

PREFACE

This Report for the year ended 31 March 2005 has been prepared for submission to the Governor under Article 151(2) of the Constitution.

The audit of revenue receipts of the State Government is conducted under Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. This Report presents the results of audit of receipts comprising sales tax, land revenue, taxes on vehicles, stamp duty and registration fees and other tax and non-tax receipts of the State.

The cases mentioned in this Report are among those which came to notice in the course of test audit of records during the year 2004-05 as well as those noticed in earlier years but could not be covered in previous years' Reports.

OVERVIEW

This Report contains 34 paragraphs including two reviews relating to non/short levy of taxes, duties, interest and penalty involving Rs.247.14 crore. Some of the major findings are mentioned below:-

I. General

1.1 The total revenue receipts of the Government of Gujarat in 2004-05 were Rs.20,264.95 crore as against Rs.18,247.52 crore during 2003-04. The revenue raised by the State from taxes during 2004-05 was Rs.12,957.70 crore and from non-tax receipts was Rs.3,090.50 crore. State's share of divisible Union taxes and grants-in-aid from Government of India were Rs.2,219.30 crore and Rs.1,997.45 crore respectively. The main source of tax revenue during 2004-05 was Sales Tax (Rs.8,308.62 crore) and taxes and duties on Electricity (Rs.1,829.07 crore). The main receipts under non-tax revenue was from Non-ferrous Mining and Metallurgical Industries (Rs.1,422.42 crore).

The aggregate of the amount received by the State Government on account of the State's share of Union Taxes and Grants-in-aid increased by 11 *per cent* from Rs.3,802.13 crore in 2003-04 to Rs.4,216.75 crore in 2004-05. The amounts received from the Government of India to the total revenue receipts of the State remained the same at 21 *per cent* in 2004-05 as compared to 2003-04. Tax receipts of the State increased marginally (16 *per cent*) to Rs.12,957.70 crore in 2004-05 compared to Rs.11,173.43 crore in 2003-04.

(Para 1.1)

During the year 2004-05, 2,91,089 assessment cases were disposed of under various Acts, under the administrative control of Finance Department. Cases pending finalisation under various heads ranged between 29 and 88 *per cent* of total cases as on 31 March 2005.

(Para 1.7)

A test check of the records in the offices of Sales Tax, Land Revenue, State Excise, Motor Vehicles Tax, Stamp duty and Registration fees, Electricity Duty and other departmental offices conducted during 2004-05 revealed under assessment, short levy and loss of revenue of Rs.2,517.11 crore in 1,125 cases. During the year, the concerned departments accepted under assessments etc. of Rs.5.06 crore in 878 cases and recovered Rs.3.29 crore in 838 cases pointed out during 2004-05 and earlier years.

(Para 1.11)

II. Sales Tax

A review on **Working of enforcement branch in Sales Tax Department** revealed the following:

- Irregularities in provisional assessments resulted in underassessment of Rs.5.87 crore.

(Para 2.2.10)

- Reconciliation of transit passes issued and that surrendered at inter state check posts is not regularly carried out.

(Para 2.2.12)

Under the Sales Tax Incentive Schemes, benefit of exemption of Rs.66.59 crore was granted to 73 dealers contrary to the provisions of the schemes.

(Para 2.3)

Set off of Rs.7.24 crore was granted to 103 dealers in violation of the provisions of the GST Rules.

(Para 2.4)

Irregular allowance of deduction from turnover and application of concessional rate resulted in short levy of central sales tax of Rs.5.77 crore from 25 dealers.

(Para 2.7)

Application of incorrect rate of tax resulted in short levy of tax of Rs.17.87 crore.

(Para 2.9)

Due to non existence of provision for levy of interest in the Bombay Sales of Motor Spirit Taxation Act, Government had to forgo interest of Rs.43.74 crore in seven assessments of four dealers.

(Para 2.14.2)

III. Land Revenue

A review on **Recovery of dues treated as arrears of land revenue** revealed the following:

- Improper maintenance of registers lead to omissions in indexing and pursuing 233 cases involving recovery of Rs.338.69 crore.

(Para 3.2.8)

- Warrants of attachment of properties and auction proceedings in 79 cases involving recovery of Rs.84.41 crore were not initiated.

(Para 3.2.12 & 3.2.13)

Conversion tax of Rs.2.07 crore was levied short in 337 cases due to non levy of tax and application of incorrect rates.

(Para 3.3)

Correction of records of rights without registered deeds resulted in loss of revenue of Rs.1.23 crore.

(Para 3.5)

IV. Taxes on Vehicles

Demand notices for recovery of motor vehicle tax of Rs.15.65 crore were not issued to operators of 517 omni buses and 558 vehicles used for transport of goods.

(Para 4.2)

V. Stamp Duty and Registration Fees

Acceptance of time barred cases in appeal by CCRA resulted in loss of revenue of Rs.0.50 crore and postponement of recovery of stamp duty of Rs.5.47 crore.

(Para 5.2)

Stamp duty and registration fees of Rs.8.60 crore were short levied due to misclassification of 436 documents.

(Para 5.3)

Stamp duty and registration fees of Rs.5.46 crore were short levied on 73 documents comprising several distinct matters

(Para 5.4)

VI. Other Tax and Non Tax Receipts

Failure to raise demand resulted in non/short levy of royalty, dead rent, surface rent and interest to the extent of Rs.8.37 crore.

(Para 6.4)

CHAPTER-I

GENERAL

1.1 Trend of revenue receipts

1.1.1 The tax and non tax revenue raised by the Government of Gujarat during the year 2004-05, the State's share of divisible Union Taxes and grants in aid received from the Government of India during the year and the corresponding figures for the preceding four years are given below:

(Rupees in crore)

		2000-01	2001-02	2002-03	2003-04	2004-05
I	Revenue raised by the State Government					
	• Tax revenue	9,046.83	10,134.18	9,520.66	11,173.43	12,957.70
	• Non tax revenue	3,349.14	3,760.94	3,995.58	3,271.96	3,090.50
	Total	12,395.97	13,895.12	13,516.24	14,445.39	16,048.20
II	Receipts from the Government of India					
	• State's share of divisible Union Taxes	1,573.75	600.68	1,363.22	1,965.48	2,219.30
	• Grants in aid	1,768.87	1,490.26	2,995.88	1,836.65	1,997.45
	Total	3,342.62	2,090.94	4,359.10	3,802.13	4,216.75
III	Total receipts of the State	15,738.59	15,986.06	17,875.34	18,247.52	20,264.95[#]
IV	Percentage of I to III	79	87	76	79	79

1.1.2 The details of tax revenue raised during the year 2004-05 along with the figures for the preceding four years are given below:

[#] For details, please see statement No.11 Detailed Accounts of Revenue by Minor Heads in the Finance Accounts of the Government of Gujarat. Figures under the Heads "0020-Corporation tax, 0021-Taxes on Income Other than Corporation Tax, 0028-Other Taxes on Income and Expenditure, 0032-Taxes on Wealth, 0037-Customs, 0038-Union Excise Duties, 0044-Service Tax, 0045-Other Taxes and Duties on Commodities and Services", share of net proceeds assigned to States booked in the Finance Accounts under A-'Tax Revenue', have been excluded from revenue raised by the State and included in State's share of divisible union taxes in this statement.

(Rupees in crore)							
Sl. No.	Heads of revenue	2000-01	2001-02	2002-03	2003-04	2004-05	Percentage of increase (+) or decrease (-) in 2004-05 over 2003-04
1	Sales tax	4,891.08	4,841.69	5,095.00	5,772.58	6,702.03	16
	Central sales tax	1,051.66	1,015.71	1,157.13	1,397.00	1,606.59	15
2	State excise	40.37	47.31	47.11	46.25	47.09	02
3	Stamp duty and registration Fees	537.42	539.41	649.88	824.67	962.80	17
4	Taxes and duties on electricity	1,521.00	1,656.52	1,383.84	1,592.19	1,829.07	15
5	Taxes on vehicles	627.28	676.63	808.11	936.39	1,060.93	13
6	Taxes on goods and passengers	26.03	99.11	11.09	171.79	160.11	(-) 07
7	Other taxes on income and expenditure – tax on professions, trades, calling and employment	104.80	93.31	95.64	99.41	132.91	34
8	Other taxes and duties on commodities and services	165.66	1,077.54	177.67	206.36	221.29	07
9	Land revenue	81.53	86.95	95.19	126.79	234.88	85
	Total	9,046.83	10,134.18	9,520.66	11,173.43	12,957.70	16

The reasons attributed by the departments for significant increase/decrease in receipts during 2004-05 over the receipts during 2003-04 are as under:

Sales Tax: The increase in collection was attributed to overall growth of economy and better tax administration of check posts, port affairs and enforcement activities.

Stamp duty and registration fees: As a result of reduction in rate of stamp duty from 11.2 *per cent* to 8.4 *per cent*, registration of documents had increased from 4.10 lakh to 4.84 lakh. Further, increase in collection was

attributed to effective recovery of outstanding amounts and implementation of Amnesty Scheme.

Taxes and duties on electricity: The increase in collection was due to enhancement of rate of electricity duty for-self generation by 100 *per cent* and due to increase in consumption of electricity by various consumers.

Taxes on vehicles: The increase in collection was due to growth of population of vehicles by 10 *per cent* on an average during the year.

The reasons called for in respect of the other major heads wherein variation is more than 10 *per cent* have not been received from the concerned departments.

1.1.3 The details of the major non tax revenue raised during the year 2004-05 along with the figures for the preceding four years are given below:

(Rupees in crore)

Sl. No.	Heads of revenue	2000-01	2001-02	2002-03	2003-04	2004-05	Percent-age of increase (+) or decrease (-) in 2004-05 over 2003-04
1	Interest receipts	1,929.82	1,594.30	1,684.88	897.12	469.72	(-) 48
2	Dairy development	0.47	0.35	0.20	0.34	0.45	32
3	Other non tax receipts	334.15	453.52	358.16	390.79	474.58	21
4	Forestry and wild life	18.48	28.34	32.49	49.85	42.39	(-)15
5	Non ferrous mining and metallurgical industries	616.65	734.58	1,072.83	1,342.34	1422.42	06
6	Miscellaneous general services (including lottery receipts)	98.79	666.90	453.76	159.92	174.26	09
7	Power	64.46	0.01	5.10	77.08	52.13	(-) 32
8	Major and medium irrigation	136.58	132.09	267.23	202.78	207.09	02
9	Medical and public health	49.14	47.26	39.02	41.60	48.87	17
10	Co operation	12.48	12.84	14.68	14.28	14.94	05
11	Public works	27.21	13.49	11.72	18.53	30.92	67
12	Police	43.17	38.91	36.03	41.43	48.85	18

13	Other administrative services	17.74	38.35	19.48	35.90	103.88	189
	Total	3,349.14	3,760.94	3,995.58	3,271.96	3090.50	(-) 06

The reasons attributed by the departments for significant increase/decrease in receipts during 2004-05 over the receipts during 2003-04 are as under:

Police: The increase in collection was attributed to effective recovery of outstanding dues from various Government departments and other organisation.

The reasons called for in respect of the other major heads wherein variation is more than 10 per cent have not been received from the departments.

1.2 Variations between budget estimates and actuals

The variations between the budget estimates and actuals of revenue receipts for the year 2004-05 in respect of the principal heads of tax and non tax revenue are given below:

(Rupees in crore)

Sl. No.	Head of revenue	Budget estimates	Actuals	Variations excess (+) or short fall (-)	Percentage of variation
Tax revenue					
1	Sales tax	7,902.00	8,308.62	406.62	5
2	Taxes and duties on electricity	1,646.05	1,829.07	183.02	11
3	Stamp duty and registration fees	825.00	962.80	137.80	17
4	Taxes on vehicles	914.90	1,060.93	146.03	16
5	Taxes on goods and passengers	157.47	160.11	2.64	2
6	Land revenue	96.75	234.88	138.13	143
7	State excise	51.11	47.09	(-) 4.02	(-) 8
8	Other taxes on income and expenditure	108.00	132.91	24.91	23
Non tax revenue					
9	Non ferrous mining and metallurgical industries	1,198.40	1,422.42	224.02	19
10	Interest receipts	2,299.90	469.72	(-) 1,830.18	(-) 80

11	Major & medium irrigation	280.00	207.09	(-) 72.91	(-) 26
12	Medical & public health	55.00	48.87	(-) 6.13	(-) 11
13	Forestry and wild life	30.00	42.39	12.39	41
14	Education, sports, arts & culture	60.00	61.04	1.04	2
15	Police	65.00	48.85	(-) 16.15	(-) 25
16	Public works	20.00	30.92	10.92	55
17	Miscellaneous general services	125.00	174.26	49.26	39

The reasons attributed by the departments for significant increase/decrease in receipts during 2004-05 over the receipts during 2003-04 are as under:

Sales tax: The increase in collection was attributed to overall growth of economy and better tax administration of check posts, port affairs and enforcement activities.

Stamp duty and registration fees: As a result of reduction in rate of stamp duty from 11.2 *per cent* to 8.4 *per cent*, registration of documents had increased from 4.10 lakh to 4.84 lakh. Further, increase in collection was attributed to effective recovery of outstanding amounts and implementation of Amnesty Scheme.

Taxes and duties on electricity: The increase in collection was due to enhancement of rate of electricity duty for-self generation by 100 *per cent* and increase in consumption of electricity by various consumers.

Taxes on vehicles: The increase in collection was due to growth of population of vehicles by 10 *per cent* on an average during the year.

Medical and Public Health: The decrease is attributed to reduction in sale of tender papers and short realisation of arrears under land revenue than that considered while preparing budget.

Police: The decrease was due to non recovery of dues of Rs.18.45 crore from railways and other state Government departments which was considered while preparing the budget estimates.

The reasons called for in respect of the other major heads wherein variation is more than 10 *per cent* have not been received from the concerned departments.

1.3 Analysis of collection

Break-up of total collection at pre-assessment stage and after regular assessment of sales tax, motor spirit tax, profession tax, entry tax and luxury tax for the year 2004-05 and the corresponding figures for the preceding two years as furnished by the Department is as follows:

(Rupees in crore)

Head of revenue	Year	Amount collected at pre-assessment stage	Amount collected after regular assessment (additional demand)	Penalties for delay in payment of taxes and duties	Amount refunded	Net collection	Percentage of column 3 to 7 (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Sales tax	2002-03	4,043.43	1,182.93	-	63.65	5162.71	78
	2003-04	5,707.84	235.98	-	69.89	5,873.93	97
	2004-05	6,612.92	270.47	-	50.41	6,832.98	97
Motor spirit tax	2002-03	1,087.35	-	-	-	1,087.35	100
	2003-04	1,295.65	-	-	-	1,295.65	100
	2004-05	1,475.64	-	-	-	1,475.64	100
Profession tax	2002-03	93.55	-	-	-	93.55	100
	2003-04	99.41	-	-	-	99.41	100
	2004-05	132.91	-	-	-	132.91	100
Entry tax	2002-03	2.07	-	-	-	2.07	100
	2003-04	2.74	-	-	-	2.74	100
	2004-05	52.61	-	-	-	52.61	100
Luxury tax	2002-03	29.92	-	-	-	29.92	100
	2003-04	34.33	-	-	-	34.33	100
	2004-05	32.99	-	-	-	32.99	100

The table above shows that percentage of collection of revenue at pre-assessment stage ranged between 78 and 97 per cent under sales tax during the years 2002-03 to 2004-05.

1.4 Cost of collection

The gross collection in respect of major revenue receipts, expenditure incurred on collection and the percentage of such expenditure to gross collection during the years 2002-03, 2003-04 and 2004-05 along with the relevant all India average percentage of expenditure on collection to gross collection for 2003-04 was as follows:-

(Rupees in crore)

Head of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage of cost of collection for the year 2003-04
Sales tax	2002-03	6,252.13	64.14	1.03	1.15
	2003-04	7,169.58	65.89	0.92	
	2004-05	8,308.62	65.18	0.78	

Taxes on vehicles and taxes on goods and passengers	2002-03	819.20	25.30	3.09	2.57
	2003-04	1,108.18	25.70	2.32	
	2004-05	1,221.04	24.53	2.00	
Stamp duty and registration fees	2002-03	649.88	18.36	2.83	3.66
	2003-04	824.67	31.51	3.82	
	2004-05	962.80	24.96	2.59	
State excise	2002-03	47.11	21.40	45.42	3.81
	2003-04	46.25	4.64	10.03	
	2004-05	47.09	4.59	9.75	

1.5 Collection of sales tax per assessee

(Rupees in crore)

Year	No. of assessees	Sales tax revenue	Revenue/assessee
2000-01	3,88,362	5,942.74	0.0153
2001-02	3,77,977	5,857.40	0.0155
2002-03	2,99,881	6,252.12	0.0208
2003-04	3,19,774	7,169.58	0.0224
2004-05	2,42,753	8,308.62	0.0342

1.6 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2005 in respect of some principal heads of revenue amounted to Rs.13,166.42 crore of which Rs.2,964.67 crore was outstanding for more than 5 years as detailed in the following table:

(Rupees in crore)

Sl. No.	Head of revenue	Amount outstanding as on 31 March 2005	Amount outstanding for more than 5 years as on 31 March 2005	Remarks
1	Sales tax	12,744.53	2,950.72	(i) Recovery of Rs.6613.90 crore was stayed by High Court and other judicial authorities. (ii) Recovery of Rs.107.30 crore has been held up due to dealers being insolvent. (iii) An amount of Rs.789.33 crore unlikely to be recovered and hence proposed to be written off.

2	Electricity duty	421.86	13.92	The arrears of Rs.13.92 crore to be recovered from Baroda Municipal Corporation have not been finalised.
3	Entertainments tax	Not received		
4	State excise	0.03	0.03	Pending in the High Court.
	Total	13,166.42	2,964.67	

1.7 Arrears in assessments

The details of cases pending assessment at the beginning of the year 2004-05, cases becoming due for assessment during the year, cases disposed of during the year and number of cases pending finalisation at the end of the year 2004-05 as furnished by the Sales Tax Department in respect of Sales tax, profession tax, purchase tax on sugarcane, entry tax, lease tax, luxury tax and tax on works contracts are as follows:

(Rupees in crore)

Name of tax	Opening balance as on 1 April 2004	New cases due for assessment during 2004-05	Total assessments due during 2004-05	Cases disposed of during 2004-05	Balance at the end of the year 31 March 2005	Percentage of column 6 to 4
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Sales tax	5,11,356	3,18,996	8,30,352	2,42,753	5,87,599	71
Motor spirit tax	3,038	646	3,684	1,021	2,663	72
Profession tax	3,20,669	66,819	3,87,488	47,008	3,40,480	88
Purchase tax on sugarcane	43	13	56	15	41	73
Entry tax	19	12	31	22	9	29
Lease tax	19	17	36	11	25	69
Luxury tax	63	-	63	41	22	35
Tax on works contracts	468	254	722	218	504	70
Total	8,35,675	3,86,757	12,22,432	2,91,089	9,31,343	76

It would be seen from the above that percentage of cases pending finalisation in Sales Tax Department under various heads ranged between 29 and 88 per cent of total cases as on 31 March 2005.

