CHAPTER II
SALES TAX/VALUE ADDED TAX

2.1 Tax administration

The tax administration of the Commercial Tax Department of the State is governed by the Gujarat Value Added Tax (GVAT) Act, 2003 and the Central Sales Tax (CST) Act, 1956. The GVAT Act was made effective in the State from 1st April 2006 and on its implementation, the Gujarat Sales Tax Act, 1969, the Bombay Sales of Motor Spirit Taxation Act, 1958 and the Purchase Tax on Sugarcane Act, 1989 were repealed. However assessments, appeals, recovery etc; pertaining to the period prior to the implementation of GVAT would continue to be governed under the provisions of these repealed Acts. The Commercial Tax Department (Department) is headed by the Commissioner of Commercial Tax (Commissioner), who is assisted by a Special Commissioner and an Additional Commissioner. The Department is geographically organised into seven administrative divisions, each headed by an Additional/Joint Commissioner (Addl./JC). A division has 'circles', each headed by a Deputy Commissioner (DC); there are 24 circles in the State. A circle has assessment units each headed by Assistant Commissioner/Commercial Tax Officer (AC/CTO); there are 104 units in the State. In addition, there are 11 permanent, two seasonal/temporary check posts headed by AC/CTO. Besides, there are staff positions in the Department's head office for administration, audit, legal, appeal, enforcement, e-governance, internal inspection *etc*., headed by Addl./JC or DC.

2.2 Analysis of budget preparation

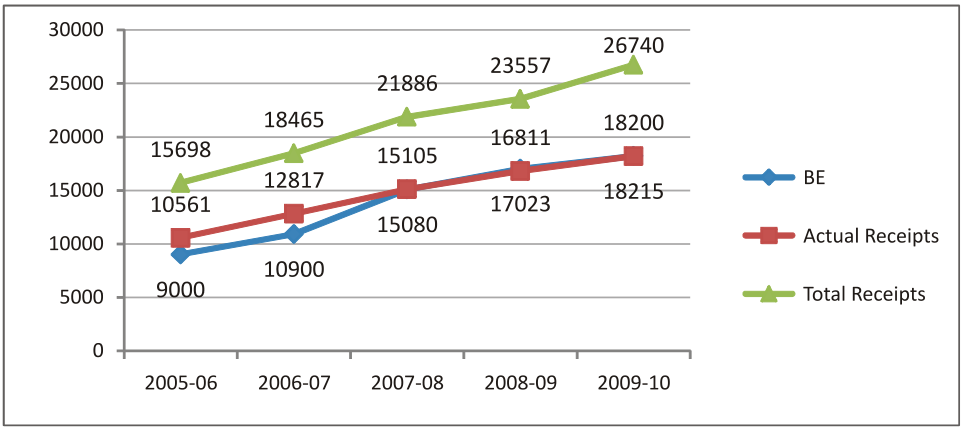
The Budget Estimates are furnished by the Commissioner in the prescribed format to the Finance Department. While preparing the budget estimates, the Commercial Tax Department considered normal growth of the State economy, rise in price of goods (particularly petroleum products) and increase in demand and production of consumer goods. The variation between the budget estimates and the actual receipt is nominal. Further, there is no variation between Budget Estimates and Revised Estimates.

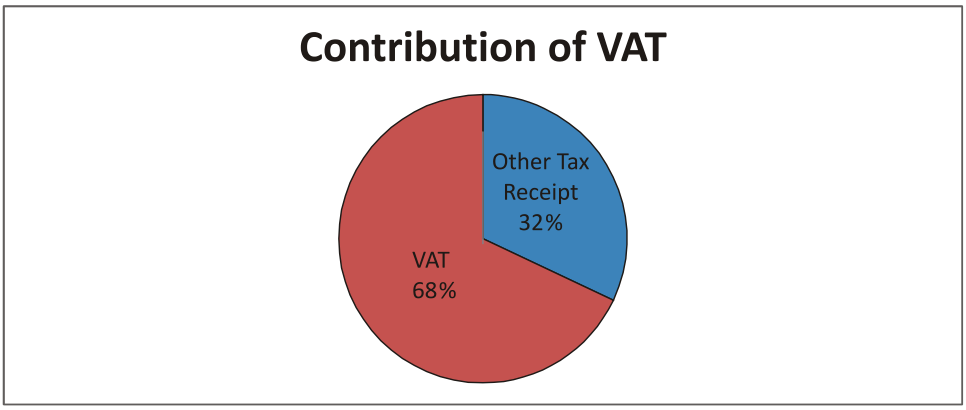
2.3 Trend of receipts

Actual receipts from Sales Tax/VAT during the last five years 2005-06 to 2009-10 alongwith the total tax receipts during the same period is exhibited in the following table and graph.

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual Sales Tax/ VAT receipts vis-a- vis total tax receipts
2005-06	9,000.00	10,561.34	(+) 1,561.34	(+) 17.35	15,698.11	67.28
2006-07	10,900.00	12,817.46	(+) 1,917.46	(+) 17.59	18,464.63	69.42
2007-08	15,080.00	15,104.54	(+) 24.54	(+) 0.16	21,885.57	69.02
2008-09	17,023.00	16,810.65	(-) 212.35	(-) 1.25	23,557.03	71.36
2009-10	18,215.00	18,199.79	(-) 15.21	(-) 0.08	26,740.23	68.06





The contribution of VAT in total tax receipts declined significantly from 71.36 *per cent* in 2008-09 to 68.06 *per cent* in 2009-10.

The above pie chart indicates the dominance of contribution of Value Added Tax (VAT) over the other tax receipts in Gujarat.

2.4 Analysis of arrears of revenue

Year	Opening balance of arrears	Demand raised	Amount collected during the year	Closing balance of arrears
2007-08	8,352.53	2,326.70	2,739.73	7,939.50
2008-09	7,939.50	2,019.07	1,104.67	8,853.90
2009-10	8,853.90	6,428.33	4,084.70	11,197.53

The arrears of revenue as on 31 March 2010 amounted to ₹ 11,197.53 crore, of which ₹ 4,178.02 crore were outstanding for more than five years. Of the total outstanding amount, recovery certificates for ₹ 1,493.25 crore have been issued. Recovery of ₹ 3,648.48 crore has been stayed by the High Court of Gujarat and other judicial authorities. Recoveries of ₹ 218.42 crore and ₹ 173.29 crore are held up due to the dealers being insolvent; and non-finalisation of rectification and review applications of the dealers respectively. ₹ 198.53 crore is unlikely to be recovered and hence proposed to be written off and ₹ 5,465.56 crore is under various stages of recovery.

We recommend that the Government to make a determined effort to recover the huge Sales Tax/VAT arrears.

2.5 Assessee profile

The number of dealers required to file returns was 3,86,397 at the end of March 2010. During the year 2009-10, 23,323 new dealers were registered. The Department issued 77,297 notices in the cases of 1,02,350 return defaulters, who did not file the return within the prescribed period. The Department had not furnished the information in respect of total number of dealers who did not file the returns and the number of defaulters to whom notices were not issued.

2.6 Arrears in assessment

The number of cases pending for assessment at the beginning of the year 2008-09, due for assessment during the year, disposed of during the year and pending at the end of the year 2008-09 alongwith the figures for the preceding four years as furnished by the Commercial Tax Department[4] are given in the following table.

[4] In respect of sales tax/VAT, profession tax, purchase tax on sugarcane, lease tax, luxury tax and tax on works contracts.

