commercial Taxes Department is one of the key revenue earning departments in the Government of Andhra Pradesh. The Department administers and collects revenue on goods and services under Andhra Pradesh Value Added Tax Act, 2005 (VAT Act), Central Sales Tax Act, 1956 (CST Act), Andhra Pradesh Entertainments Tax Act,1939, The Andhra Pradesh Tax on Professions, Trades, Callings and Employment Act, 1987 apart from other minor Acts. The Department has been administering and collecting revenue on goods and services under the Andhra Pradesh Goods and Services Tax Act, 2017.

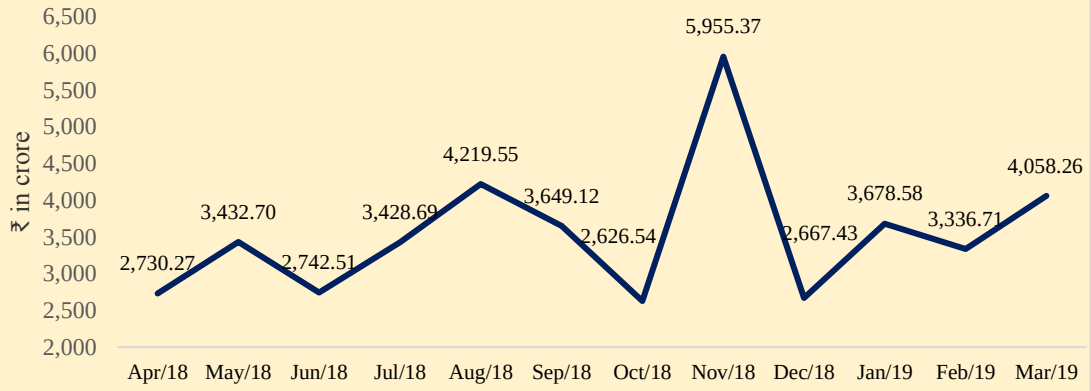
The Department is headed by the Special Chief Secretary of Revenue Department at Government level. The organisational set-up is depicted in the organogram given below:

Figure-2.1: Organogram



Sales Tax revenue (VAT and State GST) forms the largest source of revenue for the State and accounts for 37.08 *per cent* of the total revenue of the State. It has been increasing year-on-year since 2016-17, although, the actual receipts did not match budgetary projections in any of the years during 2015-16 to 2018-19. Revenue from sales tax and SGST increased from ₹10,820 crore during 2017-18 to ₹20,611 crore in 2018-19 at a growth rate of 90.49 *per cent* primarily due to increase in SGST receipts. There was a wide variation in SGST receipts across the months during 2018-19 with November accounting for highest receipts mainly on account of IGST transfer to SGST, as can be seen from **Chart 2.1**:

Chart 2.1: Taxes on Sales, Trades etc. and SGST realised during the Financial Year 2018-19



2.2 Results of Audit

Audit of Commercial Taxes Department was conducted through a test check of the assessment files, refund records and other related records in 37 out of 117 offices (31.62 *per cent*) of the Department during 2018-19, to gain assurance that the taxes were assessed, levied, collected and accounted for in accordance with the relevant Acts, Codes and Manuals, and the interests of the Government are safeguarded. These offices were selected on the basis of quantum of revenue collected. Audit brought out instances of deviations/non-compliance with the relevant Acts/ Codes/ Manuals leading to under assessment of VAT in 448 cases involving an amount of ₹84.11 crore, due to various reasons, as detailed in **Table 2.1**.

Table 2.1: Results of Audit

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1	Non-levy/Short levy of VAT	180	65.29
2	Non-levy/Short levy of Interest and Penalty	66	6.68
3	Non-levy/Short levy of tax on works contracts	4	0.73
4	Excess/Incorrect claim of Input Tax Credit	51	5.00
5	Non-levy/Short levy of tax under CST Act	67	4.00
6	Non-collection of Turn Over Tax	29	1.65
7	Other irregularities	51	0.76
	Total	**448**	**84.11**

During the year, the Department accepted underassessment and other deviations in 175 cases involving ₹8.89 crore, including ₹1.60 crore pertaining to the previous years. An amount of ₹1.81 crore relating to 141 cases was realised during the year 2018-19.

Significant audit findings involving ₹10.05 crore are discussed in the succeeding paragraphs. These cases are illustrative and are based on a test check carried out by Audit. Such omissions are pointed out in audit every year, but not only do the irregularities persist; these also remain undetected until an audit is conducted again. There is a need for improvement of internal controls so that repetition of such omissions can be avoided or detected and rectified in a timely manner.

