Chapter-2

Audit Findings

Chapter-2

A. Performance Audit

FINANCE DEPARTMENT

2.1 Audit on exemption and remission of taxes to industrial units

Highlights

- Assessing Authorities allowed irregular exemption of tax of ₹ 6.51 crore to industrial units who had not filed returns of their turnover and authorized inadmissible exemption of tax of ₹ 0.15 crore on unapproved finished product under the CST Act, besides interest of ₹ 0.13 crore was also leviable.

{Paragraphs: 2.1.7 (i) and (ii)}

- Assessing Authorities granted remission of tax of ₹ 19.51 crore to the industrial units which was not admissible on purchase and sale of finished goods, for availing input tax credit, on inflated turnover and for negative listed goods under the J&K VAT Act.

{Paragraphs: 2.1.8 (i to iv)}

- Remission of tax of ₹ 91.13 crore was granted irregularly to 18 unregistered industrial units by the Assessing Authorities.

(Paragraph: 2.1.8 (vi))

- Due to misclassification of goods under category of higher rate of tax by eight industrial units excess remission of tax of ₹ 7.09 crore was granted in their favour by the Assessing Authorities.

(Paragraph: 2.1.8 (viii)

- Assessing Authorities had failed to withdraw remission of tax of ₹ 12.81 crore granted to 27 industrial units who had committed offences under the J&K VAT Act.

(Paragraph: 2.1.9)

- There was slackness in conducting verification of tax remission orders passed by the Assessing Authorities as only tax remission claims passed upto the year 2009-10 had been verified by Internal Audit wing of the Department.

(Paragraph: 2.1.10)

2.1.1 Introduction

To promote industrial development and the viability of industrial units, the State Government sanctioned (January 2004) package of incentives under the State Industrial Policy 2004 including tax incentive schemes which provide for exemption from payment of General Sales Tax (GST) up to 31 March 2005 and remission from value added tax (VAT) with effect from 01 April 2005 besides exemption from payment of Central Sales Tax (CST) on sale of goods manufactured by the registered industrial units in the State. These tax incentive schemes were made operational

through issue of Government order/ notifications providing for grant of exemption from payment of central sales tax on interstate sales (January 2004) and remission of value added tax in respect of intrastate sales (June 2005 and March 2006) conducted by small, medium and large scale industrial units registered with the Departments of Industries and Commerce/ Handicrafts/ Handlooms and also with the Commercial Taxes Department subject to fulfilment of certain conditions specified therein.

2.1.2 Organisational set up

The Commissioner Commercial Taxes (CCT) of the State Government is responsible for overall control and superintendence of Commercial Taxes Department. He functions under the administrative control of the Principal Secretary to Government, Finance Department. 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 (Jammu: 06; Kashmir: 05; one each for Headquarter and Judicial matters). The State is divided into 52 Commercial Taxes assessment circles (Jammu: 25; Kashmir: 27) each headed by one Commercial Taxes Officer. Of these, four assessment circles (G, I&M (Jammu) and E Srinagar) deal exclusively with assessment of dealers operating industrial units.

2.1.3 Audit Objectives

Performance audit was conducted with a view to ascertain whether :

- the extent to which the provisions of Acts/ Rules and notifications issued there-under were complied with, in relation to grant of exemption/remission from payment of tax; and
- the internal control mechanism was effective and efficient.

2.1.4 Audit Criteria

The audit criteria was derived from the following:

- Jammu and Kashmir Value Added Tax (J&K VAT) Act, 2005; J&K VAT Rules, 2005 and Notifications issued there-under.
- Central Sales Tax Act, 1956; Central Sales Tax (Registration and Turnover) Rules, 1957 and Central Sales Tax (Jammu and Kashmir) Rules, 1958.
- Government order dated 30 June 2005 and Government notification dated 16 March 2006 governing grant of remission of tax to industrial units under the J&K VAT Act, 2005 on the sale of goods in the State.
- Government notification dated 31 January 2004 governing grant of exemption from payment of tax under the CST Act, 1956 on the sale of goods in the course of inter-state trade and commerce made by the industrial units.

2.1.5 Scope of Audit and Audit methodology

The Performance audit on "Exemption and remission of taxes to industrial units" for the period from 2008-09 to 2012-13 was conducted by test-check of assessment records of the dealers operating industrial units in five[1] Commercial Taxes circles (Out of 52 assessment circles) between December 2012 and June 2013. Out of 4400 industrial units in the State registered with the Commercial Taxes Department as of March 2013 and claiming exemption/ remission of tax, 2465 industrial units (56 *per cent)* stand registered in these five assessment circles. The assessment records of 436 industrial units (10 *per cent* of total industrial units) selected on random sampling basis were test checked in audit. Besides, the information/ data relating to the performance audit was collected from the offices of the Commissioner Commercial Taxes Department, Additional Commissioners (Commercial Taxes) and Deputy Commissioners (Audit).

The audit objective, scope and methodology were discussed with the Financial Commissioner, Finance Department and Commissioner, Commercial Taxes Department in an entry conference held on 4 January 2013 at Jammu. The audit findings were discussed by the Principal Accountant General with the Principal Secretary to the Government, Finance Department in an exit conference held on 28 November 2013. The Government has accepted the factual accuracy of the audit findings during the exit conference, besides replies received during the course of audit have been incorporated at appropriate places in the Report. Indian Audit and Accounts Department acknowledges the co-operation of the Commercial Taxes Department in providing necessary information to audit.

Audit findings

2.1.6 Overall position of revenue foregone

The position of revenue foregone on account of tax incentives in the shape of remission of tax under the Jammu and Kashmir VAT Act, 2005 and exemption from payment of tax under the CST Act given to the Industrial units registered with the Department during the period from 2008-09 to 2012-13 was given in **Table-2.1**.

Table-2.1

(₹ in crore)

Year	Number of Industrial Units registered with the Department	Amount of remission of tax allowed under the VAT Act	Amount of exemption from payment of tax granted under the CST Act	Total revenue foregone (3+4)
1	**2**	**3**	**4**	**5**
2008-09	3266	215.66	127.10	342.76
2009-10	3372	238.69	129.32	368.01
2010-11	3507	286.54	131.79	418.33
2011-12	3689	360.73	126.06	486.79
2012-13	4400	450.11	210.29	660.40
Total		**1551.73**	**724.56**	**2276.29**

(Source: Records of the Commercial Taxes Department).

[1] Circles: 'I', 'G', 'M' (Jammu); 'E' (Srinagar) and 'Kathua'

It would be seen that remission of tax of ₹ 1551.73 crore payable under the VAT Act and exemption from payment of tax of ₹ 724.56 crore payable under the CST Act (16 *per cent* of total revenue collection) was allowed by the Department to 4400 registered dealers operating industrial units during the period from 2008-09 to 2012-13.

The audit findings noticed in 151 cases (35 *per cent*) as a result of test-check of assessment/ remission records of 436 industrial units registered in five selected Commercial Taxes Circles are brought out in the succeeding paragraphs:

2.1.7 Exemption from payment of tax under CST Act

The Government notification dated 31 January 2004 provides for grant of exemption from payment of tax under the CST Act, 1956 on the sale of goods in the course of inter-state trade and commerce made by the industrial units subject to the conditions specified therein. The assessment of dealers operating industrial units are made under section 9 (2) of the CST Act, 1956.

Audit during the course of test-check of assessment records noticed irregularities in 34 cases revealing irregular exemption of tax of ₹ 6.51 crore, inadmissible exemption of tax of ₹ 0.15 crore and non-levy of tax of ₹ 0.12 crore authorised by the Assessing Authorities as discussed in the succeeding paragraphs:

(i) Irregular grant of exemption without filing returns

The Government notification dated 31 January 2004 *interalia* provide that exemption from payment of tax on inter-state sale of goods by the industrial unit shall be available subject to the condition that the unit holder shall furnish quarterly and annual returns for each accounting year. Further section 32 of the J&K VAT Act provides that if a dealer fails to pay the amount of tax due as per return for any tax period he shall be liable to pay interest @ two *per cent* per month on the tax payable by him according to return from date the tax payable had become due to the date of its payment or to the date of order of assessment, whichever is earlier.

Test-check of records of four[2] circles showed that 32 industrial units had not filed either quarterly or annual returns of their turnover under the CST Act, 1956 during the accounting years 2006-07 to 2009-10 thereby violating the provisions of the Government notification. While finalising assessment of these industrial units, the Assessing Authorities had not taken this fact into account and irregularly allowed exemption of tax of ₹ 6.51 crore in favour of these units.

(ii) Inadmissible tax exemption on unapproved intermediate product

The Government notification dated 31 January 2004 stipulates that the industrial units shall in no case procure finished products from outside the state and shall not dispose of the raw material in any manner whatsoever except as provided in the certificate of

[2] Circles: 'I', 'M' (Jammu) and 'Kathua'

registration issued by the Department of Industries and Commerce/ Directorate of Handicrafts/ Handlooms and Department of Commercial Taxes and in case the unit is found guilty of importing finished product or disposing off the raw material in any other manner except as envisaged in the certificate of registration, the industrial unit shall not be entitled to exemption of tax for the year in which such default is made.

Audit scrutiny of assessment records of M/s Jindal Drugs Limited Jammu, an industrial unit in Circle 'I' Jammu showed that the unit was registered for manufacture and sale of cocoa butter and cocoa powder from cocoa beans with the Industries Department with effect from February 2006 and also registered with the Commercial Taxes Department with effect from April 2006. The permission for import of 4800 MT of raw material (cocoa beans and cocoa paste) from outside the country for trial production was granted (December 2006) by the General Manager, DIC, Jammu in favour of the industrial unit due to non- availability of basic raw material in India. The permission was subsequently restricted by the Industries Department (January 2007) to import of cocoa beans only. The Commercial Taxes Officer, Circle-'I' Jammu however, without verifying the restriction for import of cocoa paste by Industries Department allowed (March 2007) the industrial unit to import both cocoa beans as well as cocoa paste from outside the country and thereafter the permission for import of cocoa paste was withdrawn in July 2007.

Audit observed that the industrial unit instead of importing cocoa beans duly permitted by the Industries Department made purchase of defatted cocoa paste during the accounting years 2006-07 to 2009-10 unauthorisedly on the pretext of trial production and continued to avail exemption from payment of tax. The Assessing Authority at the time of assessment (November 2011 and June 2012) of the industrial unit for the accounting years 2008-09 to 2009-10 did not take this aspect into account resulting in inadmissible allowance of tax exemption of ₹ 0.15 crore, besides interest of ₹ 0.13 crore was also leviable, on the turnover of ₹ 7.35 crore.

On this being pointed out, the Assessing Authority issued (February 2013) notice to the industrial unit and final outcome is awaited (December 2013).

(iii) Non-levy of tax on traded goods

The Government notification dated 31 January 2004 provide that no tax under the CST Act, 1956 is payable on the sale of goods in the course of inter-state trade and commerce made by the manufacturer operating a small, medium and large scale unit in the State registered with Directorate of Industries & Commerce or Directorate of Handloom/ Handicrafts subject to fulfilment of conditions stipulated in the notification.

Audit noticed that M/s Bharat Box Factory Unit-III Samba, an industrial unit registered for manufacture and sale of mosquito repellent coil, liquid vaporizer, printed duplex, corrugated boxes and plastic moulded items in Commercial Taxes Circle 'G' Jammu had been allowed tax exemption on interstate sale of goods valuing ₹ 57.14 crore and ₹ 52.63 crore during the financial years 2008-09 and 2009-10

respectively by the Assessing Authority after accepting declarations in Form 'C' from the industrial unit in support of interstate sales. The perusal of 'C' Forms produced in support of these sales, however, showed that the industrial unit had also made sale of traded goods viz mosquito repellent coils and liquid vaporiser valuing ₹ 6.23 crore (2008-09: ₹ 78.02 lakh; 2009-10: ₹ 5.45 crore).These goods had not been produced as a result of manufacturing activity by the industrial unit but were part of the traded goods which escaped notice of the Assessing Authority at the time of assessment (March 2012 and January 2013) of the unit. This resulted in non-charging of tax on sale of traded goods to the tune of ₹ 12.46 lakh, besides interest of ₹ 10.92 lakh @ two *per cent* per month was also leviable.

2.1.8 Remission of tax under J&K VAT Act

The Government orders dated 30 June 2005 and Government notification dated 16 March 2006 provide for grant of remission of tax to industrial units under the J&K VAT Act, 2005 on the sale of goods in the State subject to certain conditions specified therein. Every registered industrial unit claiming tax remission has to submit a tax remission claim alongwith the quarterly return duly accompanied by purchase and sale statements to the concerned Assessing Authority who in turn has to verify the tax remission claim, certify its correctness or otherwise and thereafter process the cases for grant of tax remission in respect of the industrial units found eligible for the said remission within three months. Besides, some of the industrial units are also subjected to audit assessments under section 39 of J&K VAT Act, 2005 by the Assessing Authorities.