1.8 Evasion of tax

The details of evasion of tax detected by the Sales Tax and Energy and Petro Chemicals Departments, cases finalised and the demands for additional tax raised as reported by the department is given below:

Sl. No.	Name of tax/duty	Cases pending as on 31 March 2004	Cases detected during 2004-05	Total	No. of cases in which assessments/ investigations completed and additional demand including penalty etc., raised		No. of cases pending finalisation as on 31 March 2005
					No. of cases	Amount of demand (Rupees in crore)	
1	Sales tax	715	519	1,234	234	368.75	1,000
2	Electricity duty	6	-	6	-	-	6

1.9 Write-off and waiver of revenue

During the year 2004-05, no demands relating to Sales Tax and State Excise were written off by the Departments as irrecoverable.

1.10 Refunds

The number of refund cases pending at the beginning of the year 2004-05, claims received during the year, refunds allowed during the year and cases pending at the close of the year 2004-05, as reported by the departments are given below:

Sl. No.	Category	Sales tax		Taxes and duties on electricity		State excise	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
1	Claims outstanding at the beginning of the year 2004-05	2,326	37.19	-	-	Nil	Nil

(Rupees in crore)

2	Claims received during the year	6,005	101.63	Nil	Nil	Nil	Nil
3	Refunds made during the year	4,591	50.41	Nil	Nil	Nil	Nil
4	Balance outstanding at the end of the year	3,740	88.41	Nil	Nil	Nil	Nil

1.11 Results of audit

Test check of records of sales tax, land revenue, state excise, motor vehicles tax, stamp duty and registration fees, electricity duty, other tax receipts, forest receipts and other non tax receipts conducted during the year 2004-05 revealed under-assessment/short levy/loss of revenue amounting to Rs.2,517.11 crore in 1,125 cases. During the course of the year, the Departments accepted under-assessment of Rs.5.06 crore in 878 cases and recovered Rs.3.29 crore in 838 cases pointed out in 2004-05 and earlier years. No replies have been received in respect of the remaining cases.

This report contains 34 paragraphs including two reviews relating to non-levy/short levy of taxes, duties, interest and penalties etc., involving Rs.247.14 crore. The departments/Government have accepted audit observations involving Rs.131.34 crore of which Rs.6.96 crore had been recovered. No reply has been received in other cases.

1.12 Failure of senior officials to enforce accountability and protect interest of Government

Principal Accountant General (Commercial and Receipt Audit) PAG(C&RA), Gujarat, arranges to conduct periodical inspection of the Government departments concerned with tax revenue of the State to test check the transactions and verify the maintenance of important accounting and other records as per prescribed rules and procedures. These inspections are followed up with inspection reports (IRs). When important irregularities etc., detected during inspection are not settled on the spot, these inspection reports are issued to the heads of offices inspected with a copy to the next higher authority. The heads of offices and respective next higher authorities are required to ensure compliance with the observations contained in the inspection reports and rectify the defects and omissions promptly and report their compliance to the PAG. Serious irregularities are also brought to the notice of the heads of the departments by the office of the PAG(C&RA) through draft paragraphs. A half yearly report of the pending inspection reports and audit observations is sent to the Secretary of the Department to facilitate monitoring of the audit observations in the pending IRs.

The number of IRs and audit observations relating to revenue receipts issued upto 31 December 2004 and pending settlement by the departments as on 30 June 2005 along with corresponding figures for the preceding two years is given below:

Particulars	As at the end of		
	June 2003	June 2004	June 2005
Number of outstanding inspection reports	3,624	3,908	3,152
Number of outstanding audit observations	9,307	9,988	8,139
Amount of revenue involved (Rupees in crore)	1,969.23	2,351.17	2,375.52

IRs issued upto December 2004 pertaining to the offices of sales tax, profession tax, forest, land revenue, motor vehicles tax, stamp duty and registration fees, entertainment tax and luxury tax disclosed that 8,139 observations relating to 3,152 IRs remained outstanding at the end of June 2005. Of these, 1,343 IRs containing 4,079 observations had not been settled for more than seven years. Even the initial replies which were required to be received from the heads of offices within one month from the date of issue were not received in respect of 337 IRs issued during the year 2004-05. As a result, serious irregularities commented upon in these IRs had not been settled as of June 2005.

Department-wise break up of Inspections Reports and audit observations pending as on 30 June 2005 is detailed in the Annexure-I.

1.13 Departmental Audit Committee Meetings

In order to expedite the settlement of outstanding audit observations contained in the inspection reports, departmental audit committees are constituted in all the departments of Government. These committees are chaired by Secretaries of the concerned administrative departments and attended by the concerned officers of the State Government and officers of the PAG(C&RA), Ahmedabad/ Accountant General (Civil Audit), Rajkot.

In order to expedite the clearance of the outstanding audit observations, it is necessary that the Audit Committees meet regularly and ensure that final action is taken on all audit observations outstanding for more than a year, leading to their settlement. The information regarding number of audit committee meetings held, IRs and paras settled during the year 2004-05 is as follows:

Sl. No.	Name of the Department	No. of audit committee meetings held	No. of IRs/Paras settled		Money Value of paras settled (Rs.)
			IRs	Paras	
1	Sales tax	2	-	31	11,41,159
2	Entertainment tax	2	28	103	3,16,92,783
3	Land revenue	2	15	53	29,54,653
4	Stamp duty and registration fees	-	-	-	-
5	Motor vehicle tax	-	-	-	-
6	Forest receipts	1	5	8	11,781

No meetings were convened by the departments of Energy and petro chemicals, Information and broadcasting, State excise and Geology and mining. This indicates that the above departments have not taken initiative in using the machinery created for settling the outstanding audit observations.

1.14 Response of the departments to draft audit paragraphs

According to the Hand Book of Instructions for speedy settlement of draft paragraphs issued by the Finance Department on 12 March 1992, results of verification of facts contained in the draft paragraphs are required to be communicated to the Accountant General (AG) within six weeks from the date of their receipt. In exceptional cases where it is not possible to furnish final reply to the draft paragraph within the above time limit, an interim reply should be given to the AG.

57 paragraphs proposed for inclusion in the Report of the Comptroller and Auditor General of India for the year ended 31 March 2005 (Revenue Receipts) were forwarded to the Secretaries of the respective departments between February and April 2005 through demi official letters. The Secretaries of the respective Departments did not send replies to 20 draft paragraphs. These paragraphs have been included in this report without incorporating the response of the Secretaries of the departments.

1.15 Follow up on Audit Reports-summarised position

As per instructions issued by the Finance Department on 12 March 1992, administrative departments are required to submit explanatory notes on paragraphs and reviews included in the Audit Reports (ARs) within three months of presentation of the ARs to the legislature, without waiting for any notice or call from the Public Accounts Committee, duly indicating the action taken or proposed to be taken.

The ARs for the years 2001-02, 2002-03 and 2003-04 were presented to the State Legislature on 28th March 2003, 21st February 2005 and 13th September

2005 respectively. Certain departments as detailed below, had not submitted explanatory notes for the number of paragraphs shown as of August 2005.

Name of the Department	2001-02	2002-03	2003-04	Total
Finance (Sales tax)	16	17	14	47
Revenue				
Stamp duty	07	07	09	23
Land revenue	05	06	06	17
Home (Transport)	06	07	03	16
Information, Broadcasting and Tourism (Entertainments tax & luxury tax)	06	09	04	19
Industries, Mines & energy and petrochemicals (Electricity duty & mining Receipts)	02	01	01	04
Total	42	47	37	126

CHAPTER – II

SALES TAX

2.1 Results of Audit

Test check of records in various Sales Tax Offices conducted in audit during the year 2004-05 revealed under assessment of Rs.1,775.75 crore in 534 cases which broadly fall under the following categories:

(Rupees in crore)			
Sl. No.	Category	No. of Cases	Amount
1	Incorrect rate of tax and mistake in computation	67	3.30
2	Incorrect grant of set-off	85	8.82
3	Incorrect concession/exemption	80	1,306.36
4	Non/Short levy of interest and Penalty	168	365.92
5	Other Irregularities	133	88.32
6	Review on Working of Enforcement Branch	1	3.03
	Total	534	1,775.75

During the year 2004-05, the Department has accepted under assessment of Rs.2.38 crore in 148 cases and recovered Rs.0.61 crore in 108 cases, of which 28 cases involving Rs.75.63 lakh were pointed out during the current year and rest in earlier years.

A few illustrative cases involving important audit observations and review on **Working of Enforcement Branch in Sales Tax Department** involving Rs.105.38 crore, are discussed in the following paragraphs.

2.2 Review: Working of Enforcement Branch in Sales Tax Department

Highlights

Irregularities in assessments finalised under Section 41B resulted in underassessment of Rs. 2.79 lakh.

(Para 2.2.10)

No action was taken to recover tax and penalty aggregating Rs.52.20 lakh from transporters who did not surrender 402 transit passes at the exit check post out of 649 transit passes issued by four check posts.

(Para 2.2.12)

Recommendations

2.2.1 Scrutiny of complaints and search and seizure operations need to be conducted within a specified time frame to obtain better results.

The procedure prescribed and followed for cross verification of forms collected at check posts with that of the assessment files and books of accounts is grossly inadequate in as much as receipt of forms are not acknowledged by the recipient ward.

To make the system of transit pass in respect of goods passing through the State more effective and to prevent loss of revenue due to diversion of goods within the State suitable provision needs to be put in place.

To safeguard Government revenue, assessments finalised consequent to enforcement proceedings should be scrutinized by internal audit.

Introduction

2.2.2 Under the provisions of the Gujarat Sales Tax Act, 1969 (GST Act) every dealer liable to pay tax is required to obtain a registration certificate and file returns accompanied by challans showing proof of payment of tax. If the return filed by the dealer is true and acceptable, assessment order is passed without calling the dealer. In other cases, assessments are finalised after calling for the books of accounts of the dealer.

The GST Act empowers the sales tax authorities to carry out surprise inspections of business premises of the dealers to detect suppression of taxable transactions, evasion of tax etc. Enforcement activity is carried out on the basis of information /complaints received from different sources.

During the search and seizure procedure, if evasion is detected and the dealer agrees to pay the tax with interest and penalty, the amount is recovered on the spot. The enforcement officer submits the report of verification carried out by him to the Joint Commissioner of Sales Tax/Enforcement (JC/E) who reviews the reports and issues necessary instructions to the officer conducting verification. In other cases, books of accounts are impounded and after examining the evidences/books of accounts, provisional/regular assessment is finalised. If provisional assessment order is passed, intimation is sent to the concerned jurisdictional assessing officer for incorporating the findings of the provisional assessment in regular assessment of the dealer.

Organisational set-up

2.2.3 Commissioner of Sales Tax (Commissioner) is the head of the Sales Tax Department. Special Commissioner of Sales Tax (Enforcement) assists him in framing the policy relating to anti-evasion activities. JC/E supervises the enforcement activity with the help of Flying Squad units and seven Deputy Commissioners of Sales Tax (DC/E). The Deputy Commissioner of Sales Tax (check posts) supervises the check posts.

Scope of audit

2.2.4 A test check of records maintained by the Commissioner and cases relating to assessments finalised during the years 2001-02 to 2003-04 consequent on enforcement activity and other relevant records was conducted in 69¹ out of 144 units between May 2004 and November 2004.

Audit Objectives

2.2.5 Detailed scrutiny of documentation of information/complaints received on evasion of sales tax, system of investigation into complaints, assessments and collection of tax relating to those cases and follow up thereof was made to

- see whether a well documented system is in place to deal with all complaints received on evasion of tax;
- ascertain the effectiveness of enforcement wing/check posts in detecting evasion of tax and collection of revenue.
- ascertain compliance with prescribed procedure

Audit criteria

2.2.6 Sales Tax authorities derive the power to enter and search any place of business of the dealer under Section 59 of the GST Act and the Commissioner may, under Section 80, authorise any officer appointed under Section 27 to investigate offences. Complaints received from various sources form the basis of action by the enforcement branch under these Sections. The provisions of registration of dealers, filing of returns and their assessments related to regular assessments are applicable to the cases to be finalised after the search and seizure operations. The activity at the check posts with a view to prevent evasion of tax during inter-state trade or commerce is also a part of the enforcement activity. The provisions in the Act and Rules and instructions issued by the Department from time to time formed the audit criteria to arrive at the audit findings and conclusions.

Audit methodology

2.2.7 All cases subjected to enforcement activity and assessed provisionally for part of the year are sent to the jurisdictional assessing officer for incorporating the findings at the time of regular assessment. Other cases where the books of accounts are impounded/seized and the cases are subjected to regular assessment under Section 41 or 44 are transferred to jurisdictional Sales Tax Officer (STO) for recovery of the additional dues raised. It was, therefore, necessary to visit sales tax assessment units to review the files to see that proper care has been taken to include provisional assessment orders and other related documents collected during the raids conducted in the regular assessments.

¹ 55 Sales Tax Units, four DC/E under JC Ahmedabad-II, Bhavnagar, Gandhinagar, Surat and 10 Flying Squad units.

Audit findings

Efficiency of Enforcement Branch: Investigation into complaints

2.2.8 The JC/E receives complaints/information about evasion of tax from various sources. Jurisdictional AC/DC also sends proposals for investigation where evasion is suspected. The complaint/proposal is submitted to the Special Commissioner for approval. Decision authorising the enforcement activity in case of a particular dealer is conveyed to the DC/E concerned who issues warrant for search/seizure.

No target or time limit has been fixed for disposal of the complaints. However, the Department maintains a register for recording the complaints regarding evasion of tax received from various sources. Maintenance of this register is not prescribed by the GST Act or Rules. The raid is to be conducted within two or three days from the date of issue of warrant.

A review of the register of complaints for two months each selected at random during the years 2001-02, 2002-03 and 2003-04 revealed that out of 1,548 complaints registered, there was delay in taking decision in 1,108 cases and delay in conducting raids after taking decision to carry out search and seizure procedure in 465 cases. The delay ranged from seven days to more than a year as shown in the table below:

Delay	Delay in taking decision after receipt of complaint (No. of cases)	Delay in conducting the raid after decision to conduct raid (No. of cases)
7 to 15 days	188	108
16 to 30 days	297	82
1 to 3 months	355	135
4 to 6 months	158	73
7 to 12 months	89	59
More than a year	21	8
Total	1,108	465

An analysis of 1,548 complaints registered revealed the following:

- Out of 973 cases where search and seizure operations were conducted, 304 (31 *per cent*) cases did not yield any revenue. High percentage of failed raids can be attributed to delay, ranging between 10 and 851 days, in carrying out search operation, as dissemination of information cannot be ruled out.
- In 108 cases, the books of accounts were impounded or seized. The revenue involved in these cases was estimated at Rs.112.20 crore. In the absence of proper documentation in the office of the JC/E, the Department was unable to explain the fate of those cases.

Finalisation of assessment after enforcement proceedings

2.2.9 The Department issued instructions in October 1982 laying down a time limit of six months for finalising assessments relating to enforcement.

The position of detection and disposal of enforcement cases in the State during 2001-02, 2002-03 and 2003-04 is given in the table below:

(Rupees in crore)

Year	Cases pending as on 1 st April	Cases detected during the year	Total	No. of cases in which assessments/ investigations completed and additional demands raised		No. of cases pending as on 31 March
				No. of cases	Amount of demand	
2001-02	734	267	1,001	286	118.89	715
2002-03	715	299	1,014	428	82.78	586
2003-04	586	507	1,093	378	446.87	715

Assessments in 256 cases relating to the 70 units visited are yet to be finalised even after two to 272 months from the completion of time limit of six months prescribed for finalisation of assessments. 117 assessments were finalised with delay ranging from one to 172 months after time limit of six months prescribed for finalisation of assessments as indicated in the following table:

Sr. No.	Delay (Months)	No. of cases not finalised	No. of cases finalised with delay
1	More than 60 months	11	26
2	48 – 60 months	5	1
3	36 – 48 months	31	13
4	24 – 36 months	78	15
5	12 – 24 months	96	42
6	Up to 12 months	35	20
	Total	256	117

Delay in assessment may provide an opportunity to the dealer to close down the business or it may not be possible to trace their whereabouts resulting in revenue loss to Government.

Status of provisional assessments

2.2.10 Assessment under Section 41B is required to be made within 20 days from the date of completion of search operations as per the instruction of May 2003 of the Commissioner. Such assessment can be made only if evasion of tax is proved. Penalty under Section 45(6) and interest under Section 47(4A) of the Act cannot be levied in provisional assessments.

In violation of the instructions 80 assessments by 22² assessing units were finalised between May 2003 and March 2004 after a delay ranging between seven to 300 days.

Order of provisional assessment needs to be passed immediately after the search and seizure procedure and is required to be sent to the jurisdictional STO for recovery and merger of provisional orders in regular assessments. No system has however been prescribed for linking the communication of assessment order under Section 41B and receipt thereof by the jurisdictional STO with the result that merger of provisional assessments with regular assessment orders could not be ensured. Further, in 54 enforcement cases, the provisional assessments were finalised irregularly in violation of the provisions of the Act and instructions as narrated below:

A review of the enquiry register maintained by STO, Unit 22, Ahmedabad revealed that assessment orders under Section 41B in four cases in respect of spot verifications carried out in June and December 2003 were not passed (June 2004). This was in violation of instructions issued by the Commissioner.

In 50 cases, amount was collected on the spot and assessment order was passed under Section 41B. The fact of the assessment under Section 41B was not received by the concerned jurisdictional assessing officers. As a result, the jurisdictional assessment authorities were not in a position to incorporate the evasion of Rs.5.84 crore detected during the raids which may result in short levy of penalty and interest on the amount of tax while passing assessment order under Section 41 or 44. The possibility of the dealers getting undue benefit of simple manner of assessment/deemed assessment also cannot be ruled out. In one case, regular assessment of a dealer was finalised without taking into account turnover of inter-State sales of DEPB/Import license considered in the provisional assessment. This led to non-levy of interest and penalty of Rs.2.79 lakh on the amount of tax assessed in the provisional assessment.

