SHORT LEVY OF TAX AND INTEREST DUE TO EXCESS ALLOWANCE OF ITC ON PURCHASE OF CAPITAL GOODS

MINISTRY OF HOME AFFAIRS (UT)

PUBLIC ACCOUNTS COMMITTEE
(2023-24)

ONE HUNDRED AND FORTY- EIGHTH REPORT

SEVENTEENTH LOK SABHA

LOK SABHA SECRETARIAT
NEW DELHI

PAC NO. 2378

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MINISTRY OF HOME AFFAIRS

सत्यमेव जयते

Presented to Hon'ble Speaker Lok Sabha on: 29.4.2024

Presented to Lok Sabha on: ……………..

Laid in Rajya Sabha on: ……………..

LOK SABHA SECRETARIAT
NEW DELHI
April 2024/ Chaitra 1945 (Saka)

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*Not appended in the report

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE

(2023-24)

Shri Adhir Ranjan Chowdhury - Chairperson

MEMBERS

LOK SABHA

2. Shri Thalikkottai Rajuthevar Baalu
3. Shri Subhash Chandra Baheria
4. Shri Bhartruhari Mahtab
5. Shri Jagdambika Pal
6. Shri Pratap Chandra Sarangi
7. Shri Vishnu Dayal Ram
8. Shri Rahul Ramesh Shewale
9. Shri Gowdar Mallikarjunappa Siddeshwara
10. Dr. Satya Pal Singh
11. Shri Rajiv Ranjan Singh alias Lalan Singh
12. Shri Jayant Sinha
13. Shri Balashowry Vallabhaneni
14. Shri Ram Kripal Yadav
15. Vacant[1]

RAJYA SABHA

16. Shri Shaktisinh Gohil
17. Dr. K Laxman
18. Shri Derek O'Brien
19. Shri Tiruchi Siva
20. Dr. M. Thambidurai
21. Shri Ghanshyam Tiwari
22. Vacant[2]

SECRETARIAT

Dr. Sanjeev Sharma - Joint Secretary

Shri Partha Goswami - Director

Shri Pankaj Kumar Sharma - Deputy Secretary

Shri Inam Ahmed - Committee Officer

[1] Shri Brijendra Singh resigned w.e.f 12 March 2024

[2] Dr. Sudhanshu Trivedi retired from Rajya Sabha w.e.f. 2 April 2024

INTRODUCTION

I, the Chairperson, Public Accounts Committee (2023-24) having been authorized by the Committee, do present this One Hundred and Forty-Eighth Report (Seventeenth Lok Sabha) on **"SHORT LEVY OF TAX AND INTEREST DUE TO EXCESS ALLOWANCE OF ITC ON PURCHASE OF CAPITAL GOODS"** based on Para 3.9 of Comptroller and Auditor General's Report No. 24 of 2022.

2. The Report of Comptroller and Auditor General of India was laid on the Table of the House on 20.12.2022.

3. The Public Accounts Committee took oral evidence of the representatives of Ministry of Home Affairs on 20.11.2023. The Committee considered and adopted this Report *vide* digital circulation on 20.4.2024.

4. For facility of reference and convenience, the Observations and Recommendations of the Committee have been printed in bold and form Part-II of the Report.

5. The Committee would like to express their thanks to the representatives of the Ministry of Home Affairs for tendering evidence before them and furnishing the requisite information to the Committee in connection with the examination of the subject.

6. The Committee also place on record their appreciation for the assistance rendered to them in the matter by the Committee Secretariat and the Office of the Comptroller and Auditor General of India.

NEW DELHI
20 April, 2024
31 Chaitra, 1945 (Saka)

ADHIR RANJAN CHOWDHURY
Chairperson,
Public Accounts Committee

PART-I
REPORT

The Public Accounts Committee decided to take up for detailed examination and Report **Para 3.9 of the Report No. 24 of 2022** on the subject "**Short Levy of Tax and Interest due to Excess Allowance of ITC on Purchase of Capital Goods".** While examining the subject under consideration, the Committee acquiesced themselves of the revelations of short levy of tax of Rs. 8.54 lakh (including interest) owing to the allowance of excess ITC (Input Tax Credit) on purchase of capital goods by the designated office. The above para relates to assessment done under section 29 of the Punjab Value Added Tax Act, 2005 as extended to UT of Chandigarh read with section 9 of Central Sales Tax Act 1956

2. The Committee learnt that Section 13(1) of Punjab VAT Act (extended to UT, Chandigarh) provides that a taxable person shall be entitled to input tax credit, in such manner and subject to such conditions, as may be prescribed, in respect of input tax on taxable goods, including capital goods, purchased by him from a taxable person within the State, during the tax period.