(No. of cases)

Year	Opening balance as on 1 April	Additions during the year	Total (2+3)	Clearance during the year	Closing balance at the end of the year (4-5)	Percentage of column 6 to 4
1	2	3	4	5	6	7
2005-06	9,31,343	4,58,817	13,90,160	7,07,451	6,82,709	49
2006-07	6,82,709	4,24,113	11,06,822	3,78,420	7,28,402	66
2007-08	7,28,402	3,84,961	11,13,363	4,00,588	7,12,775	64
2008-09	3,46,922[5]	1,08,174	4,55,096	1,27,315	3,27,781	72
2009-10	3,27,781	1,22,180	4,49,961	1,80,159	2,69,802	60

Thus, the percentage of closing balance at the end of each year during 2005-06 to 2009-10 to total cases becoming due for assessment ranged between 49 and 72 *per cent*. The decrease in cases due for assessment was due to the introduction of the Gujarat Value Added Tax Act, 2003 with effect from 1 April 2006 in place of the Gujarat Sales Tax Act, 1969.

Status of assessment under GVAT Act, as reported by the Department is mentioned in the following table :

Year	Opening balance as on 1 April	Additions during the year	Total (2+3)	Clearance during the year	Closing balance at the end of the year (4-5)	Percentage of column 6 to 4
1	2	3	4	5	6	7
2008-09	0	69135	69135	14187	54948	79.48
2009-10	54948	99289	154237	38707	115530	74.90

Note - The reasons for nil opening balance were not intimated by the Department.

The Section 34 of GVAT act authorises the Commissioner to audit the self assessment made under Section 33. The above figures represent only the cases selected by the Department for audit assessment under Section 34 of GVAT Act. The remaining returns are considered self-assessed. The details regarding extent of scrutiny of these self-assessed returns were not made available to audit.

The Government needs to take steps for speedy disposal of audit assessment. Also, the outstanding assessment cases under erstwhile sales tax may be finalised on priority basis to avoid revenue loss due to time barring provisions.

2.7 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 2007-08, 2008-09 and 2009-10 alongwith the relevant all India average percentage of expenditure on collection to gross collection for the preceding years is shown in the following table.

[5] Differs from the closing balance of 7,12,775 reported by the Department for 2007-08.

(₹ in crore)

Heads of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage of cost of collection of the preceding years
Sales Tax/ VAT	2007-08	15,104.54	98.43	0.65	0.82
	2008-09	16,810.65	99.51	0.59	0.83
	2009-10	18,199.79	129.07	0.71	0.88

The cost of collection in respect of sales tax/VAT/central sales tax was lower than the all India average. The increase in aggregate expenditure on collection of revenue during 2009-10 over previous year was mainly due to implementation of recommendations of Sixth Pay Commission.

2.8 Analysis of collection

The break-up of the total collection at the pre-assessment stage and after regular assessment of sales tax and motor spirit tax for the year 2009-10 and the corresponding figures for the preceding two years as furnished by the Department is mentioned below :

(₹ in crore)

Heads of revenue	Year	Amount collected at pre-assessment stage	Amount collected after regular assessment (additional demand)	Amount refunded	Net collection	Percentage of column 4 to 3
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Sales Tax/ VAT	2007-08	14,918.87	447.05	712.85	14,659.07	3.00
	2008-09	15,793.59	186.40	1,338.19	14,641.80	1.18
	2009-10	18,529.72	278.11	1,384.13	17,423.70	1.50
Cess on Motor Spirit	2007-08	450.91	0.56	-	451.47	0.12
	2008-09	523.68	2.67	-	526.35	0.51
	2009-10	496.40	0.05	-	496.45	0.01

Note: - The figures as furnished by the Department are at variance with the Finance Accounts figures and need reconciliation.

Thus, the percentage of collection of revenue after assessment (additional demand) with respect to pre-assessment stage ranged between 1.18 and 3 *per cent* under sales tax/VAT during the years 2007-08 to 2009-10. As per information furnished by the Department, major portion of refund arises due to exports or branch transfer of goods outside the State for sale.

2.9 Impact of Audit Reports

2.9.1 Revenue impact

During the last five years (including the current year's report), we through our audit reports had pointed out non/short levy, non/short realisation, underassessment/ loss of revenue, incorrect exemption, concealment/ suppression of turnover,

application of incorrect rate of tax, incorrect computation etc, with revenue implication of ₹ 5,522.99 crore in 70 paragraphs. Of these, the Department/ Government had accepted audit observations in 59 paragraphs involving ₹ 109.95 crore and had since recovered ₹ 5.65 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Paragraph accepted		Amount recovered	
	No	Amount	No	Amount	No	Amount
2005-06	14	311.89	13	25.71	7	1.60
2006-07	12	27.86	11	10.98	4	1.49
2007-08	12	134.90	10	21.81	8	1.43
2008-09	17	5,013.96	12	24.62	8	0.64
2009-10	15	34.38	13	26.83	7	0.49
Total	**70**	**5,522.99**	**59**	**109.95**	**34**	**5.65**

The above table indicates that recovery of accepted cases was very low (5 *per cent* of the accepted money value).

The Government may take suitable steps for speedy recovery.

2.9.2 Amendments in the Acts/Rules/Notification/Order issued by the Government at the instance of audit

The audit raised (AR 2006-07; Paragraph 2.2.1) issue of *Saral* Assessment without ensuring collection of declaration forms in support of inter-state trade/ transfer from the dealers resulting in probable loss of revenue on account of such concessions. The Commissioner issued a circular (April 2007) by which submission of declaration form in support of inter-state trade/transfer by the dealer was made compulsory for *Saral* assessment scheme from the year 2006-07.

2.10 Working of internal audit wing

Internal Audit Wing of Commercial Tax Department, headed by Joint Commissioner (JC), Audit conducts audit of all offices dealing with the assessment and collection of sales tax/value added tax. JC (Audit) is assisted by a Dy. Commissioner (Audit). There are seven Dy. Commissioners, one each in every Division and has a monthly target of 150 cases. The concerned Dy. Commissioner (Audit) submits monthly statement to JC (Audit) giving particulars such as offices audited, number of dealers covered and objection raised. The JC (Audit) offers his comments on such statements. During the year 2009-10, seven Dy. Commissioners (Audit) audited 2,614 cases as against yearly target of 12,600 cases. Out of 2,614 cases audited, revision orders involving an amount of ₹ 18.40 crore were passed in 131 cases.

The internal audit wing needs to put in more concerted efforts to achieve the target fixed so that better tax compliance is ensured.

2.11 Results of audit

We test checked the records of 82 units relating to Commercial Tax Offices and noticed under assessment of tax and other irregularities involving ₹ 225.08 crore in 686 cases which falls under the following categories:

Sl. No.	Categories	No. of cases	Amount (₹ in crore)
1	Incorrect rate of tax and mistake in computation	56	21.96
2	Irregular grant of set-off	91	17.67
3	Irregular concessions/exemptions	12	15.97
4	Non/short levy of tax, interest and penalty	436	137.24
5	Other irregularities	91	32.24
	Total	**686**	**225.08**

During the course of the year, the Department accepted under assessment and other deficiencies of ₹ 10.47 crore in 35 cases, of which eight cases involving ₹ 19.12 lakh were pointed out in audit during the year 2009-10 and the rest in earlier years. An amount of ₹ 44.38 lakh was realized in 22 cases during the year 2009-10.

A few illustrative cases involving ₹ 34.38 crore are mentioned in the following paragraphs.