Delay in assessment hit by limitation of time under Section 44

2.2.11 Under Section 44 of the GST Act, where turnover of sales, specified sales or purchases has escaped assessment or has been under assessed or any deduction is wrongly given or any set off has been wrongly granted, a notice in Form 37 is required to be issued before resorting to assessment. If the STO believes that the dealer has concealed the sales etc. or material particulars relating thereto or that the dealer has knowingly furnished incorrect declarations/returns then the STO can at any time within eight years from the end of the year to which such turnover relates, issue a notice in Form 37 to the dealer for assessment. Where a fresh assessment is required to be made in pursuance of any order under Section 65, 67 or 69 or in pursuance of any order of court or authority, such fresh assessment shall be made within three years from the date of such order.

² STO, Unit 14, 15, 17, 18, 20, 21 and 23 Ahmedabad, STO Kalol, Mehsana, Palanpur, Unjha, Idar, Navsari, Patan, Deesa, Junagadh, Gandhinagar, Sidhpur, Amreli, ACST(Enfo) Gandhinagar and Ahmedabad and STO, Unit 10, Surat.

In one case, notice in Form 37 for the assessment of a dealer for the period 1990-91 and 1991-92 was issued by STO, Kadi on 9 January 2001 and the assessment order passed on 5 May 2001. Appeal filed by the dealer was allowed (March 2002) and the assessment order was cancelled as the same was beyond the time prescribed under the Act. Delay in assessment resulted in loss of revenue of Rs.15.31 lakh.

In another case finalised by STO, Modasa, fresh assessment orders for the periods July 1996 to March 1997 and 1997-98 to 1999-2000 consequent upon remand of the original assessments by the appellate authority in September 2000 were passed in March 2004 i.e. after three years from the date of order of the appellate authority. As a result, demand of Rs. 8.67 lakh raised in the assessment order could not be enforced.

Working of check posts

2.2.12 Under Section 59AA of the GST Act, a transporter carrying goods from one state to another through Gujarat is required to obtain a transit pass from the officer in charge of the entry check post or barrier after his entry into the State. He has to deliver it to the officer in charge of the specified check post or barrier as proof of exit from the State of Gujarat. If the transporter does not surrender the transit pass at the exit check post or barrier, he is deemed to have unloaded the goods within the State of Gujarat and tax leviable at the applicable rates on such goods and penalty up to a maximum of 150 *per cent* can be recovered for breach of conditions of Section 59AA read with Rule 62AA.

During 2001-02 to 2003-04, the Department issued 4,766 transit passes. Out of these 649 transit passes issued by four³ entry check posts were not surrendered at the exit check post/barrier. Though in such cases the goods are deemed to have been traded in the State of Gujarat and the transporters were liable to pay tax and penalty, no action has been taken to assess and recover the tax and penalty involved in these cases. The amount of tax recoverable in 402 cases works out to Rs.52.20 lakh. Information in respect of 247 cases has not been furnished.

The Department replied that action for reconciliation of transit passes issued by the entry check post and not surrendered at the exit check post has been taken up and at present, very few passes are pending reconciliation. The Department is carrying out such reconciliation at Gandhidham check post. Further report on the outcome of the reconciliation and recovery has not been furnished.

Rules not framed for provisional attachment of property

2.2.13 Under Section 48 A of the GST Act the Commissioner may by order in writing attach provisionally any property belonging to the dealer in the interest of revenue, in such manner as may be prescribed. The term “prescribed” has been defined to mean “prescribed by Rules”. No rules have been made providing the manner in which the property is to be attached provisionally.

³ Deesa (84), Amirgadh (279), Shamlaji (229) and Songadh (57)

The instructions issued in May 1999 by the Commissioner in this connection have no legal backing as the manner in which the property is to be attached is required to be prescribed by rules and not by executive instructions.

The Department stated that all the matters need not be prescribed under Rules because the competent authorities invoking the provisions of Section 48A will themselves prescribe terms and conditions as per requirement.

Reply of the Department is not in accordance with the provision of the Act as the Act provides for the procedure to be prescribed by rules. Therefore, rules have to be framed and the instruction issued by the Commissioner does not have the force of law.

Constraints

2.2.14 Though enforcement activities are monitored in the monthly meeting held in the office of the Commissioner and all information is supposed to be available, the Department could not furnish the information such as complaints received and disposed of, details of arrears of revenue in enforcement cases, details relating to transit passes, details of bogus billing dealers and RCs cancelled, details of revenue detected by co-ordination with other Departments etc. which were called for in May 2004. No suggestions were received from the Department in response to our request for additional area to be covered in the review. Outcome of the complaint cases where no enforcement activity was done could not be intimated to audit. Data on complaints received and disposed of were produced only for six months as against for all the three years asked for by audit.

2.3 Incorrect grant of benefits under sales tax incentive schemes

2.3.1 According to Sales Tax Incentive Scheme 1986-90, 1990-95 and 1995-2000, eligible units are allowed to purchase raw materials, processing materials, consumable stores and packing material against declarations on payment of tax at the rate of 0.25 *per cent* and the balance tax on purchases is calculated at the prescribed rates and adjusted against the ceiling limit of exemption. Similarly, tax saved on sale of manufactured goods and turn over tax is also adjusted against the ceiling limit of exemption. In the event of breach of recitals of declaration, purchase tax saved is to be recovered under Section 50 of the GST Act with interest and penalty. Supreme Court of India*, by applying the principle of association of words for interpreting the meaning of a term appearing in a notification held that natural gas used as fuel is not consumables as the word “consumables” has to be read with the words raw material, component parts, sub assembly parts intermediate parts appearing in the notification and could include only such goods which get consumed in the final product. By applying the ratio of the judgement, light diesel oil (LDO), furnace oil (FO), liquified petroleum gas (LPG) and natural gas (NG) used as fuel could not be considered as raw material, processing material or consumable stores in the manufacture of aluminum circles, polyester chips, ceramic tiles, machinery parts, chemicals, detergents and alkaline benzene.

* M/s.Coastal Chemicals Vs State of Andhra Pradesh (117-STC-12)

The Commissioner issued a circular in February 2001 that the ratio of the Supreme Court judgement cannot be applied to the provisions of the GST Act as the words and phrases applied in both the Acts are not similar.

- During test check of records of seven Deputy Commissioners[^] and 10 Sales Tax Officers[#], it was noticed between December 2003 and November 2004 in the assessment of 34 dealers for the periods between 1998-99 and 2002-03 finalised between June 2001 and March 2004 that tax saved on purchases valued at Rs.183.59 crore of FO, lignite, kerosene, NG, LPG, naphtha and LDO against declaration and used as fuel was adjusted against the tax exemption limit treating them as consumable stores. Adjustment of purchase tax made in the assessments of the dealers was Rs.29.11 crore. The amount recoverable from the dealers worked out to Rs.62.22 crore including interest and penalty.

After this was pointed out in audit, the Department did not accept the observation in light of clarificatory circular issued by the Commissioner. The reply is not tenable as the circular issued by the Commissioner was not in consonance with the ratio decided by the Supreme Court decision. The GST Tribunal has also upheld the audit view. Government accepted the view of audit and stated that the Commissioner had withdrawn the circular of February 2001 and issued revised instructions in September 2005 clarifying that the ratio of the judgement of the Supreme Court is applicable to the provisions of the GST Act.

- During test check of the records of Deputy Commissioner, Valsad and 18^{*} Sales Tax Officers, it was noticed between January 2003 and November 2004 in the assessment of 33 dealers for the periods between 1993-94 and 2001-02 finalised between September 2001 and March 2004 that tax saved on purchases valued at Rs.3.96 crore against declarations was computed at incorrect rates. Similarly tax on sale of manufactured goods valued at Rs.6.01 crore was also computed at incorrect rates in the case of 15 dealers. Moreover, turnover tax was not levied and adjusted from the tax exemption limit in case of nine dealers. This resulted in short adjustment of tax of Rs.62.76 lakh.

The above facts were brought to the notice of the Department between February 2003 and December 2004 and of the Government in February 2005. The Department accepted between March 2004 and June 2005 audit observations involving an amount of Rs.61.65 lakh in case of 30 dealers and adjusted Rs.59.65 lakh in case of 26 dealers. Particulars of adjustment and replies in the remaining cases have not been received.

[^] Circle-14 Bharuch, Circle-7 Gandhinagar, Circle-8 Mehsana, Circle-9 Palanpur, Circle-23 Rajkot, Circle-17 Surat and Circle-12 Vadodara.

[#] Unit-19 Ahmedabad, Bharuch, Deesa, Dahod, Gandhinagar, Kalol, Nadiad, Prantij, Unit-3 Rajkot and Unit-2 Surendranagar.

^{*} Ankleshwar, Anand, Unit-11 Ahmedabad, Bharuch, Unit-2 Bhavnagar, Dahod, Gandhidham, Gondal, Godhra, Unit-2 Junagadh, Kalol, Unit-2 Nadiad, Nadiad, Palanpur, Unit-4 Rajkot, Surendranagar, Unit-10 Surat and Unit-1 Vapi.

2.3.2 Under the Sales Tax Incentive Schemes, the goods manufactured by an eligible unit are to be sold within the State of Gujarat. In the event of transfer of the manufactured goods by an eligible unit to its branch or to the place of business of its agent outside the State, aggregate amount computed at the rate of four *per cent* or the rate of tax applicable to the goods under the GST Act, whichever is lower, of the sale price of the goods so transferred is to be adjusted against the tax exemption/deferment limit admissible.

During test check of records of two Deputy Commissioners[^] it was noticed between May and November 2004 in the assessment of two dealers for the periods between 1994-95 and 1999-2000 finalised between February and December 2003, that though they had consigned/transferred manufactured goods worth Rs.79.90 crore to their branches outside the State, aggregate amount computed at the rate of four *per cent* in one case and at the rate of two *per cent* in another case of the sale price of the goods so transferred was not adjusted against the ceiling limit. This resulted in short adjustment of tax of Rs.3.18 crore.

The above facts were brought to the notice of the Department in July and November 2004 and of the Government in February 2005. The Department accepted and adjusted in June 2005 audit observations involving an amount of Rs.1.81 lakh in case of a dealer. Reply in the other case has not been received.

2.3.3 According to the condition stated in the Sales Tax Incentive Schemes, sale of manufactured goods is exempt from payment of tax. Accordingly, deduction from turnover against certificates[#] under the provisions of the Act shall not be allowed. The tax computed at the rates prescribed in the schedules is adjusted against the ceiling limit fixed by the competent authority.

During test check of records of Deputy Commissioner, Palanpur and three^{*} Sales Tax Officers it was noticed between May 2003 and June 2004 in the assessment of four dealers for the periods between 1995-96 and 2001-02 finalised between October 2001 and March 2004 that tax on sales made against certificates was admitted and adjusted against exemption at the reduced rates instead of the rates prescribed in the Schedules. In addition, turnover tax of Rs.4.73 lakh though leviable was not levied/adjusted in case of one out of four dealers. This resulted in short levy of tax of Rs.56.15 lakh including interest of Rs.1.97 lakh and penalty of Rs.15.38 lakh.

The above facts were brought to the notice of the Department between March and July 2004 and of the Government in June 2005. The Department accepted in September 2004 and June 2005 the audit observations involving an amount of Rs.53.16 lakh in case of four dealers and recovered Rs.25.26 lakh in case of three dealers. Particulars of recovery and replies in the remaining cases have not been received.

[^] Range-13 Nadiad and Vadodara

[#] Certificate in form 17 BB, 26.

^{*} Gandhidham, Nadiad and Vyara

2.4 Irregular/excess grant of set-off

2.4.1 According to clause C (iii) below Rule 44 of the Gujarat Sales Tax (GST) Rules, 1970, inserted from 8 January 1986, no set-off under the Rule *ibid* shall be granted where the vendor who has sold the goods to the claimant dealer has not credited in the Government treasury, the amount of tax on his sales for which set-off is claimed.

During test check of records of 12[⊕] Sales Tax Officers, it was noticed between October 2003 and November 2004, in the assessment of 27 dealers for the periods between 1994-95 and 2002-03 finalised between April 1998 and March 2004 that set-off was allowed without obtaining any proof of tax having been paid by them. This resulted in irregular grant of set-off of Rs.2.90 crore.

The above facts were brought to the notice of the Department between March and December 2004 and of the Government in January 2005. The Department accepted in May 2004 the audit observations involving an amount of Rs.26.78 lakh in case of two dealers. In respect of remaining cases it was stated that revised instructions have been issued in June 2004 to verify the fact of proof of payment of tax before grant of set-off and the matter of payment of tax in individual cases will be verified and reported. Government endorsed the view expressed by the department.

2.4.2 Under Rule 42 of the GST Rules, a dealer who has paid tax on raw or processing materials or consumable stores used in the manufacture of taxable goods, is allowed set off at the rate applicable to the respective goods from the tax on the sale of manufactured goods subject to fulfillment of general conditions of Rule 47. Supreme Court of India, by applying the principle of association of words for interpreting the meaning of a term appearing in a notification held that natural gas used as fuel is not consumables as the word “consumables” has to be read with the words raw material, component parts, sub assembly parts intermediate parts appearing in the notification and could include only such goods which get consumed in the final product. By applying the ratio of the judgement LDO, FO, LPG and NG used as fuel could not be considered as raw material, processing material or consumable stores in the manufacture of chemicals, drugs and medicines, machinery, glazed tiles and corrugated boxes. The Commissioner issued circular directions in February 2001 that the ratio of the Supreme Court judgement cannot be applied to the provisions of the GST Act as the words and phrases applied in both the Acts are not similar.

During test check of records of four* Deputy Commissioners, 17[#] STOs and flying squad, Ahmedabad, it was noticed between January and November 2004 in the assessment of 68 dealers for the periods between 1994-95 and 2002-03 finalised between September 1999 and March 2004 that excess set-

[⊕] Unit-22 Ahmedabad, Unit-8 Ahmedabad, Unit-10 Ahmedabad, Unit-14 Ahmedabad, Unit-18 Ahmedabad, Unit-5 Ahmedabad, Unit-21 Ahmedabad, Unit-2 Junagadh, Unit-2 Rajkot, Unit-1 Surendranagar, Unit-2 Vadodara, and Unit-6 Vadodara

* Range-19 Bhavnagar, Range-7 Gandhinagar, Mehsana and Range-23 Rajkot.

Unit-10,18,21,22 and 23 Ahmedabad, Anand, Ankleshwar, Unit-1 Bhavnagar, Godhra, Gondal, Unit-1, 2, 3, 5, 6 and 7 Vadodara and Porbandar .

off of Rs.1.95 crore including interest and penalty was allowed as detailed below:

(Rupees in lakh)

Sl. No.	No. of dealers	Excess set-off allowed	Nature of irregularity
1	55	173.80	Set-off was allowed on LDO/LPG used as fuel though these are not consumable stores.
2	3	9.62	Four <i>per cent</i> of the sale price of the manufactured goods consigned or transferred outside the State was not reduced from the amount of set-off worked out.
3	4	4.48	Set-off was allowed on brass parts, copper wire, duplex board, aluminum channel and paper at incorrect rates.
4	3	4.08	Set-off was allowed on the purchases of prohibited goods i.e. craft paper, casting and soda ash.
5	2	2.16	Deduction of two <i>per cent</i> of purchase price was not made in arriving at the amount of set-off.
6	1	0.74	Excess set-off carried forward than actually admissible.
	68	194.88	

The above facts were brought to the notice of the Department between February and November 2004 and of the Government in January 2005. The Department accepted between April 2004 and June 2005 audit observations involving an amount of Rs.12.74 lakh in case of 13 dealers and recovered an amount of Rs.6 lakh in case of eight dealers. In respect of cases at Sr.No.1 Government accepted the view of audit and stated that the Commissioner had withdrawn the circular of February 2001 and issued revised instructions in September 2005 clarifying that the ratio of the judgement of the Supreme Court is applicable to the provisions of the GST Act. Particulars of recovery in case of 13 dealers and replies from the Department in the remaining cases have not been received.

2.4.3 Under Section 15-B of the GST Act, where a dealer purchases any taxable goods other than declared goods and uses them as raw material, processing material or as consumable stores in the manufacture of taxable goods, purchase tax at prescribed rate is leviable in addition to any tax leviable under any other Section of the Act. Purchase tax so levied is admissible as set-off under the GST Rules, provided the goods manufactured are sold by the dealer in the State of Gujarat. High Court of Gujarat* held that the dealer is liable to pay purchase tax under Section 15-B of the Act on the purchase of raw materials by the dealer and on their use in the manufacture of goods which

* M/s.Madhu Silica (85 STC 258) and M/s.Cheminova India Ltd. (2001-GSTB-286).

are generally taxable goods under the Act though they may be exempted from payment of sales tax pursuant to the notification under Section 49(2) of the Act. Legislative intention was also to levy purchase tax in such cases as by an amendment in January 2002, purchase tax under Section 15-B was authorized to be adjusted against the monetary ceiling granted to dealers holding sales tax exemption certificates.

- During test check of Deputy Commissioner, Mehsana and four[⊗] STOs, it was noticed between January and November 2004 in the assessment of five dealers for the period between 1994-95 and 2002-03 finalised between June 2002 and September 2003, that though the dealers had transferred the manufactured goods either to their branches, consigned out side the State or sold through commission agents set off was not disallowed proportionately. This resulted in excess grant of set off of Rs.2.20 crore including interest and penalty.

The above facts were brought to the notice of the Department between February and November 2004 and of the Government in January 2005. The Department accepted between August 2004 and June 2005 the audit observations involving an amount of Rs.1.18 lakh and recovered Rs.0.78 lakh in case of two dealers. Particulars of recovery and replies in the remaining cases have not been received. (June 2005)

- During test check of records of the Deputy Commissioner, Range-19, Bhavnagar and STO, Unit-3, Rajkot it was noticed in June and October 2004 in the assessment of two dealers for the period between 1997-98 and 1999-2000 finalised in May 2001 and June 2003 that for computing purchase tax leviable under Section 15-B, goods valued at Rs.3.54 crore purchased from dealers holding sales tax exemption certificates were not considered for the reason that such goods were tax free as determined by the Commissioner under Section 62[#] of the Act. The determination orders were not in consonance with the High Court judgement. Incorrect determination orders by the Commissioner which were bound to be followed by the Assessing Officers resulted in short levy of purchase tax and consequent excess grant of set-off of Rs.18.87 lakh including interest and penalty.

The above facts were brought to the notice of the Department in March and October 2004 and of the Government in March 2005. The Department did not accept the point taking shelter of the determinations. Reply was not tenable as the determination and consequent assessment by the Commissioner were not in consonance with the judgement of the Gujarat High Court. Reply of the Government has not been received (June 2005).

