

## CHAPTER II

### TAXES ON SALES, TRADE, ETC.

#### 2.1 Tax administration

Levy and collection of Value Added Tax (VAT) receipts is governed by the Maharashtra Value Added Tax Act, 2002 (MVAT Act), Maharashtra Value Added Tax Rules, 2005 (MVAT Rules), notifications and instructions issued by the Government from time to time. The Sales Tax Department under the overall control of the Principal Secretary to the Government, Finance Department, is headed by the Commissioner of Sales Tax. He is assisted by the Zonal Additional Commissioners of Sales Tax, Joint Commissioners of Sales Tax in respect of functional branches and Deputy Commissioners of Sales Tax and other officers at divisional level.

The MVAT Act came into force with effect from 1 April 2005. Prior to the introduction of the MVAT Act, the assessment, levy and collection of Sales Tax was governed by the Bombay Sales Tax Act, 1959 (BST Act) which was repealed with effect from 1 April 2005. However, the assessments pertaining to BST Act that have not been finalised so far, continue to be governed by the erstwhile BST Act.

#### 2.2 Internal Audit

The Department has an Internal Audit wing (IAW) headed by the Joint Commissioner of Sales Tax (Internal Audit).

Information regarding position of cases selected for internal audit and actually audited as furnished by the Department is mentioned in **Table 2.2**.

**Table 2.2**

Year	No. of cases selected for audit by IAW	No. of cases audited by IAW	Audit observations raised By IAW	Audit observations settled till date	Audit observations Pending as on 31 March of the year
2011-12	4,000	3,069	969	679	290
2012-13	6,280	9,682	2,789	2,164	625
2013-14	16,695	18,628	5,808	4,391	1,417
2014-15	13,140	17,209	5,028	2,913	2,115
2015-16	15,660	17,086	4,312	1,377	2,935
<b>Total</b>	<b>55,775</b>	<b>65,674</b>	<b>18,906</b>	<b>11,524</b>	<b>7,382</b>

**Source: Information furnished by the Department**

During the last five years, the number of audit observations raised by IAW increased from year to year and their corresponding settlement has also shown an increasing trend. The Department has settled 61 *per cent* of the observations raised by IAW.

### 2.3 Results of audit

In 2015-16, test check of records of 202 units relating to Taxes on Sales, Trade, etc. showed underassessment of tax and other irregularities involving ₹ 30.88 crore in 1,185 observations, which fall under the following categories as shown in **Table 2.3**.

**Table 2.3**

(₹ in crore)			
Sr. No.	Category	No. of observations	Amount
1	Audit of “Mechanism in the State for Collection of Arrears of VAT (Sales Tax Department)”	1	0.00
2	Audit of “Departmental Mechanism for Information sharing and co-ordination with other Government Departments/Bodies”	1	0.00
3	Non/short levy of tax	246	17.52
4	Incorrect grant/excess set-off	129	4.46
5	Non/short levy of interest/penalty	6	0.04
6	Non-forfeiture of excess collection of tax	6	0.08
7	Other irregularities	796	8.78
<b>Total</b>		<b>1,185</b>	<b>30.88</b>

During 2015-16, the Department accepted underassessment and other deficiencies of ₹ 48.81 lakh in 57 observations which were pointed out during 2015-16 and earlier years. The Department also recovered an amount of ₹ 72.10 lakh in 2015-16 in respect of 82 observations accepted during 2015-16 and earlier years.

This Chapter contains five paragraphs. These include one paragraph on “Mechanism in the State for Collection of Arrears of VAT (Sales Tax Department)” and one paragraph on “Departmental Mechanism for information sharing and co-ordination with other Government Departments/Bodies”.

## **2.4 Audit of “Mechanism in the State for Collection of Arrears of VAT (Sales Tax Department)”**

### **Introduction**

The Maharashtra Value Added Tax Act, 2002 (MVAT Act) came into force with effect from 1 April 2005. Prior to the introduction of the MVAT Act, the assessment, levy and collection of Sales Tax was governed by the Bombay Sales Tax Act, 1959 (BST Act) which was repealed with effect from 1 April 2005. The assessments pertaining to BST Act regime which have not been finalised so far continue to be governed by the erstwhile BST Act. VAT/Sales Tax is a principal source of revenue receipt of the State Government.

Under the BST Act, tax assessed was required to be paid by the assessee in a manner and within the time specified in the notice of demand. Any dealer not satisfied with the demand could prefer an appeal with the Appellate Authority or in a court of law. In case of failure on the part of the assessee to pay the amount within the date mentioned in the demand notice, the Department could recover the amounts which remained unpaid.

As per Section 32 of the MVAT Act, the amount of tax due as per any order passed under the provision of the Act is to be paid with interest and penalty (levied, if any) within 30 days from the date of service of the notice issued in this regard. If these dues are not paid by the dealer within prescribed time limit and also, the dealer does not prefer an appeal in Form-310 to challenge the assessment order within 60 days from the date of service of demand notice, then arrears are created.

As per Recovery Manual of the Sales Tax Department, the officer in charge, where demand is created, should take action to recover the dues by way of attachment (i.e. bank attachment, debtor attachment, etc.). If dues are still not recovered then recovery action under Maharashtra Land Revenue Code, 1966 (MLR Code) should be initiated immediately.

As per Section 32(4) of the MVAT Act, the tax assessed is required to be paid by the dealer in a manner and within the time specified in the notice of demand. In case of failure on part of the dealer to pay the amount within the date mentioned in the demand notice, action of attachment of bank account/debtors attachment (notice in Form-318) may be initiated within 60 days from service of demand notice. If the arrears are still not recovered, then action under Maharashtra Land Revenue Code, 1966 should be initiated as Section 34 of the MVAT Act empowers the Commissioner of Sales Tax to exercise all the powers and perform all the duties under the MLR Code, to recover the amount(s) which remains unpaid as arrears of land revenue.

### **Organisational set up for collection of arrears**

A separate Recovery Branch came into existence with effect from 1 July 2007 after the restructuring of the Department as per Government decision. The Recovery Branch was headed by Joint Commissioner level officers and was responsible for all recoveries except recoveries relating to Large Taxpayers Unit (LTU branch), which were to be pursued by the concerned LTU Officer. However, the Sales Tax Department was again restructured with effect from

1 January 2016 and the existing functional setup was changed into a single desk multifunctional set up (single window system). In the new system Nodal officers were appointed for carrying out all the work (from the registration, return, Business Audit, Assessment to recovery etc.) related to a dealer. Accordingly the erstwhile Recovery Branch was abolished and the recovery cases were transferred to Nodal officers.

### Arrears of VAT and Sales Tax

As per the Departmental manual of recoveries, any arrears in respect of which recovery action is either stayed by the appellate authorities or where Revenue Recovery Certificates (RRCs) have been issued, or where the case is pending with external agencies such as Official Liquidator (OL), Debt Recovery Tribunal (DRT), Courts etc., such arrears are treated as “not available for recovery”, whereas, arrears on which the Department can take action are treated as “available for recovery”.

We called for the information regarding the arrears of Sales Tax as on 31 March 2016. The information furnished by the Department indicated that the VAT arrears in the State amounted to ₹ 80,505.50 crore and BST arrears amounted to ₹ 26,997.75 crore. The stage-wise break-up of the same is given in the following table.

(₹ in crore)				
Sr. No.	Stages of recovery of arrears	Amount involved		
		BST	VAT	Total
1	2	3	4	5
1	Departmental appeal	8,537.81	34,670.13	43,207.94
2	Tribunal	6,995.31	8,415.55	15,410.86
3	High Court/Supreme Court	987.51	528.95	1,516.46
4	Official Liquidator/ DRT	668.88	1,679.18	2,348.06
5	RRC	514.42	375.25	889.67
6	Cases under BIFR	485.27	460.81	946.08
7	Dealer not traceable	1,611.89	1,248.29	2,860.18
8	Property not available	794.29	594.63	1,388.92
9	Other reasons	810.12	1,946.77	2756.89
10	Arrears available for recovery	5,592.25	30,585.94	36,178.19
<b>Total</b>		<b>26,997.75</b>	<b>80,505.50</b>	<b>1,07,503.25</b>

**Source: Information furnished by the Department**

From the above information it could be seen that ₹ 43,207.94 crore (40.19 per cent of total pending recovery) in 2015-16 was pending in Departmental appeal.

### **Methodology and scope of Audit**

We conducted test check of records of “recovery cases” under MVAT Act pending as on 31 March 2016 pertaining to four divisions viz. Mumbai, Nashik, Pune and Thane (which accounted for 90 *per cent* of the arrears of the State) between January 2016 and May 2016. In the Recovery Branches of these divisions, 1,887 cases, each involving recovery of more than ₹ 10 lakh were selected for audit scrutiny. In addition to these, 219 cases of LTU (all cases other than appeal cases) were selected for audit scrutiny in these divisions.