Audit as a result of test-check of remission/assessment records of industrial units observed irregularities in 117 cases which showed authorisation of inadmissible remission of tax of ₹ 19.51 crore; irregular remission of tax of ₹ 92.57 crore; non-levy of tax of ₹ 0.67 crore; non-withdrawal of remission of ₹ 12.81 crore and grant of excess/ less remission of tax of ₹ 8.63 crore by the Assessing Authorities discussed in the succeeding paragraphs:

(i) Inadmissible remission of tax due to purchase of finished goods

The Government notification dated 16 March 2006 *inter-alia* provide that the registered industrial unit shall be entitled for remission of tax on sale of goods subject to the condition that the unit shall in no case procure finished goods from outside the State and shall not dispose off the raw material in any manner except as provided in the certificates of registration. In case of default the industrial unit shall not be entitled to remission of tax for that year.

Test-check of assessment records of 17 industrial units in four circles[3] showed that these units had procured finished goods valuing ₹ 9.38 crore from outside the State during the accounting years 2006-07 to 2012-13. These defaulting industrial units were not entitled to remission of tax for these years. The Assessing Authorities had,

[3] Commercial Taxes Circles: Jammu (I & M); 'Kathua' and ' E' Srinagar

however, failed to notice the default while granting remission of tax of ₹ 8.65 crore in favour of these industrial units. This had resulted in grant of inadmissible tax remission of ₹ 8.65 crore and consequent non-levy of tax of ₹ 8.65 crore, besides interest of ₹ 7.82 crore was also leviable.

After this was pointed out in audit, the Assessing Authorities of Circles (I,M Jammu and 'E' Srinagar) issued (January- February 2013) notices to the defaulting industrial units. The Assessing Authority Circle, Kathua stated (October 2013) that finished goods were purchased by industrial units for captive consumption and not for sale. The reply is not tenable as by purchasing finished goods from outside the State industrial units have violated condition of the notification. Further progress in the matter was awaited (December 2013).

(ii) Inadmissible tax remission for availing input tax credit

The Government notification dated 16 March 2006 prohibits the industrial units from claiming any input tax credit and accordingly no remission of tax was to be allowed to the industrial units who had claimed input tax credit. Further section 32 of the J&K VAT Act provides that if a dealer fails to pay the amount of tax due as per return for any tax period he shall be liable to pay interest @ two *per cent* per month on the tax payable by him according to return from date the tax payable had become due to the date of its payment or to the date of order of assessment, whichever is earlier.

Audit scrutiny of records showed that five industrial units registered in three[4]circles had availed input tax credit of ₹ 19.04 lakh during the accounting years 2007-08 to 2011-12 in contravention of the Government notification. The Assessing Authorities while allowing remission of tax of ₹ 3.09 crore for these accounting years did not notice this irregularity. This resulted in grant of inadmissible tax remission of ₹ 3.09 crore in favour of these industrial units and consequent non-levy of tax of ₹ 3.09 crore, besides interest of ₹ 1.38 crore was also leviable.

The Assessing Authority Circle 'Kathua' stated (April 2013) that the matter would be looked into and action taken accordingly. The Assessing Authority Circle 'G' Jammu stated (October 2013) that ITC was availed on purchase of pet bottles, containers and packing material used for packing of edible oil on which industrial units are paying tax. The reply was not tenable as by availing ITC the industrial unit had violated condition of notification.

(iii) Inadmissible tax remission on inflated turnover

The Department of Industries and Commerce is responsible for registration of industrial units in the State. The detailed project report for setting up of an industrial unit containing details of annual estimated value of sales, raw materials and capacity utilization of the industrial unit during initial and subsequent years of production of the unit are approved by the Project Manager, District Industries Centre (DIC) of the concerned district where the industrial unit is registered. The Assessing Authorities had to regulate the claims of the industrial units for remission of tax and exemption

[4] Circles: 'G' & 'M'(Jammu) and 'Kathua'

from payment of tax on the basis of these project reports. Further section 32 of the J&K VAT Act provides that if a dealer fails to pay the amount of tax due as per return for any tax period he shall be liable to pay interest @ two *per cent* per month on the tax payable by him according to return from date the tax payable had become due to the date of its payment or to the date of order of assessment, whichever is earlier.

(a) Audit scrutiny of records of Commercial Taxes Circle 'I' Jammu showed that M/s. Biostadt India Limited Bari Brahmana Jammu, an industrial unit, registered for manufacture and sale of Biozyme liquids, granules, Aqua liquids, pesticides, herbicides, insecticides etc; had declared annual turnover of ₹ 25.47 crore, ₹ 46.18 crore and ₹ 101.26 crore for the years 2006-07, 2007-08 and 2008-09 respectively against the consumption of raw material and packing material valuing ₹ 17.93 crore, ₹ 31.95 crore and ₹ 49.52 crore during these years. The capacity utilisation approved by the Industries Department for the industrial unit was 50 *per cent* of installed capacity (15060 Mts) for first year, 60 *per cent* for second year and 70 *per cent* for subsequent years of production. The ratio of sales to utilization of raw material fixed for the industrial unit as per the Project Report approved by the Industries Department was 127:100. The turnover returned by the industrial unit, however, did not commensurate with projected consumption of raw material as per the project report which was in excess of the prescribed ratio and was 142:100 in 2006-07,144:100 in 2007-08 and abnormally very high of 204:100 in the year 2008-09. This indicated that the industrial unit had claimed the quantum of sales in excess as compared with the consumption of raw material during 2006-07 to 2008-09 thereby reflecting inflated turnover of ₹ 46.56 crore for these accounting years. The Assessing Authority at the time of passing the remission orders for these accounting years in favour of the industrial unit did not notice this aspect resulting in non-charging of tax of ₹ 1.04 crore on inflated turnover of ₹ 46.56 crore returned by the industrial unit. This had resulted in non-levy of tax of ₹ 1.04 crore, besides interest of ₹ 1.12 crore was also leviable. After this was pointed out in audit, the Commercial Taxes Officer, Circle-I Jammu issued (February 2013) notice to the industrial unit. Further progress in the matter was awaited (December 2013).

(b) The two industrial units registered in Circle, Kathua for manufacture and sale of menthol and aluminium alloy ingots had produced the finished goods during the years 2005-06 to 2008-09 in excess of their utilization capacities approved by the DIC Kathua. The Assessing Authority while assessing these industrial units did not take this fact into account resulting in grant of inadmissible tax remission of ₹ 6.77 crore to these unit holders on the extra turnover of ₹ 187.24 crore. This led to non-levy of tax of ₹ 6.77 crore, besides interest of ₹ 9.43 crore was also leviable.

The Commercial Taxes Officer Circle, Kathua stated (October 2013) that exemption notification does not put any restriction or condition to regulate production of assessed quantity of goods. The reply was not tenable as the assessing authority had to regulate the claims of the industrial units for remission of tax on the basis of project reports for setting up of an industrial unit containing details of annual estimated value

of sales, raw materials and capacity utilization of the industrial unit during initial and subsequent years of production of the unit.

(iv) Inadmissible grant of tax remission on goods not covered by the notification

The Government notification of 16 March 2006 stipulates that there shall be no remission of tax to industrial units manufacturing goods as specified in schedule-A to the notification. The sheet metal items also figure in the specified goods in this schedule and include trunks, suit cases, *paties*, buckets, etc.

In Commercial Taxes Circle 'Kathua', an industrial unit was registered with the Department for manufacturing of tin containers from tin sheets. The Assessing Authority while assessing (November 2011) the unit for the accounting year 2008-09 allowed tax remission of ₹ 0.24 crore on local sales of ₹ 5.96 crore without considering the fact that the unit was not eligible for remission of tax as the unit was manufacturing goods of negative list in terms of the Government notification. This had resulted in non-charging of tax of ₹ 0.48 crore including interest of ₹ 0.24 crore.

The Assessing Authority stated (April 2013) that matter would be looked into and intimated accordingly.

(v) Non-levy of service tax and inadmissible remission of tax on goods manufactured on job work basis

The Government notification dated 16 March 2006 provide for remission of tax on intrastate sale of goods manufactured by the industrial units and registered with the Department of Industries. No tax remission is admissible on sale of such goods which the industrial unit gets manufactured on job work basis from another industrial unit. Further services provided in the shape of job work by the industrial units were liable to levy of service tax under J&K General Sales Tax Act 1962 till March 2012 and thereafter these services were exempted from payment of service tax.

Table-2.2 **(₹ in lakh)**

Assessment Cicle	Financial year	Amount of non levy of tax	Remarks
Jammu M	2005-06 to 2011-12	₹15.49	The assessee had conducted job work of printing on behalf of BSNL and J&K State Board of School Education and thus the assessee was liable for payment of service tax of ₹ 15.49 lakh, which was not imposed by the department.
Jammu G	2008-09 and 2009-10	₹ 4.18	The assessee has received job work charges of ₹ 49.72 lakh from another industrial units and thus he was liable for service tax of ₹4.18 lakh, which was not imposed by the department.
Kathua and Jammu G	2007-08 to 2009-10	₹ 40.35 lakh	The assessee had got done the manufacturing from other industrial units on job work basis and allowed the exemption of tax of ₹ 40.35 lakh, which was not allowable to him as per the provisions of the Act.

The Assessing Authority Circle, 'G' Jammu stated (October 2013) that service tax was not levied as assessment was done under CST Act. The Assessing Authority Circle, Kathua stated (October 2013) that there was no condition in notification for withdrawal of exemption/ remission on job work. The reply furnished was not tenable as the Commissioner Commercial Taxes had clarified (February 2010) that the benefit of tax remission/ exemption would not be available to industrial units which had not manufactured the goods. Further progress in the matter was awaited (December 2013).

(vi) Irregular grant of remission of tax to un-registered industrial units

According to Rule 13 of the J&K, VAT, Rules 2005 every dealer registered under the J&K GST Act, 1962 had to apply for registration in Form VAT-01 within three months of the appointed day without payment of any fee or security for issuance of a fresh registration to such dealer and in case a dealer fails to do so, the Assessing Authority had to issue notice in Form VAT-43 to the dealer to give reasons as to why his registration should not be cancelled. The date for registration of the dealers under the VAT Act was, however, extended upto 31 December 2010 through a Government notification issued in January 2010. Further, the Government notification dated 16 March 2006 stipulate that industrial unit should be formally registered with the Department of Industries and Commerce and also with the Commercial Taxes Department.

In two[5] Commercial Taxes circles it was noticed that 18 industrial units did not get themselves registered with the Commercial Taxes Department under J&K VAT Act 2005 even during the extended period of registration. The Assessing Authorities allowed remission of tax to these dealers for the period from 2005-06 to 2010-11 irregularly in contravention of the condition of the notification. This resulted in irregular remission of tax of ₹ 91.13 crore and consequent non-levy of tax of ₹ 91.13 crore ***(Appendix-2.1)***, besides interest of ₹ 80.56 crore was also leviable.

On this being pointed out, the Commercial Taxes Officer, Circle 'E' Srinagar stated (January 2013) that VAT registrations were not issued to unit holders due to preoccupation of the authorities in awareness programmes and that the process could not be carried out well in time. The reply furnished is not tenable in view of the fact that no notice in Form VAT-43 had been issued by the Assessing Authorities to these dealers for furnishing reasons for cancellation of their registrations. The Commercial Taxes Officer Circle 'M' Jammu, however, stated (February 2013) that matter would be looked into and action taken intimated to Audit.

(vii) Irregular grant of tax remission on defective returns

According to Section 32(2) of the J&K VAT Act, 2005 any return signed by a person who is not authorised under the Act shall be treated as if no return had been filed. As per Section 31(5) of the Act, in case of a firm, the return shall be signed and verified by any partner thereof. Further, the Government notification dated 16 March 2006

[5] Circles: 'M' (Jammu) and 'E' (Srinagar)

provide that remission of tax shall be available to the industrial units subject to the condition that every registered industrial unit claiming tax remission shall submit a prescribed tax remission claim form alongwith the quarterly return to the concerned Assessing Authority.

The quarterly returns filed by 19 industrial units in five[6] Commercial Taxes Circles in respect of 31 tax periods were either unsigned (23) or signed by the unauthorized persons (8). These returns were to be treated as if no returns had been filed by the industrial units. However, the Assessing Authorities had accepted the returns and irregularly allowed tax remission of ₹ 1.44 crore in favour of these dealers.

On this being pointed out, the Assessing Authorities Circle I&M Jammu issued (February 2013) notices to the dealers.

(viii) Excess tax remission due to misclassification of goods

The Government notification of 16 March 2006 provide that if any industrial unit is found to have preferred an incorrect tax remission claim for a tax period, such industrial unit shall not be entitled to any tax remission for that particular tax period.

Test-check of assessment records of 8 industrial units of four[7] Commercial Taxes Circles showed that these units had misclassified the finished goods under category of higher rate of tax during the accounting years 2005-06 to 2011-12 and accordingly claimed remission of tax of ₹ 10.71 crore against admissible remission of tax of ₹ 3.62 crore. The Assessing Authorities while allowing the remission claims of these units failed to detect the misclassification thereby resulting in grant of excess tax remission of ₹ 7.09 crore. For filing of incorrect tax remission claim the industrial units were not entitled to any tax remission and were liable to pay tax of ₹ 7.09 crore, besides interest of ₹ 5.63 crore was also leviable.