2.5 Non levy of purchase tax

Under Section 13 of the GST Act, a registered dealer on production of Form-19 can purchase goods other than prohibited goods without payment of tax for

[⊗] Unit-5 Ahmedabad, Unit-11 Ahmedabad, Mehsana and Unit-7 Vadodara.

[#] M/s.Sealtap Chemicals (1998 D-81) and M/s.I.P.C.L. (2003-D-22(6)).

use in the manufacture of taxable goods for sale within the State. In the event of breach of recitals of the certificate, purchase tax has to be recovered under Section 16 with interest and penalty.

During test check of records of the STO, Mehsana, it was noticed in the assessment of a dealer for the periods 1998-99 to 2001-02 finalised in June 2002 that purchase tax for breach of recitals of Form-19 on account of transfer of manufactured goods to branches out side the State was not levied. This resulted in short levy of purchase tax of Rs.84.88 lakh including interest and penalty.

The above fact was brought to the notice of the Department in November 2004 and of the Government in May 2005. The Department stated in June 2005 that action to reassess the case would be initiated. Further reply has not been received (June 2005).

2.6 Loss of revenue due to incorrect determination of disputed question

Under Section 62 of the GST Act, if any question arises otherwise than in proceedings before a court or proceedings under Section 41 or 44 regarding whether a dealer is required to be registered or any transaction is a sale or purchase or any tax is payable and if so the rate of tax applicable, then, the Commissioner shall make an order determining such question. Such order shall be binding on all assessing and appellate authorities unless challenged and revised by Tribunal or Courts.

As per determination order passed on 26 May 1984, fibre glass cloth was classified under entry 40 of Schedule-I (new entry 76 from 1 April 1992) and hence is tax free. Another determination classifying the goods under entry 7 of Schedule II-A was passed on 15 September 2000 attracting tax at the rate of four *per cent* as the goods were taken away from textile and textile articles and did not attract additional duties of excise.

During local audit of STO, Unit-7, Ahmedabad it was noticed during October 2001 in the assessment of two dealers for the periods 1997-98 to 1999-2000 finalised between February and March 2001, that no tax was levied on sale of fibre glass cloth valued Rs.13.52 crore classifying the goods under entry 76 of Schedule I.

Considering the fact that glass fibres or articles of glass fibres which fall under chapter heading 70 of Central Excise Tariff Act, 1985 are expressly excluded from Textile and Textile Articles to which entry 76 of Schedule I and entry 7 of Schedule II-A apply, it was suggested by audit to the Commissioner to review the determination order of May 1984 and September 2000. The Commissioner of Sales Tax accepted (July 2004) the view expressed by audit and stated that as the order cannot be revised, they are considering making corrections for such wrong determinations through legislative amendment. Incorrect determination on classification of goods resulted in loss of revenue of Rs.1.62 crore computed at the rate of tax applicable to residuary entry as the goods is not covered under any other entry in Schedule II-A of the Act. The

matter was reported to Government in January 2005; reply has not been received.

2.7 Short levy of Central Sales Tax

Under the CST Act, tax on inter-state sale of goods made against declaration in form `C' is leviable at the rate of four *per cent*. In case where the sale is not supported by form `C', tax is leviable at twice the rate applicable on declared goods. In the case of goods other than declared goods, tax is leviable at the rate of 10 *per cent* or at the rate applicable on such goods inside the State, whichever is higher. As per the CST Act and Rules, penultimate sale made against form H to an exporter would be exempted from payment of tax provided the goods are exported in the same form by the exporter. For claiming deduction from turnover under Section 6(2) of the CST Act, the dealer has to produce declaration in form E-I or E-II and form `C' which is mandatory. Further, additional tax at the rate of 10 *per cent* of central sales tax levied is chargeable from April 2000.

Test check of the records of five* Deputy Commissioners and 16[⊕] STOs conducted during December 1999 to November 2004 revealed the following:

- In case of 17 dealers for the periods between 1991-92 and 2003-04, the assessment of which were finalised between April 2002 and March 2004, concessional rate of tax was levied even in the absence of form `C' or transaction was prior to the date of registration of the dealer/dealer was not holding registration and hence form `C' produced was invalid. This resulted in short levy of Rs.83.53 lakh.
- In case of three dealers for the periods between 2000-01 and 2002-03 the assessments of which were finalised between August 2002 and January 2004, incorrect rate of tax was applied. This resulted in short levy of Rs.7.17 lakh.
- In case of three dealers for the period between 1993-94 and 2001-02, the assessment of which were finalised between March 2003 and March 2004, taxable turnover was computed incorrectly which resulted in short levy of Rs.37.79 lakh.
- In case of one dealer for the year 1997-98 the assessment of which was finalised in June 2003, export sale claimed against form `H' was allowed though the goods were exported by a dealer other than the one who had issued the form. This resulted in short levy of Rs.20.09 lakh.
- In case of one dealer for the year 2002-03 the assessment of which was finalised in December 2003, inter-state sale falling under Section 6(2) of the CST Act was allowed though the declaration in form E-1 and C were not produced. This resulted in short levy of Rs.4.28 crore including penalty.

*Range-19 Bhavnagar, Range-9 Palanpur, Range-22 Rajkot, Range-20 Surendranagar and Range-18 Valsad.

⊕ Unit-1, 4, 8, 14, 19 Ahmedabad, Unit-5 Baroda, Bhavnagar(Enforcement), Unit-1 Bhavnagar Dahod, Gandhidham, Porbandar, Unit-4 Rajkot, Unit-1 Surendranagar, Unit-9 Surat, Upleta and Unit-7 Vadodara

Above omissions were brought to the notice of the Department between February and December 2004 and of the Government in February and May 2005. The Department accepted between May and June 2005 the audit observations involving an amount of Rs.26.48 lakh in case of 11 dealers and recovered Rs.11.20 lakh in case of four dealers. Particulars of recovery and replies in the remaining cases have not been received (June 2005).

2.8 Non/short levy of tax due to incorrect classification of goods

Under the GST Act, tax is leviable at the rates as indicated in the Schedules to the Act, depending upon the classification of goods. However, where goods are not covered under any specific entries of the Schedules, general rate of tax is applicable.

During test check of records of five[#] STOs it was noticed between March 2003 and August 2004 in the assessment of five dealers for the periods between 1996-97 and 2001-02 finalised between March 1999 and March 2004 that the assessing officers levied tax at incorrect rates on sales of various goods valued at Rs.4.52 crore due to mis-classification of goods. This resulted in non/short levy of tax of Rs.67.70 lakh including interest and penalty.

(Rupees in lakh)

Sl. No.	No. of dealers (Location)	Name of commodity Value of goods	Rate of tax leviable/levied (percentage)	Short levy Interest Penalty	Total	Remarks
1	1 (Vadodara)	Glass frit 278.35	12+AT (6)	<u>17.71</u> <u>8.14</u> 15.19	41.05	Sales of glass frit was levied to six <i>per cent</i> instead of 12 <i>per cent</i> plus additional tax as applicable.
2	1 (Ahmedabad)	Electrical wire 7.20	15 (14&12)	<u>2.56</u> <u>1.85</u> 3.07	7.48	The dealer was assessed to tax at 12 and 14 <i>per cent</i> respectively by classifying the said goods under entry 195 instead of 15 <i>per cent</i> under entry 96 of Schedule- II A.

[#] Unit-8 Ahmedabad, Unit-34 Ahmedabad, Gandhidham, Unit-2 Surendranagar, Unit-7 Vadodara.

3	1 (Surendra- nagar)	Brique- ttes Kapa- santhi 29.77 34.60	12 & 2 (-)	<u>1.52</u> <u>1.77</u> 3.47	6.75	Tax on sales of briquettes was classified as tax free though tax at 12 <i>per cent</i> as per residuary entry 195 was leviable. Further tax on unregistered dealer purchase of Kapasanthi was also not levied.
4	1 (Gandhi- dham)	Dama- ged <u>vehicle</u> 48.28	12(4)	<u>3.86</u> <u>1.28</u> 2.32	7.46	Sales of damaged vehicles were assessed to tax at four <i>per cent</i> instead of at 12 <i>per cent</i> .
5	1 (Ahmedabad)	Soft- <u>ware</u> 54.60	4(-)	<u>2.18</u> <u>1.48</u> 1.31	4.97	Sales of software effected between 1 April 1998 and 31 March 1999 was exempted though sales tax was chargeable at four <i>per cent</i> .
	5	452.80		<u>27.83</u> <u>14.50</u> 25.36	67.70	

The above facts were brought to the notice of the Department between April 2003 and August 2004 and of the Government in January 2005. The Department accepted between May 2004 and June 2005 the audit observations involving an amount of Rs.14.23 lakh in case of two dealers. Particulars of recovery and replies in the remaining cases have not been received.

2.9 Application of incorrect rate of tax

Under the GST Act, sales tax is leviable at the rates as indicated in various Schedules to the Act.

During test check of records of Deputy Commissioner, Surat and eleven[#] STOs and flying squad Ahmedabad, it was noticed between January 2002 and October 2004 in the assessment of 20 dealers for the periods between 1995-96 and 2002-03 finalised between February 2000 and March 2004 that sales turnover of Rs.139.07 crore of various goods were taxed at incorrect rates.

[#] Unit-3, 5, 11,13,14 and 21 Ahmedabad, Unit-1 Bharuch , Unit-1 Junagadh , Unit-7 Surat, Surat(Enforcement) and Unit-1 Vadodara.

This resulted in short levy of tax of Rs.17.87 crore including interest and penalty.

(Rupees in lakh)

Sl. No.	No. of dealers	commodity	Rate of tax leviable/ levied (per cent)	Turnover	Tax short levied including interest and penalty
1	1 (Ahmedabad)	Tea	$\frac{12}{4}$	4,560.59	1337.13
2	8 (Surat)	Synthetic yarn	$\frac{4}{2}$	7774.37	361.92
3	1 (Ahmedabad)	Works contract	$\frac{14}{12}$	1,033.64	61.63
4	4 (Ahmedabad, Junagadh, Surat)	Edible oil	$\frac{4}{2}$	420.64	21.05
5	2 (Ahmedabad)	Medicine	$\frac{8}{6}$	61.30	1.91
6	1 (Bharuch)	Recycled granules	$\frac{14}{3}$	7.04	1.49
7	1 (Surat)	Cement	$\frac{15}{5}$	9.81	1.04
8	1 (Ahmedabad)	Chemicals	$\frac{6}{4}$	25.56	0.79
9	1 (Vadodara)	Door/window grills	$\frac{8}{6}$	14.41	0.52
	20	Total		13,907.36	1,787.48

The above facts were brought to the notice of the Department between March and November 2004 and of the Government in February and May 2005. The Department accepted between November 2003 and June 2005 audit observations involving an amount of Rs.15.25 lakh in case of five dealers and recovered Rs.0.87 lakh in case of two dealers. Particulars of recovery and replies in the remaining cases have not been received.

2.10 Turnover escaping assessment

According to Section 2(29) of the GST Act, sale price includes the amount of valuable consideration paid or payable to a dealer for any sale. Further, if the Commissioner has reason to believe that any turnover of sales or purchases of any goods chargeable to tax has escaped assessment, he may reassess the

amount of tax due from such dealer within the time prescribed and recover the dues on such turnover.

During test check of the records of three[⊗] STOs, it was noticed in December 2003 in the assessment of four dealers for the periods between 1994-95 and 2001-02 finalised between September 2001 and March 2003 that taxable turnover was incorrectly determined by not considering premium received on Duty Entitlement Pass Book (DEPB) and sale of vegetable ghee and packing material whereas resale of goods purchased from registered dealers was allowed in excess. This resulted in short determination of turnover of Rs.6.97 crore and consequent short levy of tax of Rs.45.83 lakh including interest and penalty.

The above facts were brought to the notice of the Department between March and September 2004 and of the Government in February 2005. The Department accepted in July 2005 audit observations involving an amount of Rs.40.03 lakh in case of three dealers. Particulars of recovery and reply in the remaining case have not been received.

2.11 Short levy of tax due to computation error

Under the GST Act, tax is leviable at different rates as laid down in various Schedules to the Act.

During test check of records of three^{*} STOs it was noticed between November 2003 and August 2004 in the assessment of four dealers for the periods between 1994-95 and 2000-01, finalised between March 2003 and 2004 that due to computation error in determining the taxable turnover in one case, incorrect computation of the amount of tax in the second case and incorrect computation of interest on refund in the remaining two cases, Rs.21.49 lakh including interest and penalty was levied short.

The above facts were brought to the notice of the Department between March and October 2004 and of the Government in February 2005. The Department accepted in January and June 2005 audit observations in all cases and recovered an amount of Rs.0.38 lakh in case of one dealer. Particulars of recovery in the remaining cases have not been received.

2.12 Incorrect allowance of deduction on Forms

Under the GST Act, sales made on certain declarations are allowed without payment of tax subject to fulfillment of prescribed conditions. Sales of prohibited goods against declaration in Form-19 are not permissible.

During test check of records of STO, Godhra it was noticed in October 2003 in the assessment of a dealer for the periods between 1995-96 and 1996-97 finalised in June 2002 that sale of prohibited goods i.e. granules valued at Rs.0.21 crore made against declaration in Form-19 were incorrectly allowed as deduction from the sales turnover. This resulted in non-levy of tax of Rs.7.82 lakh including interest and penalty.

[⊗] Unit-6 and 9 Surat and Veraval.

^{*} Morbi, Unit-1 Bhavnagar and Unit-2 Vadodara

The above facts were brought to the notice of the Department in April 2004 and of the Government in January 2005. The Department accepted in July 2004 the audit observations. Particulars of recovery have not been received.

2.13 Non/short levy of turnover tax

Under Section 10A of the GST Act, where the sales turnover of a dealer, liable to pay tax, first exceeds Rs.50 lakh, the dealer is liable to pay turnover tax at prescribed rate on the turnover of sales of goods other than declared goods after allowing permissible deduction under the Act. From April 1993, sales made against various declarations and sales exempted from tax under Section 49, were excluded from the permissible deductions making such sales liable to turnover tax. While working out the liability and applicability of rate of turnover tax, the taxable sales turnover in aggregate of all the branches of the dealer within the State is to be considered.

During test check of the records of seven[#] STOs and flying squad Ahmedabad, it was noticed between June and November 2004 in the assessment of nine dealers for the periods between 1992-93 and 1996-97 finalised between September 1999 and March 2004 that turnover tax was either not levied or short levied. This resulted in short realisation of turnover tax of Rs.36.85 lakh including interest and penalty.

The above facts were brought to the notice of the Department between June and December 2004 and of the Government in February and May 2005. The Department accepted between January and June 2005 audit observations involving an amount of Rs.4.22 lakh in case of five dealers and recovered an amount of Rs.0.71 lakh in case of two dealers. Particulars of recovery and replies in the remaining cases have not been received.

2.14 Short/non levy of interest

2.14.1 Under the GST Act, if a dealer does not pay the amount of tax within the prescribed period, simple interest at the rate of 24 *per cent* per annum for the period upto 31 August 2001 and at 18 *per cent* per annum thereafter is leviable on the amount of tax remaining unpaid for the period of default. By virtue of Section 9(2) the above provisions apply to assessments under the CST Act as well.

During test check of records of six^{*} Deputy Commissioners and 15[⊗] STOs and Deputy Commissioner (Flying squad) Ahmedabad it was noticed between October 2003 and November 2004 in the assessment of 31 dealers for the periods between 1991-92 and 2000-01 finalised between September 2000 and March 2004 that interest amounting to Rs.321.84 crore was either not levied or levied short on the amount of unpaid tax.

[#] Unit-17 Ahmedabad, Unit-1 Bhavnagar, Kalol, Unit-4 Rajkot, Sidhpur, Surat(Enforcement) and Unit-6 Vadodara

^{*} Petro-1 Ahmedabad, Range-14 Bharuch, Range-13 Nadiad, Range-9 Palanpur, Range-16 Surat and Range-18 Valsad.

[⊗] Unit-13, 15, 18 & 21 Ahmedabad, Unit-2 Anand, Unit-2 Bhavnagar, Gandhidham, Gondal, Godhra, Khambat, Unit-8 Surat,, Surendranagar , Unit 3&7 Vadodara and Unit-1 Vapi.

The above facts were brought to the notice of the Department between March and December 2004 and of the Government in January and May 2005. The Department accepted between March and June 2005 audit observations involving an amount of Rs.42.71 lakh in case of seventeen dealers and recovered an amount of Rs.4.92 lakh in case of six dealers. In one case (Gas Authority of India Ltd.,) involving interest of Rs.320.03 lakh, DCST Petro I stated on 15 June 2004 that under assessment pointed out by audit was already in notice of the Department and proceedings were initiated on 4 June 2004. The reply was not tenable as the proceedings stated to have been initiated were regarding valuation of goods and branch transfers. Particulars of recovery and replies in the remaining cases have not been received (June 2005).

2.14.2 Section 5(3) of the Bombay Sales of Motor Spirit Taxation Act, 1958 (BSMST Act) as adopted by the Gujarat Adoption of Laws Order, 1960 authorise the Collector to recover a sum not exceeding double the amount of tax not paid within the prescribed period which he may think reasonable to recover. The Act does not contain provision for levy of interest on delay in payment of tax or for non-payment of tax. In the absence of provision for levy of interest under the BSMST Act, interest cannot be levied in the assessments under the CST Act also in respect of goods covered under BSMST Act. Government of Maharashtra has since amended their Act in April 1984 and has introduced provision for levy of interest on delayed/non payment of tax at the rate of 24 *per cent* per annum.

The amount of interest forgone in seven assessments of four dealers for the periods 1994-95 and 1999-2000 finalised between January 2001 and December 2003 by Deputy Commissioners, Petroleum-I and II, Ahmedabad audited in June 2003 and November 2004 due to non-existence of provisions in the Act was Rs.43.74 crore on the unpaid dues of Rs. 61.80 crore.

The above facts were brought to the notice of the Department in July 2003 and December 2004 and of the Government in March 2005. The Department admitted that they have mooted the proposal after it was pointed out by audit, for incorporating the interest provision and till such time the provision is incorporated the Commissioner issued directions to the officers to levy penalty equivalent to the amount of interest computed at the rate applicable under the GST Act. Government accepted the issue and stated (September 2005) that legal process had been initiated to amend the Act for inclusion of the provision for levy of interest.

2.15 Non/short levy of additional tax

Under Section 4A of the GST Act, additional tax at the rate of 10 *per cent* of sales or purchase tax is leviable from every dealer liable to pay tax under Section 3 or Section 3A of the Act.