Cases relating to recovery under the erstwhile BST Act have already been covered in the Report of the Comptroller and Auditor General of India on the Performance audit on Arrears of Sales Tax (Report no. 8 of 2011) and hence are not covered in this Report. However, it is pertinent to mention here that even after a lapse of 11 years since the date of repeal of the BST Act, an amount of ₹ 26,997.75 crore was still pending for recovery as on 31 March 2016.

### **Age wise pendency of Arrears**

We called for information regarding the age-wise details of arrears of revenue as on 31 March 2016. The Department furnished consolidated information regarding pre-VAT and VAT periods as on 31 March 2016, which is shown in the following table:

(₹ in crore)			
Periodicity of arrears	No. of cases	Amount	% of arrears
Demand less than 1 year old	56,064	51,866.29	48.25
Demand between 1-2 year old	1,44,342	21,125.43	19.65
Demand between 2-5 year old	24,613	8,339.51	7.76
Demand more than 5 years old	25,454	26,172.02	24.34
<b>Total</b>	<b>2,50,473</b>	<b>1,07,503.25</b>	<b>100</b>

**Source: Information furnished by the Department**

As seen from the above table ₹ 26,172.02 crore (24.34 *per cent* of total pending arrears) in respect of 25,454 cases were pending for recovery for more than five years.

The Government may direct the Department to take prompt action particularly in respect of those cases which are more than five years old, to prevent any risk of these arrears not being recovered due to lapse of time. The Department may take deterrent action against the persons/dealers who have collected taxes from public but have closed<sup>1</sup> business premises and not remitted the dues to the Government.

<sup>1</sup> Discussed in Paragraph No. 2.4.6.

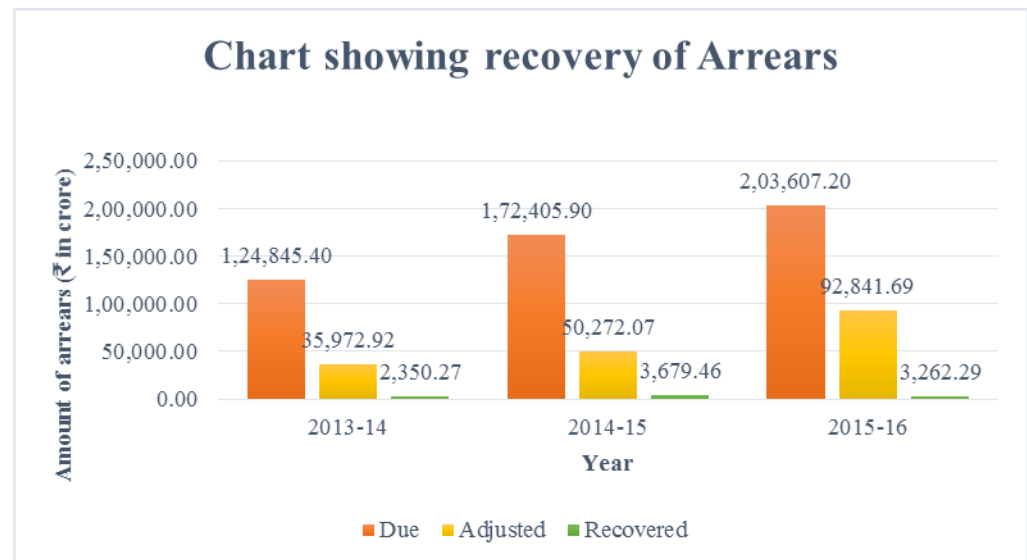
### 2.4.1 Recovery of Arrears

We called for information regarding amount of recovery due, adjusted and recovered under the MVAT Act for the period 2013-14 to 2015-16. However, the Department provided combined information for arrears under the erstwhile BST Act and the MVAT Act, as the bifurcation of the same was not available with the Department. The details are given in **Table 2.4.1**.

**Table 2.4.1**

(₹ in crore)				
Year	Amount Due for recovery	Actual recovery during the year	Adjustments of the arrears	Closing Balance
2013-14	1,24,845.42	2,350.27	35,972.92	86,522.23
2014-15	1,72,405.93	3,679.46	50,272.07	1,18,454.40
2015-16	2,03,607.23	3,262.29	92,841.69	1,07,503.25

Source: Information furnished by the Department



From the above chart it could be seen that during the period 2013-14 to 2015-16 the recovery of arrears was in the range of one to two *per cent* only. The adjustment of arrears on account of cancellation of *ex-parte* orders, write-off etc. of arrears was in the range of 28 to 45 *per cent*.

Since the task of recovery of dues was transferred to individual assessment authorities with effect from 1 January 2016, it is recommended that the Commissioner's office may ensure follow-up of arrears effectively so that these are recovered in a time bound manner.

It would be seen from the succeeding paragraphs that large accumulation of arrears was a result of lack of follow up action for recovery. It was imperative for the arrears to be monitored regularly at higher levels for which digitisation of recovery functions needed to be implemented.

#### **2.4.2 Non-Development of Recovery Module**

Twenty two software modules including Recovery Module were to be developed in software, “MAHAVIKAS” in the Sales Tax Department and these modules were to be implemented in a phased manner from 2006.

We called (August 2016) for information regarding the implementation of Recovery Module from the Department. Reply in this regard has not been received. However, the module was not found available in the official website of the Department, i.e. [www.mahavat.gov.in](http://www.mahavat.gov.in).

Mention of non-development of these modules was made in Paragraph 2.2.10.1 of the Report of the Comptroller and Auditor General of India for the year ended 31 March 2013 on the Revenue Sector, Government of Maharashtra. No reply in this regard was furnished to audit.

#### **2.4.3 Status of recovery of tax dues in case of short filers**

Short filers are dealers paying less tax than the tax actually due as per returns. As per Department’s internal circular No. 13 A of 2014 dated 10 November 2014, all the cases of available recovery such as short filers should be processed immediately and the entire amount available for recovery had to be recovered before 31 March 2015.

We analysed the tax recovery status under MVAT of short filers and position is as shown in **Table 2.4.3**.

**Table 2.4.3**

(₹ in crore)			
Year	Total recoverable	Recovery during the period	Recovery percentage
2013-14	6,953.65	456.69	7
2014-15	6,239.07	484.70	7.8
2015-16	4,814.71	1,650.28	34

**Source: Information furnished by the Department**

The recovery of dues from short filers was very meagre during 2013-14 and 2014-15, being less than eight *per cent* of the dues. However, in 2015-16 it increased to 34 *per cent*.

It could be seen from above that during 2015-16 though, there was steep rise in the collection of the arrears still tax dues amounting to ₹ 3,164.43 crore remained unrecovered from the short filers. The delay in recovery may give an opportunity to the dealers to close down their business before realisation of arrears and the chances of their recovery may become bleak.

#### **2.4.4 Non-achievement of targets in disposal of cases relating to appeals resulting in blockage of revenue**

There are 18 Joint Commissioner (JC) Appeals and 18 Deputy Commissioners (DC) Appeals in the Department. As per the Recovery Manual of the



Department, the target of disposal of appeal cases per year was 12,960<sup>2</sup> cases for JCs and 21,600<sup>3</sup> cases for DCs. However, the Commissioner of Sales tax (CST) assigned cases to JCs and DCs of other wings for disposal and fixed targets which were being watched through monthly progress reports.

The year-wise targets fixed for disposal of appeal cases and achievement thereof by Departmental authorities and the amount pending in appeal for the years 2013-14 to 2015-16 are as given in **Table 2.4.4 (A)** and **Table 2.4.4(B)**.

**Table 2.4.4 (A) (Disposal in terms of number of cases)**

Particulars	2013-14		2014-15		2015-16	
	JC	DC	JC	DC	JC	DC
Target	6,500	19,000	10,510	31,000	12,600	30,876
Disposal of cases	2,827	6,340	2,943	5,315	2,873	7,049
% of non-disposal	56.51	66.63	72.00	82.85	77.20	77.17

**Source: Information furnished by the Department**

The disposal of the cases as compared to the target fixed had shown a declining trend at each level between 2013-14 and 2015-16. At JC level the percentage of non-disposal had increased from 56.51 *per cent* to 77.20 *per cent* and at DC level it has increased from 66.63 *per cent* to 82.85 *per cent*.

**Table 2.4.4 (B) (Pendency in terms of financial impact)**

(₹ in crore)			
Details	2013-14	2014-15	2015-16
Amount pending in appeal	22,444.18	37,736.23	43,207.94
Total arrears of revenue	86,522.23	1,18,454.4	1,07,503.25
% pending in appeal	25.94	31.86	40.19

**Source: Information furnished by the Department**

It could be seen from the above, that during the year 2013-14 arrears of ₹ 22,444.18 crore i.e. 25.94 *per cent* of total pending recovery was locked up in Departmental appeal. The said pendency further increased to ₹ 37,736.23 crore (31.86 *per cent* of total pending recovery) in 2014-15 and ₹ 43,207.94 crore (40.19 *per cent* of total pending recovery) in 2015-16.