2.12 Audit observations

Our scrutiny of the records of the various Commercial Tax offices revealed several cases of non-compliance with the provisions of the Gujarat Sales Tax Act, 1969, the Bombay Sales of Motor Spirit Taxation Act, 1958, the Gujarat Sales Tax Rules, 1970, the Central Sales Tax Act, 1956 etc., and Government notifications and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on test check carried out by us. Such omissions on the part of the Departmental officers are pointed out by us each year; however, not only do the irregularities persist, but they also remain undetected till our audit is conducted in the next year. There is need for the Government to improve the internal control system and internal audit.

2.13 Recommendations

Based on the observation pointed out in the succeeding paragraphs, we suggest the following recommendations for improvement in the assessments made by the Department :

- Assessing officer(AO) should ensure that all the required declaration forms in support of inter-state trade/export are provided by the dealers as per the provisions of Act/Rules.
- While allowing set-off/ITC, the assessing officer should apply the provisions of Act/Rules strictly.
- While finalising taxable turnover, the assessing officer should also take into account the figures available in other records of the assessee and
- While finalisation of the assessment, the assessing officer should levy the prescribed interest and penalty, wherever applicable.

2.14 Non/short levy of tax due to incorrect classification/rates of goods

The Supreme Court of India held[6] that PP/HDPE fabrics will be classified as plastic instead of textile material for the purpose of levy of Central Excise duty. Assessment manual of Sales Tax Department clarifies that if any entry in Schedule to the Act is linked with Central Excise Act, any amendment made in Central Excise Act shall have effect in entry under the Sales Tax Act as well. However, we found that the earlier determination order passed (March 1987 and April 1994) by the Commissioner treating the HDPE fabrics as textile material (exempted goods) was not withdrawn/ revised in view of the Supreme Court judgement. Therefore, the practice continued treating the HDPE fabrics as textile material (exempted goods) though tax was leviable at the rate of eight *per cent* treating it as 'plastic'. Further, Section 8 of the Central Sales Tax Act (CST Act) as it stood before, provided for levy of tax on interstate sale of goods not supported by form C, at the rate of 10 *per cent* or at the rate applicable on such goods inside the State, whichever is higher.

2.14.1 During test check of records of 14 offices[7] between November 2008 and September 2009, we noticed in the assessment of 31 dealers for the period between 2002-03 and 2005-06, finalised between April 2006 and December 2008 under the GST Act and three dealers under the CST Act that the AOs did not levy tax on sale of HDPE fabrics though tax was leviable at eight *per cent* or ten *per cent* under the GST Act and the CST Act respectively, in view of the Supreme Court judgement. Incorrect classification resulted in under assessment of ₹ 7.34 crore under the GST Act and ₹ 59.05 lakh under the CST Act, aggregating to ₹ 7.93 crore.

After we pointed out the above cases between March 2009 and December 2009, the Department did not accept the audit observation and stated that the guidelines given in the assessment manual is based on judgment in case of Mysore Electrical Industries Ltd., (57-STC-559) the facts of which are different. The Department relied upon the determination orders issued under Section 62 of the Act and judgment of Sales Tax Tribunals. The reply is not acceptable in view of Supreme Court judgment and the Manual of the Sales Tax Department, both of which are binding on the assessing officers.

We reported the matter to the Government (April 2010); the Government confirmed the view of the Department (December 2010).

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[6] Union of India Vs. Pramact Plastic Pvt. Ltd. 2000(119)ELT-A173(SC).

[7] DCCT: 7 Gandhinagar, 8 Mehsana, 23 Rajkot and Valsad.
ACCT: 5, 11 and 21 Ahmedabad, 1 Anand, Kalol, 2 Rajkot, 4 Vadodara, 2 Vapi and Vijapur. CTO: Visnagar.

The GST Act provides for levy of tax at the rates as prescribed in the schedules to the Act, depending upon the classification of the goods. However, where the goods are not covered under any specific entry of the schedule, general rate of tax given for residuary item is applicable. Further, Section 8 of the Central Sales Tax Act (CST) as it stood before, provided for levy of tax on interstate sale of goods not supported by Form C, at 10 *per cent* or at the rate applicable on such goods inside the State, whichever is higher.

2.14.2 During test check of records of eight offices[8] between October 2008 and October 2009, we noticed that 11 dealers paid tax at lower rates due to incorrect classification of goods during the period between 2002-03 and 2005-06. While finalising assessments between June 2006 and September 2008, the AOs also failed to assess the tax at correct rates. This resulted in short realisation of tax of ₹ 1.78 crore, interest of ₹ 59.12 lakh and penalty of ₹ 87.28 lakh under GST Act, and ₹ 0.56 lakh and interest of ₹ 0.27 lakh under CST Act, aggregating to ₹ 3.25 crore of which, some important cases are mentioned in the table below:

(₹ in lakh)

Sl. No.	No. of dealers	Commodity	Entry no.		Rate of tax		Short levy
			Classified	Classifiable	leviable	levied	
1.	1	Tractor Battery	160	128(3)	8	4	33.32
2.	1	Food Colour	25	100	12	6	17.57
3.	1	Toner and spare parts of Photo-copier Machines	97(D)	195	12	8	9.60
4.	1	Rubber Sheet	102	195	12	8	5.29
5.	2	Pasti (waste news paper)	129	44	4	2	4.29

After we pointed out the above cases between February 2009 and January 2010, the Department accepted (November 2009 and September 2010) the audit observations involving ₹ 70.07 lakh in case of six dealers mentioned above. Particulars of recovery and replies in the remaining cases have not been received (December 2010).

We reported the matter to the Government (June 2010); the Government confirmed the reply of the Department in six cases. The reply in the remaining cases has not been received (December 2010).

[8] DCCT: 4 Ahmedabad.
ACCT: 10 and 14 Ahmedabad, Gandhinagar, Kalol, 4 Surat, 7 Vadodara and 2 Vapi.

2.14.3 Short levy of tax due to application of incorrect rate

The GST Act provides for levy of tax at the rates as provided in the schedules to the Act. However, where the goods are not covered under any specific entry of the schedule, rate of tax given for residuary entry is applicable to the respective goods.

During test check of records of four offices[9] between July 2008 and January 2009, we noticed in the assessment of four dealers for the period between 2002-03 and 2005-06, finalised between July 2006 and March 2008 that the assessing officers taxed sales turnover of ₹ 2.02 crore of various goods at the rates lower than those mentioned in the Act. This resulted in short levy of tax of ₹ 18.35 lakh including interest of ₹ 5.05 lakh and penalty of ₹ 3.75 lakh.

After we pointed out the cases between October 2008 and May 2009, the Department accepted (between May 2009 and January 2010) audit observations involving an amount of ₹ 18.35 lakh in case of all the dealers. Particulars of recovery have not been received (December 2010).

After we reported (May 2010) the matter, the Government confirmed the reply of the Department in three cases; the reply in the remaining case has not been received (December 2010).

2.15 Non/short levy of central sales tax on non-production of the Forms

Rule 12(10) of the Central Sales Tax (Registration and Turnover) Rules, 1957, provides that the dealer has to furnish to the prescribed authority, a certificate in form H, duly filled in with all details *viz*. agreement number and date relating to such export, particulars of goods along with evidence of export of such goods in support of his claim for export. By virtue of Section 9(2A) of the CST Act, provisions of interest and penalty, as per general sales tax law applicable in the State are applicable.