2.3 Levy of Penalty

2.3.1 Non-levy/ short levy of Penalty for under declaration of tax

Assessing Authorities have not levied/ short levied penalties amounting to ₹3.18 crore on dealers, who had under declared tax

As per Section 53 (1) of APVAT Act, 2005 (VAT Act), where any dealer has under declared tax and where it has not been established that fraud or wilful neglect has been committed and where the under declared tax is less than 10 *per cent* of the tax, a penalty shall be imposed at 10 *per cent* of such under declared tax. If the under declared tax is more than 10 *per cent* of the tax due, penalty shall be imposed at 25 *per cent* of such under declared tax.

Under Section 53 (3) of VAT Act, any dealer who has under declared tax and where it is established that fraud or wilful neglect has been committed, such dealer shall be liable to pay penalty equal to the tax under declared. As per Rule 25 (8) (a) and (b) of VAT Rules, the tax under declared means the excess of Input Tax Credit (ITC) claimed over and above the amount entitled to be claimed or the difference between output tax actually chargeable and the output tax declared in the returns.

Under Section 13(3) (a) of the Act, ITC is allowed on the date, the goods were received by the dealer and was in possession of a tax invoice. In terms of Section 21(3) of the Act, read with Rule 25(5) of VAT Rules, where a VAT return filed by the dealer appears to be incorrect, AA (Assessing Authority) is empowered to assess the tax to the best of his judgment, along with interest and penalty as per the provisions mentioned above.

During the test check of records of five Circles[1], Audit observed[2] from the VAT assessment files of seven dealers[3] that the AAs identified cases of under declaration of output tax and excess claim of ITC as per the assessment order. In six out of the seven cases, there was under declaration of output tax either due to fraud or wilful negligence. In one case pertaining to Eluru Bazar Circle where under declaration was not wilful and tax due was more than 10 *per cent*, penalty was proposed at 10 *per cent* instead of at 25 *per cent* in the assessment order. However, no penalty was levied by the AA. Of the seven cases AAs have short levied penalty in three cases[4] and did not levy any penalty in the remaining four cases. This had resulted in non-levy/ short levy of penalty of ₹3.18 crore over the under declared tax of ₹3.81 crore.

In response, AAs accepted (between August and November 2019) the audit observation in six cases pertaining to five offices[5] and issued penalty orders/ notices. In the remaining one case pertaining to Ibrahimpatnam, AA stated (March 2019) that the matter would be examined and report would be submitted in due course.

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1 Chilakaluripeta, Elurubazar, Ibrahimpatnam, Indrakeeladri and Kakinada.
2 between May 2018 and April 2019 for the period from 2011-12 to 2016-17.
3 Chilakaluripeta (1), Elurubazar (1), Ibrahimpatnam (2), Indrakeeladri (2) and Kakinada (1).
4 Ibrahimpatnam (two cases) and Indrakeeladari (one case).
5 Chilakaluripeta, Elurubazar, Ibrahimpatnam (1), Indrakeeladri (2) and Kakinada.

The matter was referred to the Department (August 2019) and to the Government (February 2020). Their reply has not been received (December 2020).

2.3.2 Non-levy of interest and penalty for belated payment of tax

Assessing Authorities did not levy interest and penalty of ₹1.59 crore on belated payment of tax

As per Section 22 (2) of VAT Act, if any dealer fails to pay the tax due within the time prescribed, interest at the rate of 1.25 *per cent* per month for the period of delay was liable to be paid in addition to such tax or penalty. Under Section 51(1) of the Act, if a dealer fails to pay tax due, by the last day of the month in which it was due, penalty at the rate of 10 *per cent* of the amount of tax due is to be paid, in addition to such tax.

During the test check of VAT returns and payment records of Guntur division and 14 circles,[6] it was observed[7] that in 38 cases, dealers paid tax after the due dates with delays ranging from 1 to 586 days. Assessing Authorities, however, did not levy any interest and penalty for belated payment of tax. This had resulted in non-levy of interest of ₹0.44 crore and penalty of ₹1.15 crore totalling to ₹1.59 crore.