In the monthly review meeting held in June 2015, regarding speedy disposal of appeal cases, the Commissioner had observed that litigation/disputes between the Department and assessee/dealers were mainly on account of large number of *ex-parte* orders passed by the Department. The CST had instructed the appellate authorities to minimize the time gap between appeal filing and fixation of part payment, and also between part payment fixation and final disposal. It was also instructed that the cases involved with common issues should be clubbed so as to decide more cases simultaneously. The assessing authorities were also directed to minimize the *ex-parte* orders and supply the assessment files well in time to the appellate authorities. The concerned controlling authorities were directed to do regular inspection to ensure that the Commissioner's instructions were properly complied with.

<sup>2</sup> Target of 60 cases per month X 12 X 18 = 12,960.

<sup>3</sup> Target of 100 cases per month X 12 X 18 = 21,600.



The above facts indicate that despite Departmental instructions, the pendency of arrears in appeal has increased.

It is recommended that the Government may direct the Department to take appropriate steps for speedy disposal of the appeal cases and ensure that the targets fixed by the Department under the manual are adhered to. Timely and quality assessments may be passed so as to avoid *ex-parte* assessment orders.

#### **2.4.5 Non follow-up of dealers who have become untraceable**

As per the information furnished by the Department, the recoveries pending as on 31 March 2014, 31 March 2015 and 31 March 2016 from the dealers who have become non-traceable were ₹ 4,500.75 crore, ₹ 4,974.25 crore and ₹ 2,860.18 crore respectively. The Commissioner of Sales Tax, Maharashtra State, issued instructions in April 2014 detailing procedures to be followed for pursuing recoveries from untraceable dealers. The instructions, inter-alia contained the following:

- (i) The recovery officials should find out the other new business concerns with which the defaulting dealer or its members are doing business using the member search functionality in registration module of the Department and with the help of PAN and old Registration Certificate number of such dealers
- (ii) The Recovery Officer should obtain the whereabouts of the non-traceable dealers and the properties held by them with the various other Government and non-Government authorities. It has also prescribed the format of communication with the various authorities, such as Government/Municipal Officials, Income Tax Department, Regional Transport Authorities, Department of Posts, stock exchanges, etc.

However, during audit the Recovery Officers did not produce any record relating to action taken in this light of the instructions issued. As such, the follow up of the untraceable dealers could not be ascertained.

#### **2.4.6 Audit of VAT arrears in the Recovery branch**

Scrutiny of 1,887 recovery cases under MVAT Act in the Recovery Branch of Mumbai, Nashik, Pune and Thane Division revealed that the arrears aggregating ₹ 342.35 crore were pending for recovery in 581 cases due to inaction at different stages. Out of these ₹ 73.50 crore were pending in 151 cases due to inaction of the Department after assessment of cases, ₹ 164.12 crore were pending in 270 cases due to delay in attachment of bank accounts of the dealers, and ₹ 104.73 crore were pending in 160 cases due to delay in action under MLR Code and subsequent non-pursuance of the recovery process for recovery of arrears of revenue. It was noticed that during the course of time, some of these dealers had closed down their business and left the place of business (POB). These are discussed in following paragraphs.

##### **2.4.6.1 Lack of action for recovery of dues of dealers after finalisation of assessment**

We noticed that in 151 cases relating to the periods between 2005-06 and 2012-13, the dealers were assessed to MVAT dues between October 2010 and

January 2016 amounting to ₹ 73.50 crore. No action for recovery of dues of the dealers such as attachment of bank accounts, warrant of attachment and property attachment etc. had been taken by the concerned Recovery officers even after a lapse of 3-66 months from the date of assessment. The details are as given in **Table 2.4.6.1**.

**Table 2.4.6.1**

(₹ in crore)			
Division	Total no. of cases	Arrears involved	Months elapsed after assessment
Mumbai	79	46.91	3-66
Nashik	9	3.67	18-36
Pune	40	17.22	4-35
Thane	23	5.70	7-36
<b>Total</b>	<b>151</b>	<b>73.50</b>	<b>3-66</b>

Source: Information furnished by the Department

We also noticed from the visit reports (made to visit to the business premises of the dealers) of the Departmental officials that out of the above cases, in 20 cases involving arrears of ₹ 9.94 crore the dealers had closed their business and left the POB.

#### **2.4.6.2 Delay in attachment of the bank accounts of dealers and absence of follow-up action**

We noticed that in 270 cases relating to the periods between 2005-06 and 2012-13, the dealers were assessed to MVAT dues of ₹ 164.12 crore between August 2010 and January 2016. Thereafter, no action such as, issue of notice in Form-1 and other subsequent actions under MLR Code were taken by the Concerned Recovery officers even after a lapse of 30 days to 48 months from the date of issuance of Form-318 (notice of attachment of bank account). In 241 cases Form-318 was issued after lapse of 3 to 65 months from the date of assessment. The division-wise breakup of such cases is shown in **Table 2.4.6.2**.

**Table 2.4.6.2**

(₹ in crore)				
Division	Total no. of cases	Arrears involved	Months elapsed after assessment (no. of cases)	Months elapsed after issuing F-318
Mumbai	159	78.26	3-65(152)	1-48
Nashik	17	8.76	3-39 (11)	1-31
Pune	70	70.70	3-27 (58)	2-31
Thane	24	6.40	4-32 (20)	2-28
<b>Total</b>	<b>270</b>	<b>164.12</b>	<b>3-65 (241)</b>	<b>1-48</b>

Source: Information furnished by the Department

We also noticed from the visit reports of the Departmental officials that out of the above cases, in 44 cases involving arrears of ₹ 28 crore the dealers had closed their business and left the POB.

### **2.4.6.3 Delay in action under MLR Code**

We noticed that in 160 cases relating to the periods between 2005-06 and 2011-12, the dealers were assessed to MVAT dues of ₹ 104.73 crore between August 2010 and November 2015. The Department issued notice in Form-1 under the MLR Code in these cases, thereafter, no subsequent action under MLR Code such as issue of warrant of attachment/order of attachment and auction of the property had been taken by the concerned Recovery officers despite a lapse of 30 days to 32 months from the date of issue of notice under MLR Code in Form-1. It was further noticed that in 158 cases, notice in Form-1 was issued after a lapse of four to 52 months from the date of assessment. The division-wise breakup of such cases is shown in **Table 2.4.6.3**.

**Table 2.4.6.3**

(₹ in crore)				
Division	Total no. of cases	Arrears involved	Months elapsed after assessment (no. of cases)	Months elapsed after issuing F-1
Mumbai	74	76.45	5-52 (74)	1-18
Nashik	17	7.61	4-34 (16)	1-32
Pune	44	14.56	4-28 (43)	4-13
Thane	25	6.11	6-30 (25)	1-13
<b>Total</b>	<b>160</b>	<b>104.73</b>	<b>4-52 (158)</b>	<b>1-32</b>

Source: Information furnished by the Department

We also noticed from the visit reports of the Departmental officials that out of the above cases, in 22 cases involving arrears of ₹ 22.80 crore the dealers had closed their business and left the POB.

Thus, it could be seen from above that the Department only did the formality of recovery action by issuing the notices belatedly for attachment of bank accounts (F-318) and under MLR Code (Form-1) and did not make adequate efforts for recovery of tax dues.

Thus, it would be seen from the preceding paragraphs, that in 86 cases involving arrears of ₹ 60.74 crore the dealers were not found at their registered addresses.

### **Audit scrutiny of VAT cases**

We scrutinized 1,887 recovery cases under MVAT Act in the Recovery Branches of Mumbai, Nashik, Pune and Thane Division, and 219 recovery cases in the LTU branches of the said Divisions. The records revealed a number of deficiencies, a few are mentioned in the following paragraphs.

### 2.4.7 Cases pending with the Department

We noticed that in eight cases, involving VAT arrears of ₹ 326.44 crore, the dealers either did not file their VAT returns or did not pay the tax in accordance with the turnover mentioned in their returns. There was delay in finalization of these cases resulting in delay/ non-recovery of the demands raised by the Department.

As per Section 32(4) of the MVAT Act, the tax assessed is required to be paid by the dealer in a manner and within the time specified in the notice of demand. In case of failure on part of the dealer to pay the amount within the date mentioned in the demand notice, action of attachment of bank account/debtors attachment (notice in Form-318) may be initiated within 60 days from service of demand notice. If the arrears are still not recovered, then action under Maharashtra Land Revenue Code, 1966 (MLR Code) should be initiated as Section 34 of the MVAT Act empowers the Commissioner of Sales Tax to exercise all the powers and perform all the duties under the MLR Code, to recover the amount(s) which remains unpaid as arrears of land revenue.