On this being pointed out, the Assessing Authority circle 'I' Jammu issued (February 2013) notices to the industrial unit holders. The Assessing Authority Circle, 'G' Jammu stated (October 2013) that the articles for the packing of plastics were correctly classified as unspecified chargeable to tax at the rate of 12.5 *per cent*. The reply was not correct as articles for the packing of plastics is classifiable under four *per cent* category of tax.

2.1.9 Monitoring Mechanism

(i) Non-withdrawal of tax remission for committing offences

The Government notification of March 2006 provides that industrial unit found guilty of an offence specified under sections 66(6), 67 and 69(1)(f) of the Jammu and Kashmir VAT Act, 2005[8] shall not be entitled to any tax remission for the year in which such offence is committed.

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[6] Circles: 'G', 'I','M' (Jammu), 'Kathua' and 'E' (Srinagar)

[7] Circles: 'I' and 'G' (Jammu), 'Kathua' and 'E' (Srinagar)

[8] Section 66 (6) provide for penalty for non-accountal of goods detected by the Commissioner during inspection. Section 67 provide for penalty for detection of such goods for which dealer is not authorized to deal as per registration. Section 69(1)(f) provide for penalty for concealment of turnover or furnishing inaccurate particulars thereof.

(a) Audit scrutiny of records of two Commercial Taxes Circles (I and G) Jammu showed that penalty amounting to ₹ 2.92 lakh had been imposed (October 2008 and November 2009) on two industrial units by the Additional Commissioner, Commercial Taxes, Jammu under section 66(6) of the J&K VAT Act 2005. The Assessing Authorities of these circles had not, however, taken any action to withdraw remission of tax of ₹ 1.29 crore in respect of intrastate sales of ₹ 32.27 crore made during the accounting years 2008-09 and 2009-10 by these industrial units.

After this was pointed out, the Assessing Authority Circle 'I' Jammu issued (February 2013) notice to the industrial unit.

(b) Eight industrial units[9] had been found guilty of offence under section 67 of the J&K VAT Act 2005, between 2007-08 and 2011-12 as their goods had been seized at check post Lakhanpur, Jammu. The unit holders had paid tax on the items seized as the industrial units were not registered to deal in these items. Due to non-maintenance of records of offences committed by the industrial units the Assessing Authorities while allowing remission of tax to these industrial units, had failed to take cognizance of the offence during the accounting years 2007-08 to 2011-12 resulting in grant of inadmissible remission of tax of ₹ 0.96 crore. This had resulted in non-charging of tax of ₹ 1.58 crore including interest of ₹ 0.62 crore.

On this being pointed, the Assessing Authority of Commercial Taxes Circle 'I' Jammu issued notice to the industrial unit while as the Assessing Authorities of circle 'M' (Jammu) and Kathua stated (February/ April 2013) that the matter would be considered.

(c) Seventeen industrial units registered in four[10] Commercial Taxes Circles had concealed interstate purchase of raw materials valuing ₹ 50.51 lakh during the accounting years 2006-07 to 2010-11 making them liable for penalty under section 69 (1)(f) of the J&K VAT Act, 2005. These industrial units were not eligible for remission of tax for the year in which such offence had been committed in terms of the Government notification dated 16 March 2006. The Assessing Authorities of these circles had failed to detect the concealment of purchases which resulted in non-withdrawal of tax remission of ₹ 10.56 crore in these cases.

On this being pointed out, the Assessing Authorities circle 'E' Srinagar and circle 'I' Jammu issued (January/ February 2013) notices to the unit holders.

(ii) Irregular remission of tax for failure to intimate ceasing of manufacturing activity by the industrial units

The Government notification of March 2006 provide that where any industrial unit for any reason whatsoever, ceases its manufacturing activity for any tax period the matter shall forthwith be brought to the notice of the Assessing Authority concerned. The recommencement of the same shall also similarly be intimated. In case of failure to do

[9] Circles: 'I'(Jammu), 'E'(Srinagar) , 'M'(Jammu) and 'Kathua'
[10] Circles: ' I' and 'M' (Jammu); 'Kathua' and 'E'(Srinagar)

so, the industrial unit shall not be entitled to any remission of tax for the year to which such information pertains.

Audit scrutiny of records in five[11] Commercial Taxes Circles showed that five industrial units had not intimated the information of ceasing and subsequent recommencement of manufacturing activity during the accounting years 2008-09 to 2011-12 to the Assessing Authorities and as such were not eligible for benefit of tax remission for the year of default. The Assessing Authorities had not initiated any action to disallow tax remission to these unit holders for the years of default resulting in grant of irregular tax remission of ₹ 35.26 lakh on the turnover of ₹ 1.49 crore in favour of these industrial units. Irregular grant of remission of tax to these units had resulted in non-levy of tax of ₹ 58.10 lakh, including interest of ₹ 22.84 lakh.

On this being pointed out, the Assessing Authorities of Circles 'E' Srinagar and 'M' Jammu issued (January/ February 2013) notices to the unit holders while as Assessing authorities of Circle 'Kathua' and 'G' Jammu stated (April/ June 2013) that matter would be looked into and action taken intimated subsequently. The Assessing Authority Circle, G Jammu stated (October 2013) that the industrial unit was manufacturing goods seasonally and his sale was based on supply orders. The reply was not tenable as industrial unit was not debarred to intimate ceasure of manufacturing activity and recommencement thereof.

(iii) Non-initiation of proceedings for levy of tax

Audit scrutiny of records showed that tax remission orders in respect of three industrial units registered in Circle 'M' Jammu for the accounting years 2006-07, 2007-08 and 2009-10 (first quarter) had not been passed by the Assessing Authority due to late filing of return (one unit) and non-submission of tax remission claims (two units) by these industrial units. The Assessing Authority had not initiated any action against the defaulting units resulting in non-charging of tax of ₹ 14.25 lakh including interest of ₹ 7.33 lakh.

On this being pointed out, the Assessing Authority stated that matter would be looked into. Further progress was awaited (September 2013).

(iv) Incorrect tax remission orders

Test-check of records showed that three[12] Commercial Taxes Officers had passed remission orders in nine cases incorrectly and allowed tax remission in excess by ₹ 74.04 lakh (7 cases) and less by ₹ 0.08 lakh (1 case) against the remission claims submitted by the industrial units.

On this being pointed out, the Assessing Authority (Circle 'I' Jammu) issued (February 2013) notices to the unit holders.

[11] Circles: 'I', 'G' and 'M' (Jammu); Kathua and ' E' (Srinagar)
[12] Circles: 'E' (Srinagar); 'I', and 'M'(Jammu)

2.1.10 Internal control System

Internal controls in the Department are intended to provide reasonable assurance of proper enforcement of laws, rules and departmental instructions. These helps in prevention and detection of frauds and other irregularities besides creation of adequate safeguards against evasion of taxes and duties. It is as such responsibility of the departmental authorities to ensure that a proper internal control structure is instituted, reviewed and updated from time to time. Audit noticed that internal controls to ensure correctness of remission/exemption of tax to the eligible units were inadequate in the Department as audit pointed out several control deficiencies.

2.1.11 Internal Audit

Internal audit wing in the Commercial Taxes department is headed by the Deputy Commissioner; Commercial Taxes (Audit) one each for Jammu and Kashmir divisions. The Government notification dated 16 March 2006 stipulate that Commissioner, Commercial Taxes shall get at least 25 *per cent* of tax remission claims verified for each tax period by the Deputy Commissioner, Commercial Taxes (Audit) of the concerned division.

It was seen in audit that only tax remission claims passed upto the year 2009-10 had been verified (March 2013) by the Internal Audit Wing of the Department indicating slackness of the Department in conducting verification of tax remission orders passed by the Assessing Authorities.

2.1.12 Conclusion

Exemption from payment of tax in violation of the Government notification had been allowed to industrial units who procured semi finished products, sold traded goods and to those who failed to file returns as prescribed under the CST Act. Remission of tax has been granted to those who procured finished goods from outside the State, availed input tax credit, returned inflated turnover, purchased goods not covered under notification, conducted manufacturing activity through job works and dealers who were found to have committed offences under the various sections of the Act though not provided.

2.1.13 Recommendations

The Government may consider to:

- put in place a mechanism for cross verification of records of capacity utilization, authorized quantities of raw material and finished products approved by the Industries Department in respect of each industrial unit with the records and returns of turnover filed with the Assessing Authorities by these units.
- strengthen coordination within various wings of the Department for reporting cases of offences committed by the Industrial units to the concerned Assessing Authorities for withdrawal of remission/ exemption of tax in their favour; and
- strengthen monitoring mechanism and internal control system to ensure compliance of Tax Laws effectively.

(Sales Tax/ Value Added Tax)

2.2 Incorrect exemption of tax

Failure of the Assessing Authority to detect concealment of purchases at the time of assessment resulted in grant of incorrect exemption to a dealer from payment of tax of ₹ 21.28 lakh on the taxable turnover of ₹ 67.75 lakh.

The Government notifications issued on 20 August 1998 and 31 January 2004 provided for exemption from payment of general sales tax on the sale of finished goods manufactured by the industrial units registered with the Industries and Commerce Department. The dealers were however, required to maintain a correct and regular account of purchase of goods including raw materials and sale of goods besides filing returns of sales regularly. Any dealer found guilty of concealing his turnover or furnishing inaccurate particulars thereof was not entitled to any exemption from payment of tax for the year in which such offence was committed or for subsequent years.

Scrutiny of records (April 2008) of the Commercial Taxes Officer Circle 'M' Srinagar showed that a dealer had shown purchase of ₹ 65.35 lakh and sale of ₹ 61.33 lakh in his trading account for the year 2003-04. The Assessing Authority while assessing (November 2005) the dealer (industrial unit) for the accounting year 2003-04 under section 7 (6) of the Jammu and Kashmir General Sales Tax Act 1962 allowed exemption from payment of tax on the turnover of ₹ 61.33 lakh claimed by the dealer. A cross-check of purchase statement with the trading account furnished by the dealer however, showed that against the purchases of ₹ 67.45 lakh the dealer had accounted for ₹ 65.35 lakh only in his trading account during the year 2003-04. As the assessee had furnished inaccurate particulars, he was not entitled for any exemption and he was liable for payment of tax on the total turnover.

On this being pointed out (April 2008), the Assessing Authority re-assessed (October 2011 and March 2012) the dealer at a taxable turnover of ₹ 67.75 lakh and raised (March 2012) demand of tax of ₹ 21.28 lakh against the dealer. Had the Assessing Authority cross-checked purchase statement with the trading account the concealment of purchases could have been detected at the time of assessment by the Assessing Authority.

The matter was referred to the Government/ Department in September 2013, the reply thereof was awaited (December 2013).

2.3 Short levy of tax/penalty due to concealment of purchases

Failure of the Assessing Authority to detect concealment of purchases by the dealer at the time of his assessment resulted in short levy of tax of ₹ 5.47 lakh.

Section 7 of the Jammu and Kashmir General Sales Tax Act, 1962 (J&K GST) and the rules made thereunder provide that every dealer shall submit a true and correct

return of his turnover in such a manner as may be prescribed under the Act. Further, if a dealer who has without any cause failed to furnish correct return of his turnover or concealed any particulars of his turnover, the Assessing Authority (AA) shall direct the dealer under section 8(8) and 17 (1) (f) of the said Act to pay in addition to tax and interest payable by him, penalty not less than amount of tax evaded but not exceeding twice the amount of tax.

(i) Audit scrutiny (June 2012) of records of Commercial Taxes Circle, Kargil showed that the assessment of a dealer for the financial year 2005-06 was made (August 2009) by the Assessing Authority under section 7 (8) of the J&K GST Act at a taxable turnover of ₹ 23.26 lakh. A cross-check of consumption statement of 'A[1]' forms with the purchase statement and trading account for the year 2005-06 filed by the dealer showed that purchases of ₹ 4.39 lakh had not been accounted for by the dealer in his accounts resulting in suppression of purchases to that extent. This led to understatement of turnover to the extent of ₹ 5.62 lakh (after adding 5 *per cent* freight + 22 *per cent* profit) and consequent short levy of tax of ₹ 5.38 lakh[2] including interest and penalty. Had the Assessing Authority cross-verified the details of consumption statement of 'A' Forms with the purchase statement and trading account, the concealment of purchases by the dealer would have been detected at the time of assessment.

(ii) Scrutiny of records of the Commercial Taxes Circle 'F' Srinagar showed that while assessing (March 2012) the dealer for the accounting year 2008-09 under section 39 (5) of the J&K VAT Act, the Assessing Authority had noticed concealment of purchases of ₹ 25.99 lakh with taxable turnover of ₹ 27.55 lakh. The Assessing Authority accordingly raised a demand of tax of ₹ 5.92 lakh including interest of ₹2.48 lakh against the dealer but did not impose penalty under the provisions of the Act. For concealment of the turnover, the Assessing Authority was required to direct the dealer to pay in addition to tax and interest, the penalty of ₹ 6.89 lakh equal to double the amount of tax.