In response, AAs accepted (between August 2018 and September 2019) the audit observation in 26 cases pertaining to 10[8] offices. Of 26 cases, part amount of penalty of ₹1.77 lakh and interest of ₹0.56 lakh was collected in two offices[9]. In the remaining 12 cases pertaining to five offices[10] it was replied (between August 2018 and March 2019) that the matter would be examined and reply would be furnished to Audit in due course.

The matter was referred to Department (August 2019) and to the Government (March 2020). Their reply has not been received (December 2020).

2.4 Short levy of VAT due to incorrect determination of taxable turnover

Sales turnover of dealers reported in annual accounts was more than the turnover declared in VAT returns. Incorrect determination of taxable turnover by Assessing Authorities resulted in short levy of tax of ₹18.88 lakh

As per Section 21(3) of VAT Act, read with Rule 25 (5) of VAT Rules, if the AA considers the return filed by a VAT dealer as incorrect or incomplete or not satisfactory, the AA shall assess the tax payable to the best of his judgment on form VAT 305 within four years from the due date or date of filing of the return, whichever

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6 Guntur division (2 cases), Circles:- Adoni-I, Eluru Bazar (3), Guntakal, Ibrahimpatnam (5), Indrakeeladri (4), Kadapa-I (5), Kurnool-III, Narasaraopet (2), Nidadavolu (2), Ongole-II, Palkol, Patamata (7), Samarangam Chowk (2) and Vinukonda.

7 between February 2015 and March 2018 for the period from 2012-13 to 2016-17.

8 Adoni-I (1 case), Eluru Bazar (3 cases), Indrakeeladri (4 cases), Kadapa-I (5 cases), Kurnool-III (1 case), Nidadavolu (2 cases), Ongole-II (1 case), Palkol (1 case), Patamata (7 cases) and Vinukonda (1 case).

9 Adoni –I (1 case) and Ongole II (1 case).

10 Guntur Division (2), Assitant Commissioners – Guntakal, Ibrahimpatnam (5), Narsaraopet (2), Samarangam chowk (2).

is later. As per Section 21(4) of the Act, the competent authority may conduct a detailed scrutiny of the accounts of any VAT dealer based on the available information and where any assessment becomes necessary after such scrutiny, such assessment shall be made within a period of four years from the end of the period for which the assessment is to be made. As per Rule 25(10) of the VAT Rules, all the VAT dealers have to furnish the statements of manufacturing/ trading, Profit and Loss (P&L) accounts, balance sheet and Annual Report for every financial year, duly certified by a Chartered Accountant, on or before 31 day of December of succeeding financial year. As per Para 5.12 of VAT Audit Manual 2012, the audit officer is required to verify the details declared by the dealer in VAT returns and to reconcile with those reported in certified Annual Accounts for that period.

During the test check of the VAT audit records, it was noticed[11] in six cases in six Circles[12], that sales made by six dealers as per their annual accounts were more than those declared in VAT returns. The incorrect determination of taxable turnover by the AAs resulted in short levy of tax of ₹18.88 lakh.

In response, AAs replied that the matter would be examined and reply would be submitted to Audit in due course.

The matter was referred to Department (August 2019) and to the Government (March 2020). Their reply has not been received (December 2020).

2.5 Works Contracts

2.5.1 Short levy of tax on Works Contracts where detailed accounts were not maintained

Taxable turnover was incorrectly determined on account of inadmissible deductions such as pressing charges and other state works, although detailed accounts were not maintained. Incorrect determination of taxable turnover resulted in short levy of tax of ₹82.68 lakh

As per Section 4 (7) (a) of VAT Act, tax on works contract receipts is to be paid on the value of goods at the time of their incorporation in the work, at the rates applicable under the Act. To determine the value of goods incorporated, the deduction prescribed under Rule 17 (1) (e) of VAT Rules are to be allowed from the total consideration and remaining turnover is to be taxed in proportion to goods purchased at the rates applicable to them. As per Rule 17 (1) (g) of VAT Rules, if any works contractor did not maintain the detailed accounts to determine the correct value of the goods at the time of their incorporation, tax shall be levied at the rate of 14.5 *per cent* on the total consideration received, after allowing permissible deductions on percentage basis on the category of work executed. Percentage of the total value eligible for deduction for all other contracts other than specifically categorized in the Rules is 30 *per cent.* In such cases, the works contractor shall not be eligible to claim ITC.

[11] between April 2018 and May 2019 for the period from 2011-12 to 2016-17.
[12] Adoni- I, Chittoor-II, Markapur, Patnam Bazar, Tuni and Vinukonda.