**2.4.7.1** During test check of the recovery files of the dealers of Mumbai Division, we noticed that a dealer (an importer and reseller of electronic goods) was in arrears of ₹ 53.57 crore under the MVAT Act for the periods from 2005-06 to 2010-11. The dealer had stopped filing of return since February 2012. In June 2012, notice for assessment for the period 2005-06 was served to the dealer. However, it was found that the dealer's business was closed for last two years. A notice for attaching the bank account was issued to Hong Kong and Shanghai Banking Corporation (HSBC Bank) on 23 October 2013. The bank intimated that the dealer had closed his current account in September 2006. Subsequently, the Department lodged an FIR against the dealer in October 2015, after a delay of more than three years. The registration of the dealer was cancelled on 4 January 2014 retrospectively from 1 February 2012.

The above indicates that the Department became aware (June 2012) of the fact that the dealer had closed his business and had become untraceable, yet the concerned DCST did not take prompt action for finalisation of assessments for the periods from 2005-06 to 2010-11. These were completed belatedly<sup>4</sup> between December 2012 and August 2014. Further, we noticed that neither any property existed in the name of the dealer in the records produced to audit nor was there any mention of any amount in the bank account of the dealer.

Thus, the failure of the Department to assess the defaulting dealer in time and delayed action in attaching the bank account and for prosecution of the dealer has resulted in non-recovery of ₹ 53.57 crore.

After this was pointed out, the Department intimated (January 2017) that the demand, the total amount outstanding against the dealer for these years was ₹ 64.31 crore and confirmed the other facts like the dealer being untraceable, having no bank account etc. The reasons for increase in outstanding amounts have not been intimated.

<sup>4</sup> When they were on the verge of becoming time barred.

**2.4.7.2** During test check of the recovery files of the dealers of Mumbai Division, we noticed that a dealer (reseller of new cars and other vehicles) was in arrears of ₹ 77.49 crore under MVAT for the periods from 2007-08 to 2011-12.

We found that the dealer had not paid the tax in accordance with the returns filed by him for the period November 2008 to October 2009. The Investigation Branch visited the dealer's premises in December 2009 and found that the dealer had collected tax<sup>5</sup> for the periods 2007-08, 2008-09 and 2009-10 (till November 2009). The dealer had deposited tax of ₹ 5.81 crore for this period. The Department after scrutinizing the returns, issued (March 2010) demand notices (Form-213) for amounts aggregating to ₹ 5.75 crore.

Notice in Form-318 for attachment of bank account was issued (January 2011) to six banks (Allahabad bank, HDFC Bank, Standard Chartered Bank, SBI, Corporation Bank and Shamrao Vithal Co-op Bank) against which only HDFC Bank replied (October 2011) that there was only ₹ 2,110 in the dealer's account. FIR was lodged against the dealer in March 2011. The dealer stopped filing returns from September 2011. Subsequently, the Department finalised the assessments for the periods from 2007-08 to 2011-12 between October 2013 and August 2015 and raised a demand of ₹ 77.49 crore.

It would be seen from the above that the Department was aware of the fact that the dealer was a defaulter in payment of tax dues and had completely stopped filing of returns since September 2011, however, the concerned DCST did not take prompt action for finalisation of assessments.

After this was pointed out, the concerned Recovery Officer stated (January 2017) that the dealer had refused to pay the dues collected by him. FIR had already been filed against the dealer, and the said recovery now depends on the outcome of the police investigation. However, the reasons for delay in finalizing the assessments were not furnished to audit.

**2.4.7.3** During test check of the recovery files of the dealers of Pune Division, we noticed that a dealer was in arrears of ₹ 166.57 crore for the periods 2006-07 and 2009-10.

The assessment for the period 2006-07 was completed in March 2014 raising a demand of ₹ 145.30 crore. In June 2014 notice in Form-1 for recovery action under MLR Code was pasted on the business premises of the dealer since the premises were stated to have been closed for the last 4-5 years. A claim on the property of the dealer was lodged by the Department with the Talathi Office Pimpri Waghore in August 2014. The Talathi office stated (September 2014) that the property was not in the name of the dealer as per their records. The assessment for the period 2009-10 was finalised in December 2014 and demand of ₹ 21.27 crore was raised. Thus, the total amount against the dealer aggregated to ₹ 166.57 crore. No further action for recovery of tax dues taken by the concerned DCST was found on record.

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<sup>5</sup> The investigation branch had found that the dealer had collected tax of ₹ 13.10 crore out of which ₹ 5.81 crore was paid, but the Department based on the returns raised a further demand of ₹ 5.75 crore.

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After this was pointed out, the concerned Recovery Officer stated (May 2016) that the dealer (a trader company) was dealing in medicines and drugs. Recovery actions as per provisions of law have been taken against the dealer and since the POB was on rental basis and no other property was available for recovery, the case has been classified as “Property not available”.

However, the fact remains that there was inordinate delay in assessing the case and delay in initiating recovery proceeding resulting in non-recovery of tax dues of ₹ 166.57 crore.

**2.4.7.4** During test check of the recovery files of the dealers of Pune Division, we noticed that a dealer was in arrears of ₹ 1.15 crore on account of short filing of returns for the period from November 2012 to July 2013.

The Department had issued a demand notice of ₹ 1.15 crore in December 2013. However, no response was received. The Department issued notices in Form-318 for attachment of bank account in January 2014 and in Form-1 (for attachment of immovable property) in February 2014. The Department issued (July 2015) a letter to the Talathi, Dhanore, Taluka - Khed, Pune for lodging of claim of tax dues on the property of the dealer. Thereafter no further action taken by the concerned DCST was found on record.

After this was pointed out, the concerned Recovery Officer while confirming (June 2016) the facts stated that the Talathi had been asked (July 2015) to submit all important document including Form-7/12 to the Department. Further action taken in this matter was not intimated (February 2017).

Thus, delay in initiating recovery proceeding and ineffective follow-up action resulted in non-recovery of tax dues of ₹ 1.15 crore.

**2.4.7.5** During the test check of recovery files of the dealers of Nashik Division, we noticed that a dealer was in arrears of ₹ 7.32 crore for the period from 2006-07 and 2008-09 to 2013-14.

The assessments for the periods 2006-07, 2008-09 to 2010-11 were finalised between February 2013 and March 2015 for ₹ 6.32 crore. The assessments for the period 2011-12 to 2013-14 were not finalised. However, as per returns, an amount of ₹ 98.57 lakh was due from the dealer. As such the total amount due from the dealer was ₹ 7.32 crore.

Notices in Form-1 for action under MLR Code for the payment of dues were issued on August 2013 and January 2015, and police prosecution show cause notice was issued in August 2013. A case was also lodged in the court of Chief Judicial Magistrate, Nashik on 21 January 2015 against the Director of the company for penal action under Section 74(2) of the MVAT Act.

As the dealer was defaulter in payment of tax (since 2008) as well as a defaulter in payment of instalment dues (since 2012), the concerned DCST should have initiated immediate action to recover the dues under MLR Code which was not done.

After this was brought to notice, the Department stated (June 2016) that further recovery action under MLR Code would be initiated after the completion of pending assessments for the period 2012-13 and 2013-14. This indicated that the Department was not pursuing recovery dues vigorously. The

Department may take necessary steps for recovery of dues already raised under MLR Code.

**2.4.7.6** During the test check of recovery files of a dealers of Nashik Division, we noticed that a dealer was in arrears of dues of ₹ 38.63 lakh on account of short filing of returns for the period from June 2012 to August 2014, for which notices were issued to the dealer between August 2012 and November 2014. Subsequently as per request of the dealer, an order sanctioning payment of dues in six monthly instalments by the dealer was passed (April 2015) for total amount of ₹ 38.46 lakh to be paid from May 2015 onwards. However, the dealer failed to pay the instalments and notice in Form-1 for action under MLR Code was issued in September 2015. Thereafter, the concerned DCST did not take any action for recovery of pending dues.

After this was pointed out, the Department stated (June 2016) that the properties of the dealer had been attached. The Department further stated that Issue Based Audit for the year 2011-12 is still pending and further valuation and auction process will be initiated after completion of the assessment for the period 2011-12.

Thus, the above facts indicate that despite a lapse of five years, the assessment under Issue Based Audit has still not been completed. The Department may simultaneously take action for recovery of the Government dues without waiting for finalisation of assessment.

**2.4.7.7** During the test check of recovery files of Pune Division, we noticed that a manufacturer of engineering goods was a defaulter for non-payment of tax dues of ₹ 58.00 lakh for the period from November 2008 to September 2009. In addition to this, notice in Form-213 was issued (February 2013) for short filing of dues of ₹ 11.26 lakh for December 2010 and ₹ 2.13 lakh for January 2011.