On these being pointed out (May/June 2012), the Assessing Authority re-assessed (March 2013) the dealer for the financial year 2005-06 at a taxable turnover of ₹ 5.49 lakh and raised additional demand of ₹ 5.47 lakh[3] against the dealer. The Commercial Taxes Officer, Kargil intimated (July 2013) that an amount of ₹ 1.15 lakh against the demand of ₹ 5.47 lakh had been recovered from the dealer. Further progress of recovery of balance amount was awaited (December 2013). Assessing Authority Circle'F' Srinagar imposed (June 2013) the penalty equal to double the amount of tax and created a demand of ₹ 6.89 lakh against the dealer.

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[1] Certificate in the prescribed format issued by the dealer indicating purchase of goods from another dealer for sale in the state.

[2] Tax: ₹ 1.18 lakh; Interest: ₹ 1.84 lakh and Penalty: ₹ 2.26 lakh

[3] Tax: ₹ 1.15 lakh; Interest: ₹ 2.01 lakh and Penalty: ₹ 2.31 lakh

2.4 Short levy of tax due to misclassification of goods

Failure of the Assessing Authority to detect misclassification of goods at the time of assessment resulted in short levy of tax of ₹ 4.77 lakh.

The Jammu and Kashmir Value Added Tax Act, 2005 and the rules made thereunder provide for assessment of any registered dealer in terms of provisions of the Act. Section 16 of the Act further stipulates that tax on the taxable turnover of a registered dealer shall be levied at such rates specified by the Government from time to time.

Scrutiny of records (June 2011) of the Commercial Taxes Officer, Circle Rajouri showed that a dealer had charged the turnover of ₹ 24.79 lakh to tax under four *per cent* category in his trading account during the year 2006-07. The turnover (cold/ soft drinks) was actually chargeable under 12.5 *per cent* tax thereby resulting in misclassification of goods. The Assessing Authority while assessing (May 2009) the dealer to tax for the accounting year 2006-07 under section 39 (5) of the J&K VAT Act failed to detect this mistake. This led to charging of turnover of the dealer at lower rate of tax and consequently short levy of tax to the tune of ₹ 3.33 lakh[4], including interest of ₹ 1.22 lakh.

On this being pointed out (June 2011), the Assessing Authority re-assessed (February 2012) the dealer under section 42 of the J&K VAT Act 2005 and raised a tax demand of ₹ 4.77 lakh[5] against the dealer.

The matter was referred to the Government/Department in September 2013. The Commissioner Commercial Taxes reported (December 2013) that an amount of ₹ 0.60 lakh had been recovered from the dealer. Progress of recovery of balance amount was, however, awaited (December 2013).

2.5 Short levy of tax due to non verification of credit notes

Inaction of the Assessing Authority to verify genuineness of credit notes at the time of assessment of the dealer resulted in short levy of tax of ₹ 4.21 lakh.

Section 26 (3) of the Jammu and Kashmir Value Added Tax Act (VAT) 2005 provides that in case of goods returned or rejected by the purchaser a credit note shall be issued by the selling dealer to the purchaser and a debit note by the purchaser to the selling dealer containing particulars as may be prescribed.

Audit check (August 2012) of records of the Commercial Taxes Circle 'D' Jammu showed that the dealer was assessed (June 2010) to tax for the accounting year 2007-08 under section 39 (5) of the J&K VAT Act, 2005 by the Assessing Authority at a taxable turnover of ₹ 20.28 crore. The dealer had not accounted for the credit notes of ₹ 15.88 lakh issued by the selling dealer in his purchases of ₹ 18.85 crore

[4] Tax: ₹ 2.11 lakh; Interest: ₹. 1.22 lakh
[5] Tax:₹ 2.11 lakh; Interest: ₹. 2.66 lakh

during the said accounting year. The Assessing Authority while assessing the dealer had not taken cognizance of this fact and verified the genuineness of the credit notes. This had resulted in short accountal of purchases and consequent under assessment of taxable turnover to the extent of ₹ 15.88 lakh leading to short levy of tax of ₹ 4.04 lakh (including interest ₹ 2.06 lakh).

On this being pointed out (August 2012), the Assessing Authority re-assessed (February 2013) the dealer under section 42 of J&K VAT Act, 2005 and after verification of the admissibility of credit notes, raised (February 2013) a tax demand of ₹ 4.21 lakh (including interest ₹ 2.34 lakh) on the credit notes valuing ₹ 14.97 lakh against the dealer. Had the Assessing Authority verified the genuineness of credit notes at the time of original assessment of the dealer the short levy of tax could have been avoided?

The matter was referred to the Government/ Department in September 2013. The Commissioner Commercial Taxes reported (December 2013) that an amount of ₹ 2.87 lakh had been recovered from the dealer. Further, progress of recovery is awaited (December 2013).

Transport Department

2.6 Revenue Mobilization in Motor Vehicles Department

The system of revenue management by Motor Vehicles Department (MVD) for the period from 2010-11 to 2012-13 was reviewed in audit through a sample system-check in the office of the Transport Commissioner, Regional Transport Officer Jammu and Assistant Regional Transport Officer Udhampur from June 2013 to September 2013. The important audit findings are discussed in the succeeding paragraphs:

As of March 2013 a total of 1020786 vehicles were registered in the State with the Department. The position of revenue realized by the Department during the years 2010-11 to 2012-13 is given in **Table-2.6.1.**

Table-2.6.1

(₹ in crore)

S. No	Year	Targets Fixed	Actual receipts	Shortfall	Percentage shortfall
1.	2010-11	113.30	112.00	1.30	1
2.	2011-12	128.50	120.13	8.37	7
3.	2012-13	139.00	129.44	9.56	7

Yearly targets were fixed for RTOs but these had not been fixed by the RTOs for their subordinate offices viz ARTOs.

2.6.1 Management Information System

A well formulated Management Information System (MIS) in an organization captures important dynamic information to aggregate and classify data for conversion into useful exception reports to bring to the notice of the top management for remedial action.

Audit noticed that there is no MIS/ mechanism in place to monitor the position of tax due, realized and outstanding taxes/ levies in respect of different types of vehicles, viz., token tax, grant/ renewal of route permits, conductor licenses issued in relation to the number of registered stage carriage vehicles. The latest data on the website is of 2009-10 (September 2013). As of March 2013, a total of 1020786 vehicles were registered with the Department while as the data on website of Department showed the position of registration of vehicles (as of September 2013) as 737577 vehicles registered with the Department. This is despite the fact that the Department has an ongoing plan scheme of computerization. The position of renewal of trade certificates of the dealers, licenses for the driving schools and issue of preferential registration numbers had also not been monitored by the Department.

The Joint Transport Commissioner stated (July 2013) that importance of efficient MIS could not be over emphasized and the areas pointed out by Audit where there is

deficiency in performance indicators would be augmented so that a better MIS is exercised by the Department.

2.6.2 System deficiencies in cash management

Jammu and Kashmir Financial Rules provide that all transactions of receipts, disbursements and charges of whatever sort should find place in the cash book with detailed particulars. The receipts realized should be remitted into the treasury on the same day or the next day at the most and the remittance register monthly reconciled and got verified by the treasury. Audit examination of records of Transport Commissioner showed that:

- the consolidated/ main cash book depicting the details of receipts in the form of bank drafts received and remitted into the Bank for clearance/ credit was not maintained and the bank drafts were received at multiple cash points/ counters and remitted directly from these points into the Bank without routing through the main cash book;
- the system of monthly reconciliation of revenue/ receipts realized from the bank drafts sent for collection to the Bank was not in place;
- the delay in transfer of revenue by the two branches of Jammu & Kashmir Bank Limited; old secretariat Srinagar and Trikuta Nagar Jammu ranged between five days and six months and by the Jammu & Kashmir Bank Ltd; Civil Secretariat ranged between nine days and four months; and
- the delay in depositing the bank drafts with the Jammu & Kashmir Bank Ltd; ranged from 28 days to 15 months.

Audit check of records of RTO Jammu showed that:

- the delay in remittance of cash into the treasury ranged between one and 190 days with undue retention of cash ranging between ₹ 1.43 lakh and ₹ 19.03 lakh;
- the reconciliation of remittance of bank drafts and their subsequent realization had not been conducted with the Bank as a result the factual position regarding clearance/ realization of bank drafts was not available with the Department; and
- the proceeds of bank drafts valuing ₹ 9.06 crore remitted into the Bank by the RTO Jammu during the period 2010-11 to 2012-13 were not realized as of March 2013.

RTO Jammu stated (September 2013) that position of bank drafts would be reconciled with the Bank and that all the dealing assistants had been directed to remit cash into the treasury without undue delay on daily basis.

2.6.3 Outstanding token tax

The position of outstanding token tax had not been monitored by the Department. However in test-checked offices of ARTO Udhampur and RTO Jammu, an amount of ₹ 3.19 crore on account of token tax was outstanding from 7123 vehicle owners as of March 2013 for period ranging between three months and 69 months. The Department had not worked out the interest amount on the unpaid tax and had not taken any action by way of issue of notices/ demand to recover the outstanding arrears on account of token tax from the defaulters.

On this being pointed out, RTO Jammu as well as ARTO Udhampur (September 2013) stated that the token tax would be recovered under rules from the concerned vehicle owners.

2.6.4 Grant/ renewal of various types of route permits

The position of grant/ renewal of national, state and district route permits issued under the provisions of the Act for various types of vehicles by the Department during the period from 2010-11 to 2012-13 is given in ***Appendix-2.2***. The audit findings in respect of the test-checked cases are discussed in the succeeding paragraphs:

(i) Non-renewal of national permits for goods carriage

Government of India Ministry of Road Transport and Highways introduced a new national permit system with a view to provide a frame work for uninterrupted movement of goods vehicles across the country which provides for realization of ₹ 16500 towards 'central pool fund' and ₹ 1000 towards 'home state authorization fee' for issuance of fresh national permits. The renewal fee of ₹ 300 for national permits was prescribed with effect from 14 April 1999 along with application fee of ₹ 30 as specified in the amendment notification (February 1999).

Audit check of records of Transport Commissioner showed that out of 17093 national permits for goods carriage 1391 permits (Jammu: 1039; Kashmir: 352) due for renewal during the years 2010-11 to 2012-13 were not renewed as of March 2013 resulting in non-recovery of 'home state authorization fee' along with renewal fee to the extent of ₹ 24.64 lakh.

On this being pointed out, the Joint Transport Commissioner stated (July 2013) that there was no lapse on part of the Department. The reply is not tenable as 'State authorization fee' at the rate of ₹ 1330 per annum per vehicle in the shape of renewal fee was to be charged from national permit holders and that no steps had been taken by the Department in forwarding list of defaulters to the State Traffic police for ensuring recovery of outstanding amount from the defaulters.

(ii) Non-renewal of permits of Jammu and Kashmir Road Transport Corporation

Audit examination of records showed that out of 605 permits issued for the vehicles of Jammu & Kashmir State Road Transport Corporation, 378 permits were not renewed and the outstanding permit renewal fee was ₹ 31.28 lakh as of March 2013. No action had been taken by the Department to recover the outstanding renewal permit fee from the Corporation.

The Government had imposed (March 2007) ban on plying of commercial/ passenger vehicles on the roads in the State on attaining the age of 25 years with effect from 1 April 2007. Audit noticed that 87 vehicles of the Corporation which were more than 25 years old had neither been weeded out from the records after keeping a note in the Permit Register nor the permits of such vehicles cancelled after ascertaining the status of these vehicles from the Corporation. The Joint Transport Commissioner stated (July 2013) that matter would be taken up with the Corporation.

(iii) Non-renewal of district route permits

Section 81(1) of the Central Motor Vehicle Act 1988 read with Rule 80(G) of the J & K Motor Vehicle Rules 1991 specifies the validity period of a Permit other than a temporary permit or a special permit and the manner in which a permit could be renewed.

Test-check of records of ARTO Udhampur and RTO Jammu showed that 404 permits due for renewal for the last one to 12 years had not been renewed by the permit holders as of March 2013. The outstanding amount of permit renewal fee as of March 2013 in test-checked offices was ₹ 2.51 lakh with additional fee of ₹ 17.75 lakh on account of belated renewals. The Department had not made recovery of permit renewal fee in time from the vehicle owners/ permit holders nor had the cases of defaulters been referred to the Traffic Police Department for initiating appropriate action at their end.

On this being pointed out, ARTO Udhampur stated (August 2013) that necessary action would be taken while RTO Jammu stated (September 2013) that computerization of the data of renewal of permits by the vehicle owners was under process and that the outstanding renewal fee would be recovered from the permit holders.

2.6.5 Renewal of certificate of fitness of vehicles

Section 56 of the Central Motor Vehicle Act 1988 read with Rule 62 of the Central Motor Vehicle Rules 1989 provides that a transport vehicle shall not be deemed to be validly registered unless it carries a certificate of fitness issued by the prescribed authority and prescribes the period of its validity and mode of renewal.