During a test check of records of two Circles[13], Audit observed[14] in two cases, that AAs allowed exemptions on pressing charges, other state works and sub-contract works, although work-wise detailed accounts were not maintained. In the absence of separate detailed accounts, the turnover should have been assessed under Rule 17 (1) (g). Incorrect assessment of taxable turnover and allowing exemption had resulted in short levy of tax of ₹82.68 lakh on the works contract turnover of ₹5.98 crore.

In response, the AC, Kakinada stated (May 2019) that notice was issued to the dealer and VAT audit file was submitted to Joint Commissioner for revision. AC, Sattenapalli stated (June 2018) that the matter would be examined and report would be submitted to Audit in due course.

The matter was referred to Department (August 2019) and to the Government (February 2020). Their reply has not been received (December 2020).

2.5.2 Non/ short levy of tax due to incorrect determination of taxable turnover in Works Contracts

Taxable turnover was incorrectly determined on account of inadmissible deductions such as 'transport charges' under 'establishment cost', and incorrect computation of profit relatable to labour, resulting in non/ short levy of tax of ₹45.84 lakh

As per Section 4 (7) (a) of the VAT Act, tax on works contract receipts is to be paid on the value of goods at the time of their incorporation in the work, at the rates applicable under the Act. To arrive at the value of goods at the time of incorporation, the deduction prescribed under Rule 17 (1) (e) of APVAT Rules, 2005 (VAT Rules) such as expenditure toward labour charges, hire charges etc., incurred by the contractor are to be allowed from the total consideration and on the balance turnover, tax is to be levied at the same rate at which purchase of goods were made and in the same proportion. As per Rule 17 (1) (d) of VAT Rules, the value of the goods at the time of incorporation, as arrived at, shall not be less than their purchase value and shall include seigniorage charges, transportation charges etc.

During a test check of the VAT assessment files of the office of CTO, Kadapa-I, it was observed (October 2018) that, in one case, the AA, while finalising the assessment[15], had incorrectly determined the taxable turnover due to allowing certain inadmissible deductions such as 'transport charges', under 'establishment cost' from the gross turnover. Besides this, taxable turnover of material under different tax categories (5 *per cent*/ 14.5 *per cent*) was incorrectly adopted. This led to incorrect determination of taxable turnover resulting in non-levy/ short levy of tax of ₹45.84 lakh on the works contract receipts of ₹104.65 crore.

[13] Kakinada and Sattenapalli.
[14] between June 2018 and May 2019 for the period from 2013-14 to 2016-17.
[15] for the period 2015-16 and 2016-17.

In response, AC Kadapa-I replied (December 2019) that revised assessment orders were passed (November 2019) and a total amount of ₹3.61 lakh[16] was taken to Debt Management Unit (DMU)[17]. Based on the explanation given in the revisional orders (November 2019) Audit recomputed short levy as ₹45.84 lakh instead of ₹68.10 lakh and intimated to department.

The matter was referred to Department (February 2020) and to the Government (February 2020). Their reply has not been received (December 2020).

2.5.3 Non-levy of tax on Works Contracts

Works contract receipts were split into service component and material component to avoid tax. This had resulted in non-levy of tax of ₹16.63 lakh

Section 4 (7) (b) of the Act read with Rule 17 (2) (b) of VAT Rules permits the dealers to opt to pay tax at the rate of four *per cent*[18] on the gross receipts by way of composition on filing Form VAT-250 before commencing the work.

During a test check of records of AC Kakinada, it was observed[19] that works contract receipts were split into sales turnover and service turnover even though the dealer received the entire amount from a composite contract under 'composition scheme' by way of raising a single invoice for two elements i.e., material and service. Since the dealer opted for composition, VAT is liable to be paid on gross receipts. However, the AA allowed exemptions relating to service component and arrived at tax liability contrary to the provisions of the Act. This had resulted in short levy of tax of ₹16.63 lakh on the works contract turnover of ₹3.33 crore.

In response, JC, Kakinada stated (October 2020) that revised show cause notice was issued to the dealer and would submit further rectification report.

The matter was referred to Department (August 2019) and to the Government (February 2020). Their reply has not been received (December 2020).