In February 2011, notices (Form-318) to attach the dealer's bank accounts were issued to the Oriental Bank of Commerce and the Janseva Bank, Pune for tax dues of ₹ 71.39 lakh. In reply, it was stated by the Oriental Bank of Commerce that the dealer was availing credit facility, and the Janseva Bank, Pune stated that the dealer's account was closed since July 2007.

The dealer intimated (February 2011) the Department that the firm was facing financial crisis and besides other loans, cash credit limit of ₹ 6.85 crore had been taken by the firm from Oriental Bank of Commerce. He further stated that the firm was going to sell all properties to repay the loans. The Department issued (February 2011) a letter to the bank lodging a tax claim on the property of the dealer at Maharashtra Industrial Development Corporation, Pune. The bank stated (March 2011) that they had the first charge on the property which was under mortgage. Hence they were not able to pay the MVAT dues of the Sales Tax Department.

The assessments for the periods from 2005-06 to 2010-11 were finalised by the Department between March 2013 to November 2014 for ₹ 19.23 crore and demands were raised accordingly.



The matter was brought to the notice of the Department in June 2016; their reply has not been received.

**2.4.7.8** During the test check of recovery files of the dealers of Nashik Division, we noticed that a dealer was in arrears of dues of ₹ 74.35 lakh for the period from 2007-08 to 2009-10. Scrutiny of the records further revealed that according to the visit report of Sales Tax Inspector dated 29 July 2012, the business of the dealer was closed for the last 4-5 years. Thereafter, the concerned Sales Tax Officer issued (December 2014) RRC to the Collector, Jalore, District Jodhpur, Rajasthan but the Collector, Jalore returned (February 2015) the said RRC stating that it did not pertain to his district.

After this was pointed out, the concerned Recovery Officer stated (June 2016) that the dealer was declared a hawala dealer by the Department and an FIR had been registered at Ambad Police Station, Nashik on 30 April 2016. Action by Police Department under IPC/CrPC is awaited.

It can be inferred from the above that there was delay in issuing the RRC/lodging the FIR resulting in non recovery of the dues of ₹ 74.35 lakh.

#### **2.4.8 Non recovery of arrears from the properties attached by banks**

In the following cases, we noticed that the Department did not attach the properties of the defaulting dealers in time, the properties were attached by the banks and VAT arrears remained unpaid.

**2.4.8.1** During the test check of recovery files in Pune Division, we noticed that a dealer was in arrears of ₹ 1.12 crore for the period from 2006-07 to 2009-10 and return period from August 2012 to June 2013.

The Department assessed the dealer for the periods 2006-07, 2008-09 and 2009-10 for ₹ 38.71 lakh between June 2013 and October 2015. The demand notice of ₹ 73.37 lakh (short filer dues for the period from August 2012 to June 2013) was issued on 2 September 2013 under MVAT Act. Notice in Form-1 under MLR Code was issued on 4 September 2013. Thereafter no further action for recovery of dues was taken by the concerned DCST.

On 24 October 2015, the Bank of Maharashtra published notice in newspaper for auction of properties of the dealer. Thereafter the Department issued order of attachment of property of the Director of the company on 31 October 2015 and informed the bank of the first charge of the Sales Tax Department on the property of the dealer under Section 37 of the MVAT Act.

It could not be ascertained from the records whether the bank had auctioned the property of the dealer. No further action was found to have been taken by the Department. Thus, failure in taking timely action by the Department for recovery of dues has resulted in non-realisation of dues of ₹ 1.12 crore.

The case was pointed out to the Department in January 2016. The reply is still awaited.

**2.4.8.2** During the test check of recovery files of Pune Division, we noticed that a dealer was in arrears of ₹ 4.19 crore for the period from 2009-10 to 2010-11.

The Department issued a notice in Form-318 for bank attachment to the Bank of Baroda on 7 October 2015. However, the State Bank of India took possession of the property of the company on 1 December 2015. This came to the notice of the Department through a public notice in a newspaper. Thereafter, the concerned DCST issued order of attachment of property of the company on 5 December 2015 and informed the bank of the first charge of the Sales Tax Department on the property of the dealer. It could not be ascertained from the records produced whether the bank had auctioned the property of the dealer. Thus, the delay in taking timely action resulted in non-realisation of dues of ₹ 4.19 crore.

After this was pointed out, the concerned Recovery Officer stated (July 2016) that the auction declared by the bank was postponed due to non-response of the bidders and the said property was still unsold.

**2.4.8.3** During the test check of recovery files of Pune Division, we noticed that a dealer was in arrears of ₹ 17.92 crore for the period from 2005-06 to 2010-11. The assessments for the above period were completed between February 2014 and November 2014. During the same period, notices for attachment of bank account and for recovery under MLR Code were also issued. On 7 November 2014, the Bank of India published auction notice in newspaper for auction of properties of the dealer. Thereafter, prohibitory order under Section 38 was issued to the company, Bank of India and Regional Officer MIDC, Pune. No further action for recovery of dues was taken by the concerned DCST.

After this was pointed out, the Department stated (May 2016) that the bank has assured that the property would not be disposed without the NOC of the Department.

The above cases are indicative of the fact that due to the failure of Department to take timely action, property was attached by the banks and the chances of recovery in these cases seem remote.

The Government may direct the Department to devise a system for proper/regular follow-up of RRC cases, cases with the Official Liquidator, Debt Recovery Tribunal and take prompt action of attachment/auction of property of the defaulting dealers.

#### **2.4.9 Non recovery of arrears from the properties sold by banks**

In the following cases, we noticed that the properties of the dealers were sold by the banks for recovery of their dues; however, VAT dues were not recovered by the Department.

**2.4.9.1** During the test check of recovery files of the dealers of Thane Division, we noticed that a dealer was in arrears of dues of ₹ 20.99 crore for the periods from 2005-06 to 2011-12. Initially, the dealer was issued notice in Form-213 on 23 December 2011 for payment of short filer dues of ₹ 42.49 lakh for the periods 2006-07 and 2007-08. Subsequently, prohibitory orders under Section 38 of the MVAT Act were issued on 23 December 2011 to the

dealer and his premises were seized. A copy of the order was also given to various authorities including Axis Bank directing them not to issue NOC for transfer of properties of the dealer. Axis Bank requested (January 2012) the Department to withdraw the prohibitory order stating that the notice was illegal and against the law. In March 2013, the property of the dealer situated at MIDC Ambarnath was sold by Axis Bank for ₹ 3.25 crore. After this came to the Department's notice, the Department issued (July 2013) notice under Section 38 to the directors of the company, Axis bank, MIDC and Tahsildar, Ambarnath. In reply the Axis Bank justified (August 2013 and October 2013) the sale of property and stated that they had replied to the earlier prohibitory order dated December 2011, but no response was received from the Sales Tax Department. As per the information available on record no further action was taken by the concerned DCST for recovery of dues.

Thus, it can be seen from the above that the dealer was making short payment of tax since 2006-07 and 2007-08 but the Department issued notice in Form-213 for recovery of dues only in December 2011. The delay of the Department in taking effective recovery action resulted in property of the company being sold by the bank. Even after that, no proper follow-up of the case was made with the bank as Department did not respond to the Axis Bank's denial of prohibitory order issued by the Department. The assessments for the period 2005-06 to 2011-12 were completed by the Department only between December 2013 and March 2016 raising total dues to ₹ 20.99 crore. Considering the facts of the case and revenue at stake, the assessments should have been given priority.

After this was pointed out, the Department intimated that an Official Liquidator (OL) was appointed in the case in December 2014, and debt affidavit for ₹ 16.84 crore was lodged with the OL in February 2015 and another debt affidavit for ₹ 4.15 crore was lodged in May 2016.

The fact remains that the delays in finalizing the assessments combined with lack of action by the Department to prevent the sale of property resulted in non-realisation of dues.

**2.4.9.2** During the test check of recovery files in Nashik Division, we noticed that a dealer was in arrears of ₹ 48.69 lakh for the period 2005-06. The assessment for the period 2005-06 was completed *ex-parte* on 15 March 2013 by raising demand of ₹ 48.69 lakh including interest and penalty. The Sales Tax Inspector visited the POB of the dealer on 10 July 2013 for serving demand notice. As no authorised representative of the dealer was there to receive the notice the same was served by pasting. However it was noticed that the said premise was sealed by the State Bank of India. The Department wrote to the State Bank of India on 23 August 2013 stating that the tax dues are first charge on the property of the dealer.

After this was pointed out, the Department stated (June 2016) that the property of the dealer was sold by the SBI, hence letter was issued to Manager, SBI, Mumbai for recovery of sales tax dues. It further stated that Amnesty scheme was declared vide trade circular 10T of 2016 and if the dealer did not avail the benefit of amnesty scheme then further recovery action under MLR Code would be taken. The facts, however, indicate that the Department had not taken effective recovery action for recovery of its dues.