The Transport Commissioner did not have the position regarding number of certificates pending for renewal and outstanding revenue on account of issue/ renewal

of fitness certificates was not available with the Department. In test checked offices, audit noticed that an amount of ₹ 39.11 lakh was outstanding on account of non-renewal of fitness certificates in respect of 4245 transport vehicles as of March 2013.

Audit further noticed that the fitness certificates of transport vehicles were issued by the Board of Inspection[6] in RTO Jammu simply on visual inspection of the vehicles as it did not have the requisite infrastructure of equipments and apparatus for undertaking tests pertaining to exhaust gas, engine tuning, engine analysis, brake system, wheel alignments, compressors, etc; for inspection of the vehicles.

On this being pointed out, the ARTO Udhampur and RTO Jammu stated (August/ September 2013) that fitness certificates were issued on the basis of manual inspection as no specialized infrastructure for fitness purpose had been provided by the Department and that the transport vehicle owners would be insisted upon to renew the fitness certificate on priority.

2.6.6 Passenger Welfare Fund

The Government accorded (May 2008) sanction to the creation of passenger welfare fund and issuance of Jammu and Kashmir Passenger Welfare Fund Rules, 2008. The objective of the fund was to introduce measures for welfare of the dependents, legal heirs of the persons killed, injured in road accidents of commercial passenger vehicles due to negligence/ machinery failure/ road weather conditions. The passenger welfare fund was to be collected from the commercial passenger vehicles with effect from 1 April 2010 at a rate of ₹ 1200 per annum for heavy vehicles, ₹ 600/- per annum for medium commercial vehicles and ₹ 240/- per annum for other vehicles like taxies etc; The amount so realized was to be credited to Government account under Major head of account '8235-General and other Reserve Fund – 300- other funds'.

The position of passenger welfare fund due from the commercial vehicles registered during the period 2010-11 to 2012-13 in the State, amount realized thereof, amount actually credited to the fund and amount utilized there against is given in the **Table-2.6.2**.

Table-2.6.2

(₹ in lakh)

Year	No. of commercial vehicles registered	Amount due from registered vehicles	Amount realized	Actual amount credited to the fund	Amount withdrawn from the fund	Closing balance under the fund
2010-11	15313	111.39	107.59	NIL	Nil	Nil
2011-12	17092	234.09	81.43	73.16	55.90	17.26
2012-13	19073	364.56	45.10	67.82	80.85	04.23
Total	**51478**	**710.04**	**234.12**	**140.98**	**136.75**	**4.23**

[6] Board constituted by the Transport Commissioner to examine transport vehicles for issue of certificate of fitness

It would be seen that against the passenger welfare fund of ₹ 7.10 crore due from the owners of 51478 commercial vehicles during the period 2010-11 to 2012-13 in the State, only ₹ 2.34 crore was realized from the registered vehicles resulting in short realization of ₹ 4.76 crore. Further against ₹ 2.34 crore realized only ₹ 1.41 crore had been credited to the Fund account resulting in less credit to the extent of ₹ 93.00 lakh. The non-crediting of amount to the passenger welfare fund realized at the time of registration of commercial vehicles had not been investigated by the Department.

The Joint Transport Commissioner stated (July 2013) that matter had been referred to the RTOs/ ARTOs concerned for response although no reply for the shortcomings and deficiencies relating to poor management, monitoring and maintenance of the fund had been furnished (December 2013).

2.6.7 Non-renewal of goods agent business licenses

The J&K Motor Vehicle Rules 1991 specifies the period for which the license of an agent engaged in the business of collection, forwarding and distribution of goods by vehicles plying for hire shall be valid for a period of one year from the date of grant of licence or its renewal.

Audit check of records showed that out of 197 Goods Agent Business licenses issued by the Transport Commissioner in the State, 64 such licenses (out of 451 renewals) had not been renewed till March 2013 thereby resulting in non-realization of ₹ 25.93 lakh (renewal fee: ₹ 16.91 lakh and late fee: ₹ 9.02 lakh). Audit also observed that these Agent licenses were due for renewal for the last one to 17 years.

The Joint Transport Commissioner stated (July 2013) that notices had been issued to the licensees for getting their licenses renewed within stipulated time failing which their licenses would be cancelled.

2.6.8 Non-renewal of motor transport service license

The J&K Motor Vehicle Rules 1991 provides that persons/ firms having motor transport service license have to get their licenses renewed after one year after payment of renewal fee/ late fee for delayed renewal.

Audit check of records of the Transport Commissioner showed that out of 201 motor transport service licenses, 83 licenses which were due for renewal between 1997-98 and 2012-13 (499 renewals) were not got renewed by the respective firms/ transport companies as of March 2013 resulting in non-realization of revenue of ₹ 41.87 lakh (license fee ₹ 16.97 lakh and late fee ₹ 24.90 lakh).

The Joint Transport Commissioner stated (July 2013) that the licensees had been issued notices for getting their licenses renewed within stipulated time failing which their licenses will be cancelled.

2.6.9 Conclusion

The taxes due, realized and outstanding in respect of different categories of vehicles is not being monitored by the Department. The field units of the Department do not have readily available information and proper system of reviewing and targeting defaulting motorists. The proceeds in respect of bank drafts remitted into the Bank during the period 2010-13 by the RTO, Jammu were not realized as of March 2013. Token tax was outstanding from vehicle owners for the period ranging between three months and 69 months. The Passenger Welfare Fund was poorly managed as total amount realized had not been credited to the Fund.

The above points were reported to the Department and the Government (October 2013); reply has not been received (December 2013).

REVENUE DEPARTMENT

2.7 Irregularities in Implementation of the Jammu and Kashmir State Lands (Vesting of ownership to the Occupants) Act, 2001

The Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) Act, 2001, popularly known as the 'Roshni Act' ('Roshni' means light), came into effect from 01 March 2002. The Act was amended in 2004 and 2007. The main objective of the Act is to generate funds to finance power projects in the State by (a) granting ownership on State lands at market value to such permanent residents (natural persons or companies, fulfilling conditions under governing law) of the State of J&K, who were authorized occupants (lease/ grant holders) or unauthorized occupants of State lands on a particular date and (b) public auction of vacant State lands. The Government notified Rules on 25 August, 2005 in exercise of the authority delegated under the Act. The Rules were amended on 23 November, 2006 and 5th March 2007. The Rules prescribed the types of State lands on which ownership rights could be transferred to occupants on applications to be considered by committees to be set up for this purpose, which were also empowered to determine market value of land. The Government had estimated (November 2006) that total State land was 125,03,973 *Kanals*[7] of which 20,64,972 *Kanals* (estimated value ₹ 25448 crore) was under encroachment.

The implementation of the Roshni Act and the Rules framed thereunder was examined by Audit between November 2012 and July 2013 to assess whether there was any deficiency in the formulation of Rules for the implementation of the Act and also irregularities in the implementation of Act. Audit faced difficulties in getting full information/records despite writing a series of letters to the Revenue Department in this regard during the period of audit. With this constraint, audit was conducted through a test-check of records of the offices of Deputy Commissioners in seven[8] out of 20 districts in which the Act was implemented. The records were test checked in Srinagar, Jammu, Udhampur, Anantnag, Pulwama and Budgam districts and 547 cases involving transfer of 666 *kanals* of non-agricultural lands were examined in detail. The following are some of the important audit findings:

2.7.1 Audit findings

2.7.2 Deficiencies in framing the Rules for implementing the Act

2.7.2.1 Provisions in the Rules contrary to the scope and objectives of the Act

Roshni Act is a special type of legislation concerning rights of permanent residents of the State requiring 2/3rd majority of total membership of each House of the Legislature under Article 9(b) of the Constitution of J&K. The Act provided that the Rules were not required to be approved by the Legislature. Hence, the authorization to the Government to make Rules "for carrying into effect the purposes of this Act" cast a special responsibility of due diligence on the Government in making the Rules.

[7] 272 Sft = 1 Marla; 1 *kanal* = 20 *marlas* = 605 sq yards = 505.86 sq m = 0.125 Acre = 0.050585 Hectare

[8] Budgam, Anantnag, Srinagar, Pulwama, Jammu, Samba and Udhampur

Audit found that the Rules made by the Government contained provisions that were contrary to the scope and objectives of the Act and hence irregular.

2.7.2.2 Transfer of agricultural lands free-of-cost against the provisions of the Act

Section 8(2) of the Roshni Act stipulate that total land in possession of any person or a family including the land vested in such person or a family under the Act shall not exceeds the limit of 100 *Kanals*. However, the Rules provided for transfers of all agricultural lands to be free of cost, which is beyond the scope, objectives and mandatory provisions of the Act. Hence, all transfers of agricultural lands under the Act become illegal.

2.7.2.3 Provision of rebates, incentives and penalties not in consonance with provisions of Act

Section 12 of the Act provides for committees to be set up to decide the value of the land in a particular area/district and to approve the vesting of the ownership rights to the occupants on application. While laying down the parameters for fixing the price of the land by the notified committees, the Act mandated (vide Section 12(2)) that the committees shall *inter-alia* take into consideration "potential value of the land" and "the market value of land determined for purpose of Stamp Duty under the Stamps Act and the rules made there under". The Rules provided for differential pricing of lands, depending upon the size of plot of land, category of occupants or end-use of land, by prescribing different rates of rebates over land prices assessed by the statutory committees. This resulted in substantive deviation from the mandatory provisions of the Act prescribing parameters of price fixation by the committees. The rebate provisions are against the objectives, scope and substantive provisions of the Act. Further, the Rules provided for, without any enabling provision in the Act to this effect, incentives to the applicants, depending upon the period of payment, as a percentage discount over the rebated price. For payment made within 3, 6, 9 or 12 months, the quantum of rebate is 25, 15, 5 and 2 *per cent*, respectively. Offering discounts on the rebated land price itself, rather than charging graded interest for delayed payment on the principal amount due, is unreasonable. Further, the Rules provided for stretching of the payment process up to two years with penalty of 5, 15, 25 and 35 *per cent* for payments within 15, 18, 21 and 24 months, respectively. The provisions of incentives are not in consonance with the provisions of the Act.

2.7.2.4 Deficiencies in the formation of Committees

Section 12 of the Act contemplates transfer of ownership rights of State lands to occupants on payment of price determined by the committees, to be appointed by the Government, to whom the application was to be forwarded by the Tehsildar and District Commissioner with recommendations made after due inquiries. The Hon'ble Chief Minister had approved (November 2006) the constitution of district level committees headed by the Deputy Commissioners for rural areas and the divisional level committees headed by the two Divisional Commissioners to deal with the lands

in cities, towns and places where Development Authorities had been constituted. The Rules however, contrarily provided following committees to approve land transfers: (a) Divisional Commissioner concerned, Chairman (b) District Collector concerned, Member (c) Assistant Commissioner Nazool/Revenue concerned, Member (d) Tehsildar concerned, Member, for the Jammu and Srinagar districts. For other districts including areas falling under the Tourism Development Authorities as (a) District Collector concerned, Chairman (b) Additional Deputy Commissioner concerned, Member (c) Assistant Commissioner Revenue concerned, Member (d) Chief Executive Officer of the Tourism Development Authority concerned, Member (e) Tehsildar Territorial concerned, Member.

It was observed that:

- The Divisional/ District Commissioner are the authorities statutorily responsible for prevention and removal of unauthorized occupation of State lands, and wider consultations with other stakeholder Departments were necessary for effective implementation of the Act. Therefore, the committees set to approve applications and fix land prices should have involved all stakeholders (viz Public Works, Public Health Engineering, Irrigation and Flood Control and Rural Development Departments etc;) for having a broad-based Committee.
- Prior to the 2007 amendments to the Rules, the committees in all districts were headed by Divisional Commissioners and had the representation from concerned Development Authorities. The 2007 amendment removed Jammu Development Authority and Srinagar Development Authority from the membership of the concerned committee in Jammu and Srinagar and also downgraded the chairpersonship of the committees to Deputy Commissioner level in other Districts. Thus, the level/composition of committees was whittled down after 2007, which may have impacted on determination of market/ potential value of lands.
- In contrast to the lower level committees for fixing land prices under the Roshni Act concentrated within Revenue Department, there is a higher level committee having wider participation of stakeholders for fixing land prices under Stamp Duty Act. In 2006, the Divisional Commissioners were the key decision makers for fixing land prices under both Acts. While the committees under Roshni Rules were downgraded in 2007, the mechanism under the Stamp Duty Rules was strengthened in 2011[9].