2.6 Short levy of tax due to application of incorrect rate of tax under CST Act

Incorrect allowance of concessional/ incorrect rates of tax on inter-State sales resulted in short levy of tax of ₹1.37 crore

As per Section 8 (2) of the Central Sales Tax Act 1956 (CST Act), read with Rule 12 (1) of CST Registration and Turnover (R&T) Rules, 1957, inter-State sales not supported by 'C' declaration forms are liable to tax at the rate applicable to sale of such goods inside the appropriate State; otherwise tax shall be at the rates applicable to the sale or purchases of such goods inside the appropriate state under the sales tax law of that State. Tax on interstate sales supported by 'C' declaration forms are liable to tax at

[16] 2015-16 ₹0.39 lakh, 2016-17 ₹3.22 lakh = ₹3.61 lakh.
[17] 2015-16 ₹2.85 lakh, 2016-17 ₹65.25 lakh = ₹68.10 lakh.
[18] Five *per cent* from 14 September 2011.
[19] In May 2019 for the period from 2012-13 to 2016-17.

the rate of two *per cent* as per Section 8(1) of the Act. Under Section 4 (3) of the VAT Act, every VAT dealer shall pay tax on sale of taxable goods at the rates specified in the Schedules to the VAT Act.

Section 5(4) of CST Act read with Rule 12(10) of CST(R&T) Rules prescribe that form 'H' is to be enclosed for claiming exemption on export sales. In the absence of declaration form, State rate of tax is to be applied.

'Photo Frames', 'Electronic Appliances', 'Lubricants' and 'Air Conditioners', are not specified in any of the Schedules to the VAT Act and therefore classifiable under Schedule-V to Act and liable for tax at the rate of 14.5 *per cent*. 'Chillies', 'Cotton', and 'Mobile Phones' are classifiable under Schedule IV to VAT Act and are liable for tax at the rate of five *per cent*.

During a test check of CST records of three Circles[20], Audit observed[21] that in ten cases, AAs either exempted or levied tax at the incorrect rate of two/ five *per cent* instead of at 5/ 14.5 *per cent* on the inter-State sales turnover of ₹16.93 crore not supported by 'C' forms. The application of incorrect rate of tax/incorrect exemption resulted in short levy of tax of ₹1.37 crore.

In response, AC, Eluru Bazar replied (August 2019) that show cause notices were issued (August 2019) in two cases. In another case in the same Circle, where the tax was incorrectly exempted due to acceptance of invalid 'H' form, AA stated (August 2019) that original 'H' declaration form was available in Assessment record. Extract of the original declaration form has been called for further examination. In another case in the same circle, AA stated (August 2019) that authorites of Tamilnadu would be addressed to verify genuineness of 'C' form. In the remaining six cases, AAs[22] replied (May and August 2019) that the matter would be examined and report submitted to Audit in due course.

The matter was referred to Department (August 2019) and to the Government (February 2020). Their reply has not been received (December 2020).

2.7 Input Tax Credit (ITC)

2.7.1 Excess/ Incorrect allowance of Input Tax Credit

Allowance of excess ITC on purchase of materials resulted in excess allowance of ITC of ₹6.96 lakh

Under Section 13 (1) of the VAT Act, ITC shall be allowed to the VAT dealer for the tax charged in respect of all purchases of taxable goods, made by that dealer during the tax period, if such goods are for use in the business of the VAT dealer. ITC is admissible only on purchases made from the VAT dealers within the State. As per Section 13 (7) of the VAT Act, read with Rule 17(1) (b) of VAT Rules, the dealer who

[20] Eluru Bazar, Patamata and Indrakeeladri.
[21] In May 2019 for the period from 2013-14 to 2016-17.
[22] Indrakeeladri (1) and Patamata (5).

pays input tax at the rate of 14.5 *per cent* is eligible to claim ITC at the rate of 75 *per cent* with effect from 15 September 2011.

During a test check of VAT records of Morrispet Circle, Audit noticed[23] that in one case, the AA allowed 100 *per cent* ITC on purchase of materials used in works contract instead of restricting it to 75 *per cent*. This had resulted in excess claim of ITC of ₹6.96 lakh.

In response, AC Morrispet stated (April 2018) that the matter would be examined and report would be submitted in due course.

The matter was referred to Department (August 2019) and to the Government (March 2020). Their reply has not been received (December 2020).