Thus, though the Department was aware in August 2013 that the property of the dealer was in the custody of the State Bank of India, it had taken no action to safeguard Government revenue. These should have been recovered under MLR Code by the concerned DCST. This property was auctioned by the State Bank of India and ₹ 48.69 lakh payable to the Government was not recovered.

#### **2.4.10 Inaction in lodging/pursuing claim with the Official Liquidator**

The Official Liquidators (OL) are the officers appointed by the Central Government under Section 448 of the Companies Act and are attached to the various High Courts. The primary function of the OL is to administer the assets of companies under liquidation, sale of the assets and realisation of all debts of companies in liquidation for the purpose of distributing the same among the various creditors and other shareholders of the companies and to finally dissolve such companies after the affairs are completely concluded. When the High Court orders the winding of a company, the OL appointed by the High Court takes possession of the Company's assets, books of accounts etc. and the company is liquidated as per the orders of the High Court. As per Section 530(i)(a) of the Companies Act, 1956, priority is given to all revenues, taxes, etc., due from the company to the Central, State or local authorities from the date of appointment of the OL or from the date of order for winding up in case a OL is not appointed.

The procedures to be followed by the Departmental tax authorities with the Official Liquidator (OL) are laid down in Para 6.6.5 of the Recovery Manual of the Department. It *inter-alia*, stipulates that the Recovery Officer should file a debt affidavit along with assessment orders and demand notices to the OL and obtain the acceptance of the claim from the OL.

**2.4.10.1** During test check of the recovery files of the dealers of Mumbai Division, we noticed that a dealer was in arrears of ₹ 47.23 crore for the period 2006-07 to 2010-11.

The assessment of the dealer for the year 2008-09 and onwards was taken up (March and December 2014) after a gap of four years from the last assessment (i.e. 2006-07 and 2007-08 in April, May 2010). The Department came to know in September 2010 that the dealer was under liquidation vide Hon'ble Bombay High Court order dated 19 March 2010. Thereafter, it did not file the debt affidavit, as laid down in the Recovery Manual. The debt affidavit was finally filed in September 2015 by the concerned DCST. Thus, there was a delay of more than five years in lodging the claim with OL as per the manual provisions.

After this was pointed out, the concerned Recovery Officer stated (October 2016) that, the assessments in the case were completed in time, and the claim was lodged with the OL in time. The reply is not tenable as the Department did not file the debt affidavit in September 2010 when it came to know about the dealer's liquidation proceedings and finally filed it after a lapse of five years in September 2015.

**2.4.10.2** During test check of the recovery files of the dealers of Pune Division, we noticed that a dealer was in arrears of ₹ 39.63 crore for the period 2010-11 to 2012-13.

The dealer was a manufacturer of copper wire. He had stopped filing of the return since March 2012. In July 2013, the Hon'ble Bombay High Court ordered the dealer to be wound up and an OL was appointed. Scrutiny of the records revealed that though the Department was intimated about the appointment of OL in August 2013, the demand of ₹ 39.63 crore for the period 2010-11 to 2012-13 were raised only between March 2015 and October 2015 by way of assessment. The debt affidavit for recovery of said dues was filed with the OL only in December 2015.

We brought the matter to the notice of the Department in February 2016; their reply has not been received.

Thus, the demands were raised after a delay ranging from 19 months to 26 months and debt affidavit was filed after a delay of 29 months, thereby delaying the recovery of the tax dues.

#### **2.4.11 Lack of follow-up action in cases pending with the Debt Recovery Tribunal**

The Debt Recovery Tribunal (DRT) has been constituted under Section 3 of the Recovery of Debt Due to Banks and Financial Institutions Act, 1993. The aim of the DRT was to receive the claim applications from Banks and Financial Institutions against their defaulting borrowers. The dues of workmen against a company, the State dues and the dues of other non-secured creditors all came before the DRT, if the company's property was under the possession of the DRT. Further, as per Section 37 of the MVAT Act, any amount of tax, penalty, interest or any other sum payable shall be first charge on the property of the dealer. Therefore, in case the possession of the property is taken over by the DRT, the Department has to lodge its claim before the DRT.

During the test check of the recovery files of the dealers of Nashik Division, we noticed that a dealer was in arrears of ₹ 3.56 crore for the period 2008-09 to 2013-14. The property of the dealer was sealed on March 2015 by the Court Receiver under Debt Recovery Tribunal (DRT) as the dealer did not pay the outstanding loan of the State Bank of India.

The DRT, through newspaper advertisement, fixed the date for e-auction of the property of the company on 15 March 2016. After proclamation of auction, the concerned DCST immediately (10 March 2016), filed debt affidavit for claim of dues. Further progress on the case was not on record.

The above facts indicate that the Department had failed to keep track of the dealer's activity and his property and did not file debt affidavit till the proclamation of auction thus reducing the chances of the recovery.

On this being pointed out, the concerned Recovery Officer confirmed that the debt affidavit was filed after the proclamation of auction. However, further action taken in this regard has not been intimated.

#### **2.4.12 Property in the possession of the Department but not auctioned**

During the test check of recovery files of dealers of Pune Division, we noticed that a dealer (manufacturer of Indian Made Foreign Liquor) was in arrears of dues of ₹ 67.50 crore for the period from 2006-07 to 2013-14. After the investigation visit (January 2013) the dealer accepted the liability and filed the revised return for the period 2006-07 to 2012-13. The tax dues of the dealer was initially determined at ₹ 37.43 crore for the period from 2006-07 to 2012-13 which included assessment as well as return dues. Notice in Form-213 for return dues in respect of above periods as well as notice in Form-318 for bank/debtor attachment was also issued in March 2013. Order of attachment of immovable property of the dealer was issued in April 2013. The auction of the property was scheduled on 18 July 2013 which was subsequently deferred on account of the transfer of the Mumbai based Investigation officer who had initiated the recovery proceedings. The Department decided to authorise another officer based in Pune for the recovery proceedings as the principal place of business was in Pune. Thereafter the recovery action under MLR Code was initiated afresh by the new officer and the auction of the property of the dealer was scheduled on 29 March 2014. However the auction was postponed as no bidder came forward for the auction. Thereafter no further recovery action is taken from the Department. However the pending dues increased from ₹ 37.43 crore to ₹ 67.50 crore after the finalisation of assessments for the periods 2006-07, 2007-08, 2009-10, 2010-11, 2012-13 and 2013-14 and the dealer was intimated about the enhanced dues in September 2015.

Thus, the property of the dealer was in possession of the Department since April 2013 but Department failed to auction the property and realise the amount as the recovery case was transferred from Mumbai to Pune at the time of auction of the property. Had timely action been taken in deciding the proper authority for auction of the property, the auction could have been completed and amount realised.

The matter was brought to the notice of the Department in February 2016; their reply has not been received.

#### **2.4.13 Non pursuance of RRC case within the State**

During the test check of recovery files of Pune Division, we noticed that a dealer was in arrears of dues of ₹ 39.43 lakh for the periods 2006-07 and 2007-08. Notice in Form-318 was issued to SBI, Golibar Maidan Branch, Pune on 28 January 2015. Subsequently a letter was issued (March 2015) to the Tahsildar, Mandangarh, District Ratnagiri for registering the tax dues of ₹ 39.43 lakh on three properties of the dealer situated at Ratnagiri. The Tahsildar replied (July 2015) that the dues had been registered against only one property as the one property was already sold by the dealer and the other was not registered in his name.

In September 2015, RRC was issued to Joint Commissioner of Sales Tax, Kolhapur Division for recovery of dues under MLR Code. However, no action has been taken by the JC, Kolhapur in this regard.

After this was pointed out, the concerned Recovery Officer confirmed (August 2016) the facts and stated that a reminder had been issued to JCST, Kolhapur in August 2016.

The inordinate delay in assessing the case and absence of concerted efforts at every stage of recovery resulted in non-realisation of dues.

#### **2.4.14 Conclusion**

The adjustment of arrears due to cancellation of *ex-parte* orders, write-offs, etc. was in the range of 28 *per cent* to 45 *per cent*. This reflected the poor quality of assessments in the Department. The disposal of appeal cases by the appellate authorities declined in the last three years and was much lower than the target fixed. The Department did not pursue the recovery cases properly and limited the recovery action to issue of notices. These notices were issued belatedly for bank attachment and recovery of arrears as arrears of land revenue.

The Department did not adequately monitor the defaulting dealers. RRCs issued were not pursued, properties of dealers were not attached or attached properties were not auctioned in time. There was nothing on record to show that efforts were taken by the Department to pursue cases of non-traceable dealers. The Departmental machinery was not prompt in its approach with respect of recovery of tax dues and claims lodged with Debt Recovery Tribunal and Official Liquidator were not pursued promptly and effectively. These aspects reflect weakness in the system which necessitates the establishment of a strong and effective mechanism in the State for collection of arrears of revenue.