9 For implementation of the J&K Stamp Act, the Rules were first framed in 2006 and amended in 2011. Under Stamp Duty Rules, 2011, there is a Central Valuation Board (CVB) headed by the Inspector General of Registration/ Commissioner of Stamps for fixation of valuation of lands/properties for the purpose of determination of Stamp Duty and it is fixed and notified for particular areas/types. Hon'ble Chief Justice of the J&K High Court presently functions as ex-officio Inspector General of Registration. Other members of this Board include Chief Engineer, Public Works Department (R&B) or his representative, Chief Town Planner or his representative, Director Land Records or his representative, Director, Agriculture or his representative, Chief Conservator of Forest or his representative and any other members nominated by the State Government. The District Valuation Committees are headed by District Commissioners, have participation of officers from Departments other than the Revenue Department and most importantly, these District Valuation Committees merely provide inputs to the CVB which accords final approval.

Thus the 'committees' under the Roshni Rules (a) are essentially Divisional/District Commissioner led 'committees', de facto comprising of their subordinates and these 'in-house' committees have no formal input from outside the Revenue Department; (b) are fixing market rates for transfer of State lands to occupants on a case-by-case rather than on an area/locality basis; (c) do not have any obligation to notify the price fixed by them for public information; (d) are free from scrutiny by civil courts or general public and (e) have unlimited financial powers to alienate valuable public lands.

2.7.2.5 Ambiguity about the impact of amendment in the Rules on pending applications

The Rules do not specify whether the amended Rules would also apply to pending applications. Unless otherwise provided, any change in the Rules should normally apply only to applications received after the amendment. However, all the applications were processed under amended Rules. Since the Rules were progressively relaxed in favour of applicants, the delay in disposal of pending applications benefited the applicants. Instances were found where even applications already decided upon under pre-amended Rules were re-processed after amendment of the Rules.

2.7.2.6 Relaxation in the criteria for the identification of eligible occupants

(i) Section 5(b) of the Act passed in 2001, only such occupants seeking transfer of ownership were eligible to apply who had been in actual physical possession of the land during the period from 1 January, 1990 to the commencement[10] of the Act in a particular area. Thus, the original Act (2001) limited the benefit of the scheme only to the long-term occupants. Under 2004 amendment to the Act, all those occupants who were in actual physical possession of the land, either personally or through authorized agents, on the 'commencement' of the 2004 Amendment Act were made eligible to apply, irrespective of the length of period of occupation. The 2004 Amendment Act, passed on 27th February 2004 and assented to by the Governor on 19th March 2004, stipulated that it shall come into force on the date its publication in the Gazette, which was issued on 21st May 2004.

The relaxation of eligibility criterion resulted in extension of the benefit of the scheme even to those who occupied State lands after the enactment of Roshni Act 2001. Delay in notifying the 2004 Amendment Act benefited those occupying the State lands after the passage of the Amendment Act by the Legislature.

(ii) Under Roshni Rules, the agricultural lands being transferred to applicants should have been in cultivation for at least three years on the date of application. However, no such minimum period of occupation was prescribed in respect of non-agricultural lands.

10 The date of commencement was left to be notified by the Government and it was commenced with effect from 1st March 2002.

2.7.2.7 Non-provision for preferential buyback of transferred lands

Section 8(d) of the Act requires the committee to ensure, before approving transfer of a land that it is not required for any public purpose. Such determination requires wider consultations. Considering growing requirement of lands for various development projects and since the land was not auctioned, there should have been enabling provisions in the Rules for Government's preferential right to get back the transferred land at the transfer price, adjusted for intervening period, if the land is required by Union or State Government for any public purpose.

2.7.2.8 Error in publishing the correct version of the amended Act

Sub-section 3 of section 12 of the Act, as amended in 2004 provided that the committee constituted under the Act for determination of the price for the land may put such land to auction in accordance with the provisions of the Act if, in the opinion of the committee, the price offered in negotiations was not commensurate with the potential value of the land. The said Act was amended in February 2007 wherein sub-section 3 of section 12 was not omitted as per the Gazette notification. However, while publishing the consolidated amended Act subsequently the proviso to sub-section (3) of section 12 was omitted by insertion of a footnote.

2.7.3 Irregularities in the implementation of the Act

2.7.3.1 Transfer of lands without carrying out mapping of lands

Section 3-A of the Act mandated that the mapping of the State land is to be carried out "by such authority, in such manner and within such time, as may be prescribed" before detailing various provisions enabling transfer of State lands to occupants. The legislative intent was to ensure completion of mapping before transfer of ownership of lands under the Act. The Rules provide that the mapping of State land shall be "carried out by the Tehsildar in such manner and within such period as may be directed by the Government from time to time". The Divisional Forest Officer concerned shall be associated in the mapping of forest land. Thus, the Rules did not specify either 'manner' or 'timeliness' of conducting mapping. Mapping of State lands was not done as no gazette notification or public notice for information of general public was found issued in any of the test-checked districts. Thus, the Department had proceeded with the vesting of ownership rights in respect of the occupied State lands without mapping of all State lands in that area, which affected the determination of market value of the transferred lands by the committees.

2.7.3.2 Deficient system of processing the applications

(i) Under Section 6 of the Roshni Act, each Tehsildar is required to maintain an application register and make an entry in the register duly numbered and also attest each such entry date wise. The register was to be closed on 31 March, 2007 and the number of applications received Tehsil-wise was to be furnished to the Administrative Department by 15 April, 2007. The purpose of fixing a last date for receipt of applications is defeated if the applicants are allowed to submit incomplete

applications without all the supporting documents like affidavits, copy of the extract of *Khasra Girdawari*[11]*, Tatima Shajra*[12]*/ Shajra Kat,* copy of the permanent residence certificate, ration card, non-encumbrances certificate, reference to *Wasidari* register and make good the deficiencies later. Audit found that the system and procedure for processing and scrutinising applications was non-transparent and susceptible to misuse, as detailed below:

- There was a statutory requirement of an affidavit in prescribed proforma to accompany an application under the Roshni Act. In Budgam and Pulwama districts, the enclosed affidavits bore the date after 31 March 2007 in 90 *per cent* applications, although the applications complete in all respects should have been received by 31 March 2007.
- The applications register maintained by Tehsildar South Srinagar simply contains some numbers, supposedly serial numbers of applications, without any other particulars of applications, viz., name of the occupant, parentage, residence, particulars of land etc.
- In Jammu, the applications were processed in an *adhoc* manner without proper record of approvals on individual files. Details of applications received for approval, applications approved, rejected and applications where ownership rights granted were not maintained. The application registers had not been maintained in the serial order. The entries in the Register were not attested and the registers were not closed on 31 March, 2007. Seventy applications were received after the last date of receipt of applications i.e. after 31 March 2007. As many as 1047 applications did not bear the dated signature of the Tehsildar and 83 applications were not signed by any Revenue authority.
- In Tehsil Khag (Budgam), the entire record of applications was maintained on loose sheets and the date of receipt of application was not authenticated. The test-checked applications did not bear the dated signatures of the Tehsildar.
- Copy of Ration Card for residence proof was not obtained in 672 out of 1038 cases, test-checked in Jammu, Udhampur and Samba districts.
- A certificate to the effect is required to accompany the application from the prospective owner that land in question was free from encumbrances; the land was not used as path way, grazing ground, graveyard, cremation ground, or Khul and held by any Government department, earmarked for a specific purpose in any master plan, forest land or wooden waste or land belonged to the allottee etc. The

[11] Harvest Inspection Register

[12] Tatima Shajara– a certified extract from Revenue records - is required to be attached with an application for transfer of land under the Roshni Act in fact for any sale deed, lease deed, mortgage or gift or any other transfer of land.

applications without such certificates were irregularly accepted in all the test-checked districts.

(ii) The Rules did not specify whether the amended Rules would also be applicable to the applications pending on the date of the amendment. Since proper record of action taken on each application is not being kept, the system is susceptible to misuse by allowing scope to resubmit the same application after change in the composition of the committee or change in the incumbency of committee members or to avail of more benefits under liberalized Rules.

It was noticed in the following cases that the applications already decided by the committees in 2004 were re-processed in 2007 after the Rules were amended allowing benefit of rebates to the occupants;

- The lease for a Four *kanals* residential land in Gogji Bagh, Srinagar, had expired in the year 1979 but the property had come to the possession of a family through multiple gift deeds. The whole land was originally with a single lessee. The applications were moved by two related persons for 1 kanal-4 marla-90 sq.ft and 2 *kanal*-15 *marla*-182 sq.ft for transfer of ownership under the Roshni Act before 06 May 2004 and the market rate of ₹ 70 lakh per *kanal* was recommended by AC Nazool in June 2005. For reasons unexplained the cases remained pending and were approved by the committee on 26 May 2007. The committee applied (May 2007) the market rate of ₹ 40 lakh per *kanal*, and after giving benefit of rebates under the liberalized Rules amended with effect from 5th March 2007, asked them to pay ₹ 67.13 lakh. As the lease itself had expired, the applicants were classified as 'unauthorized occupants' and asked to pay 40 *per cent* of market value upto 2 *kanals* and 50 *per cent* beyond two *kanals*. The applicants had deposited ₹ 50.35 lakh in July to September 2007. Had the Department acted promptly and settled the case before amendment of Rules in March 2007 at a minimum rate of ₹ 70 lakh per *kanal* the Department would have recovered ₹ 2.80 crore. This resulted in loss of ₹ 2.30 crore to the State exchequer.

- A prime commercial Nazool land measuring seven *marlas* 166 Sft land at Estate Koothi Bagh, Lal Chowk Srinagar was leased out for 40 years with effect from March 1974. On the death of leaseholder, the land was mutated in favour of the successors in interest who executed (July 2000) a general power of attorney in favour of the applicant to hold the lease rights of the said land in violation of the Land Grants Act 1960. The committee agreed on 21 July 2006 to vest ownership rights to the power-of-attorney holder at the rate of ₹ 1 crore per *kanal*, noting that the rate had been accepted by the applicant. Subsequently, the committee re-processed the same case on 28 May 2007 without making any reference to the decision already arrived at in the minutes of the meeting held on 21 July 2006. The Committee in its meeting on 5th June 2007, fixed the rate at ₹ 1.20 crore per

kanal and gave 60 *per cent* rebate thereon applicable to "un-authorized occupants" under the liberalized Rules amended with effect from 5th March 2007 who deposited ₹ 20.55 lakh in August 2007. The Department's failure of not resuming the land in favour of the Government when it was transferred on power of attorney and thereafter allowing rebate under new Rules though the case already stood disposed off on 21 July 2006 under pre-amended Rules had resulted in loss of ₹ 17.50 lakh.

- The transfer of four *kanals*-9 sq.ft of land situated at Moulana Azad Road, Srinagar was approved by the committee on 25 August 2004 @ ₹ 75 lakh per *kanal*. However, the ownership rights were restricted to only 3 *kanals* 4 *marlas* and 9 sq.ft as the remaining land viz 16 *marlas* could not be transferred due to the restrictions under Ribbon Development Act (As per instructions below Section 4 of the Roshni Act, free hold right cannot be granted on the State land falling within 50 ft and 75 ft from the centre on either side of any interior road and highway, respectively). However, the applicant did not pay the amount and his case was re-processed after the Rules were amended in 2007, and a higher rate of ₹ 1 crore per *kanal* was applied but due to benefit of rebates under Rules 2007 to unauthorised occupants, he was asked to pay only 60 *per cent* of the market value. The Department did not resume the land for which the lease was cancelled in the year 1985 and did not proceed to enforce the decision of the committee of 25 August 2004. Instead of rejecting the application due to non-payment the Department re-processed the application leading to less payment of ₹ 96.05 lakh. The Department had further allowed the occupant to retain 16 *marlas* of land (valuing ₹ 60 lakh) unauthorisedly falling under the Ribbon Development Act. Thus undue benefit of ₹ 1.56 crore was allowed to the occupant.

- The successors of deceased ex-lessee of one *kanal* seven *marlas* and 242 Sft of land situated in estate Kothibagh Srinagar had applied for vesting of ownership rights and the committee recommended (July 2004) transfer of land @ ₹ one crore per *kanal*. The Department neither affect the transfer of land nor rejected the application for non-payment but re-processed the application on 18 August 2007 under the amended Rules with effect from 5 March 2007. The price of the land was reset @ ₹ 1.20 crore per *kanal* but 40 *per cent* rebate was allowed on the value of land and 25 *per cent* rebate for making payment within three months under the liberalized Rules. The committee in its meeting dated 18 August 2007 did not mention anything about the case already having been decided in its meeting on 16 July 2004 and 30 July 2004. The committee vested the ownership of one *kanal* one *marla* and 74 Sft of land and balance six *marlas* 168 Sq.ft of land could not be transferred under the Ribbon Development Act. The

Department allowed balance residual land also to be retained by the occupant free of cost. This compounded the revenue loss by ₹48.93 lakh.

2.7.3.3 Deficient functioning of the committees

The following deficiencies were noticed in the functioning of committees:

- Section 12(3) of the Act mandates that the price fixation committee must give reasons for determining the rate *'in a particular area or locality'*. However, the committees were found to have adopted an case-by-case price fixation approach, resulting in different rates being adopted for different transferees in the same area or locality resulting in relative undervaluation of land in individual cases.