2.15.1 During test check of the records of eight offices[10] between September 2008 and July 2009, we noticed in the assessment of 21 dealers for the period between 1995-96 and 2005-06, finalised between February 2007 and March 2009 that the AOs allowed export sales valued at ₹ 77.59 crore either without production of form H/bill of lading or against incomplete certificates in form 'H'. This resulted in under assessment of ₹ 8.66 crore. Besides for non-production of the forms, interest of ₹ 4.45 crore and penalty of ₹ 5.08 crore was also leviable.

[9] ACCT : Gandhinagar, 2 and 7 Vadodara, 2 Vapi.

[10] ACCT : 14 Ahmedabad, Gandhidham, 2 Nadiad, 6 and 9 Surat, Unja, 3 and 7 Vadodara.

After we pointed the cases out (between February 2009 and November 2009), the Department accepted (between March 2010 and September 2010) the audit observations involving an amount of ₹ 13.08 crore in case of eight dealers. The particulars of recovery and replies in remaining cases have not been received (December 2010).

After we reported (June 2010) the matter, the Government confirmed the reply of the Department in eight cases; the reply in the remaining cases has not been received (December 2010).

The CST Act and Rules made there under provide that where any dealer transfers goods from one State to another not by reason of sale, he shall furnish to the AO, a declaration in form 'F', duly filled and signed by the principal officer of the other place of business, along with the evidence of dispatch of such goods. If the dealer fails to furnish such declaration, the movement of such goods shall be deemed to have been occasioned as a result of sale. A single declaration in Form F shall cover dispatch of goods by a dealer which he claims to be otherwise than by sale effected during a period of one calendar month. By virtue of Section 9(2A) of the CST Act, provisions of interest and penalty, as per general sales tax law applicable in the State are applicable.

2.15.2 During test check of the records of 13 offices[11] between January 2009 and October 2009, we noticed in the assessments of 16 dealers for the period between 2002-03 and 2005-06, finalised between November 2006 and November 2008 that in eight cases the AOs allowed claim of transfer of goods to other place of business without any declaration or evidence for dispatch of such transfer. In eight cases, the AOs allowed deduction on "F" Forms covering transaction of more than one calendar month. This resulted in incorrect deduction of turnover involving tax of ₹ 2.27 crore. Besides interest of ₹ 89.93 lakh and penalty of ₹ 1.05 crore was also leviable.

After we pointed the cases out (between May 2009 and December 2009), the Department accepted (between January and September 2010) the audit observations in case of seven dealers involving an amount of ₹ 1.40 crore and recovered ₹ 35,000 in case of one dealer. Particulars of recovery and replies have not been received in remaining cases (December 2010).

After we reported (June 2010) the matter, the Government confirmed the reply of the Department in seven cases; the reply in the remaining cases has not been received (December 2010).

[11] ACCT: 11 Ahmedabad, Ankleshwar, Bhavnagar, Bhuj, Kalol, Palanpur, 1 Rajkot, 11 Surat and 3, 4 and 7 Vadodara

DCCT: 22 Rajkot and 15 Surat.

Section 8(1) of the Central Sales Tax (CST) Act, provides for levy of tax at the rate of four *per cent on* inter-state sale of goods made against declaration in form 'C'. Where the sale is not supported by declaration in form 'C', tax is leviable at the rate of 10 *per cent* or at the rate applicable on such goods inside the State, whichever is higher. In respect of declared goods where the sale is not supported by form 'C', tax is leviable at twice the rate applicable. Dealers availing tax exemption benefit under entry 69 or 255 of notification issued under Section 49(2) of the GST Act, concessional rate of four *per cent* without production of 'C' form would be available only on production of form 29 or 43 otherwise tax shall have to be computed at the higher rates as applicable. By virtue of Section 9(2A) of the CST Act, provisions of interest and penalty, as per general sales tax law applicable in the State are applicable.

2.15.3 During test check of the records of 25 offices[12] between January 2007 and October 2009, we noticed in the assessment of 50 dealers for the period between 2000-01 and 2005-06, finalised between March 2005 and March 2009 that sales of various goods were not supported by form 'C'. However, AOs incorrectly levied concessional rates of tax instead of appropriate rates. This resulted in short levy of tax of ₹ 1.31 crore. Besides, interest of ₹ 52.93 lakh and penalty of ₹ 58.85 lakh was also leviable.

After the cases were pointed out by us between June 2008 and January 2010, the Department accepted (between April 2009 and December 2010) the audit observations involving ₹ 1.71 crore in case of 25 dealers and started the recovery process. Particulars of recovery and reply in the remaining cases have not been received (December 2010).

After we reported (June 2010) the matter, the Government confirmed the reply of the Department in 25 cases; the reply in the remaining cases has not been received (December 2010).

12 ACCT: 5, 8 and 14 Ahmedabad, Bharuch, 1 Bhavnagar, Bhuj, Mehsana, 2 Nadiad, 2 Surat, Valsad, 3, 4, 6 and 7 Vadodara, 1 and 2 Vapi.

DCCT: Corp. Cell-1 Ahmedabad, 19 Bhavnagar, 8 Mehsana, 13 Nadiad, 22 Rajkot, 15 Surat, 12 Vadodara, 18 Valsad.

CTO : Viramgam.

Section 6(2) of CST Act stipulates that in the course of inter-state sale of goods, if the purchasing dealer effects any subsequent sales during movement of goods, no tax is payable, provided the dealer claiming exemption produces a declaration in Form E-I or E-II obtained from his selling dealer and declaration in Form C from his purchaser. By virtue of Section 9(2A) of CST Act, provisions of interest and penalty, as per general sales tax law applicable in the State are applicable.

2.15.4 During test check of the records of two[13] offices in January and July 2009, we noticed in the assessment of five dealers for the assessment year 2005-06, finalised between May 2007 and September 2008 that in one case the AO did not levy tax on sales though sales were not supported by mandatory E-1/E-II and C forms. In four cases, the dealers produced E1 forms against sales to the local dealers. As the goods had not been sold during its inter-state movement, these sales were to be treated as local sales and the claim of the dealers was not allowable. Though such sales were to be treated as inter-state sales against C form and were liable to tax at the rate 4 *per cent*, the AO did not levy the tax on these sales. This resulted in non-levy of tax of ₹16.84 lakh. Besides, interest ₹ 6 lakh and penalty ₹ 9.03 lakh was also leviable.

After we pointed out (between May 2009 and December 2009), the Department accepted (September 2010) the audit observation in case of one dealer involving an amount of ₹ 8.93 lakh. Particulars of recovery and replies in remaining cases have not been received (December 2010).

After we reported (June 2010) the matter, the Government confirmed the reply of the Department in one case; the reply in the remaining cases has not been received (December 2010).

[13] ACCT : 17 Ahmedabad and 7 Vadodara.

2.16 Non/short levy of purchase tax

Section 15-B of the GST Act provides that where a dealer purchases directly or through commission agent 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 on such goods. Purchase tax so levied is admissible as set off under the Rule 42E of the GST Rules, 1970 provided the goods manufactured are sold by the dealer in the State. 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 from sales tax exemption holders under Section 49(2) of the Act and on their use in the manufacture of goods which are generally taxable goods under the Act. Hence, purchases of tax free goods from specified manufacturers are also liable for purchase tax under Section 15-B of the Act.