## **2.5 Audit of “Departmental Mechanism for information sharing and co-ordination with other Government Departments/Bodies”**

### **Introduction**

The two main branches in the Sales Tax Department (STD) entrusted with detecting/dealing with cases involving tax evasion are the Investigation Branch and the Economic Intelligence Unit (EIU)

(A) **Investigation branch:** The branch, which is an integral part of the Department, carries out the following functions.

- Collect intelligence about tax evasion/avoidance/suppression/fraud and
- Create deterrence among tax evaders and avoiders
- Investigate specific cases allotted
- Collect and provide evidence/information about evasion of tax to audit divisions.

(B) **Economic Intelligence Unit (EIU):** The EIU was earlier part of the Investigation Branch, but after 2012, it functions as a separate unit. Its functions include –

- Analyzing information regarding sales tax returns, registration data, inter-state goods transaction, commodity deals and ranking dealers based on their statutory compliance history
- Performing compliance risk analysis, risk scoring, 360 degrees analysis i.e. collecting and analyzing tax information from Central Government Departments and
- Generating and recommending cases for Business Audit, Issue based Audit, Investigation, Returns branch and Registration branch

As per revised manual of Investigation Branch, all cases of tax evasion were directed to be referred to EIU, which after analysis, would be forwarded to the Investigation Branch.

### **Audit coverage**

The Sales Tax Department (STD) has 13<sup>6</sup> divisions out of which we selected five divisions viz. Mumbai, Pune, Thane, Thane-Rural and Nashik for audit scrutiny, these being the top divisions in terms of average Gross Sales Tax receipts for the period 2010-11 to 2014-15. A sixth division, Raigad, was subsequently selected only for scrutiny of mining (sand and stone) receipts. Within these divisions we collected information from nine VAT units, four Municipal Corporations, two Collectorates, two Registrar (Stamp) offices and one Zilla Parishad office.

Analysis of the data collected from these offices revealed a number of instances of non-sharing of information/absence of co-ordination with other Government Departments/Bodies, which have led to short collection of VAT. A few cases are discussed in the following paragraphs.

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<sup>6</sup> Amravati, Aurangabad, Dhule, Kolhapur, Mumbai, Nagpur, Nanded, Nashik, Pune, Raigad, Solapur, Thane and Thane Rural (Palghar).

### 2.5.1 Non-registration of contractors

We obtained data regarding payments made to contractors by various Municipal Corporations/Government bodies for various works undertaken and royalty received by Collectorates from sand mining and stone quarry lease contractors during 2010-11 to 2015-16. The data so obtained was cross-verified with the data available in the MAHAVIKAS system in the Sales Tax Department. The observations in this regard are as follows:

**2.5.1.1** Section 16 read with Section 3 of MVAT Act provides that each contractor executing work(s) shall get himself registered if his turnover of sales exceeds the threshold limit of ₹ 5 lakh<sup>7</sup> during a year. As per Section 31 of the MVAT Act and Rule 40 of the MVAT Rules, employers (those awarding contract) are liable to deduct tax from the contractor i.e. TDS (Tax deduction at source). It is two *per cent* in case of registered dealers and four *per cent*<sup>8</sup> in case of unregistered dealers, of the amount payable to the contractor.

We observed that 455 contractors who were paid ₹ 470.99 crores for various works undertaken in various Municipal Corporations/Government bodies were not registered with the STD. The turnover of all these dealers had exceeded the threshold limit of ₹ five lakhs and in all the works undertaken cases, TDS was deducted at the rate prescribed for unregistered dealers by these Corporations/bodies and credited to the VAT tax head. No efforts were found to have been taken on record to bring the dealers under the tax net.

Details of payments received by these unregistered contractors from various Corporations/bodies are shown in **Table 2.5.1.1**.

**Table 2.5.1.1**

(₹ in crore)				
Sr. No.	Name of the organisation	Payment period	Nos. of contractors	Total Payments made
1	Kalyan Dombivili Municipal Corporation	2010-11 to 2014-15	321	406.62
2	Pune Municipal Corporation	2010-11 to 2014-15	95	51.21
3	Ambernath Municipal Council	2010-11 to 2014-15	35	12.48
4	Zilla Parishad-Thane (Prime Minister Gram Sadak Yojana)	2010-11 to 2014-15	4	0.68
<b>Total</b>			<b>455</b>	<b>470.99</b>

**2.5.1.2** Section 31A<sup>9</sup>, provides for TCS (Tax Collection at source) by District Collector<sup>10</sup> of the auction amount of sand, stone etc., from the person

<sup>7</sup> ₹ 10 lakh from 26 June 2014.

<sup>8</sup> Five *per cent* from April 2012.

<sup>9</sup> w.e.f. 1st May 2012.

<sup>10</sup> Notification No. VAT 1512/CR 149/Taxation-1 dated 15th February 2013.

or dealer who has been awarded the right to excavate and credit it to the VAT tax head.

In case of mining and stone quarry lease contractors, we noticed that 79 contractors in respect of whom royalty of ₹ 23.73 crores had been collected by the Collectorates were unregistered with the STD and TCS had not been recovered from these contractors. Details of royalties received by the Collectors from these unregistered contractors are shown in **Table 2.5.1.2**.

**Table 2.5.1.2**

(₹ in crore)				
Sr. No.	Name of the organisation	Payment period	No. of contractors	Total Payments received
1	Thane District Collector (sand mining and stone quarry lease)	2010-11 to 2013-14	61	13.90
2	Raigad District Collector (sand mining and stone quarry lease)	2013-14 to 2015-16	18	9.83
<b>Total</b>			<b>79</b>	<b>23.73</b>

The correct tax liability of these unregistered contractors remained undetermined. The turnover of all these dealers involved a number of items which were not on record. As such the tax liability, if any, of the dealers could not be ascertained in Audit.

The Department may consider registering those dealers that have crossed the threshold limit for registration.

We brought the matter to the notice of the Department between July and September 2016. Their reply has not been received.

### **2.5.2 Concealment of work-receipts by contractors**

Section 20(1)(a) of MVAT Act requires every registered dealer to file correct, complete and self-consistent return. Further, proviso to Section 16(6) of MVAT Act requires that, where the dealer has failed to apply for cancellation of registration, the Commissioner should satisfy himself regarding discontinuation or disposal of the business before cancelling the registration.

We collected data regarding payments made to 3,209 contractors by three Municipal Corporations for various works undertaken during 2010-11 to 2014-15 and compared it with the data available in the MAHAVIKAS system in the Sales Tax Department. It was noticed that:

- Four contractors had executed contract valued at ₹ 1.28 crore but the turnover was not disclosed in their periodical returns.
- Eight contractors who had executed contracts worth ₹ 5.47 crore had not filed their returns.

- Forty one contractors who had executed contracts valued at ₹ 149.39 crore, were dealers whose Registration Certificate (RC) had been cancelled.

In all these cases, TDS was made and remitted to the Department, however, they escaped the assessment of the Department since they were not registered.

We brought the matter to the notice of the Department (July/August 2016). Reply has not been received.

### 2.5.3 Evasion of tax by builders

Beginning from 20 June 2006, transfer of property in goods involved in execution of an agreement for cash, deferred payment, etc. for the building and construction of immovable property was treated as works contract and attracted VAT at five *per cent* under composition scheme. Further, as per Section 42 (3A) of the MVAT Act, 2002, from 1 April 2010, VAT at the rate of one *per cent* of agreement value or on the value specified for the purpose of stamp duty, whichever was higher was leviable under the composition in respect of construction of flats, dwellings, buildings or premises. The tax rate of one *per cent* is leviable only in cases where the building is yet to be granted Occupancy Certificate.

Analysis of data pertaining to registration of flats provided by the Registrar's office, Thane and Kalyan revealed that 16 builders who had sold 480 flats during the period 2010-11 to 2014-15 valued at ₹121.88 crore were not registered with the STD and thus remained outside the tax net. In absence of the information regarding the stage at which the flats were sold, the tax liability could not be ascertained.

We brought the matter to the notice of the EIU (July/August 2016). The EIU stated that it deals with only data available with the STD. The reply indicates that the STD is yet to put in place an effective cross-check mechanism to detect cases of tax evasion by sharing of information with other Government Departments/bodies. This exercise may be done by the Department to check the evasion of taxes in STD.

### 2.5.4 Excess or improper export claims

Proviso to Section 6(1) of the CST Act, 1956 exempts a dealer from payment of tax when the sale of goods is in the course of export out of the territory of India.

We compared export claims of 35 dealers allowed by the STD during their assessments for the periods 2010-11 and 2011-12, with these dealers export data obtained from the Indian Customs EDI System, covering Jawaharlal Nehru Port, Mumbai Port and Air Cargo-Sahar, etc. We found that in three cases though deduction of exports amounting to ₹ 138.17 crore was allowed to the dealers, no exports had been made by them. In eight cases, excess export sales amounting to ₹ 107.06 crore were allowed to the dealers in their assessment. This has resulted in total excess export claims to the dealers to tune of ₹ 245.23 crore. A few instances are shown in **Table 2.5.4**.