In the assessment of a dealer of Ahmedabad for the period April to December 2000 finalised in March 2004, the assessing officer did not levy additional tax of Rs.1.89 lakh. Consequently, the dealer was liable to pay interest and penalty of Rs.4.85 lakh. Total short levy worked out to Rs.6.74 lakh.

The omission was brought to the notice of the Department in May 2004. The Department accepted in June 2004 the audit observation and raised additional demand of Rs.6.74 lakh. Recovery particulars have not been received.

2.16 Other irregularities

2.16.1 According to clause C (iii) below Rule 44 of the GST Rules, 1970 no set off under the Rule *ibid* shall be granted where the vendor who has sold the goods to the claimant dealer has not credited in the Government treasury, the amount of tax on his sales for which set-off is claimed. Second proviso below Section 47(4) of the GST Act, provides that subject to such conditions as the State Government or the Commissioner may by general or special order specify, where a dealer to whom incentives by way of deferment of sales tax or purchase tax or both have been granted by virtue of an eligibility certificate granted by the Commissioner of Industries and where a loan liability equal to the amount of any such tax payable by such dealer has been raised by the Gujarat Industrial Investment Corporation (GIIC) or Gujarat State Finance Corporation (GSFC), then such tax shall be deemed, in public interest, to have been paid. Commissioner issued in September 1993 a circular specifying that set off may be granted in respect of purchases made from dealers holding sales tax deferment certificate under sales tax incentive schemes on production of a declaration appended to the circular which stating that they hold sales tax deferment certificate issued by the Department.

During test check of records Deputy Commissioner, Range-17, Surat and three[#] STOs it was noticed between February and November 2004 in the assessment of five dealers for the periods between 1997-98 and 2000-01 finalised between September 2002 and March 2004 that set-off of Rs.1.46 crore was allowed on purchase of goods from dealers holding deferment certificate on production of a simple declaration as specified in the circular of September 1993. As this declaration did not contain the condition of availment of loan facility from GIIC or GSFC by the dealers, the circular instruction was not in conformity with the provisions of the Act/Rule.

The above facts were brought to the notice of the Department between March and December 2004 and of the Government in January 2005; reply has not been received (June 2005).

2.16.2 According to Government Resolution (GR) of 11 September 1995 of the Industries and Mines Department, an industrial unit with project costing more than Rs.10 crore and eligible to avail sales tax incentive under New Incentive Policy of 1995-2000 shall have to contribute two *per cent* of sales tax in case of exemption and three *per cent* of sales tax in case of deferment availed during the year for Gokul Gram Yojana (GGY) before June of subsequent financial year. In case of failure to contribute the amount on due date, interest at the rate of two *per cent* per month is leviable. As this forms part of sales tax incentive scheme, recovery of contribution from the beneficiaries has been entrusted to sales tax Department which is to be monitored by the authorised officer of the Rural Development Department.

[#] Unit-10 Ahmedabad, Unit-4 Rajkot and Unit-3 Vadodara

During test check of records of two* STOs, it was noticed in the case of three dealers for periods between 1997-98 and 2003-04 that the dealers had availed of the sales tax incentive and were liable to pay Rs.77.52 lakh towards the GGY within the stipulated period. Two dealers made full payment, though belatedly, and hence were liable to pay interest of Rs. 13.86 lakh calculated up to the date of payment. The third dealer did not pay his full contribution; a sum of Rs.6.29 lakh remained unpaid (August 2004). In his case interest payable worked out to Rs.7.59 lakh up to the date of audit (August 2004).

The short realisation of Rs.27.74 lakh as detailed above was brought to the notice of the Department in December 2003 and October 2004 and of the Government in February 2005; their replies have not been received.

2.17 Levy of purchase tax on sugar cane

2.17.1 Non-payment of tax even after expiry of moratorium period

Levy of sales tax or purchase tax on sugar cane was governed by Section 18 of the GST Act upto 30 September 1987. The Government enacted in March 1989, 'The Gujarat Purchase Tax on Sugar Cane Act, 1989' (GPTS Act) which was given effect retrospective from 1 October 1987. The Government issued five different resolutions between 1996 and 2003 which allowed moratorium period of five years to co-operative sugar factories during which no tax was payable by them.

It was observed from the assessment records of a dealer for the period 2001-02 finalised in February 2003 that he had not paid tax of Rs.111.58 lakh even after expiry of moratorium period in May 2001. Besides the dealer was liable to pay interest of Rs.51.33 lakh and penalty equal to the amount of interest. The total dues worked out to Rs.2.14 crore.

After this was pointed out in audit, the Department accepted the audit observations and stated that instructions have been issued to the assessing officer to reassess the dealer. Further reply has not been received (June 2005).

2.17.2 Short levy of purchase tax

Under the GPTS Act, purchase tax on sugarcane procured for the use in manufacture or production of sugar in a factory or khandsari unit is leviable at the rate of Rs.20 per metric ton. 20 *per cent* additional tax is also leviable on the tax so calculated.

During the course of collection of statistical data in April 2004, it was noticed in respect of two khandsari units that these units were assessed in August 2003 at the rate of Rs.20 per metric ton and additional tax was not levied for the period between 1995-96 to 1999-2000 while additional tax at the rate of 10 *per cent* was levied for the period 2000-01 and 2001-02. Non levy/short levy of additional tax resulted in short levy of purchase tax of Rs.24.53 lakh including penalty and interest of Rs.16.92 lakh.

After this was pointed out in audit, the Department accepted the audit observation and stated that reassessment order has been passed in one case and

* Ankleshwar and Morbi.

final report in respect of second case would be submitted after completion of revision proceedings. Further reply has not been received (June 2005).

2.17.3 Incorrect grant of exemption under incentive scheme to new industries

- Under Section 49(2) of the GST Act, 1969, various incentives are given to new industries in terms of resolutions issued by Industries and Mines Department. The purchase tax on sugarcane is governed by provisions of the GPTS Act and as such tax exemption granted under section 49(2) of the GST Act can not be allowed in respect of purchase tax on sugarcane.

During test check of records of STO, Vyara, it was noticed in the assessment of a dealer for the period 1 October 1999 to 31 March 2001 finalised in 28 February 2003 that the dealer was allowed to adjust purchase tax on sugarcane of Rs.10.32 lakh against tax exemption limit granted under entry 255 of the notification issued under Section 49(2) of the GST Act. Government had to forgo Rs.15.48 lakh during October 1999 to November 2001 consequent to grant of exemption certificate to the dealer which was irregular.

After this was pointed out, the Department accepted audit observation and stated that the dealer has been reassessed as per provision of GPTS Act and the benefit given was disallowed. Report on recovery has not been received (June 2005).

- The benefit of moratorium for a period of five years for payment of purchase tax is admissible subject to condition that the society shall not avail any other incentive or relief under any of the schemes of State Government including the incentive scheme of Industries and Mines Department during the period.

During the course of collection of statistical information from Deputy Commissioner, Range-12, Vadodara, it was noticed that a dealer was availing moratorium from December 1999 onwards and was also granted exemption under entry 69 of section 49(2) of the GST Act, 1969 for Rs.26.73 crore for the period 3 August 2000 to 9 February 2005. In the assessment for the period 1 September 1999 to 31 March 2001 finalised on 31 January 2004 sales tax exemption of Rs.11.88 lakh was allowed alongwith moratorium of Rs.103.24 lakh. Grant of exemption upto the monetary limit of Rs. 26.73 crore and availment of exemption Rs.11.88 lakh was in violation of the scheme of moratorium already being availed by the dealer.

After this was pointed out in audit, the Department accepted audit observation and stated that after cancellation of exemption certificate, reassessment proceedings would be undertaken. The matter was reported to Government in June 2005. They endorsed the view of the department.

2.18 Internal Control

The GST Act and Rules specify the systems and procedures to deal with registration of dealers, receipt of returns, scrutiny and assessments and collection of tax. To monitor the activities, the Department had prescribed

maintenance of registers and submission of monthly diaries by unit level offices and also intermediate direction offices. The Deputy Commissioner (Inspection) (DC) in the Commissioner's office reviews the diaries and the activities/performances are discussed in the monthly meeting of Joint Commissioners of Sales Tax held with the Commissioner of Sales Tax.

Internal control is mainly exercised through administrative inspection and internal audit. Administrative inspection of offices is done by the DC (Inspection) who verifies all documents maintained by units as well as range offices. In Internal Audit, selected cases assessed by officers spread all over the State are checked and corrective action taken for any technical or legal inaccuracies. Though clear time frame has been developed and followed for completing administrative inspection of all offices annually, it had failed to point out the following omissions which are illustrative:

- notices of demand were either not issued or issued with delay in two cases one each of Bhavnagar and Junagadh;
- demand notices issued and transferred to jurisdictional assessing officers for watching recovery were not received and noted in the recovery register with the result the demands were not pursued by either of the officers (Bhavnagar and Gandhinagar);
- cases where fresh assessments, consequent on remand by appellate authorities, were required to be made within a specified date were not done (Para 2.7 of this report).

These omissions which would have resulted in non pursuance of demands or loss of revenue could have been avoided if the issues were pinpointed during internal inspection with reference to registers maintained for the purpose. Performance of internal audit is minimal and inadequate. This fact has been commented upon in para 2.17 of Audit Report (Revenue Receipts) for the year ended 31 March 2003. Irregularities and omissions highlighted in the present Report show that Department has not initiated adequate measures to check and correct the omissions committed by the Assessing Officers on a regular manner.

CHAPTER-III

LAND REVENUE

3.1 Results of Audit

Test check of assessment records in the offices of the Collectors, District Development Officers, Taluka Development Officers, District Inspectors of Land Records and City Survey Superintendents conducted in audit during the year 2004-05 disclosed non/short recovery and loss of revenue amounting to Rs. 578.04 crore in 141 cases. These cases broadly fall under the following categories:

(Rupees in crore)			
Sl. No.	Category	No. of cases	Amount
1	Non/short recovery of occupancy price/premium price	13	9.51
2	Non-raising of demand for non-agricultural assessment, Non/short recovery of NAA, Non/short levy of NAA at revised rate	36	1.70
3	Non-recovery of conversion tax	52	2.13
4	Other irregularities	39	1.43
5	Review: Recovery of dues treated as arrears of land revenue	1	563.27
	Total	141	578.04

During the year 2004-05, the Department recovered under assessment of Rs.61.70 lakh in 49 cases pertaining to earlier years.

A few illustrative cases involving important audit observations and review on **Recovery of dues treated as arrears of land revenue – Revenue Recovery Certificates** involving Rs.101.15 crore, are discussed in the following paragraphs.

3.2 Review: Recovery of dues treated as arrears of land revenue – Revenue Recovery Certificate

Highlights

Improper maintenance of initial records which lead to ineffective monitoring by departmental officers, resulted in omissions in indexing and pursuing 233 RRC cases involving recovery of Rs.338.69 crore including service charges.

[Para 3.2.8]

Negligible recovery in RRC cases reflected adversely on efficiency of revenue recovery machinery.

[Para 3.2.10]

Demand notices in respect of 141 RRCs involving recovery of Rs.99.62 crore including service charges were either not issued or issued late to the defaulters.

[Para 3.2.11]

Warrants of attachment of properties in 46 RRCs involving recovery of Rs.48.15 crore including service charges were not issued.

[Para 3.2.12]

In 33 RRCs involving recovery of Rs.36.26 crore inclusive of service charges, the movable/immovable properties of the defaulters were not attached/auctioned.

[Para 3.2.13]

In 1,890 RRCs service charges of Rs.0.16 crore were not recovered and in 100 RRCs the demand of service charges of Rs.12.11 crore were not included in the demand notices issued.

[Para 3.2.15]

Recommendations

3.2.1 Following recommendations are proposed to improve the system:

- adoption of uniform format of register for watching receipt and disposal of RRCs, maintaining status of pendencies of arrears and prompt recovery thereof;
- submission of periodical returns by each recovery officer to the Revenue Department showing progress of recovery of arrears;
- return of incomplete RRCs immediately to issuing authorities;
- reconciliation of number and amount of RRC cases between taluka level offices and district level offices;
- strict adherence to provisions related to recovery of service charges;
- consider delegation of powers to recover the dues as arrears of land revenue to heads of the respective departments;

The Department accepted majority of the recommendations and corrective action was initiated by issuing circular/instructions.

Introduction

3.2.2 The modes of recovery of arrears of the Government departments/undertakings, corporations, banks etc. are laid down in the relevant Acts of the concerned departments/organisations. However, if recovery cannot be effected

and the dues become irrecoverable under the provisions of the relevant Acts, the officers responsible for administering the Acts are required to send requisitions in the prescribed form, furnishing full details of recovery to be effected as arrears of land revenue to the District Collector (DC) or the District Development Officer (DDO) under whose jurisdiction the property of the defaulter is situated. The DC/Mamlatdar in respect of city areas and the DDO/Taluka Development Officer (TDO) in respect of rural areas, has been delegated with powers for initiating the recovery proceedings by adopting any one or more of the processes like attachment of movable/immovable property, auction of the property and even confinement of the defaulters in jail, if they fail to respond to the demand notices issued to them prescribed under the Bombay Land Revenue Code (BLR Code), 1879, (as applicable to Gujarat State) and the Gujarat Land Revenue Rules (GLR Rules), 1972.

As per instructions issued by the Revenue Department in July 2001, December 2001 and August 2002, Revenue Recovery Certificates (RRCs) initially received in the office of the DC/DDO are required to be registered in the recovery register before being passed on for necessary action to the Mamlatdar/ TDO concerned. The Mamlatdar/TDO, on receipt of these RRCs, are required to enter them in their register of revenue recovery and initiate the recovery proceedings as laid down in the BLR Code through their Village Officers (i.e. Talatis). In cases of arrears of motor vehicle tax, the taxation authorities of motor vehicle Department are required to issue RRC and recover the dues as arrears of land revenue through Mamlatdar deputed for the purpose.

Organisational set-up

3.2.3 The administration of Land Revenue Department vests with the Principal Secretary (Revenue). For the purpose of administration, the State is divided into 25 revenue districts. Each district is further divided into talukas and villages.

The DCs are overall incharge and responsible for the administration of their respective districts. The Mamlatdars and Executive Magistrates are incharge of the administration of their respective talukas and exercise supervision and control on Talatis who are entrusted with the work of collection of land revenue and other receipts including recovery of dues treated as arrears of land revenue. In addition, the Revenue Department has delegated powers to the Panchayat Officers (DDOs and TDOs) for recovery of dues treated as arrears of land revenue to facilitate the revenue administration.

Scope of Audit

3.2.4 Records of nine¹ DCs and nine² DDOs out of 25 each and 86 Mamlatdars and 86 TDOs out of 223 each covering the period from 1999-2000 to 2003-2004 were test checked between May and December 2004. The findings of review are given in succeeding paragraphs.

¹ Collector: Ahmedabad, Gandhinagar, Junagadh, Mehsana, Porbandar, Rajkot, Surat, Vadodara and Valsad

² DDO: Ahmedabad, Gandhinagar, Junagadh, Mehsana, Porbandar, Rajkot, Surat, Vadodara and Valsad

Audit Objectives

3.2.5 The review was conducted with the objective to:

- ascertain the efficiency of revenue recovery machinery with reference to revenue collection;
- review overall status/position of adherence of procedural requirements and
- review the efficacy of internal control.

Audit Criteria

3.2.6 The Revenue Recovery authorities (i.e. Collectors/DDOs/Mamlatdars/TDOs) exercise their powers for recovery of dues as arrears of land revenue as provided in the BLR Code and GLR Rules and various instructions issued by the Revenue Department from time to time which formed the audit criteria for the purpose of this review.

Audit Methodology

3.2.7 Nine districts were selected in such a way that four major revenue earning districts, Ahmedabad, Vadodara, Surat and Rajkot get covered and remaining five (Gandhinagar, Mehsana, Junagadh, Porbandar and Valsad) were selected on the basis of their geographical location so that the entire State gets represented.

Information/details of RRCs issued by the Director of Foreign Trade, Ahmedabad, the National Small Industries Corporation Ltd., Ahmedabad, the Commissioner of Geology and Mining, the Commissioner of Transport and the lead bank (Dena Bank, Ahmedabad) were collected for cross verification with the respective Collectors/DDOs whose records were selected for detailed scrutiny.

Non/improper maintenance of initial records and non-reconciliation of RRC cases between District and Taluka Offices.

3.2.8 The Revenue Department had issued instructions in July 2001, December 2001 and August 2002 about the procedure to be followed for maintenance of registers/records in the offices of the Collector/DDO/Mamlatdar/TDO. According to these instructions, on receipt of the requisition from requisitioning authority, the concerned Collector/DDO shall first get it entered in his/her Revenue Recovery Register before transmitting it to the concerned Mamlatdar/TDO. The Mamlatdar/TDO, in turn, is required to enter immediately the RRC in their Revenue Recovery Register and thereafter initiate proceeding of recovery within 10 days. Each case of recovery shall be scrutinised monthly by a responsible officer and expeditious action taken for recovery of dues. Monthly returns in prescribed form were required to be submitted by the Mamlatdars/TDOs to the Collector/DDO showing the number of cases registered, number of cases finalised and number of cases

pending at the end of the month alongwith amount involved therein. The Collectors/DDOs, in turn, are required to send a consolidated report in prescribed form for the district as a whole, to the Revenue Department. Further, reconciliation of RRC cases between the District level and Taluka level offices are required to be carried out. Action (i.e. recording entry in annual confidential report) is required to be taken against the officers responsible for carelessness in work of recovery of arrears.

Test check of records of nine Collectors/DDOs and their respective Mamlatdar/TDO offices revealed the following:

- the Revenue Recovery Registers were not maintained in 21³ offices and where these were maintained, the same were not in uniform format. Due to non/improper maintenance of registers, the progress made in recovery of dues and pendency thereof could not be verified by the recovery officers.
- twenty three RRCs involving Rs.1.16 crore issued by the various requisitioning authorities to Collector, Mehsana and DDO, Mehsana between 1999 and 2003 were not registered and hence were not sent to the concerned Mamlatdars/TDOs for taking further action.
- 210 RRCs involving Rs.321.40 crore sent by four⁴ Collectors and two⁵ DDOs to 21⁶ Mamlatdars and two⁷ TDOs between April 1999 and March 2004 were not traceable in the offices of the Mamlatdars and TDOs.

As a result, an amount of Rs.322.56 crore remained un-recovered for a period ranging from six to 63 months and consequent non-realisation of Government revenue of Rs.16.13 crore being service charges leviable at the rate of five *per-cent* of the amount of dues.