2.16.1 During test check of records of 15 offices[14] between October 2008 and September 2009, we noticed in the assessment of 18 dealers for periods between 1999-00 and 2005-06, finalized between March 2005 and February 2009 that the AOs, either did not levy or levied lesser amount of purchase tax on purchases made from exemption holders or purchases used in goods consigned outside the State. This resulted in under assessment of ₹ 1.77 crore. Besides, interest of ₹ 57.59 lakh and penalty of ₹ 34.69 lakh was also leviable.

After we pointed out (between February 2009 and December 2009) the cases, the Department accepted (between January and October 2010) the audit observation involving ₹ 89.31 lakh in case of 14 dealers and recovered ₹ 21.99 lakh in case of two dealers. The Department did not accept the audit observation in one case and stated that the assessment for the year 2004-05 was made on the basis of previous assessment calculation i.e. 2003-04 and observation was not raised therein. The reply is not tenable as the Department is responsible for assessing the tax liability after taking into account the provisions of Act, Rules and prevailing instructions. Particulars of recovery of balance dues and replies in remaining cases have not been received (December 2010).

After we reported (April 2010) the matter, the Government confirmed the reply of the Department in 15 cases; the reply in the remaining cases has not been received (December 2010).

14 DCCT- 3, 4 and Corp. Cell-1 Ahmedabad, Bharuch, 7 Gandhinagar, 15 Surat, 10 Vadodara and 18 Valsad.

ACCT- 11 Ahmedabad, Ankleshwar, Bharuch, 1 Jamnagar, Mehsana, 3 Rajkot and 2 Vapi.

Section 13 of the Gujarat Sales Tax Act provides that a registered dealer, on production of certificate in Form 19, can purchase goods (other than prohibited goods) without payment of tax for use by him as raw materials or processing materials or consumable stores in the manufacture of taxable goods for sale within the State. Section 15A of the GST Act provides that purchase tax at the rate prescribed is payable on the purchases made against declaration in Form 19/Form 24 at the time of filing returns. In the event of breach of condition of declarations, the dealer is liable to pay purchase tax at the prescribed rates, with interest and penalty, under Section 16 of the Act.

2.16.2 During test check of records of 10 offices[15] between February 2008 and July 2009, we noticed from assessments of 13 dealers for the period between 2000-01 and 2005-06 finalised between September 2006 and February 2009 that the dealers had purchased materials valued at ₹ 55.98 crore against Form 19 and either used for a purpose contrary to the conditions of Form 19 or did not discharge relevant liability for tax on purchases against declaration in Form 19/Form 24. In case of four dealers, the AOs failed to levy purchase tax on purchases against Form 19/ Form 24 declared by the dealers in their returns. In case of eight dealers, the manufactured goods were branch transferred outside the State for sale. In one case, the dealer had purchased goods against Form 19 which was not used either as raw material or processing material or consumable stores. Though there was a breach of condition of Form 19, the AOs did not levy purchase tax under Section 16 of the Act in these cases. This resulted in non/short levy of purchase tax of ₹ 32.06 lakh. Besides, interest of ₹ 6.66 lakh and penalty of ₹ 10.01 lakh was also leviable.

After we pointed out (between June 2008 and December 2009) the cases, the Department accepted (between May 2009 and September 2010) the audit observations involving an amount of ₹ 26.76 lakh in case of seven dealers and recovered ₹ 85,849 from one dealer. The Department did not accept audit observation in one case and stated that the purchase tax under Section 15(A) of the Act is exempted vide entry No.11 (2) (new) of Section 49(2) of the Act. The reply is not acceptable as new entry 11(2) exempts purchase tax under Section 19-B of the Act. The dealer is liable to pay purchase tax under Section 15A of the Act for purchases through commission agent against Form 24. Details of recovery of balance amount and replies in the remaining cases have not been received (December 2010).

After we reported (May 2010) the matter, the Government confirmed the reply of the Department in eight cases; the reply in the remaining cases has not been received (December 2010).

15 ACCT - Gandhinagar, 1 Jamnagar, Patan, 3 Rajkot, 7 Vadodara.
DCCT – 3 Ahmedabad, 24 Jamnagar, 11 and 12 Vadodara.
CTO – Khambhat.

2.17 Irregular/excess grant of set off

Rule 42 of the GST Rules provides that a dealer who has paid tax on the purchase of goods (other than prohibited goods) to be used as raw or processing materials or consumable stores in the manufacture of taxable goods, is allowed set-off at the rate applicable to the respective goods from the tax payable on the sale of manufactured goods subject to fulfillment of general conditions such as assessee had maintained a true account of goods purchased showing the details of goods in chronological order prescribed in Rule 47 of the Rules. Proviso to Rule 42 stipulates a deduction of four *per cent* of the sale value of the manufactured goods transferred outside the State for sale.

2.17.1 During test check of the records of 18 offices[16] between October 2008 and October 2009, we noticed in the assessment of 27 dealers for the assessment period between 1995-96 and 2005-06, finalised between April 2006 and March 2009 that the AOs allowed excess set-off, either on purchase of prohibited goods or without ascertaining the fulfillment of prescribed conditions. This resulted in excess grant of set off of tax of ₹ 1.01 crore. Besides, interest of ₹ 33.74 lakh and penalty of ₹ 32.79 lakh was also leviable as detailed below :

(₹ in lakh)

Sl. No.	Nature of observation	No. of dealers	Short levy
1.	The dealer had been allowed set off on purchase of prohibited goods/goods exempted on certificate under Section 49(2) of the GST Act.	11	107.59
2.	The AO did not deduct four *per cent* of sale price of goods transported to other States for sale.	10	39.33
3.	The dealer had been allowed set off which was incorrectly calculated or allowed without deduction of prescribed two *per cent*.	2	14.47
4.	The AO allowed set off to a dealer though the search operation revealed that the dealer had not maintained the books of account properly as prescribed under Rule 47 of the GST Rules.	1	3.02
5.	The dealer was allowed set off on goods purchased by payment of tax at incorrect rates.	3	2.89

After we pointed out (between February and December 2009), the Department accepted the audit observations in case of 17 dealers involving an amount of ₹ 57.38 lakh and recovered ₹ 11.42 lakh in case of six dealers. Particulars of recovery and replies in the remaining cases have not been received (December 2010).

[16] ACCT: 8, 11, 17 and 21 Ahmedabad, 11 Gandhinagar, 1 Jamnagar, Kalol, Mehsana, Palanpur, , 6 and 7 Vadodara, 2 Vapi, Vijapur.
DCCT: 4 and 5 Ahmedabad, 22 Rajkot, 17 Surat 12 Vadodara.

After we reported (May 2010) the matter, the Government confirmed the reply of the Department in 17 cases; the reply in the remaining cases has not been received (December 2010).

Rule 44 of the GST Rules provides that the dealer who had paid tax on purchase of goods is eligible for set off from the tax payable on inter state sale of such goods. Rule further provides that no set off shall be granted where the vendor who has sold the goods to the claimant has not credited in Government treasury, the amount of tax on his sales for which set off is claimed. The Department has also issued instructions in June 2004 to verify the fact of proof of payment of tax before grant of set off.

2.17.2 During test check of the records of four offices[17] between October 2008 and May 2009, we noticed in the assessments of four dealers for the period between 2003-04 and 2005-06, finalised between December 2007 and March 2008 that the AOs allowed excess set off of ₹ 82.09 lakh without obtaining any proof of tax having been paid by selling dealers. This resulted in excess grant of set off of ₹ 82.09 lakh. Besides, interest of ₹ 2.75 lakh and penalty of ₹ 3.21 lakh was also leviable.