3. Further, it also came to light before the Committee that in terms of provisions contained in item No. 16 of Schedule 'B' appended to Punjab VAT Act as extended to UT Chandigarh, Capital goods i.e. Plant and Machinery and parts thereof are liable to tax at the rate of five per cent.

4. Moreover, Section 32 (3) of the Act provides that if a person fails to declare the tax in a return, he shall be liable to pay simple interest at the rate of one and half per cent per month on such amount of tax from the due date for payment till the date he actually pays such amount of tax.

5. In light of the above provision of the Punjab VAT Act (extended to UT, Chandigarh), the Audit (October, 2019) flagged a major aberration from the records. Audit noticed (October 2019) from the records relating to the assessment of M/s Sukhija

Real Estate Pvt. Ltd., for the year 2011-12 that the designated officer had incorrectly allowed input tax credit (ITC) of ₹ 5.72 lakh on the purchase value of capital goods of ₹ 52.49 lakh, instead of admissible ITC of ₹ 2.62 lakh. Computation of ITC at a rate higher than the prescribed rate of five per cent had resulted in excess allowance of input credit tax amounting to ₹ 3.10 lakh, apart from interest payable amounting to ₹ 5.44 lakh under Section 32(3) of the Act.

6. The Committee further came to know from the Audit Report that on being pointed out (June 2020 & January 2022), the Department, while admitting the objection, stated (February 2022) that with the approval of the Excise and Taxation Commissioner, the order had been amended as per the provision of Section 29(7) of Punjab VAT Act, and a rectification assessment order with a demand for ₹ 10.79 lakh (including tax, interest and penalty) had been raised. Final outcome was awaited. The matter was referred to the Ministry of Home Affairs in January, 2022.

7. Regarding the action taken by the Chandigarh UT Administration, the Ministry of Home Affairs in their written note submitted the details before the Committee as produced below:-

> "The case for the year 2011-12 was rectified u/s 29(7) of PVAT Act, 2005 as extended to U.T. Chandigarh. Additional demand of ? 10.78 lakh was created and the dealer had filed an Appeal before 1st Appellate Authority i.e. Deputy Excise & Taxation Commissioner (Appeal), U.T. Chandigarh vide appeal no. 138/2021 dated 28.02.2022 after depositing the 25% of the additional demand of Rs 2,70,000/- vide Tr. No. 81 dated 08.03.2022 against the rectification order. The appeal has been rejected by the 1st Appellate Authority vide order dated 13.07.2023. Thereafter, the dealer has filed an Appeal before the Hon'ble VAT Tribunal on dated 25.09.2023 against the order of DETC (Appeal), which is still pending.
>
> Further, disciplinary action has been recommended against the concerned officer vide office memo no. 4275 dated 18.04.2023 (Annexure A).

> Chandigarh Administration has also issued directions to all the ward in-charges vide memo No 4233 dated 18.4.2023 so that such irregularities do not occur in future and officers have been directed to follow the due procedure as per extant Act and Rules."

8. While deposing before the Committee during the course of evidence, the representative of the UT, Chandigarh stated as below:-

> "Para 3.9 is regarding the excess allowance of ITC worth Rs. 8.54 lakh where we have accepted the findings of the Audit. A rectification order was made and a demand of Rs. 10.78 lakh was made. On receiving Rs. 10.78 lakh demand, the assessee appealed before the first appellate authority after paying 25 per cent tax. The appeal has been denied. Now, they are before the hon. VAT tribunal challenging the order of the assessing authority and also the first appellate authority. Due action has also been taken against the officers. SOP has now been set so that these kinds of issues do not happen in future."

9. Responding further to a query of the Committee, the representative of UT, Chandigarh submitted as under:-

> "Sir, we assure you and also commit you that this will not be repeated. Now, the institutional corrective mechanisms have been installed."