- monthly reports showing registration/disposal/pendency of RRC cases were either not submitted at all or was not at regular intervals in case of district and taluka level offices test checked.
- reconciliation of RRC cases shown in the registers of district and taluka level offices have not been carried out at any point of time. Detailed scrutiny of cases referred to taluka offices revealed the following:

³ Collector: Ahmedabad and Gandhinagar

Mamlatdar: Choryasi

DDO: Gandhinagar and Valsad

TDO: Bardoli, Choryasi, Gandhinagar, Kalol(Mehsana), Kamrej, Mahuva(Surat), Mandvi, Mangrol(Surat), Nizar, Olpad, Palsana, Songadh(Surat), Uchhal, Umarpada, Valod and Vyara.

⁴ Collector: Junagadh, Mehsana, Rajkot and Surat

⁵ DDO: Ahmedabad and Vadodara

⁶ Mamlatdar: Choryasi, Gondal, Jasdani, Jam-Kandorna, Jetpur, Junagadh, Keshod, Kodinar, Kotasanghani, Ladhika, Malihatina, Mehsana, Rajkot, Surat, Talala, Tankara, Upleta, Vanthali, Veraval, Visavadar and Wankaner

⁷ TDO: Ahmedabad and Vadodara

(Rupees in lakh)

Name of Collector/ DDO	Demand as per Collector/ DDO register/ returns	Name of Mamlatdar/ TDO	Demand as per Mamlatdar/ TDO/ register/ returns	Difference*
	No. of cases (Amount)		No. of cases (Amount)	No. of cases (Amount)
Collector, Rajkot	Nil(Nil)	Addl. Mamlatdar, Rajkot City	<u>1</u> 81.92	1(81.92)
-do-	8(359.08)	Mamlatdar, Dhoraji	<u>3</u> 5.07	5(354.01)
DDO, Vadodara	NA(24,769.96)	TDO, Vadodara	<u>NA</u> 55.33	NA(24,714.63)
-do-	NA(2.40)	TDO, Padra	<u>NA</u> 0.72	NA(1.68)
-do-	NA(28.02)	TDO, Waghodia	<u>NA</u> 8.20	NA(19.82)
Collector, Vadodara	616(7,910.26)	Mamlatdar, Vadodara City	<u>1118</u> 2,168.04	502(5,742.22)
Collector, Valsad	25(11.82)	Mamlatdar, Dharampur	<u>24</u> 0.99	1(10.83)
Collector, Valsad	116(46.75)	Mamlatdar, Pardi	<u>36</u> 2.92	80(43.83)
-do-	433(78.68)	Mamlatdar, Valsad	<u>26</u> 9.91	407(68.77)
-do-	3(0.58)	Mamlatdar, Umargam	<u>Nil</u> Nil	3(0.58)

As reconciliation was either not carried out at all or at regular intervals, the difference between the cases referred by the district level offices to the taluka level office could not come to the notice of the higher authorities.

After this was pointed out in audit, the Department has prescribed in February 2005 uniform format for maintenance of registers and also issued instructions for monthly reconciliation of RRC cases between district and taluka offices. Further, while accepting the objection, eight⁸ Recovery Officers stated that

* The information has been compiled in respect of offices where there was difference in two set of figures.

⁸ Collector: Gandhinagar, Junagadh, Mehsana and Surat
DDO: Ahmedabad, Gandhinagar, Mehsana and Vadodara

they would either trace out the RRCs or collect the copy of RRCs to initiate recovery proceedings.

Position of arrears

3.2.9 As per details available with the offices selected for detailed scrutiny, 29,549 cases involving amount of Rs.466.67 crore recoverable as arrears of land revenue were pending as on 31 March 2004. Year wise position of recoverable demand, cases returned without recovery, recovery made and balance during last five years ending 31 March was as under:

(Rupees in lakh)

Year	Opening Balance	Fresh Demand	Total demand	RRC returned	Amount collected	Input/output ratio during the year	Closing Balance	Percentage of recovery
	No.of cases Amount	No.of cases Amount	No.of cases Amount	No.of cases Amount	No.of cases Amount	No.of cases Amount	No.of cases Amount	(6) to (4)
1	2	3	4	5	6	7	8	9
99-00	<u>15,047</u> 70.37	<u>3,573</u> 33.61	<u>18,620</u> 103.98	<u>166</u> 4.03	<u>1,067</u> 2.73	<u>3:1</u> 12:1	<u>17,387</u> 97.22	2.63
00-01	<u>17,387</u> 97.22	<u>5,413</u> 253.12	<u>22,800</u> 350.34	<u>378</u> 9.29	<u>1,041</u> 3.58	<u>5:1</u> 71:1	<u>21,381</u> 337.47	1.02
01-02	<u>21,381</u> 337.47	<u>4,336</u> 42.43	<u>25,717</u> 379.90	<u>391</u> 7.40	<u>785</u> 4.34	<u>6:1</u> 10:1	<u>24,541</u> 368.16	1.14
02-03	<u>24,541</u> 368.16	<u>3,608</u> 75.88	<u>28,149</u> 444.04	<u>563</u> 8.43	<u>960</u> 5.64	<u>4:1</u> 13:1	<u>26,626</u> 429.97	1.27
03-04	<u>26,626</u> 429.97	<u>4,286</u> 95.98	<u>30,912</u> 525.95	<u>559</u> 52.03	<u>804</u> 7.25	<u>5:1</u> 13:1	<u>29,549</u> 466.67	1.38

Percentage of recoveries during five years ending March 2004 ranged between 1.02 and 2.63 *per cent*. 21,216 cases involving Rs.501.02 crore were received whereas 4,657 cases involving amount of Rs.23.54 crore were disposed of during the period 1999-2000 to 2003-04. The inflow and outflow ratio varied between 3:1 and 6:1 in respect of number of RRC cases and 10:1 and 71:1 in respect of recovery of amount during these years. Thus, the number of cases pending for disposal had increased steadily. The Department did not initiate any steps to arrest this trend. The Revenue Department did not fix any norms for disposal of certificate cases by each officer leading to huge accumulation of pending cases. Age wise pendency of arrears treated as arrears of land revenue was not available with the Department or the field offices.

Efficiency of Revenue Recovery Machinery

3.2.10 In order to assess the efficiency of revenue recovery machinery in terms of timely initiation of action and consequent recovery, a sample of 3,123 cases out of total pending RRC cases as on 31 March 2004 was randomly drawn involving an amount of Rs.352 crore. The sample was taken from

offices selected for detailed scrutiny. The table below shows the position existing in these offices:

(Rupees in lakh)

Sl. No.	Offices DDO DC	Selected cases DDO DC	Amount involved DDO DC	Recovery in cases (per cent) DDO DC	Amount recovered (per cent) DDO DC	No. of notices issued (per cent) DDO DC
1	2	3	4	5	6	7
1	Surat	139 37	405.18 271.85	3(2.16) 1(2.70)	0.45(0.11) 0.23(0.08)	104(74.82) 15(40.54)
2	Vadodara	133 63	25,115.14 1,862.17	Nil(0) 14(22.22)	Nil(0) 9.93(0.53)	43(32.33) 54(85.71)
3	Gandhinagar	28 35	61.26 196.52	Nil(0) Nil(0)	Nil(0) Nil(0)	Nil(0) 33(94.29)
4	Junagadh	210 126	139.37 215.69	Nil(0) 33(26.19)	Nil(0) 18.43(8.54)	207(98.57) 124(98.41)
5	Mehsana	12 26	87.61 47.67	Nil(0) 6(23.08)	Nil(0) 1.95(4.09)	3(25.00) 21(80.77)
6	Porbandar	51 1,335	27.72 1,536.84	Nil(0) Nil(0)	Nil(0) 55.00(3.58)	2(3.92) Nil(0)
7	Valsad	91 30	81.64 11.28	Nil(0) 5(16.67)	Nil(0) 1.52(13.50)	28(30.77) 8(26.67)
8	Ahmedabad	29 70	300.87 3,173.66	Nil(0) Nil(0)	Nil(0) Nil(0)	24(82.76) 64(91.43)
9	Rajkot	586 122	87.46 1,577.82	Nil(0) 19(15.57)	Nil(0) 8.56(0.54)	499(85.15) 116(95.08)
	Total	3,123	35,199.75	81(2.59)	96.07(0.27)	1,345(43.06)

Out of 3,123 cases selected (outstanding as on 31 March 2004), action for recovery under the BLR code was initiated in 1,345 cases which was 43 per cent on an average and ranged from nil to 98.57 per cent for individual offices. The Collector, Porbandar and the DDO, Gandhinagar had not initiated any action whereas maximum number of cases acted upon was by the DDO, Junagadh. The proportion of cases in which part or full recovery was made ranged from nil to 26.19 per cent. However, recovery was made in only 81 cases (2.59 per cent) out of a total of 3,123 cases. The proportion of amount recovered to total amount involved varied from nil to 13.50 per cent, the maximum by Collector, Valsad. In 10⁹ out of 18 offices test checked, no recovery was made at all though amount of Rs.292.71 crore was recoverable in 1,245 cases selected.

⁹ DDO: Ahmedabad, Gandhinagar, Junagadh, Mehsana, Porbandar, Rajkot, Vadodara and Valsad.
Collector: Ahmedabad and Gandhinagar.

Non-issue/delay in issue of demand notices

3.2.11 As per Section 152 of the BLR Code, and Rule 118 of the GLR Rules, the revenue recovery authorities are required to issue a demand notice immediately on or after the day following that on which the arrear accrues.

- In case of offices of five¹⁰ Mamlatdars and 14¹¹ TDOs, demand notices in 137 cases registered between April 1999 and January 2004 involving recovery of Rs.81.84 crore were not issued. Non-issue of demand notices even after a lapse of nine to 66 months resulted in non-recovery of outstanding dues of Rs.81.84 crore apart from non-realisation of service charges of Rs.4.09 crore.
- In the office of the Mamlatdar, Vadodara demand notices in four cases registered between December 2003 and January 2004 were issued with delay ranging from four to five months. This resulted in delay in initiating recovery proceeding of Rs.13.04 crore and service charge of Rs.0.65 crore.

Non-issue of warrant of attachment

3.2.12 As per Sections 154 and 155 of the BLR Code, if the defaulter fails to deposit the dues within the stipulated time limit specified in the demand notice, a warrant is to be issued to attach his movable/immovable property.

In offices of eight¹² Mamlatdars and two¹³ TDOs, though demand notices were served upon the defaulters in 46 cases involving recovery of Rs.45.86 crore between December 1999 and January 2004, warrants of attachment of property were not issued even after lapse of nine to 55 months.

Non-initiation of steps as per codal provisions resulted in non-recovery of dues and resultant non-realisation of service charges of Rs.2.29 crore.

Non-attachment of property

3.2.13 After serving warrant of attachment upon the defaulter, the Mamlatdar/TDO is required to take action for attachment of property of the defaulter. Further, action for sale of attached property through public auction is to be taken after the expiry of 30 days from the date on which notice was served/affixed.

- In offices of three¹⁴ Mamlatdars, warrant of attachment in 31 cases involving recovery of Rs.32.69 crore were served between July 1999 and October 2003 to the defaulters. No further action was taken to attach the property and hold auction proceedings as per provisions of

¹⁰ Mamlatdar: Ahmedabad, Gandhinagar, Mehsana, Unjha and Vadodara

¹¹ T.D.O.: Bardoli, Choryasi, Kutiana, Mahuva(Surat), Mandvi, Mangrol(Surat), Olpad, Palsana, Ranavav, Songhad(Surat), Umarpada, Vadodara, Valod and Vyara.

¹² Mamlatdar : Ahmedabad, Choryasi, Dhoraji, Gandhinagar, Mehsana, Rajkot, Ranavav and Vadodara.

¹³ T.D.O.: Ranavav and Vadodara

¹⁴ Mamlatdar : Ahmedabad, Rajkot and Vadodara

the BLR Code. This resulted in non recovery of dues of Rs.32.69 crore and resultant non-realisation of service charges of Rs.1.63 crore.

- In the office of the Mamlatdar, Ahmedabad city, two RRCs were incorrectly sent between April 1999 and July 2000 to the talatis for making entries in village records for creation of charge on the immovable properties of the defaulters instead of taking action for attachment of such properties as per provisions of the BLR code. Non-observation of codal provisions for attachment of properties resulted in non-recovery of outstanding dues of Rs.1.85 crore and non-realisation of service charges of Rs.0.09 crore.

After this was pointed out, all Recovery Officers accepted the objection. However, four¹⁵ officers stated that non-issue or delay in issue of demand notices was due to engagement of staff on election duties and similar other urgent official engagements or shortage of staff. However it was assured that necessary action would be taken for issue of notices of demand/warrant of attachment/attachment of properties. The Government stated in February 2005 that Prant Officers have been appointed as nodal officers to look after the progress of recovery of RRC cases.

Return of revenue recovery certificates

3.2.14 In cases where the dues cannot be realised due to:

- incorrect/incomplete address of the defaulters;
- non-existence of the firm/company;
- whereabouts of the defaulters not known or
- there were no properties in the name of defaulters,

the Department instructed in December 2001 all revenue recovery officers to consult the senior officials of the Police Department to proceed further in the case.

During test check of records of Collector, Rajkot and two¹⁶ Mamlatdars, it was noticed that 8 RRCs involving Rs. 7.40 crore issued between 1999-2000 and 2003-04 by the DCs for recovery of arrears were returned between January 2002 and October 2003 to the requisitioning authorities or to the respective DCs without consulting the Police Department on the ground that the amount of arrears could not be realised due to one or more of the reasons narrated above. This was in violation of the instructions.

Non-realisation of service charges

3.2.15 Under the provisions of the GLR Rules, and notification dated 13 May 1983 issued by the Revenue Department, service charges at the rate of five *per cent* of the arrears due from the defaulters shall be included in the demand notices.

¹⁵ Collector: Ahmedabad, Rajkot and Vadodara
DDO: Vadodara

¹⁶ Mamlatdar : Ahmedabad and Vadodara

During scrutiny of records of offices of Collector and DDO Gandhinagar, 13¹⁷ Mamlatdars and 11¹⁸ TDOs, it was noticed that service charges of Rs.0.16 crore being five *per cent* of arrears of Rs.3.24 crore recovered in 1,890 cases between April 1999 and February 2004 were not demanded and recovered from the parties. Further, in offices of eight¹⁹ Mamlatdars and six²⁰ TDOs, the service charges of Rs.12.11 crore recoverable on amount of dues of Rs.242.15 crore in 100 cases were not included in the demand notices issued between April 1999 and February 2004 to the defaulters in contravention of the provisions of the GLR Rules.

After this was pointed out, all recovery officers accepted the objection and agreed to issue demand notices for recovery of service charges in these cases. Further progress has not been received (June 2005).

Recovery of arrears of motor vehicle tax

3.2.16 As provided in the Bombay Motor Vehicles Tax Act, 1958, if motor vehicle tax is not paid by the defaulter within 15 days from the date of issue of the demand notice, taxation authority is required to issue RRC to recover tax as arrears of land revenue through Mamlatdars deputed to Motor Vehicles Department. Under the provisions, recovery Mamlatdars can take action to recover the dues by distraint and sale of movable and immovable property of defaulters or by arresting and sending the defaulters to prison.

During test check of records of the Commissioner of Transport, it was observed that an amount of Rs.26.93 crore of arrears of motor vehicle tax as on 31 March 2004 required to be recovered by the Mamlatdars as arrears of land revenue remained unrecovered and the Mamlatdars did not take action prescribed under the Act except for issuing routine demand notices.

Arrears of motor vehicle tax pending recovery in the State during last five years as at the end of March 2004 were as under:

(Rupees in crore)

Year	Opening Balance	Addition during the year	Total	Amount recovered	Closing Balance	Percentage of recovery Col 4 to 3
	1	2	3	4	5	6
1999-00	<u>12.65</u> (32506)	<u>12.98</u> (1151)	<u>25.63</u> (33657)	<u>1.42</u> (1212)	<u>24.21</u> (32445)	5.54
2000-01	<u>24.21</u> (32445)	<u>2.11</u> (712)	<u>26.32</u> (33157)	<u>3.21</u> (1619)	<u>23.11</u> (31538)	12.19
2001-02	<u>23.11</u> (31538)	<u>4.93</u> (882)	<u>28.04</u> (32420)	<u>3.71</u> (1746)	<u>24.33</u> (30674)	13.23

¹⁷ Mamlatdar : Dharampur, Gandhinagar, Junagadh, Keshod, Kodinar, Manavadar, Mangrol, Pardi, Rajkot, Ranavav, Vadodara, Valsad and Vanthli

¹⁸ TDO : Kamrej, Mahuva(Surat), Mandvi, Mangrol(Surat), Nizar, Olpad, Palsana, Songadh(Surat), Uchhal, Vadodara and Valod

¹⁹ Mamlatdar : Gondal, Jasdan, Mehsana, Rajkot, Unjha, Vadnagar, Vadodara and Visnagar

²⁰ TDO : Kadi, Kheralu, Mehsana, Vadnagar, Vadodara and Vijapur

2002-03	<u>24.33</u> (30674)	<u>5.34</u> (2113)	<u>29.67</u> (32787)	<u>5.02</u> (3625)	<u>24.65</u> (29162)	16.92
2003-04	<u>24.65</u> (29162)	<u>7.73</u> (2429)	<u>32.38</u> (31591)	<u>5.45</u> (2636)	<u>26.93</u> (28955)	16.83

Number of cases shown in brackets.

It would be seen from the above that though recovery of arrears ranged between 5.54 and 16.92 *per cent* between 1999-2000 and 2003-04, pendency of arrears increased by 213 *per cent* from Rs.12.65 crore to Rs.26.93 crore during the same period. Non-recovery of motor vehicle tax of Rs.26.93 crore resulted in non-realisation of service charges of Rs.1.35 crore.

Acknowledgement

3.2.17 We are thankful to the Department and various field offices for co-operation extended by them at various stages. Audit findings were discussed with the Pr.Secretary (Revenue) who while accepting them in principle issued a circular incorporating all the audit recommendations. In the field offices where details of pending RRC cases were not readily available, they produced the same before finalisation of the review.

The Department and the field offices accepted the existing position. They were quite forthcoming in taking corrective measures to improve the extant position. Vide their circular dated 25 February 2005, the Government has not only incorporated all the audit suggestions but also added a few additional points to streamline the system:

- to ensure whether the requisitioning authority has explored all courses of action to recover outstanding dues before forwarding the RRC to the Revenue Department;
- Prant Officer was nominated as the nodal agency to monitor the recovery proceedings.