- For districts other than Jammu and Srinagar, the committees headed by the Deputy Commissioner functioned only with his subordinates as participating members. Although the Rules provided for participation of Chief Executive Officer (CEO) of Tourism Development Authorities as a member of these committees, Audit found that the CEOs did not participate in the committee functioning in any of the test-checked districts.

- The lists of cases approved/rejected were not signed by all the committee members.

- There was no record of designated committees' deliberations (duly signed Minutes etc.) in Budgam, Anantnag and Jammu (non-Nazool lands). In Srinagar also, no proper record of date wise Minutes of the meeting under which price fixation committee deliberated upon fixation of price procedure were maintained. The Minutes of the meeting merely indicate either offering of a particular rate to the occupant or adoption of particular rate in the area or negotiation with occupants.

- In Jammu, where the Rules contemplated the committee headed by the Divisional Commissioner to approve land transfers, these were approved at the level of the Deputy Commissioner for agricultural lands.

- Section 8(d) of the Act requires that the land approved for transfer should not be required for any public purpose, the transferee should be a permanent resident and the transfer should not result into breach of prescribed ceiling on total land by a transferee. Audit found that the committees did not verify and confirm compliance to all these statutory pre-conditions before approving land transfers. Instead of doing necessary due diligence before taking the final decision, conditional orders for land transfers were found issued 'subject to' various stipulations.

2.7.3.4 Irregularities in approving transfers of agricultural lands

Rule 13 of the Roshni Rules, 2007 allow free of cost transfer of agricultural lands. Lack of due diligence was noted in effecting such transfers, resulting in even non-cultivable lands being irregularly transferred by showing them as 'agricultural'. Whether the lands claimed to be 'agricultural lands' were indeed being used for agricultural purposes for at least three years on the date of application was not properly scrutinized as the nature/quantum of agricultural produce was not found on record. Audit found:

- In Budgam, Pulwama and Anantnag, 733 *Kanals* 5 Marlas of non-cultivable lands[13] were illegally transferred to 223 applicants, showing as 'agriculture lands', free of cost. Further, in Budgam district, 1185 out of total 1224 cases approved for transfer of 3321 *Kanals* of State lands pertained to 'agricultural lands' whose records were not made available to Audit.
- Under Roshni Rules, conferment of ownership rights for agricultural land is subject to the condition that: (i) Land use in respect of agricultural land shall not be changed after the ownership is vested. In case an occupant desires to use agricultural land in future for any purpose, other than agriculture, if otherwise admissible in due process of law, he shall have to pay as per the scale prescribed for commercial use for getting the land regularized for that purpose. (ii) Besides, no transfer of agricultural land other than by inheritance shall be permitted for 10 years from the date of conferment of ownership rights. The orders vesting ownership rights of agricultural lands issued in the Districts of Budgam, Anantnag and Pulwama did not specify these conditions. Record of inspections to check diversion of agricultural land for non-agricultural purposes was not available. Also, no note to this effect was found in the Record of Rights and the Mutations to ensure implementation. Thus there was inadequate system for keeping watch on subsequent utilization/diversion of agricultural land for non-agricultural purposes.

2.7.3.5 Loss due to irregular rebates over the price fixed by the committees

Audit found significant variations in unit price approved by the committees for different occupants in the same area or locality. This resulted in undue benefit to some occupants. The case-wise, area-wise listing of rates accepted by the committees in 547 test-checked cases highlights the variation of rates in the same locality. For instance, in Badhori village in Samba district, which was carved out of erstwhile Jammu district in April 2007, rate for residential land was approved as ₹ 5 lakh per *Kanal* by the Jammu District's Committee. After pending applications partially processed in Jammu District were transferred to Samba, the committee in Samba reduced the rate

[13] Variously known locally as 'Gair Mumkeen' land signifies un-cultivable wooden wastes, mountainous hillocks, Gair Mumkan Jaad, Aar Bana, Dhar, Kassi, Rohar, Kohar, Banjri Kadeem, Maidaini, Baghi Khushki, or Lubroo etc.

to ₹ 1.50 lakh per *Kanal* without assigning any reasons. The financial implication of rebates in 547 test checked cases is given in **Table-2.7.1.**

Table-2.7.1

District	No of Payment cases checked	As per Act	As per Rules			Average Rate of Land Price fixed by Committees (₹ in lakh per *kanal*)
		Price fixed by the committees (₹ in crore)	Rebates and incentives allowed (₹ in crore)	Net Price demanded from applicants (₹ in crore)	Area (*kanal*)	
Anantnag	19	1.30	1.00	0.30	47	2.77
Jammu	125	37.58	28.46	9.12	67	56.09
Udhampur	61	0.008	0.005	0.003	11	0.07
Pulwama	47	1.90	1.60	0.30	23	8.26
Srinagar	287	283.00	193.00	90.00	490	57.76
Budgam	8	1.60	1.20	0.40	28	5.71
Total	**547**	**325.388**	**225.265**	**100.123**	**666**	**48.86**

It may be seen from the above table that the Government suffered a loss of ₹ 225.26 crore due to rebates and incentives allowed on the transfer of 666 *Kanal* of land. Some of the interesting cases are given as under:

(i) Undue benefit of higher rebates

(a) Section 2 of the Act defines three types of occupants of State lands. An "authorized occupant" means a person who on a particular date (21 May 2004) is in actual physical possession of the State land, personally or through an authorized agent, by virtue of an existing valid lease or grant made by the competent authority. An "authorized overstayed occupant" means a person who on that date is in actual physical possession of State land, personally or through an authorized agent, but whose lease or grant has expired and no notice for eviction or assumption of lease has been issued by the competent authority. An "unauthorized expectant occupant" means a person who on that date is in actual physical possession of the State land, personally or through an authorized agent, and in respect of which lease has expired but no notice for resumption of lease has been issued by the competent authority or who pursuant to this Act has applied for transfer of ownership under the Act. The only differential treatment that the Act prescribes for different categories of occupants is in terms of the ceiling on maximum land that can be transferred per 'person or family'. The Rules made provision for different rates of rebates over the market value fixed by the committees based on size of plot of land and category of occupants, which is contrary to the intent and provisions of the Act. The provision of rebates in the Rules led to irregular 'misclassification' of land use(residential/ commercial/ agricultural/ institutional use) and occupants (authorized occupants/authorized expectant occupants/unauthorized expectant occupants/other occupants) and splitting of family estate so as to give the applicants undue benefit of higher rebates. Some of the cases are as under:

- Land measuring 5 *Kanals* 8 *Marlas* 2.5 Sft in Srinagar was leased upto 30 June 2008. The lessee had applied for transfer of lease in favour of a third person, which was initially allowed but subsequently rescinded *ab-initio* (September 1999). Due to breach of the provisions of the Land Grants Act, 1960, the occupant could not be categorized as an authorized occupant or unauthorized overstayed occupant or unauthorized expectant occupant. However, on 28 April 2007, the committee fixed the market price adopting a rate of ₹ 80 lakh per *kanal* and, instead of treating the occupants as 'unauthorized occupants' and asking to pay 60 *per cent* of market price, asked the applicant to pay 30 *per cent* of the market price resulting in short recovery of ₹ 1.30 crore.

- Land measuring 4 *Kanals* one *marla* 263 Sq.ft situated at Estate Habakadal Srinagar was transferred in favour of the lessee upto January 1997. The lease was not extended but the land remained under ex-lessee's occupation. On the occupant's application, the Department asked (17 May 2007) the occupant to pay an amount of ₹ 28.43 lakh at the rate of ₹ 25 lakh per *Kanal,* treating the occupant as 'authorized' whereas the occupant falls in the category of authorized over-stayed occupant/unauthorized expectant occupant and was thus required to pay 35 *per cent* of the value of land determined up to two *Kanals* and 50 *per cent* of the value of land determined in respect of balance land. The incorrect categorization of occupant of land resulted in loss of ₹ 15.30 lakh.

- Nazool land measuring four *kanals* situated in estate Nursingh Garh Rajbagh Srinagar was leased for residential purpose upto 13 January 1998. As per the status report filed by the Tehsildar Nazool Srinagar, there was nothing on record to indicate whether the applicants subsequently applied for extension/renewal of lease or that the Government had extended/renewed the lease further with effect from 13 January 1998. The occupants applied for transfer of land under Roshni Act. The Price Fixation Committee (PFC) categorized (20 June 2007) the occupants as authorized occupant (having applied for renewal of lease on 6 October 1997) without any documentary evidence. Due to this mis-categorization of occupant, the Committee asked the occupants to pay 25 *per cent* of market value rather than 35 *per cent* applicable to un-authorized overstayed occupants. The PFC had valued (June 2007) the prime residential land situated in a posh locality of Srinagar at the rate of ₹ 56 lakh per *kanal* whereas the Assistant Commissioner (Nazool) Srinagar had recommended (June 2005) a rate of ₹ 70 lakh per *kanal* in the same vicinity. The PFC compounded the undue benefit by splitting the land unauthorisedly into two plots of two *kanals* each to give the occupant benefit of higher discounts applicable for plots upto two *kanals.* This resulted in loss of ₹ 31.50 lakh.

- Nazool land measuring four *kanal* situated in estate Nursing Garh, Gogji Bagh Srinagar was leased out from June 1940 for 40 years for residential purposes and the same was not got renewed as the case was not cleared by the Srinagar

Development Authority. The case for renewal/ transfer was thus deemed to have been rejected and the occupants were to be categorized as unauthorized overstayed or unauthorised expectant occupant. However, the committee approved (May 2007) transfer of land by fixing the market price at ₹ 40 lakh per *kanal* and then allowed higher rebate applicable to authorized occupants. In the same area of Gogji Bagh, the committee had fixed (February/ March 2009) the rate of ₹ one crore per *kanal*. In June 2005, the Assistant Commissioner (Nazool) Srinagar had ascertained market rate for Jawahar Nagar Gogji Bagh to be ₹ 70 lakh per *kanal*. The PFC had thus undervalued the price of land besides wrongly treating the occupants as 'authorised occupants' resulting in loss of ₹59.25 lakh.

(b) Some instances of incorrect categorization of land-use (residential/ commercial/agricultural/ institutional use) are as under:

- Illegal condonation of delay in making payment and charging of commercial land at residential rates for land measuring seven *kanals* three *marlas* 27 Sq.ft situated at Nursing Garh Magarmal Bagh Srinagar, resulted in revenue loss of ₹1.82 core.
- Transfer of land measuring four *kanals* situated in estate Rajbagh (Nursing Garh) by treating the commercial land as residential land and incorrect application of rates, non-charging the rates for nine *marlas* of encroached land resulted in loss of ₹ 1.52 crore.

(c) Rules 13 of the Roshni Rules 2007, provided higher rebate for plots upto two *Kanals*, there were cases where the same land under occupation of a family was split in favour of several persons to give benefit of higher rebates to occupants and application of different rates/undervaluation in the same vicinity. Some illustrative cases are detailed below:

- Vesting of ownership rights in respect of land measuring eight *Kanals* by splitting the land in less than 2 *Kanals* each, situated at Nursingh Garh Gogji Bagh Srinagar resulted in loss of ₹ 63 lakh due to improper application of rates.
- Transfer of eight *kanals* of land situated in estate Gogji Bagh Srinagar resulted in loss of ₹ 52.50 lakh due to undervaluation of price of land. Transfer of land two *kanals* 14 *marlas* situated at Estate Gogji Bagh in favour of two applicants resulted in loss of ₹14.85 lakh due to undervaluation of land and distribution amongst co-sharers.
- Transfer of eight *kanals* situated in estate Nursing Garh locality Raj Bagh Srinagar resulted in loss of ₹ 1.71 crore due to undervaluation and splitting of land in less than 2 *kanals* in each case, in violation of the provisions of the Act, 2001.

- Transfer of four *kanals* land situated at Gogji Bagh resulted in loss to the extent of ₹ 28.50 lakh due to application of lower rates in the same vicinity where the rates applied in another case were higher and undervaluation by the committee.
- Application of different rates in the same vicinity for vesting of ownership rights for 4 *kanals* of Nazool land in Gogji Bagh, Srinagar resulting in loss of ₹ 33 lakh to the Government.

(ii) Irregular transfer of lands to Trusts etc.

Section 12 of the amended Roshni Act, 2007 contemplated that land under 'institutional use' could be allowed to be transferred even in excess of 10 *Kanals* (up to 100 *Kanals*) to unauthorized occupants. However, the Rules framed by the Government expanded the scope of concessions available to occupants of lands under 'institutional use'. The Rules provided that the lands "in Institutional use, viz., educational, religious, charitable, non-profitable, social institutions, trusts, societies, political parties recognized by Election Commission of India" could be transferred to occupants at 15 *per cent* (for Authorized occupants), 25 *per cent* (for Authorized overstayed or Un-authorized expectant occupants) and 50 *per cent* (for Un-authorized occupants) of the price fixed by the committees Further, the Act authorizes transfer of occupied lands only to 'permanent residents' and under the law, these can be either natural persons fulfilling certain conditions or companies registered under the J&K Companies Act as per governing law. In contravention of the said provision of the Act, lands were transferred to seven 'institutional' entities [14] in Srinagar with no safeguards to ensure diversion of land for non-institutional use after transfer of freehold rights.