2.7.2 Excess claim of Input Tax Credit due to non/ incorrect restriction

ITC was not restricted/ restricted incorrectly by the Assessing Authorities on sale of exempt goods and exempt transactions resulting in excess allowance of ITC of ₹38.80 lakh

As per Section 13 (5) of the VAT Act, no ITC shall be allowed to any VAT dealer on sale of exempted goods (except in the course of export) and exempt sales. As per Section 13 (6) of VAT Act, ITC for transfer of taxable goods outside the State (otherwise than by way of sale) shall be allowed for the amount of tax in excess of four/ five[24] *per cent*. Further, as per sub rules (7) and (8) of Rule 20 of VAT Rules, a VAT dealer making taxable sales, exempt sales and exempt transactions of taxable goods shall restrict ITC as per the prescribed formula[25]. As per Rule 20 (10) of VAT Rules, where a dealer also makes sale of exempt goods, (9.5 *per cent*/ 10.5 *per cent* portion of 14.5 *per cent*) ITC of which was fully claimed initially, shall be restricted at the end of March by applying prescribed formula. Exempt transactions shall be included in taxable turnover during such restriction.

During a test check of records of six[26] Circles, Audit observed (between June 2018 and May 2019) from the VAT assessment files of six dealers (for the assessment period from 2011-12 to 2017-18), that the dealers had effected exempt sales/exempt transactions of taxable goods along with sale of taxable goods by utilising common inputs. However, the ITC was not restricted/restricted incorrectly by the AAs contrary to the relevant provisions, resulting in excess claim of ITC of ₹38.80 lakh.

In response, AC, Tuni replied (September 2019 in one case) that the VAT Audit file was submitted to JC for revision. AC Kakinada replied (September 2019 in one case) that notice was issued to the dealer. In the remaining four cases[27] the AAs stated

[23] In April 2018 for the assessment period 2014-15.
[24] four *per cent* up to 13 September 2011 and five *per cent* from 14 September 2011.
[25] A x B/C, where A is the ITC for common inputs for each tax rate, B is the taxable turnover and C is the total turnover.
[26] Bhavanipuram, Chittoor-II, Eluru bazaar, Ibrahimpatnam, Kakinada and Tuni.
[27] Bhavanipuram, Chittoor-II, Eluru bazaar and Ibrahimpatnam.

(between June 2018 and April 2019) that the matter would be examined and report would be submitted in due course.

The matter was referred to Department (August 2019) and to the Government (February 2020). Their reply has not been received (December 2020).

2.7.3 Incorrect claim of Input Tax Credit by eating establishments

Dealers running hotels are not eligible to claim ITC. Four dealers running hotels claimed ITC on their purchase turnover resulting in incorrect claim of ITC of ₹14.89 lakh

Under Section 4 (9) (d) of the VAT Act, any VAT dealer running an eating establishment, whose annual total turnover is more than rupees seven lakhs and fifty thousands and less than rupees one crore and fifty lakhs shall pay tax at the rate of five *per cent* of the taxable turnover of the sale or supply of goods, being food or any other article for human consumption or drink, served in restaurants attached to such hotels or anywhere whether indoor or outdoor. As per Section 13(5)(h) of the Act, such dealers are not entitled to claim ITC.

During a test check of VAT records of three Circles[28], it was observed[29] that four dealers running hotels and paying tax under Section 4(9) (d) of the Act claimed ITC on their purchases in contravention to the provisions resulting in incorrect claim of ITC of ₹14.89 lakh.

In response, AC Nandyal-I replied (August 2019) that a notice was issued to the dealer for production of books of accounts. AC Vinukonda replied (September 2019 in two cases) that VAT Audit was taken up and result would be intimated. AC Samarangam Chowk stated (September 2018) that the matter would be examined and report would be submitted in due course.

The matter was referred to Department (August 2019) and to the Government (February 2020). Their reply has not been received (December 2020).

2.8 Short levy of VAT due to application of incorrect rate of tax

Dealers declared tax at the rate of four/ five *per cent* on the commodities taxable at the rate of 4/14.5 *per cent* resulting in under declaration of tax leading to short levy of VAT of ₹70.35 lakh

As per Section 4 (1) of VAT Act, VAT is leviable at the rates prescribed in Schedules II to IV and VI to the Act. The rate of tax for goods falling under Schedule-IV to the Act, was enhanced from four to five *per cent*[30] from 14 September 2011. Commodities not specified in any of the Schedules fall under Schedule V and are liable to VAT at 14.5 *per cent* from 15 January 2010. In terms of Section 20 (3) (a) of VAT Act, every monthly return submitted by dealer shall be subject to scrutiny to verify the correctness

[28] Nandyal-I (1), Samarangamchowk (1) and Vinukonda (2).
[29] between September and November 2018 for the period from 2013-14 to 2017-18.
[30] G.O.MS. No. 1718 Revenue (CT II) Department dated 13 September 2011.

of calculation, rate of tax, ITC claimed and full payment of tax payable for such tax period.