After we pointed this out (between February 2009 and December 2009), the Department accepted (January and August 2010) the audit observations involving ₹ 88.05 lakh in all the cases. Particulars of recovery have not been received (December 2010).

After we reported (April 2010) the matter, the Government confirmed the reply of the Department in two cases; the reply in the remaining cases has not been received (December 2010).

2.18 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 nine offices[18] between October 2007 and July 2009, we noticed in the assessment of 10 dealers for the periods between 2003-04 and 2005-06, finalised between March 2006 and November 2008, that the AOs did not include the amount of valuable consideration forming part of sale price. This resulted in short realisation of tax of ₹ 1.64 crore including interest of ₹ 52.81 lakh, of which important cases are mentioned in the table below:

17 ACCT: 21 Ahmedabad, Ankleshwar, Bharuch and Patan.

18 ACCT-5, 14 and 17 Ahmedabad, 2 Surat, 4 Vadodara, 5 Rajkot and 2 Vapi. DCCT- Bharuch and 22 Rajkot.

(₹ in lakh)

Sl. No.	Name of the office	No. of dealers	Turnover escaping assessment	Total tax recoverable including interest	Nature of objection
1.	ACCT 4, Vadodara	One	785.89	99.69	The AO did not reconcile the difference between turnover as per balance sheet and turnover of sales shown in the returns. The Department initiated action for revision under Section 67 of the Act.
2.	ACCT 17, Ahmedabad	One	153.08	15.16	Though no tax was paid on mineral water manufactured through the job-workers, the AO allowed deduction of such sales as RD resales. Taxable portion of turnover was allowed as resale.

After we pointed out the cases between May 2008 and November 2009, the Department accepted (between January and September 2010) audit observations in case of three dealers involving amount of ₹ 1.17 crore. The Department had not accepted the audit observations in case of two dealers. In one case, the Department stated that the total amount of rate difference and discount of ₹ 32,37,833 has been deducted from the total turnover of ₹ 2,99,76,507 shown in the balance sheet. The reply is not acceptable as the sales turnover shown is net of trade discounts, rebates and sales returns as per 'Notes on accounts'. Moreover, the sales in the returns had not been reconciled with balance sheet. Therefore the reply of the Department is not based on the correct facts. In other case, the Department stated that the service charges pertained to man power service which is not includable in taxable services. The reply is not acceptable as the income of man power services was income from catering and required to be added in the catering sales. The provisions of the Act require levy of tax on gross value and no deduction is admissible to the dealer opting for composition tax.

Particulars of the recoveries and replies in the remaining cases have not been received (December 2010).

After we reported (May 2010) the matter, the Government confirmed the reply of the Department in four cases; the reply in the remaining cases has not been received (December 2010).

2.19 Non/short levy of interest

Section 47(4A) of the GST Act provides that if a dealer does not pay the amount of tax within the prescribed period and if the amount of tax assessed or reassessed exceeds the amount of tax already paid by more than 10 *per cent,* 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) of the CST Act, the above provisions apply to assessments under the CST Act as well.

During test check of records of 15 offices[19] between October 2008 and October 2009, we noticed in the assessment of 24 dealers for the period between 1996-97 and 2005-06, finalised between January 2007 and February 2009 that the AOs, either did not levy interest or levied it short on the amount of unpaid tax. This resulted in non/short levy of interest of ₹ 1.71 crore.

After we pointed out (February 2009 and January 2010), the Department accepted (August 2009 and September 2010) the audit observations involving ₹ 1.48 crore in case of 12 dealers and recovered ₹ 3.04 lakh in case of three dealers. Particulars of recovery of balance dues and replies in the remaining cases have not been received (December 2010).

After we reported (April 2010) the matter, the Government confirmed the reply of the Department in 12 cases; the reply in the remaining cases has not been received (December 2010).

2.20 Non/short levy of penalty

Section 45(6) of the GST Act provides that where the amount of tax assessed or reassessed exceeds the amount of tax paid with the returns by a dealer by more than 25 *per cent*, penalty not exceeding one and one half times of difference shall be levied. Further, the Commissioner *vide* public circular dated 3 June 1992 has laid down slab rates for levy of penalty. By virtue of section 9(2) of the CST Act, the above provisions apply to assessments under the CST Act as well.

During test check of the records of 16 offices[20] between October 2008 and October 2009, we noticed in the assessment of 28 dealers for the assessment periods between 1996-97 and 2005-06 that the difference between tax assessed and tax paid with returns exceeded by 25 *per cent* of the amount of tax paid. However, the AOs while finalising the assessments between March 2005 and March 2009, did not levy penalty as per said provisions and Commissioner's circular of June 1992. This resulted in non/short levy of penalty of ₹ 3.55 crore.

[19] DCCT: 4 Ahmedabad, 11, 12 Vadodara and 18 Valsad.
ACCT: 8, 16, 21 Ahmedabad, 3 Jamnagar, Kalol, Navsari, Patan, 2 Surendranagar, 7 Vadodara and 1, 2 Vapi.

[20] ACCT : 5 Ahmedabad, Bharuch, Gandhinagar, Kalol, Mehsana, Navsari, 1 Surendranagar, 7 Vadodara, 1 and 2 Vapi.
DCCT: 2, 3, 4 and Corporate Circle-1 Ahmedabad, 12 Vadodara, and Valsad.

After we pointed out between February and December 2009, the Department accepted (between July 2009 and September 2010) audit observations involving an amount of ₹ 3.49 crore in case of 23 dealers and recovered ₹ 2.76 lakh in case of two dealers. Particulars of recovery of balance amount and replies in the remaining cases have not been received (December 2010).

After we reported (April 2010) the matter, the Government confirmed the reply of the Department in 19 cases; the reply in the remaining cases has not been received (December 2010).

2.21 Non/short levy of turnover tax

Section 10A of the GST Act provides for levy of turnover tax at prescribed rate on the turnover of sales of goods other than declared goods after allowing permissible deduction under the Act, where the turnover of sales of a dealer liable to pay tax, first exceeds ₹ 50 lakh. 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 also liable to turnover tax.

During test check of the records of four offices[21] between October 2008 and April 2009, we noticed in the assessment of four dealers for the periods between 1992-93 and 1996-97, finalised between September 2003 and March 2008 that the AOs, either did not levy tax on turnover of sales exceeding prescribed limit or levied lesser amount of tax by applying incorrect rate. This resulted in short realisation of turnover tax of ₹ 36.49 lakh. Besides, interest of ₹ 11.86 lakh and penalty of ₹ 12.43 lakh was also leviable.

After we pointed out between February 2008 and December 2009, the Department accepted (May and September 2010) the audit observations in case of two dealers involving ₹ 24.23 lakh. Particulars of recovery and replies in remaining cases have not been received (December 2010).

After we reported (April 2010) the matter, the Government confirmed the reply of the Department in two cases; the reply in the remaining cases has not been received (December 2010).

[21] ACCT : 11 Ahmedabad and Gandhinagar.
DCCT : 22 Rajkot and 15 Surat.

2.22 Non/short levy of tax on works contract

Section 3 read with Section 2(10) of the GST Act, provides that any person who transfers property in goods (whether as goods or in some other form) involved in the execution of a works contract is liable to pay tax under the provision of the Act. The Commissioner of Sales Tax clarified in December 1985[22] that if a dealer engaged in the job work utilises own raw material more than 15 *per cent*, the job work shall be treated as works contract. As per judicial decisions[23], the property of materials such as chemicals and dyes used in the process of dyeing and printing are passed on to the fabrics of the customers and such passing of property of material is a deemed sale and tax is leviable on such materials.