It was also observed that lands in Srinagar were transferred to Khidmat Trust (7 *Kanals* 15 *Marlas* 84 Sft at Kothibagh) and Nawi Subah Trust (3 *Kanals* 16 *Marlas* at Zero Bridge) at concessional rate applicable to lands under institutional use though the lands were also under commercial use. The market rate fixed by the committee for the lands was ₹ 110 lakh per *Kanal* in case of Khidmat Trust and was ₹ 120 lakh per *Kanal* in case of Nawi Subah Trust. These were rebated by 85 *per cent* and transferred at ₹ 16.5 lakh per *Kanal* and ₹ 18 lakh per *Kanal.* Thus, lands valued by the committees at ₹ 13.10 crore were approved for transfer at a price of ₹ 1.97 crore against which only ₹ 1.47 crore had been collected. Properties are also being used for commercial purposes and the Rule 13 of the Roshni Rules 2007, provide application of commercial rates even if only a part of the land is used for commercial purposes.

(iii) Irregular mutation of lands

Under the Stamp Duty Act, land transfers are required to be registered on payment of applicable Stamp Duty. To complete the legal process of transfer of title to land,

[14] Mandir Shiv Ji Solina, Kashmir Chamber of Commerce, Khidmat Trust, Nawi Subah Trust, Mosque Ahmadiya, Hemis Gompa, Idara Auqaf Gousia.

mutation of title in Revenue records should be carried out only after the transfer deed has been duly registered. Audit noticed that this was not being done and the State exchequer was put to loss not only on account of transfer of lands free or below the price fixed by the committees but also on account of non-collection of Stamp Duty.

Under Section 8(4) of the Roshni Act, the Tehsildar should after the receipt of the money and mutation fee, confer the ownership rights in respect of such land within one month from the date the occupant produces receipt of the money deposited with the District Collector. Mutations in respect of 2191 cases of lands transferred under the Act during 2007 to 2011 in Budgam, Anantnag, Pulwama and Srinagar Districts were yet to be attested (March 2013). The Assistant Commissioner (Nazool) Jammu had carried out 97 mutations in favour of the prospective owners but these mutations were not incorporated by the Tehsildar Territorial and Settlement in their record. Out of these 97 cases, 35 such applications did not have any reference to Wasidari register.

2.7.3.6 Deficient system to check ceilings on permitted land transfers

Section 8(2) of the Act prescribes a ceiling of 100 *Kanals* on the maximum land that can be transferred to a 'person or family'. For an occupant other than an 'authorized occupant', 'authorized over-stayed occupant' or 'unauthorized expectant occupant', the ceiling was reduced to 10 *Kanals* in 2007. The reduced ceiling does not apply to 'agricultural lands' or to 'lands under institutional use'. A ceiling per 'person or family' may induce splitting of families and requires full data on land holding for its enforcement. Since a Tehsildar does not have access to database of land records of whole State, it is not possible to verify the genuineness of an applicant's claim of having total land holding in the entire State within the prescribed ceiling. It was found that:

- Deputy Commissioner Srinagar had issued conditional orders conveying approval for transfer of land "subject to the condition" that the '*prescribed ceiling is not exceeded*'.
- In 729 cases in Jammu Division, the applicants had not indicated their land holdings in the application. However, Patwari and office Qanoongo certified that area already in possession would not exceed the limit of 100 *Kanals*. Further, extract of Khasra Girdawari was not found attached in support of land holding/ land in possession prior to May 2004 in 1285 cases. In the absence of the extract of the Khasra Girdawari of 2004, authenticity of the certificate of the patwari could not be verified.
- The actual measurement of each khasra number was not indicated in 630 cases test checked in Jammu. The measurement of the Khasra number was found split up and only that portion was shown in possession, which was required to be transferred. In split up khasra numbers, chances of showing land transferred in excess of available land under particular Khasra number and chances of transfer

of land more than once could not be ruled out.

2.7.3.7 Transfer of lands without reference to authentic revenue records

Massavi[15] is a permanent, original record of land holdings maintained by the Revenue Department. Aks-Latha is traced from the Massavi. Tatima Shajra[16]indicating exact boundary of a particular land/plot is traced from the Aks-Latha. A Dasti Map (Sketch) cannot be taken as substitute of the Tatima Shajra, an Aks of the original Latha and an authentic Revenue record. When Tatima Shajra is issued for transfer of land, an entry to this effect is made in the original Latha in red ink to minimize chances of double transfer of land. Dasti Maps can be issued more than once for the same land and can be considered a valid document for transfer of land only when the competent authority certifies that the Latha and Massavi were worn out/ depleted. Copies and extracts from original Revenue records are issued under proper authorization and checks to prevent their misuse. It was noticed that instead of authentic Revenue record of Tatima Shajra, a copy of the Aks-Massavi was found enclosed in 55 cases of Udhampur District, which did not indicate the exact dimensions of the transferred land. In 112 approved cases, Tatima Shajara was not found attached and in 323 cases, the enclosed Tatima Shajara was incomplete as it did not indicate the boundary surrounding the field from all sides[17]. The Khasra Girdwari and Tatima Shajara was also found incomplete, having been prepared only for the land in question that formed part of the Khasra number and did not indicate the details of the boundaries of the land involved, or did not depict the distance from the centre of the interior road or the Highway in order to ascertain whether it came under category of land prohibited from transfer under Roshni Act. Dasti Maps had been accepted in 262 cases for transfer of State land without the required certificate of non-availability of Massavi and Latha and without attestation of Tehsildar.

2.7.3.8 Irregular transfer of lands adjoining roads and highways

Under Section 6 of the Roshni Act, the State land falling within 50 feet and 75 feet from the centre on either side of any interior road and highways, respectively, are to be considered by the Government only for grant of lease hold rights initially for a period of forty years subject to extension in the term of lease or resumption of such State land in the public interest on expiry of the initial term of lease. Besides, in pursuance of administrative instructions issued in July 2007 all such cases were to be forwarded to the Revenue Department for taking final decision regarding disposal of such cases.

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[15] Massavi - also called Shajra Kistwar - is a cadastral map/ field map of a particular village in which every field bears a serial number in red ink showing the outer boundary lines of the village (Serhadas).

[16] Tatima Shajara or Tatima Kat – a certified extract from Revenue records - is required to be attached with an application for transfer of land under the Roshni Act in fact for any sale deed, lease deed, mortgage or gift or any other transfer of land.

[17] The Meinedo (Boundary) of a Khasra no. (individual plot) are marked on the Shajra with its measurement on all sides.

Audit noticed that land measuring 129 *kanals* four *marlas* and 4 ½ Sft of road-side land was transferred in Pulwama to 59 occupants against clear prohibition in the Act as the land was coming within 50 feet from the centre of the interior road.

It was also noticed that in Srinagar where the ownership of portions of lands coming under such restrictions was not transferred but these lands were nevertheless allowed to be unauthorizedly retained by the applicants, rather than being formally leased out.

2.7.3.9 Transfer of lands to persons not in its actual physical possession

Lands were transferred to such persons who were not in actual physical possession of the land, having unauthorizedly sub-let it to others though the Act allows transfer of lands only to those in 'actual physical possession' of the land.

- Under Section 5 of the Act, an application should be accompanied by documentary proof to the effect that the applicant is an occupant of a particular category of the State land in question and that an entry stands recorded to this effect in Khasra Girdawari in the name of the applicant. In 25 cases in Pulwama, the names of the applicants were not found recorded as occupants of the State land as per Revenue records and as such could not be treated as occupants but ownership of 87 *Kanals* land was irregularly transferred in their favour.
- In 30 cases in Jammu, Samba and Udhampur, vacant Government land measuring 62 *kanals* 17 *marlas* and 46 Sft supposedly under the possession of the Government was transferred to certain applicants although their names did not appear in the Khasra Girdawri. The land transfer was approved on the basis of occupation verified through on-the-spot witnesses.
- In 31 cases in Jammu, State lands had been transferred in excess of land shown as occupied in Revenue records indicating that the transfer of State land had been approved without verifying the relevant documents.

2.7.3.10 Non-eviction of unauthorized occupants

As of March 2013, a total of 20,46,436 *Kanals* of State land was under encroachment. All unauthorized occupants of State lands, whether under expired leases or otherwise, who had not even applied for transfer of ownership under the Act, or whose applications had been rejected or who had failed to pay the amount asked by statutory committees within the maximum period of two years allowed under the Rules were to be evicted within two months after expiry of two years' period. It was found in Srinagar that, 108 occupants, for whom 160 *Kanals* land had been approved for transfer by the empowered committee, failed to pay up ₹ 38 crore as demanded by the committees. Of these, approvals for 94 occupants were given before the year 2010 and hence such unauthorized occupants among the applicants were liable for eviction. As many as 14,648 applications involving 22,276 *Kanals* of land had been rejected in Budgam, Anantnag and Pulwama districts but the occupants had not been evicted.

2.7.3.11 Non reconciliation of departmental receipt with Treasury Accounts

Section 10 of the Act had contemplated creation of a separate fund under a proper account number in the Jammu and Kashmir Bank in each District or to allot an account head in which cost of the land realized under this Act should be deposited but no such Fund or Account was created. The moneys were to be received by the District Collector. However, the moneys were directly deposited by the individual beneficiaries in the various Treasuries and the Treasury Remittance challans were provided to the Tehsildar. The Revenue authorities had not carried out any reconciliation with concerned Treasuries in any of the test-checked districts. Hence, Revenue authorities are not in a position to confirm whether the moneys as due have actually been received by the Treasuries and credited to the proper head of account. In Jammu, status report showed revenue collection of ₹ 9.35 crore but the treasury receipts attached with the application forms indicated receipt of ₹ 8.33 crore only.

2.7.3.12 Monitoring mechanism

The Department introduced monitoring of the Scheme only from April 2012. It was noticed that Status Report of the Roshni Act sent by Deputy Commissioner, Jammu to higher authorities was not prepared on the basis of the inputs actually received from the subordinate offices (December 2012). In Srinagar, there were instances of land transfers not included in the progress reports sent to higher authorities.

The Department furnished different information to Audit and to the State Legislature on progress of the implementation of the Act. The Department informed audit that by March 2013, a total of 2,54,439 applications had been received for transfer of 17,86,387 *Kanals* land, out of which 1,76,774 applications had been disposed of (including rejections) and transfer of total 3,48,160 *Kanals* land had been approved. The committee had approved cost of land amounting to ₹ 317.54 crore (after allowing rebate), out of which Government could recover only ₹76.24 crore (24 *per cent*). The Department had, however, informed (March 2013) the Legislative Assembly that the total area of land transferred under the Act was 6,04,602 *Kanals*[18].

2.7.4 Conclusion

The principal objective of the Act was to raise resources for investment in Power Sector and the Government had estimated (November 2006) resource mobilization of about ₹ 25,448 crore by selling 20,64,972 *Kanals* State land under unauthorized occupation. However, it was observed that only ₹ 76.24 crore (24 *per cent*) reportedly realized against a demand of ₹ 317.54 crore raised by the end of March 2013 in the actual transfer of 3,48,160 *Kanals* in the State. Thus, the principal objective of the

[18] The Department informed Legislature (March 2012) that 256,792 applications had been received and transfer of total land measuring 5,95,024 *kanals* had been approved. It indicates some gap in the information system of the Department.

Act, viz., raising of resources for investment in Power Sector was not achieved though the State has lost sizeable lands. Of this, the major portion (3,40,091 *Kanals*) has been categorised as 'agricultural' and hence transferred free of cost. Balance is residential use: 6949 *Kanals*, Commercial use: 990 *Kanals* and Institutional use: 130 *Kanals*. In 547 cases covering revenue of 31.53 *per cent* (₹100.12 crore out of ₹ 317.54 crore) of the total transfers approved in the State and 0.19 *per cent* of land i.e. 666 *Kanals* out of 3,48,160 *Kanals* of land, the statutory committees had fixed the price at ₹ 325.39 crore at an average rate of ₹ 48.86 lakh per *Kanal* (before allowing rebates and incentives). After allowing the discounts over the land price fixed by the statutory committees, the applicants were asked to pay only ₹ 100.12 crore. Thus, there was a loss of ₹ 225.26 crore to the State exchequer. Further, after transfer of 3,48,160 *Kanals* under the Act, new encroachments are continuing unabated as area of public lands under encroachment was 20,46,436 *Kanals* in March 2013 as against 20,64,972 *Kanals* in November 2006.

The above points were reported to the Government (July 2013); the Government in its interim reply stated (September 2013) that there was no deviation in the implementation of Roshni Act and action would be taken against erring officials if anything is found wrong. The reply of the department does not relate to audit findings. The Department confirmed that the Rules framed by the Government were not approved by the Legislature, there being no statutory requirement to this effect. Since the Rules made have been published in gazette, the general public and the Legislature in any case deemed informed about its provisions. This per se cannot justify the infirmities in the Rules.