10. When enquired about the realisation of Rs. 10.79 lakh including tax interest and penalty in full from M/S Sukhija Real Estate Limited, the representative of UT, Chandigarh further submitted before the Committee as mentioned under:-

> "Sir, as I mentioned, the demand for Rs. 10.78 lakh in the rectification order was given. When this demand was given, the assessee appealed against the order of the demand before ethe first appellate authority. The first appellate authority rejected the appeal and when he went for the first appeal, he paid 25 per cent of the demand due which is as per the provision of the law under the Punjab VAT Act and now since his appeal is before the VAT Tribunal, depending on the order of the hon. VAT Tribunal, concerned process for the recovery of the pending demand will be completed."

11. The Committee also found from the Final Action Taken Notes of the Ministry that as a remedial measure, the Chandigarh Administration have issued an advisory regarding the framing of assessment in future *vide* office memo no. 4233 dated 18.04.2023.

PART II
OBSERVATIONS/RECOMMENDATIONS

1. During the course of examination of the subject, the Committee were apprised of the provision of the Punjab Value Added Tax (VAT) Act (extended to UT, Chandigarh) which *inter-alia* mandates that capital goods i.e. Plant and Machinery and Parts thereof are liable to tax at the rate of five percent. The Committee, in this context, note that the C&AG *vide* their Report No. 24 of 2022 under Para 3.9 have flagged the issue arising out of wrong computation of ITC (Input Tax Credit) leading to short levy of tax of Rs. 8.54 lakh, including interest. From the records relating to the assessment of M/s Sukhija Real Estate Pvt. Ltd. for the year 2011-12, it surfaced that the designated officer had incorrectly allowed ITC of Rs. 5.72 lakh on the purchase value of capital goods of Rs. 52.49 lakh, instead of admissible ITC of Rs. 2.62 lakh. Thus, the erroneous computation of ITC at a rate higher than the prescribed rate of five percent had resulted in excess allowance of input credit tax amounting to Rs. 3.10 lakh, apart from interest payable amounting to Rs. 5.44 lakh under section 32(3) of the Act.

2. The Committee are perturbed to take note of the existence of such fallibility in cases of basic calculation leading to loss to the revenue collection. In an era of technological advancement and usage of softwares in office work places, the error in calculation can be easily managed and obviated. Keeping in view the collateral financial damages such human errors may cause, the Committee recommend the Ministry to engage and utilize the emerging technologies in the

Excise and Taxation Department of UT, Chandigarh and elsewhere to mitigate the losses to exchequer and to ensure efficient handling of accounts.

3. The Committee, after thorough scrutiny of the audit findings and the Action Taken Notes of the Ministry are of the firm opinion that Departments of the Government handling revenue matters need to have robust mechanism in place for maintaining a proper check and balance on the assessment/collection procedures of taxes etc. In the instant case, the error in calculating the ITC by designated Officer/office was highlighted after 8-9 years of the occurrence though the Audit Findings and the total recovery is still due on account of the pendency of the 2nd appeal of the dealer before the VAT Tribunal, as can be ascertained from the facts provided by the Ministry. The Committee are of the view that there is probability of existence of other instances of similar nature, wherein erroneous computation of assessment cause loss of revenue to the Government. Such possibility, even if remote, should not remain unexamined and the Ministry should explore all possible measures to undertake a holistic review of the Departments under their purview to cull out such anomalies and take corrective action at the earliest while also fixing due accountability of the same. Therefore, the Committee recommend the Ministry to initiate an inquiry without any delay and conduct internal audit of the Excise and Taxation Department, UT, Chandigarh in particular and other Departments also in a time bound manner.

4. The Committee take cognizance of the submissions made by the representative of Union Territory of Chandigarh that SOP has been prepared and institutional corrective mechanism have been instituted to ensure that such errors in assessment of tax do not occur in future. Though the Committee find

this corrective measure to be a step in right direction, they have not been made aware with the finer details of such mechanism. The details of such SOP and corrective mechanism for cross checking and filtering the steps involved in assessment ought to be brought in public domain for ensuring transparency and fixing accountability. The erring officials should not be spared and proper provision of punitive measures need to be not only incorporated in the SOP but also be complied with in 'Letter and Spirit'. Therefore, the Committee recommend the Ministry to keep a watch over the implementation of their SOP and mechanism so instituted to prevent occurrence of such aberrations in future.

NEW DELHI
20 April, 2024
31 Chaitra, 1945 (Saka)

ADHIR RANJAN CHOWDHURY
Chairperson,
Public Accounts Committee