During test cheek of records of five offices[24] between January and July 2009 in the assessment of seven dealers for the period 1996-97 and 2005-06, we noticed that the AOs did not levy tax on transfer of property in goods involved in the execution of works contract. Out of these cases, in case of five dealers, the dealers had used, in the process of dyeing and printing work, chemicals and dyes purchased from outside Gujarat State. However, the AOs did not levy tax on such material though tax was leviable as also held by the judicial decisions. In case of two dealers, the AOs allowed deduction of entire receipt income as job work though the material used in job work was purchased from outside the State and on declarations against Form 19 which was taxable in view of the Commissioner's clarification. This resulted in non/short levy of tax of ₹ 19.02 lakh. Besides, interest of ₹ 6.22 lakh and penalty of ₹ 7.21 lakh was also leviable.

After we pointed out between May and November 2009, the Department accepted the audit observation involving ₹ 9.24 lakh in case of one dealer. In three cases, the Department stated that Commissioner vide circular dated 22 September 1986 had specifically provided relief to such dealers. This circular was not taken into consideration when the issue was discussed. The reply is not acceptable in view of the judicial decisions. Particulars of recovery and replies in remaining cases have not been received (December 2010).

After we reported (May 2010) the matter, the Government confirmed the reply of the Department in two cases; the reply in the remaining cases has not been received (December 2010).

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[22] Public circular No. Gujka/303/584/3(A)-85-86 dated 03.12.1985.

[23] M/s Mathu Shree Textile Industries Ltd. (132-STC-539).
M/s Teaktex Processing Complex Ltd. (136-STC-435).
M/s Bijoy Processing Industries (92-STC-503).

[24] ACCT :17 Ahmedabad, 1 Anand, Ankleshwar, 6 Surat, 7 Vadodara.

2.23 Irregular remission of interest and penalty under *Vechan Vera Samadhan Yojana*

The State Government had introduced (March 2005, March 2006 and April 2007) *Vechan Vera Samadhan Yojana (Yojana)* for speedy recovery of outstanding tax. The *Yojana* allowed remission of interest and penalty on payment of outstanding tax during the currency of the *Yojana*. The benefit under the *Yojana* was not available to the beneficiaries of any other scheme.

During test check of the records of two offices[25] in September 2008 and March 2009, we noticed in the assessment of two dealers for the periods between 2001-02 and 2004-05, finalised between April 2007 and February 2008 that the AOs irregularly allowed remission of interest and penalty. In one case dealer was availing exemption benefit under Section 49(2) of the GST Act. In other case, the AO incorrectly allowed the remission of interest on delayed payment of tax along with returns (paid during 2004-05) under Section 47(4A)(a) of the Act which was not within currency of the *Yojana* (1 April 2007 to 31 May 2007). This resulted in irregular remission of interest of ₹ 46.93 lakh and penalty of ₹ 1.34 crore.

After we pointed out between February 2009 and September 2009, the Department accepted the audit observation involving ₹ 1.67 lakh and recovered the amount in case of one dealer. Particulars of recovery and reply in other case have not been received (December 2010).

After we reported (June 2010) the matter, the Government confirmed the reply of the Department in one case; the reply in the remaining case has not been received (December 2010).

2.24 Non/short levy of tax on specified sale

Section 3A of the GST Act provides that any dealer, whose turnover of 'Specified Sale' exceeds ₹ 50,000 in a year, is liable to pay tax. Section 2 (30c) provides that 'Specified Sale' means the transfer of the right to use any goods for any purpose for cash, deferred payment or other valuable consideration. The Supreme Court held[26] that in absence of appropriate legislature to create any legal fiction, the status of sale in case of transaction of transfer of right to use any goods would be the place where the property of goods passes i.e., where the agreement transacting the right to use is executed.

During test check of the records of ACCT 10 Ahmedabad in December 2008, we noticed in the assessment of one dealer for the period of 2002-03 and 2003-04, finalised in March 2008 that the AO allowed deduction of lease income amounting to ₹ 2.65 crore and ₹ 1.15 crore for the period 2002-03 and 2003-04 respectively treating it as outside state transaction. However, audit noticed that some agreements had been executed by the dealers in Ahmedabad for giving the goods on lease to Ahmedabad Municipal Corporation. The lease rent of ₹ 47.97 lakh and ₹ 68.75 lakh was received relating to these goods for the year 2002-03 and 2003-04 respectively as such were liable to tax in the State. Failure to do so, resulted in short levy of tax of ₹ 4.84 lakh. Besides, interest of ₹ 2.62 lakh and penalty of ₹ 2.91 lakh was also leviable.

25 ACCT: Modasa.
DCCT: 15 Surat.

26 20th Century Finance Corporation Ltd. Vs. State of Maharashtra.

The above facts were brought to the notice of the Department/Government in March 2009 /June 2010; their reply has not been received (December 2010).

2.25 Non/short levy of tax due to computation error

Section 41 of the Gujarat Sales Tax Act provides that the assessing officer shall assess the amount of tax payable by a registered dealer for particular period on the basis of evidences produced before him.

During test check of the records of two offices[27] in November 2007 and July 2008, we noticed from the assessments of two dealers for the period 2001-02 and 2002-03, finalised in April 2005 and March 2007 that the AOs computed incorrect amount of tax payable. In case of one dealer, the AO levied tax of ₹ 28,814 instead of correct amount of ₹ 2.88 lakh. In case of other dealer, the amount of goods returns of ₹ 31.24 lakh was deducted twice from the total sales turnover. This resulted in short levy of ₹ 9.50 lakh including interest of ₹ 2.78 lakh and penalty of ₹ 1.12 lakh.

After we pointed out between June 2008 and October 2008, the Department accepted the audit observations involving ₹ 9.50 lakh in case of both dealers and recovered ₹ 4.96 lakh in case of one dealer. Particulars of recovery in other case have not been received (December 2010).

After we reported (June 2010) the matter, the Government confirmed the reply of the Department in one case; the reply in the remaining case has not been received (December 2010).

2.26 Incorrect determination of turnover

Section 8A of the CST Act as well as Rule 50 of the Gujarat Sales Tax Rules, 1970 provide for deduction of tax amount from aggregate of sale price in determining the turnover, provided the sale price is inclusive of tax.

During test check of the records of four[28] offices between October 2008 and March 2009, we noticed from the assessment of four dealers for the period 1993-04 and 2004-05, finalised between January 2008 and March 2008 that the AOs incorrectly allowed the deduction of tax amount under Section 8A and Rule 50 even though the sales turnover in their annual accounts was exclusive of tax. This resulted in incorrect deduction of tax involving short levy of tax of ₹ 95.62 lakh. Besides, interest of ₹ 62.84 lakh and penalty of ₹ 77.45 lakh was also leviable.

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[27] ACCT: Godhra.
DCCT: Corp. cell 1 Ahmedabad.

[28] ACCT: Gandhinagar, 6 Surat and 1 Vapi.
DCCT: 22 Rajkot.