The commodities, food products, kurkure, and Explosives, are not specified in any of the Schedules to the Act and are therefore taxable at the rate of 14.5 *per cent* under Schedule V to the Act.

During a test check of VAT records of two Circles[31] it was observed[32] that two dealers, dealing in food products, kurkure, and Explosives had declared tax at the rate of four/ five *per cent* instead of at 14.5 *per cent*. This had resulted in short levy of tax of ₹70.35 lakh.

Assessing Authorities replied (August and September 2019) that notices were issued to the dealers.

The matter was referred to Department (May 2019) and to the Government (January and February 2020). Their reply has not been received (December 2020).

2.9 Short payment of tax and non-levy of penalty due to non-conversion of Turnover Tax (TOT) dealer as VAT dealer

Failure of Assessing Authorities to register the TOT dealers as VAT dealers after crossing the threshold limit resulted in short payment of tax of ₹50.65 lakh and penalty of ₹5.97 lakh

As per Section 17(3) of the VAT Act, every dealer, whose taxable turnover in the twelve preceding months exceeds ₹50 lakh, shall be registered as VAT dealer and pay tax at applicable VAT rates from thereon as prescribed in Schedules to VAT Act. As per Section 17(5)(h) of the Act, every dealer engaged in sale of food items including sweets etc., whose total annual turnover was more than ₹7.50 lakh, was liable for VAT registration and has to pay tax at the rate of five *per cent* under the provisions of Section 4 (9)(d) of the Act. As per Rule 11(1) of the VAT Rules, the prescribed authority may *suo-motu* register a dealer, who is liable to apply for registration as VAT dealer but has failed to do so. As per Section 49 (2) of the VAT Act, any dealer who fails to apply for registration, as required under Section 17, shall be liable to pay a penalty of 25 *per cent* of the tax due prior to the date of registration as VAT dealer.

During a test check of TOT records of 12 Circles[33], Audit observed (between April and November 2018) that in 20 out of 25 cases the taxable turnover of the dealers during the period between September 2014 and March 2017 had crossed the threshold limit. In remaining five cases of Adoni Circle, the total annual turnover of food sales of dealers have crossed threshold limit of ₹7.50 lakh during the period between June 2014 and March 2015 making them liable for VAT registration. The subsequent turnover liable for levy of VAT after the dealers had crossed the threshold limit, amounted to ₹6.53 crore, on which VAT of ₹56.81 lakh was to be levied had they been registered as

[31] Patnam Bazar (1) and Tuni (1).
[32] between April 2018 and April 2019 for the assessment period from 2016-17 to 2017-18 (up to June 2017).
[33] Adoni, Bhavanipuram, Kurnool-III, Machilipatnam, Morrispet, Nandyal, Narasaraopet, Nellore-II, Nidadavolu, Palkol, Proddutur-I and Sattenapalli Circles.

VAT dealers but they had paid tax of only ₹6.16 lakh. These TOT dealers had neither applied for VAT registration nor were they registered by the respective AAs. This had resulted in short payment of tax of ₹50.65 lakh and non-levy of penalty of ₹5.97 lakh.

In response, Department accepted the audit observations in 13 cases pertaining to four offices[34]. Of 13 cases accepted, partial amount of ₹1.50 lakh was collected (between February and July 2019) in two cases (AC, Adoni-I). In six cases pertaining to three offices[35] show cause notices were issued. AC Machilipatnam replied (September 2019 in two cases) that in one case clerical error in turnover for the quarter ended March 2017 was rectified and there was no tax liability after rectification. As verified from ledger, discrepancy was noticed in the turnover rectified by the AA for the relevant month. With respect to another case it was reported that tax had been remitted. As verified from remittance details, the period objected by Audit and the amount indicated in the challan did not match. Hence AC's reply needs re-examination. In remaining four cases from three offices[36] AAs replied (June and November 2018) that the matter would be examined and reply would be furnished to Audit in due course.

The matter was referred to Department (July and August 2019) and to the Government (February 2020). Their reply has not been received (December 2020).