In addition, the Department is contemplating mooted a proposal by which powers will be delegated to the Recovery Agents of the Nationalised Banks for recovery in respect of RRCs pending with them. Simultaneously they are deliberating the possibility of amending the provisions of the BLR code and inserting the provisions for recovery of outstanding dues by way of "attachment of properties" instead of by way of "Revenue Recovery Certificates".

3.3 Non/short levy of conversion tax

Under the BLR Code as applicable to Gujarat, conversion tax is leviable on change in mode of use of the land from agricultural to non-agricultural purposes or from one non-agricultural purpose to another in respect of land situated in a city, town or village. Different rates of conversion tax are prescribed for residential/charitable and industrial/other purposes, depending upon the population of the city/town/notified area/ village. By an amendment notification, the rates of conversion tax were revised with effect from 1 April

2003. The conversion tax shall be paid in advance by a challan in the Government Treasury.

During test check of the records of Mamlatdar {Non-Agriculture (NA)}, Vadodara, four[§] Collectors, five^{*} DDOs, two[#] Prant Officers and 36[@] TDOs, it was noticed between December 2003 and November 2004 that in 337 cases relating to the period 1999-2000 to 2003-04, conversion tax for change in mode of use, though leviable, was either not levied or levied at incorrect rate on 46.17 lakh sq.m. as of land. Failure on the part of the departmental officials to follow the codal provisions resulted in non/short levy of conversion tax amounting to Rs.2.07 crore.

The above facts were brought to the notice of the Department between January and December 2004 and of the Government in January 2005. The Government accepted audit observations in June 2005 and recovered an amount of Rs.1.17 crore in 130 cases. Particulars of recovery in remaining cases have not been received (June 2005).

3.4 Non recovery of occupancy price

Under the BLR Code and the GLR Rules, unoccupied land may be allotted on certain terms and conditions as may be specified in the permission order. The terms and conditions *inter-alia* provide that possession of land could be given only on payment of cost of land. Thus the Collector is required to recover the price of the land before granting permission to occupy the land.

During test check of records of Collector (LR), Rajkot, it was noticed in March 2004 that land measuring 25,406 sq.mtrs. was allotted and possession handed over to Gujarat Telecom Circle between May 2000 and November 2002 without recovering the occupancy price of Rs.42.07 lakh from the above Department.

The above facts were brought to the notice of the Department in June 2004 and of the Government in January 2005. The Government replied (June 2005) that the BSNL[⊕] requires about 1000 sq.mtrs. only at each place and wants to give back the land in excess of their requirement to the Government. Final decision in the matter is awaited (June 2005). Action of the Collector to hand over possession of land without recovering the occupancy price was in contravention of the provisions of the Act.

3.5 Loss of revenue due to correction of records of rights without registration of documents

Under the BLR Code, the Talati of a village is authorised to correct the village records changing the ownership of the property on receipt of intimation in

[§] Anand, Bharuch, Dahod and Palanpur.

^{*} Dahod, Godhra, Jamnagar, Navsari and Palanpur.

[#] Dholka and Viramgam.

[@] Anjar, Bagasara, Bardoli, Bavla, Bharuch, Bhachau, Bhavnagar, Bhesan, Bhuj, Botad, Dhrangadhra, Gadhada, Gandhidham, Godhra, Idar, Kamrej, Keshod, Kodinar, Limbdi, Mahuva(Bhavnagar), Mahuva(Surat), Mehmedabad, Muli, Mundra, Nadiad, Navsari, Palanpur, Pavijetpur, Sanand, Savarkundla, Sihor, Talaja, Upleta, Valia, Valsad and Viramgam.

[⊕] Bharat Sanchar Nigam Limited

writing from any person within three months of acquiring a property. Section 17 of the Indian Registration Act, 1908, provides that registration of every document of sale, mortgage, lease or exchange of the property of the value of Rs.100 or more is compulsory. Further, the Bombay Stamp (BS) Act, 1958, empowers every person in charge of a public office to impound any instrument, produced before him in the performance of his functions, if it appears that such instrument is not duly stamped.

During test check of the records of Mamlatdar (City), Surat, two* Collectors, two# DDOs, five& Prant Officers and 19@ TDOs, it was noticed between December 2003 and April 2004 that entries regarding rights of properties, valued at Rs.20.05 crore in 123 cases, were carried out by the Talaties between 1999-2000 and 2003-04 in the village records of rights. Such entries of transfers/charges were made in favour of persons, financial institutions, banks etc., on the basis of intimations received from them though these intimations were not supported by valid registered documents. In 57 other cases, the concerned Collectors/DDOs/TDOs/Prant Officers while according permission for non agricultural purposes did not impound the unregistered/unstamped irrevocable powers of attorney of properties in their favour produced by the parties before them. Non-inclusion of corresponding provision in the Code making the production of registered documents compulsory for carrying out corrections in the village records and failure on the part of the departmental officials to exercise the powers conferred upon them under the BS Act, resulted in loss of revenue in the form of stamp duty and registration fees amounting to Rs.1.23 crore.

The above facts were brought to the notice of the Department between January and December 2004 and of the Government in January 2005. The Department replied that the Inspector General of Registration has instructed all Collectors, DDOs, Prant Officers and TDOs to send a copy of unregistered documents to the respective Deputy Collectors (VOP) for further action. Moreover, they have issued instructions in June 2005 not to make/approve such entries unless documents produced in support are not properly stamped and registered.

3.6 Non/short recovery of non-agricultural assessment

Under the BLR Code and the Rules made there under, land revenue is payable at the prescribed rates on all lands unless specifically exempted from payment. For determining the rates of non-agricultural assessment (NAA), cities, towns and villages have been divided into five classes from "A" to "E" according to their population. Different rates depending on use of land are prescribed for each class of city/town/village. Peripheral areas falling within five kilometers of class "A" city and one kilometer of class "B" and "C" town/village are classified along with respective cities and towns. Certain industrial and adjoining areas which are notified by the Government are also classified as class "B" areas irrespective of the population of the concerned areas. By a

* Surendranagar and Valsad.

Surendranagar and Valsad.

& Chhotaudepur, Dabhoi, Dholka, Vadodara and Viramgam.

@ Ahmedabad (City), Ankleshwar, Anand, Amirgarh, Bharuch, Bardoli, Borsad, Dharampur, Gandhidham, Khedbrahma, Limbdi, Mehmedabad, Navsari, Olpad, Pardi, Palanpur, Sankheda, Una and Valsad.

notification, the rates were revised with effect from 1 August 2003 classifying the villages in three categories. All payments of land revenue shall be made to the officers of the village in which such revenue is due and noted in the prescribed forms/registers. The Code provides for issue of demand notice, distraint and sale of defaulter's movable/immovable property etc., by Village Officer for non payment of land revenue.

During test check of the records of Mamlatdar, Bhuj and six[&] TDOs, it was noticed between December 2003 and October 2004 that in 106 cases, on land measuring 2.12 crore sq.mtrs. used for non-agricultural purposes during the period between 2000-01 and 2003-04 by housing societies, semi-Government bodies, industrial units, individuals *etc.*, NAA was either not levied or was levied at incorrect rates. Failure to initiate action as per the codal provisions resulted in non/short recovery of NAA of Rs.74.72 lakh as detailed below:

(Rupees in lakh)

Sl. No.	Name of the Taluka/ place No.of cases	Period	Area of land (sq.mtr in lakh)	Amount		Nature of irregularity
				Recov-erable/ Recov-ered	Not/ short recov-ered	
1	Valsad, Shihor, Mundra and Bhuj 33	Between 2000-01 and 2002-03	188.88	<u>48.12</u> 1.13	46.99	NAA was not/short levied on land used for industrial, commercial, residential and for development of Port.
2	Bhavnagar and Vadodara 66	2003-04	21.93	<u>26.11</u> 0.68	25.43	NAA was levied at pre-revised rates on land used for various non-agricultural purposes.
3	Choryasi (Surat) 07	2003-04	1.15	<u>2.44</u> 0.14	2.30	Though NAA was leviable at higher rate on land falling under periphery of Surat Urban Development Authority, it was levied at lower rate.
	Total 106		211.96	<u>76.67</u> 1.95	74.72	

The above facts were brought to the notice of the Department between January and December 2004 and of the Government in January 2005. The Government accepted audit observations in all cases and recovered an amount of Rs.49.06 lakh in 40 cases. Particulars of recovery in remaining cases have not been received (June 2005).

[&] Bhavnagar, Choryasi, Mundra, Sihor, Vadodara and Valsad

CHAPTER-IV

TAXES ON VEHICLES

4.1 Results of Audit

Test check of records in the offices of Commissioner of Transport, Regional Transport and Assistant Regional Transport Offices in the State, conducted in audit during the year 2004-05 disclosed under-assessments, etc., amounting to Rs.17.80 crore in 85 cases. These cases broadly fall under the following categories:

(Rupees in crore)			
Sl. No.	Category	No. of cases	Amount
1	Non/short levy of motor vehicle tax	65	16.98
2	Other irregularities	20	0.82
	Total	85	17.80

During the year 2004-05, the Department accepted and recovered under assessment of Rs.1.36 crore in 645 cases pertaining to earlier years. A few illustrative cases highlighting important audit observations involving Rs.15.95 crore are given in the following paragraphs.

4.2 Non/short levy of Motor Vehicles Tax

Under the Bombay Motor Vehicles Tax (BMVT) Act, 1958 and Rules made thereunder, tax is levied and collected in advance on all motor vehicles and omnibuses/luxury buses (exclusively used as contract carriage) used or kept for use in the State. The owner of a vehicle, who does not intend to use the vehicle or keeps it for use in the State but desires to avail exemption from payment of tax, has to make a declaration in advance. If a non-use declaration is accepted by the taxation authority, it is noted in the tax index cards/registers and no tax is payable for the period of such non-use. The taxation authorities are required to review the tax index cards/registers to identify the defaulters and take prompt action to recover the dues. According to Section 18(1) of the BMVT Act and Commissioner of Transport's circular dated 7 March 2001, penalty at the rate of 15 *per cent* of tax remaining unpaid is leviable when owner himself comes forward for payment of tax. In cases of vehicles found plying on road without payment of tax or where revenue recovery certificate has been issued to Mamlatdars, penalty at the rate of 25 *per cent* is leviable. The Government vide Resolution of 27 June 2003 further clarified that where delay in payment of tax exceeds one month, penalty at the rate of two *per cent* per month or part thereof, subject to maximum of 25 *per cent*, is chargeable from defaulters.

Further, Section 8A of the Act introduced with effect from 1 April 2003 provides that interest at the rate of two *per cent* per month or part thereof is leviable on the tax remaining unpaid within prescribed time.

During test check of records of 18* taxation authorities, it was noticed between December 2003 and October 2004 that operators of 517 omnibuses, who kept their vehicles for use exclusively as contract carriage and 558 vehicles used for transport of goods had neither paid tax nor filed non-use declarations for various periods between 1999-2000 and 2003-04. Failure of the Department in issuing demand notices and not taking recovery action prescribed under the Act resulted in non/short levy of motor vehicles tax of Rs.15.65 crore including interest and penalty.

The above facts were brought to the notice of the Department between January and December 2004 and of the Government in February 2005. The Department accepted audit observations in all the cases and recovered Rs.88.83 lakh in 147 cases. Particulars of recovery in the remaining cases have not been received (June 2005).

4.3 Non/short levy of lump sum tax

Under the BMVT Act, the State Government prescribed rates of one time tax (lump sum tax), with effect from April 1987, leviable on all non-transport vehicles where unladen weight does not exceed 2250 kgs. From September 2001, lump sum tax (LST) is also leviable on transport vehicles used for carriage of goods or materials where registered laden weight does not exceed 3000 kgs. In respect of such vehicles registered prior to September 2001, LST was recoverable according to the age of the vehicle in 12 equal monthly instalments. The Act provides for levy of interest and penalty for non-payment of tax in time.

During test check of the records of 10# taxation authorities for the period 2002-04, it was noticed between December 2003 and September 2004 that LST in respect of 277 transport vehicles used for carriage of goods registered prior to September 2001 was not recovered which resulted in non/short levy of LST of Rs.30.26 lakh including interest and penalty.

The above facts were brought to the notice of the Department between January and December 2004 and of the Government in February 2005. The Department accepted audit observations in all cases and recovered Rs.8.16 lakh in 78 cases. Recovery particulars in remaining cases have not been received (June 2005).

4.4 Delay in revalidation of drafts

Under the BMVT Rules, 1959, as amended from time to time, payment of tax may be made by the vehicle owner in Government treasury or to the Taxation Authority in cash, by cheque or Demand Draft (DD). Under reciprocal

* Ahmedabad, Amreli, Bardoli, Bharuch, Bhuj, Dahod, Gandhinagar, Godhra, Junagadh, Mehsana, Nadiad, Navsari, Palanpur, Patan, Porbandar, Surat, Surendranagar and Valsad.

Bhuj, Dahod, Gandhinagar, Godhra, Mehsana, Nadiad, Navsari, Porbandar, Surat and Valsad.

agreements, the Government of Gujarat collects the composite fee in the form of DDs through State Transport Authority of respective States by whom permits are granted to vehicles for plying in Gujarat State which is credited to government account by the Commissioner of Transport. If the validity of the DDs expires, these are returned to the authorities concerned of the home States for revalidation.

During test check of records of Commissioner of Transport, Ahmedabad it was noticed in January and December 2003 that 225 DDs for Rs.9.06 lakh received on account of composite fee from other States were either received late or not deposited promptly with the result validity of these drafts expired. Though these DDs were sent for revalidation between July 2001 and February 2003, the same were not received back. Failure on the part of departmental officials to initiate prompt action for revalidation of drafts resulted in non realization of composite fee of Rs.9.06 lakh.

The above facts were brought to the notice of the Department in March 2003 and March 2004 and of Government in February 2005. The Department replied in May 2003 that to avoid delay in realization of Government money, it has been decided by the States covered under reciprocal agreements that officials of taxation authority of the concerned States meet once in every three months to settle the issue. Out of 225 DDs only 20 DDs involving amount of Rs.70,400 have been stated to be revalidated. In respect of other DDs, reply has not been received (June 2005).

4.5 Internal control

The taxation branch maintains tax index card for each vehicle and determines and records the rate of tax appropriate to the vehicles. The tax index cards of all vehicles are to be reviewed twice a year as a measure of internal control to identify defaulters and to initiate recovery proceedings. Further as per Section 12B of BMVT Act, the Department has been empowered to seize and detain vehicles until dues are paid.

Demand drafts register is maintained in the office of the Commissioner of Transport to watch receipt of road tax in respect of vehicles holding national permits for plying in Gujarat. The receipt of DDs, their prompt deposit in banks for realization and effective steps to revalidate time barred DDs is watched through this register.

Scrutiny of records of various offices[⊕] between January and October 2004 revealed that though the register of recovery of tax and register of DDs have been maintained, entries of payment of tax are not made in time and timely action for remittance of DDs received was not ensured. The registers were not closed periodically with the result the amount of tax not paid at a given point of time was not known either to the officer maintaining the registers or to his superiors. Thus due to incomplete exercise, important internal control intended to identify defaulters and to initiate recovery proceedings by the taxation authorities and timely realization of DDs towards recovery of

[⊕] Commissioner of Transport, Ahmedabad and RTOs of Ahmedabad, Amreli, Bardoli, Bharuch, Bhuj, Dahod, Gandhinagar, Godhra, Junagadh, Mehsana, Nadiad, Navsari, Patan, Porbandar, Surat and Surendranagar.

Government dues were not adequately applied. Non collection of tax due to non-review of tax index cards was commented upon in Para 4.2.5 of Audit Report (Revenue Receipts) of Government of Gujarat for the year ended 31 March 1996.

After this was pointed out, the Commissioner of Transport replied (June 2005) that corrective measures have been adopted from 2005-06 onwards by maintaining details of movement of each DD and also streamlining the monitoring in this respect.

CHAPTER-V

STAMP DUTY AND REGISTRATION FEES

5.1 Results of Audit

Test check of assessment records in the registration offices and offices of the Collectors of Stamp Duty (valuation of property) in the State, conducted in audit during the year 2004-05 disclosed short realisation of stamp duty and registration fees amounting to Rs.49.84 crore in 204 cases, which fall under the following categories:

(Rupees in crore)			
Sl. No.	Category	No. of cases	Amount
1	Misclassification of documents	86	9.27
2	Under valuation of property	46	12.03
3	Incorrect grant of exemption	4	0.09
4	Under assessment of stamp duty on instruments of mortgage deeds	19	1.59
5	Irregular acceptance of time barred cases resulting in postponement of realization of Government duty	23	23.98
6	Other irregularities	26	2.88
	Total	204	49.84

During the year 2004-05, the Department accepted and recovered under assessment of Rs.3.95 lakh in five cases pertaining to earlier years. A few illustrative cases highlighting important audit observations involving Rs.15.12 crore are given in the following paragraphs.

5.2 Loss of revenue by way of stamp duty due to acceptance of time barred appeal cases

Under Section 32-B of Bombay Stamp (BS Act) Act, 1958, as applicable to Gujarat, any person aggrieved by an order passed by the Collector, valuation of property (VOP) under Section 31 or 32-A determining the market value, may represent his case to the Chief Controlling Revenue Authority (CCRA) through the Collector (VOP), within 60 days from the date of order passed by the Collector (VOP). Section 53(1) (a) of the Act further provides that the CCRA shall not entertain an appeal application made by a person unless such an application is presented within a period of 60 days from the date of order of the Collector.

During test check of records of 16^s Dy.Collectors (VOP) it was noticed between December 2003 and October 2004 that the Dy.Collectors had determined the market value of 569 documents between February 1992 and September 2003. The aggrieved parties filed appeals between April 2000 and March 2004. The appeal applications were submitted after expiry of the prescribed period of 60 days with delays ranging from two to 4,063 days. The Dy. Collectors had referred these appeals to the CCRA between April 2001 and April 2004. Out of these, 20 cases involving Rs.49.66 lakh pertaining to Dy.Collector (VOP), Bharuch were remanded by the CCRA on 8 April 2003 with orders to refund the amount of deposit to the parties. Remaining cases were pending for final decision. Acceptance of appeal applications submitted by persons beyond the limitation period specified in the Act by the Dy.Collectors (VOP) and decision of the CCRA in favour of the parties on such time barred references were beyond the powers vested in them under the Act. Failure of the Dy.Collector (VOP) to take action under provisions of the Act for recovery either by attachment and sale of movable/immovable property and/or under the provisions of the BLR code resulted in loss of stamp duty of Rs.49.66 lakh and non-realisation of stamp duty of Rs.5.47 crore. Though internal audit had conducted inspection of these offices, they had failed to highlight this omission of the departmental officers.