After we pointed out between February 2009 and September 2009, the Department accepted the audit observation in case of one dealer involving an amount of ₹ 93,834. The Department had not accepted the audit observations in case of two dealers. In one case, the Department stated that total turnover was inclusive of tax element as verified from books of account. The reply of the Department is not tenable as the turnover was exclusive of sales tax as per profit and loss account and note (5) forming part of the Balance sheet and profit and loss account. In other case, the Department stated that tax element is allowable while determining the taxable turnover as per Tribunal judgement in cases of M/s. Vikas Steel Industries and M/s. Classic Electrical Ltd. The reply of the Department is not relevant as these cases pertained to interstate sales where tax was recovered by the dealer. In the instant case, the dealer had branch transferred/consigned the goods to other state for sale. Moreover, such branch transfer/consignment did not include tax element. Particulars of recovery and reply in remaining one case have not been received (December 2010).

The matter was reported to the Government (June 2010); their reply has not been received (December 2010).

2.27 Incorrect allowance of exempted purchase of branches

Section 41(3) of the GST Act provides that the AO after considering all the evidences which may be produced in support of his return furnished by the dealer shall assess the tax due from the dealer.

During test check of the records of Deputy Commissioner of Commercial Tax-2, Ahmedabad, we noticed from the assessment of a dealer for the period 2002-03 finalised in March 2007 that the dealer had purchased goods valued at ₹ 38.55 crore from its own two units holding exemption certificate under Section 49 (2) of GST Act. However, the dealer had claimed and AO allowed purchase of exempted goods of ₹ 65.41 crore instead of ₹ 38.55 crore. The sale of exempted goods of ₹ 78.82 crore was allowed in assessment. Thus, by applying the ratio of purchase and sale of exempted goods, the sale value of such excess claim of ₹ 26.86 crore stood at ₹ 32.37 crore, escaping sales tax on this amount. Thus, incorrect allowance of exempted purchase resulted in underassessment of tax of ₹ 3.47 crore. Besides, interest of ₹ 1.87 crore and penalty of ₹ 2.08 crore was also leviable.

The above facts were brought to the notice of the Department in June 2008. Reply has not been received so far (December 2010).

The matter was reported to Government (June 2010); their reply has not been received (December 2010).

2.28 Incorrect grant of benefits under sales tax incentive schemes

Under the sales tax incentive schemes, the units which opt for deferment incentives are allowed to collect and retain the tax and pay it after a specified period into the Government account. The deferred amount of tax is recoverable in six annual installments beginning from the financial year subsequent to the year in which the unit exhausts the limit of incentive granted to it under the scheme or after the expiry of relevant period during which deferment is available, whichever is earlier. In the event of default in payment of tax deferred, interest is leviable at the rate of 24 *per cent* up to 31 August 2001 and 18 *per cent* thereafter.

2.28.1 During test check of the records of two offices[29] in September 2008 and March 2009, we noticed that three dealers opted for deferment incentive schemes, of these, one dealer did not pay any installment of deferred tax, the other dealer, paid the annual installments of deferred tax of ₹ 6.68 lakh late; after delays that ranged between 39 days and 60 days. In another case, we noticed that details recorded in the Recovery Register did not show complete details of repayment. We found from the challan file that the dealer had paid fixed installments each of ₹ 16.64 lakh instead of ₹ 23.36 lakh. The AOs did not initiate action to recover the tax and interest in these cases resulting in non-realisation of tax of ₹ 4.98 crore including interest of ₹ 1.61 crore.

Under the sales tax incentive schemes, eligible units are allowed to purchase raw material, processing material, consumable stores and packing material against declaration on payment of tax at the rate of 0.25 *per cent.* Remaining amount of the tax on such purchases is calculated at the prescribed rates and adjusted against the ceiling limit of exemption. Similarly, tax saved on sale of manufactured goods is also adjusted against the ceiling limit of exemption. In the event of breach of the recitals of the declaration, purchase tax saved is to be recovered under Section 50 with interest under Section 47(4A) and penalty under Section 45(6) of the GST Act. Further, the Act Provides for levy of penalty under Section 46(1) for collection of the tax in contravention to the provisions of the GST Act.

After we pointed this out (between February 2009 and July 2009); the Department accepted (between February and September 2010) the audit observations involving ₹ 4.98 crore in two cases. In one case involving ₹ 67,498 payable from 1.4.2006, the Department stated that the repayment of installments is to be considered within time limit as per Resolution No.GST-1209-561-TH dated 31.5.2010 which stipulated that payment of the installments within sixty days from the end of the financial year in which installment was due. The reply in this case is not acceptable as the amendment of providing sixty days from the end of financial year was inserted on 31 May 2010 and will be applicable prospectively. The report of recovery has not been received (December 2010).

After we reported (June 2010); the Government confirmed reply of the Department in two cases, while reply in the remaining case has not been received (December 2010).

[29] ACCT: Ankleshwar, Modasa.

2.28.2 During test check of the records of 10 offices[30] between July 2008 and June 2009, we noticed in the assessment of 17 dealers for the period between 1988-89 and 2004-05 and finalised between February 2007 and April 2008 that the AOs computed the tax either at incorrect rates or on commodity not included in the exemption certificate or did not impose penalty under Section 46(1) of the GST Act, though the dealer had collected the tax in contravention of exemption scheme, and either adjusted against the ceiling limit available or recovered in cash. This resulted in under assessment of tax of ₹ 1.67 crore. Besides, interest of ₹ 40.37 lakh and penalty of ₹ 34.81 lakh was also leviable as mentioned in the table below:

(₹ in lakh)

Sl. No.	No. of dealers	Nature of objection	Short levy of tax including interest and penalty	Remarks
1.	13	The AOs computed the tax at incorrect rate and adjusted against the ceiling limit available.	₹ 181.25	The Department accepted the observations in 6 cases involving ₹ 7.41 lakh.
2.	1	Though the exemption holder was not entitled to collectw the tax, he collected the tax and claimed deduction under Rule 50 of the GST Rules. The AO allowed the claim of deduction and did not impose the penalty under Section 46 of the GST Act.	₹ 25.36	Department accepted the observation and initiated revision process.
3.	1	Though set-off of tax paid on raw materials to be used in manufacture is to be adjusted against the tax payable on sale of manufactured goods, the AO adjusted against the tax payable on trading goods.	₹ 21.86	-
4.	1	Exemption was allowed on the goods not covered by the exemption certificate.	₹ 12.71	Department accepted the observation and raised the demand.
5.	1	Though incentive of exemption available under entry 118 dated 5.2.1981 of notification issued under Section 49(2) of the Act did not allow to adjust the purchase tax under Section 15(B) of the Act, the AO incorrectly adjusted the PT against exemption limit and refunded the tax paid by the dealer in cash through returns.	₹ 1.22	The AO accepted the audit observation.
		Total	**₹ 242.40**	

After we pointed this out (between January 2009 and September 2009) the Department accepted (May 2009 and December 2010) audit observations involving ₹ 46.71 lakh in case of nine dealers and recovered ₹ 1.89 lakh in case of two dealers. In one case the Department stated that the dealer had adjusted the amount of set-off against cash payment liabilities which is not contrary to the condition of deferment scheme. The reply of the Department is not acceptable as the dealer was allowed to adjust set off allowable on manufactured goods against the tax payable on trading goods. Moreover, no justification was available in the assessment order for delay of 19 years in assessment of one case. Particulars of recovery and replies in remaining cases have not been received (December 2010).

After we reported (June 2010) the matter, the Government confirmed the reply of the Department in four cases. The reply in the remaining cases has not been received (December 2010)

[30] ACCT : Ankleshwar, 2 Bhavnagar, Gandhidham, 2 Junagadh, Kalol, Mehsana, 5 Rajkot and 2 Vadodara.
DCCT: Corp. Cell-1 Ahmedabad and 25 Gandhidham.