2.10 Incorrect exemption

2.10.1 Non-levy of tax due to incorrect exemption of textile turnover

Assessing Authorities had incorrectly exempted sale turnover of 'textiles and fabrics', instead of levying tax at the rate of five *per cent*, resulting in short levy of tax of ₹30.75 lakh

Under Section 4 (3) of the VAT Act, every VAT dealer shall pay tax on sale of taxable goods at the rates specified in the Schedules to the Act. As per the Government order[37] dated 08 July, 2011, the commodity 'textiles and fabrics' was added to Schedule-IV and made taxable at five *per cent*[38]. Government issued orders in Memo[39] dated 14 November, 2012 waiving the VAT dues of textile and fabric dealers, as they had not collected the same from their customers during the period from 11 July 2011 to 31 March 2012. As per Ordinance No. 9 of 2012 dated 05 November 2012, with effect from 1 April 2012, the dealers of 'textiles and fabrics' may opt to pay tax at the rate of one *per cent* under composition[40]. Later, Government by another order[41] included the said commodity in Schedule-I from 07 June 2013 and exempted sales thereof. Hence, the commodity was liable to be taxed at the rate of five *per cent* from 01 April 2012 to 06 June 2013, if the dealers had not opted for composition.

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34 Adoni-I (5 cases), Narasaraopet (1 case), Palakol (3 cases) and Proddatur-I (4 cases).
35 Morrispet (3 cases), Nandyal-I (1 case) and Nidadavolu (2 cases).
36 Bhavanipuram (1 case), Kurnool-III (2 cases) and Sattenapalli (1 case).
37 G.O.Ms.No.932, Revenue (CT-II) Department dated 08 July 2011.
38 four *per cent* up to 13 September 2011.
39 Government Memo No.16460/CT-II(1)/2012-5 dated 14 November 2012.
40 option form in VAT 250 to be filed by the dealer for paying tax at one *per cent* instead of at five *per cent*.
41 G.O.Ms.No.308, Revenue (CT-II) Department dated 07 June 2013.

During a test check of records of four Circles[42], it was observed[43] from VAT audit files of seven cases dealers did not pay any tax by incorrectly declaring the sale of textiles and fabrics as exempt. The AAs, however allowed exemption instead of levying tax at five *per cent*. In the office of AC Tanuku-I, Audit observed (November 2015 in one case) that though the dealer did not opt to pay tax under composition, paid tax at the rate of one *per cent* for the part of turnover during the year 2012-13. The exempted turnover was liable for tax at the rate five *per cent* as none of the dealers had opted for composition. Incorrect exemption had resulted in non-levy of tax of ₹30.75 lakh.

In response, Department accepted audit observations in five cases pertaining to three offices[44]. In remaining three cases AAs[45] replied (November 2015 and September 2018) that the matter would be examined and reply would be furnished to Audit in due course.

The matter was referred to Department (July and August 2019) and to the Government (January 2020). Their reply has not been received (December 2020).

2.10.2 Non levy of tax on fertiliser sale turnover

Assessing Authorities did not levy tax at five *per cent* on sale of Fertilisers classifiable under Schedule IV to VAT Act, resulting in non -levy of tax of ₹9.01 lakh

Goods listed under Schedule-I to VAT Act are exempt from tax. Government of Andhra Pradesh in their order[46] dated 09 October 2012 exempted (Serial No. 64 of Schedule I to VAT Act) direct sales of "Fertilisers" by Primary Agriculture Co-operative Societies (PACS) to Farmers. The commodity 'Fertiliser' is classifiable under Schedule- IV to VAT Act and liable to tax at the rate of five *per cent*.

During the course of Audit of Nidadavolu Circle, it was noticed (September 2015) from VAT assessment file of a dealer that (for the period from April to July 2012), the sale turnover of ₹1.80 crore of fertilisers to co-operative society liable to tax under Schedule-IV of Act at the rate of five *per cent* was not subjected to tax. This had resulted in non-levy of tax of ₹9.01 lakh on the turnover of ₹1.80 crore.

In response, AC, Nidadavolu stated (September 2015) that the matter would be examined and report would be submitted in due course.

The matter was referred to Department (August 2019) and to the Government (February 2020). Their reply has not been received (December 2020).

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42 Chittoor-II, Indrakeeladri, Machilipatnam, and Samarangam chowk.
43 between April 2018 and May 2019 for the period from April 2015 to June 2017.
44 Chittoor-II (1 case), Indrakeeladri (1 case) and Machilipatnam (3 cases).
45 Tanuku-I (1 case) and Samarangamchowk (2 cases).
46 GO MS Rev (CT II) Department No. 605 dated 09 October 2012.