**Table 2.5.4**

(₹ in crores)							
Sr. no.	Year	Name of the dealer	Name of the division	Date of Assessment order	Value of exports as per STD	Value of exports as per Customs (FOB)	Difference (6) – (7)
1	2	3	4	5	6	7	8
1	2011-12	M/s A	Palghar	12-02-2015	17.39	14.28	3.11
2	2011-12	M/s B	Pune	01-04-2015	5.36	0	5.36
3	2011-12	M/s C	Pune	28-03-2016	6.87	0	6.87
4	2011-12	M/s D	Pune	30-04-2015	82.78	33.54	49.24

The exact quantum of evasion of tax could not be ascertained as multiple commodities were involved in these export sales. We brought the matter to the notice of the Department (September 2016). The Department may look into matter and the short recovery, if any, may be got recovered.

### 2.5.5 Under-declaration of imports

Section 20(1) (a) of MVAT Act requires every registered dealer to file correct, complete and self-consistent return. The various return forms prescribed for this purpose requires the dealer to declare goods imported by him.

We compared the goods import claims of 79 dealers allowed by the STD at the time of their assessments for the periods 2010-11 and 2011-12, with these dealers import data obtained from the Indian Customs EDI System, covering Jawaharlal Nehru Port, Mumbai Port and Air Cargo-Sahar, etc., we found that in ten cases, under-declaration of imports amounting to ₹ 344.59 crore had been allowed by the STD during the dealers assessment. A few instances are shown in **Table 2.5.5**.

**Table 2.5.5**

(₹ in crores)							
Sr. no.	Year	Name of the dealer	Name of the division	Date of Assessment order	Value of imports as per STD	Total Value of imports assessed by Customs for payment of duty	Difference (7) – (6)
1	2	3	4	5	6	7	8
1	2010-11	M/s V	Pune	05-08-2014	90.41	148.10	57.69
2	2010-11	M/s W	Pune	29-12-2014	33.89	66.08	32.19
3	2011-12	M/s X	Pune	29-03-2016	79.58	107.84	28.26
4	2010-11	M/s Y	Nashik	29-03-2015	70.67	88.34	17.67

The exact quantum of evasion of tax could not be ascertained as multiple commodities were involved in these import purchases. We brought the matter to the notice of the Department (July 2016). The Department may look into the matter and short recovery, if any, may be got recovered.

### **2.5.6 Conclusion**

The above instances of non-registration and non verification of sales income, export claims and imports indicate that the STD's tax evasion detection mechanism was not in place and hence unable to detect such cases either due to absence of information exchange with other Government bodies or due to non-utilisation of such information already available with the Department.

## **2.6 Other audit observations**

Our scrutiny of the assessment records finalised under the Maharashtra Value Added Tax, 2002 (MVAT Act) and the Central Sales Tax Act, 1956 (CST Act) in the Sales Tax Department revealed cases of non-observance of provisions of Acts/Rules, short levy of tax, irregular grant of set-off, etc., as mentioned in the succeeding paragraphs in this Chapter. These cases are illustrative and are based on a test check carried out by us. Such omissions on the part of Assessing Authorities (AAs) are pointed out in audit each year, but not only do the irregularities persist; these remain undetected till we conduct audit. There is need for the Government to improve the internal control system including strengthening of internal audit.

### **2.6.1 Excess allowance of set-off**

**Dy. Commissioner of Sales Tax, E-618 Large Tax Payers Unit, Mazgaon**

#### **Set-off of ₹ 18.75 lakh was allowed without proper verification of taxable local purchases transferred to branches outside the State**

As per the provisions of Rule 53(3) of Maharashtra Value Added Tax Rules, 2005, if any claimant dealer dispatches any taxable goods outside the State, to any place within India, not by reason of sale, to his own place of business or of his agent or where the claimant dealer is a commission agent, to the place of business of his principal, then an amount equal to the amount calculated at the rates, notified from time to time by the Central Government for the purposes of Sub-section (1) of Section (8) of the Central Sales Tax Act, 1956 of the purchase price of the corresponding taxable goods (not being goods treated as capital assets or used as fuel) shall be deducted from the amount of set-off otherwise available in respect of the said purchases.

During test check (October 2015) of records pertaining to the year 2006-07 of a dealer engaged in the business of trading in CDMA handsets, voice data cards, etc. (covered by Schedule entry C-56 and locally taxable @ four *per cent* during 2006-07), we noticed that branch transfers out of Maharashtra State were allowed at ₹ 133.43 crore, which included taxable local purchases of ₹ 8.60 crore. However, instead of deducting an amount of ₹ 33.07 lakh from the set-off granted to the dealer on account of four *per cent* (the rate of Central Sales Tax during 2006-07 being four *per cent* on goods which were locally taxable @ four to 10 *per cent*) of the such RD purchases, the assessing officer deducted only ₹ 14.32 lakh. This resulted in excess allowance of set-off of ₹ 18.75 lakh. Further, interest of ₹ 19.69 lakh on the resulting dues was also leviable.

After we brought the case to the notice of the Department in November 2015, the Department accepted the observation and passed rectification order in December 2015 raising additional demand of ₹ 38.44 lakh including interest of ₹ 19.69 lakh. The Department further stated that the dealer had preferred appeal against the rectification order. A report of recovery in the matter is awaited.

We brought the matter to the notice of the Government in June 2016; their reply has not been received (February 2017).



### 2.6.2 Incorrect allowance of set-off

**Dy. Commissioner of Sales Tax, E-008, Refund & Refund Audit, Kolhapur**

#### **Set-off of ₹ 24.51 lakh was allowed without proper verification**

As per Section 48(5) of Maharashtra Value Added Tax Act, 2002, set-off on any goods purchased shall not exceed the amount of tax in respect of the same goods actually paid under this Act or any earlier law. Tax actually paid means tax remitted into the Government Treasury. Further, Trade Circular dated 21 June 2012 stated that No Input Tax Credit claim shall be allowed unless the corresponding tax is paid by the selling dealer into the Government treasury.

During scrutiny of assessment records (February 2014) in respect of four dealers, we observed that set-off amounting to ₹ 24.51 lakh for the periods from 2008-09 to 2010-11 was allowed on the basis of the suppliers ledger confirmation. A scrutiny of the data available in the Maharashtra Vikrikar Automation System (MAHAVIKAS) revealed that the Registration certificates of the suppliers were cancelled prior to the date of supply of goods or the suppliers had filed nil returns for those periods. It was not evident from the MAHAVIKAS that the taxes collected by the suppliers were paid into the treasury. Thus, allowance of set-off of ₹ 24.51 lakh of without any documentary evidence was incorrect.

At this being pointed out (March 2014), the Department stated that the point would be verified.

We brought the matter to the notice of the Government in July 2016; their reply is awaited (February 2017).

### 2.6.3 Underassessment of dues

**Dy. Commissioner of Sales Tax, E-003 Large Tax Payers Unit, Nashik**

#### **Incorrect adjustment against tax dues instead of interest resulted in underassessment of dues by ₹ 24.13 lakh**

Under the provisions of Section 9(2B) of the Central Sales Tax Act, 1956, if the tax payable by any dealer in Maharashtra under this Act is not paid in time, the dealer shall be liable to pay interest for delayed payment of such tax as per the provisions of Section 30(2) of the Maharashtra Value Added Tax, 2002. Further, as per provisions of Section 40 of the MVAT Act, interest payable, if any, is adjustable against the payments made before adjustment of dues.

During the scrutiny (February 2015) of assessment and other related records under the CST Act, of a dealer engaged in manufacturing of electricity transmission and controls apparatus, we noticed that the dealer had, for the years 2008-09 and 2009-10, paid along with returns, ₹ 63.43 lakh and ₹ 34.28 lakh respectively, including interest of ₹ 12.63 lakh and ₹ 11.50 lakh respectively under Section 30(2).

At the time of passing the assessment order, the assessing officer adjusted the entire amount of ₹ 97.71 lakh against the tax dues instead of ₹ 73.58 lakh which were the actual dues amount paid by the dealer along with return, which

resulted in underassessment of dues including interest, penalty etc. by ₹ 12.63 lakh and ₹ 11.50 lakh for the periods 2008-09 and 2009-10 respectively.

After this being brought to notice (April 2015), the Department accepted the observation and passed rectification order (May 2015) by considering the interest under Section 30(2) of ₹ 11.92 lakh and ₹ 10.01 lakh for the periods 2008-09 and 2009-10 respectively. The Department further stated that as the dealer was in appeal against the original assessment order, the case has been forwarded to appeal. A report on recovery has not been received.

We brought the matter to the notice of the Government in June 2016; their reply has not been received (February 2017).