The above facts were brought to the notice of the Department between February 2004 and December 2004 and of the Government in March 2005. The Government replied (June 2005) that the CCRA had to decide whether application for appeal filed beyond the prescribed time was to be considered or not on merits of each case. It was also stated that Government was contemplating seeking opinion of the State Legal Department in the matter. The reply is not tenable as the Act does not provide for any discretion to the Collector (VOP) or CCRA to accept and decide application for appeal beyond the prescribed time.

5.3 Short levy of stamp duty and registration fees due to misclassification of documents

Under Section 3 of the BS Act, every instrument mentioned in Schedule-I shall be chargeable with duty at prescribed rates. If an instrument falls under more than one description given in the Schedule and duties chargeable under those descriptions are different, highest of such duties shall be charged on such a document as per Section 6 of the Act. For the purpose of levy of stamp duty, an instrument is required to be classified on the basis of its recitals given in the document and not on the basis of its title.

During test check of records of 38[#] Sub-Registrars (SRs), it was noticed between January and October 2004 that 436 documents registered between 2001 and 2003 were classified on the basis of their titles and stamp duty was levied accordingly. Scrutiny of the recitals of these documents, however,

^s Amreli, Bhavnagar, Bharuch, Bhuj, Dahod, Godhra, Jamnagar, Junagadh, Palanpur, Patan, Rajkot-I and II, Surat I & II, Surendranagar and Valsad

[#] Seven of Ahmedabad, four of Surat, three each of Rajkot and Vadodara, two of Jamnagar and one each of Amreli, Anand, Bhavnagar, Bhuj, Chikhli, Gandhinagar, Gondal, Himatnagar, Junagadh, Kadi, Kheda, Kodinar, Kunkavav, Mehsana, Palanpur, Sanand, Savarkundla, Wadhwan and Wankaner.

revealed that these documents were misclassified. This resulted in short levy of stamp duty and registration fees of Rs.8.60 crore. A few illustrative cases are given below:

(Rupees in lakh)

Sl. No.	No. of offices	No. of documents	Short levy	Nature of irregularity
1	28	157	459.52	The documents were classified as equitable mortgage/deposit of title deeds and stamp duty levied accordingly. However, recitals of these documents revealed that the guarantors had deposited the title deeds of their properties in the bank on behalf of the borrowers. These documents were, therefore, classifiable as bonds. As stamp duty on bonds is higher than that for equitable mortgage deeds/deposit of title deeds, higher rates are chargeable.
<p>Remarks: The Department stated that in case of documents of deposit of title deeds stamp duty was leviable treating it as equitable mortgage under Article 6 as per circular issued by the IGR in January 2002. Reply is not tenable as where a person undertakes liability for a debt due by another to get certain property mortgaged to the creditor for the debt and on failure to do so, it was held[@] that though the document did not come exactly within the definition of a bond, it was still a bond as it was attested and by it the executant obliged himself to pay a certain sum of money to another if he did not perform a specified act.</p>				
2	17	160	290.96	The documents were misclassified as "agreement", though as per the recitals of the documents possession of the property had been handed over/full rights to develop, market and use the properties, right and interest were transferred to the purchasers. The documents were, therefore, required to be classified as conveyance deeds.
<p>Remarks: The Department stated that in case of one office (six cases) order for levy of deficit duty had been issued.</p>				

[@] Nand Lal v.Karam Chand, 2 Lah LJ 224.

3	11	99	25.89	The documents were classified as deposit of title deeds/equitable mortgage though as per the recitals right or interest in the property was created in favour of the mortgagees by executing separate loan agreements, writings and giving power of attorney. These documents were, therefore, classifiable as mortgage deeds as clarified by the IGR in letter dated 31 July 1993.
<p>Remarks: The Department stated that concerned Dy.Collectors (VOP) had declared four documents as properly stamped. Dy.Collector(VOP)'s action was not proper as these documents contained recitals falling within the definition of "Mortgage" as per IGR's clarification dated 31 July 1993 and hence deficit stamp duty as pointed out was leviable.</p>				
4	02	16	80.77	The documents were classified as development agreement though as per the recitals, possession of the properties were handed over to the developers, rights and title of the property were transferred with full right to develop/sell the property, accept consideration, execute conveyance/transfer/ lease deeds in favour of individual purchasers. The developers also paid full/part consideration/post dated cheques etc. The developers were also liable to pay all taxes from the date of execution of agreement. These documents were, therefore, classifiable as conveyance deeds.
<p>Remarks: The Department stated that Dy.Collectors(VOP) had issued notices to parties and final decision would be intimated after following the procedure prescribed under the Act.</p>				

The above facts were brought to the notice of the Government in March/April 2005; replies have not been received (June 2005).

5.4 Short levy of stamp duty and registration fees on instruments comprising several distinct matters

Under Section 5 of the BS Act, any instrument comprising or relating to several distinct matters is chargeable with the aggregate amount of the duties for which such separate instrument would be chargeable under the Act.

During test check of records of 11[#] SRs, it was noticed between July 2003 and October 2004 that 73 documents comprising several distinct matters of immovable properties valued at Rs.47.29 crore were charged to stamp duty and registration fees for only one matter/transaction. This resulted in short levy of stamp duty and registration fees of Rs.5.46 crore. Two illustrative cases are given below:

(Rupees in crore)

Sl. No.	Location	No of documents	Value of property	Short levy	Nature of irregularity
1.	Ahmedabad, Kalol, Rajkot, Surat and Vadodara	42	26.03	2.36	As per recitals of the documents registered, the transaction involved three parties whereas stamp duty was levied as if it was a sale between the seller and the third person though full consideration was paid by the second person to the seller and not by the third person. In addition in the case of document of Kalol, no stamp duty was levied though the property was also mortgaged for obtaining loan.
2	Surat	17	19.18	2.97	Though instruments contained elements of sale and irrevocable power of attorney, duty was levied only on sale.

The above facts were brought to the notice of the Department between September 2003 and December 2004 and of the Government in April 2005; replies have not been received (June 2005).

5.5 Short levy of stamp duty due to undervaluation of properties

Under the BS Act, if the officer registering the instrument has reasons to believe that the consideration set forth in the document presented for registration is not as per the market value of the property, he shall, before registering the document, refer the same to the Collector (VOP) for determining the market value of the property. The market value of the property is to be determined in accordance with the Valuation Rules and instructions issued by the Government from time to time.

[#] Three of Ahmedabad, two each of Surat and Vadodara and one each of Kalol, Navsari, Rajkot and Surendranagar

During test check of the records of Dy. Collector (VOP) Junagadh and eight[§] SRs it was noticed between April 2002 and October 2004 that the market value of the property was determined incorrectly in 37 documents registered between 2001 and 2003 which resulted in short levy of stamp duty of Rs.47.00 lakh.

The above facts were brought to the notice of the Department between May 2002 and December 2004 and of the Government in March 2005; reply has not been received (June 2005).

5.6 Non levy of interest

Under the BS Act and Gujarat Stamps Rules made thereunder, if any person required to pay any amount of duty, penalty or other sums, fails to pay the same within the prescribed time limit, simple interest at the rate of 24 *per cent* per annum is chargeable from 4 April 1994 to 31 March 2002 and at the rate of 15 *per cent* thereafter on such amount or on any less amount thereof for the period for which such amount remains unpaid.

During test check of records of three[®] Dy. Collectors (VOP) it was noticed between February and June 2004 that in 51 cases finalised between September 1991 and December 1999, payment of duty of Rs.4.61 lakh was made between October 1999 and January 2004. The delay in payment ranged between five and 137 months from the date of service of order. In 14 cases where notices were issued between December 1998 and June 2003 based on the recommendations of SRs but final orders were not passed by the Dy. Collectors (VOP), payment of duty was made with delays ranging between nine and 57 months from the date of issue of notices. In these cases, interest was neither demanded nor levied. Interest leviable in 51 cases worked out to Rs.8 lakh and loss of interest due to delay in finalisation of 14 cases worked out to Rs.1.37 lakh.

The above facts were brought to the notice of the Department between April and August 2004 and of the Government in March 2005. Government in their reply stated that as per instructions issued in April 1994 by the Superintendent of Stamps, interest was not leviable in cases finalised prior to the date of introduction of provision for levy of interest. Reply is not tenable as interest becomes payable on any amount due and outstanding on the date of introduction of the provision and is chargeable from 4 April 1994 to the date of payment. The date of finalisation of cases has no relevance to levy of interest.

[§] Two of Ahmedabad and one each of Kheda, Morbi, Padra, Palanpur, Rajkot and Savli
[®] Bhuj, Surat and Surendranagar

CHAPTER – VI

OTHER TAX AND NON TAX RECEIPTS

6.1 Results of Audit

Test check of records in various Departmental offices relating to the following receipts conducted in audit during the year 2004-05 disclosed under-assessments amounting to Rs.95.68 crore in 161 cases as detailed below:

(Rupees in crore)			
Sl. No.	Category	No. of cases	Amount
1	Entertainments tax	58	3.48
2	Electricity duty	25	73.49
3	Luxury tax	25	0.68
4	Geology and Mining	49	17.99
5	Forest Receipts	04	0.04
	Total	161	95.68

During the year 2004-05, the departments accepted and recovered under assessment amounting to Rs.66.15 lakh in 31 cases pertaining to earlier years. A few illustrative cases highlighting important audit observations involving Rs.9.54 crore are given in the following paragraphs.

ENTERTAINMENTS TAX

6.2 Non-realisation of entertainments tax and interest

Under the Gujarat Entertainments Tax (GET) Act and the Rules made thereunder, entertainment tax shall be paid by the proprietor of a cinema house weekly within 14 days of the end of the week and by the proprietor of video parlour in advance every month by the 15th day of the month preceding the month to which the tax relates. If the payment of tax is delayed, simple interest at the rate of 24 *per cent* per annum is chargeable on the unpaid amount of tax for the period of delay. The proprietor is also required to submit periodical returns in prescribed form to the prescribed authority. In case of non submission, the prescribed authority will assess the case to the best of his judgment.

During test check of records of three[§] Collectors and three[#] Mamlatdar offices, it was noticed between March and October 2004 that 26 cinema houses and six video parlours either did not pay the tax or paid the tax late with delays ranging from five days to 36 months during 2002-03 and 2003-04. Failure on the part of the Department to monitor the cases with reference to the control registers maintained and raise demands for tax and/or interest resulted in non-levy of tax of Rs.72.77 lakh, including interest*.

The above facts were brought to the notice of the Department between April and December 2004 and of the Government in March 2005. The Department accepted audit objection in all cases and recovered an amount of Rs.42.46 lakh

[§] Bhavnagar, Navsari and Surat

[#] Ahmedabad, Gandhinagar and Vadodara

* Interest calculated upto the date of payment/date of audit

in 19 cases. Particulars of recovery in remaining cases have not been received (June 2005).

6.3 Non recovery of entertainments tax from cable operators

Under the GET Act, tax is leviable for exhibition of programmes with the aid of antenna or cable television. As per GET(Exhibition by means of cable television and antenna) Rules, 1993, each operator has to register with the Department and file quarterly return in advance accompanied by copies of challan towards payment of tax. Assessment of return filed has to be made by the Department before commencement of the succeeding quarter and demands for non/short payment of tax are to be raised against the defaulters. For non payment of tax within the prescribed time, interest at the rate of 24 *per cent* per annum is leviable.

During test check of records of three[&] Collectors and nine[∇] Mamlatdar offices, it was noticed between February and December 2004 that in three[⊗] out of 12 offices information as to the total number of registered cable operators was not available. In nine^{*} offices, in 105 out of 601 cases entertainment tax totaling Rs.18.13 lakh was not paid. In four[⊕] offices, no demands were raised for collecting the tax of Rs.14.05 lakh in 57 cases whereas in eight[#] offices it could not be ascertained whether the demands were raised or not due to faulty maintenance of records. This indicates that no system to watch receipt of returns and issue notices where returns were not filed, for completion of assessments, was being followed. Failure to follow the prescribed procedure resulted in non/short recovery of Rs.35.21 lakh from 260 cable operators during 2001-02 to 2003-04, including interest.

The above facts were brought to the notice of the Department between April and December 2004 and of the Government in February 2005. The Department accepted audit objection in all cases and recovered an amount of Rs.3.79 lakh in 55 cases. Particulars of recovery in remaining cases have not been received (June 2005).

MINING RECEIPTS

6.4 Non/short levy of royalty, dead rent and surface rent

Under the Mines and Minerals (Regulation and Development) Act (MMDR Act), 1957, the Mineral Concession Rules, 1960 and the Gujarat Minor Mineral Rules, 1966, a lessee is liable to pay in respect of each lease for major/minor mineral, dead rent or royalty whichever is higher. Dead rent at the rate of 75 *per cent* of prescribed rate is leviable when the lease is granted in private land. According to Industries and Mines Department's circular dated

[&] Bhuj, Rajkot and Surat.

[∇] Ahmedabad, Gandhidham, Gondal, Godhra, Khambhat, Kheralu, Pardi, Sanand and Viramgam.

[⊗] Collector Rajkot and Mamlatdars Ahmedabad and Sanand.

^{*} Collectors Bhuj & Surat and Mamlatdars Gandhidham, Godhra, Gondal, Khambhat, Kheralu, Pardi & Viramgam.

[⊕] Collector Surat and Mamlatdars Pardi, Godhra and Viramgam.

[#] Collectors Bhuj & Rajkot and Mamlatdars Ahmedabad, Gandhidham, Gondal, Khambhat, Kheralu and Sanand.

22 December 2000, royalty is to be paid in advance with effect from 1 January 2001. If payment of royalty or rent or any other sum is not made within the date prescribed, interest at the rate of 24 *per cent* per annum is chargeable for the period of delay. Further, the lessee is liable to pay surface rent as specified by the Government for the surface area used by him for mining operations. Rules also provide for issue of demand notices for non payment of royalty/dead rent/surface rent in time. The Government can determine the lease for breach of conditions of lease agreement and recover the amount of royalty and other dues as arrears of land revenue.

6.4.1 During test check of records of offices of 14[#] geologists/assistant geologists, it was noticed between December 2003 and December 2004 that in 414 cases, the lease holders had not paid Rs.3.34 crore towards royalty/dead rent/surface rent for major/minor minerals during the period between 1999-2000 and 2003-2004. Failure of departmental officials to issue demand notices and further follow up by issue of revenue recovery certificates as per provisions of Rules to recover the rent and/or royalty due and all costs and expenses occasioned by the non payment thereof or non initiation of action for determination of lease for continuous default resulted in non/short levy of royalty, dead rent and surface rent of Rs.3.53 crore including interest.

This was brought to the notice of the Department between January and December 2004 and of the Government in February 2005. The Department accepted audit observations in all cases and recovered Rs.1.66 crore. Particulars of recovery in the remaining cases have not been received (June 2005).

6.4.2 Government by issue of notifications in January and June 1999, fixed lumpsum rate for payment of royalty by brick/roofing tiles manufacturers. The rate was fixed on the basis of quantity of bricks manufactured and with reference to number of dye revolving press used, for roofing tiles.

During test check of records of four offices of geologists/assistant geologists of Ahmedabad, Bharuch, Gandhinagar and Rajkot, it was noticed between March and October 2004 that 12 roofing tiles and 36 brick manufacturers had not paid royalty of Rs.7.38 lakh for the years 2002-03 and 2003-04. Failure of departmental officials to monitor the cases with reference to the control registers maintained, issue demand notices and take recovery action as per provisions of the Act/Rules resulted in non/short levy of royalty of Rs. 8.61 lakh including interest.

The above facts were brought to the notice of the Department between May and December 2004 and of the Government in February 2005. The Department accepted audit observations in all cases and recovered Rs.7.25 lakh. Particulars of recovery in remaining cases have not been received (June 2005).

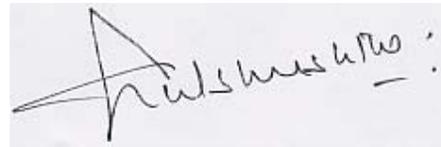
6.4.3 During test check of records of the offices of five^{*} geologists/assistant geologists, it was noticed between January and November 2004 that in 21 cases, interest on belated payment of royalty/dead rent was not levied during

[#] Ahmedabad, Amreli, Bharuch, Bhuj, Gandhinagar, Godhra, Himatnagar, Jamnagar, Junagadh, Mehsana, Porbandar, Surendranagar, Vadodara and Valsad

^{*} Amreli, Bhuj, Junagadh, Porbandar and Valsad.

the years 2002-03 and 2003-04. Failure of departmental officials to demand interest on delayed payment of royalty resulted in non levy of interest of Rs.4.84 crore.

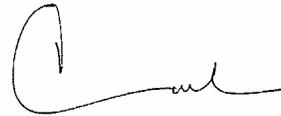
This was brought to the notice of the Department between January and December 2004 and of the Government in March 2005. The Department accepted audit observations in all cases and recovered Rs.1.07 crore. Particulars of recovery in the remaining cases have not been received (June 2005).



Ahmedabad
The:

(Anupam Kulshreshtha)
Principal Accountant General
(Commercial and Receipt Audit) Gujarat

Countersigned



New Delhi
The :

(Vijayendra N. Kaul)
Comptroller and Auditor General of India

ANNEXURE - I
(Refer Para 1.13)

**Department-wise break up of Inspections Reports and audit observations
pending as on 30 June 2005.**

(Rupees in crore)

Sl. No.	Department	Inspection Reports	Paras	Amount involved	Years to which observation relate	No. of IRs to which first replies have not been received
1	Sales Tax	1069	4060	893.37	1993-94 to 2004-05	59
2	Stamp Duty and Registration Fees	577	1276	532.13	1988-89 to 2004-05	67
3	Land Revenue	556	843	108.47	1988-89 to 2004-05	117
4	Motor Vehicles Tax	149	614	421.97	1991-92 to 2004-05	6
5	Entertainments Tax	383	520	91.61	1989-90 to 2004-05	23
6	Geology and Mining	117	309	164.40	1995-96 to 2004-05	16
7	Valuation of property	106	183	24.05	1995-96 to 2004-05	23
8	Forest	70	107	7.24	1993-94 to 2004-05	7
9	Luxury Tax	64	110	7.05	1995-96 to 2004-05	13
10	Electricity Duty	36	66	124.94	1992-93 to 2004-05	4
11	Profession Tax	20	43	0.22	1994-95 to 2004-05	1
12	Prohibition and Excise	5	8	0.07	1997-98 to 2004-05	1
	Total	3152	8139	2375.52		337